

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION**

In Re:

Bankruptcy No. 04-5-747-GFK
In Chapter 7 Proceedings

JOSEPH R. FRANZINELLI,
and JULIE A. FRANZINELLI,

Debtors.

**NOTICE OF HEARING AND MOTION FOR EXPEDITED RELIEF AND MOTION
FOR RELIEF FROM STAY**

TO: THE ABOVE NAMED DEBTORS AND THEIR ATTORNEY, Peter C. Greenlee, **Greenlee Law Offices**, PO Box 1067, Twig, Minnesota, 55791; and Robert R. Kanuit, The United States Trustee, 4815 West Arrowhead Road, Suite 230, Hermantown, Minnesota, 55811; and all other parties in interest.

1. Norma J. Petrich, moves the court for the relief requested below, and gives notice of hearing herewith.

2. Norma J. Petrich by and through her attorney, James F. Clark, 1937 Second Avenue East, Hibbing, Minnesota, will hold a hearing on this motion on the **6th day of October, 2004 at or about 1:30 p.m.**, in the US Bankruptcy Court, United States Courthouse, Room 416, 515 West First Street, Duluth, Minnesota, 55802, for an Order lifting the automatic stay so that the Creditor, Norma J. Petrich may proceed in her personal injury action against the Debtors, Joseph and Julie Franzinelli, to the amount of their insurance coverage.

3. Any response to these motions must be filed and delivered not later than October 1, 2004, which is three days before the time set for the hearings (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearings (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTIONS IS TIMELY FILED, THE COURT MAY GRANT**

THE MOTIONS WITHOUT A HEARING. Norma J. Petrich will not object to any response regardless when a response may be served or filed.

4. This court has jurisdiction over the motions pursuant to 28 U.S.C §§ 157 and 1334, Fed. R. Bankr. P. 5001, and Local Rule 1070-1. This is a core proceeding. The petition commencing the Chapter 7 case was filed on June 25, 2004. The case is now pending in this court. Norma J. Petrich requests expedited relief and relief from the automatic stay provided by 11 U.S.C. § 362 to allow it to continue with pending proceedings.

5. On or about March 21, 2002, an automobile owned by Joseph R. Franzinelli was being driven by Victoria R. Cholich with the permission and consent of Joseph R. Franzinelli. Victoria R. Cholich carelessly and negligently operated Joseph R. Franzinelli's automobile so as to cause it to collide with Norma J. Petrich's vehicle.

6. Prior to the filing of debtors' Chapter 7 petition on June 25 2004, Norma J. Petrich had commenced civil proceedings against debtor Joseph R. Franzinelli in St. Louis County District Court with respect to a personal injury. On May 06, 2004 a Summons and Complaint was served upon Joseph R. Franzinelli, a copy of which is attached hereto as **Exhibit A**.

7. On May 25, 2004 an Answer was received by Joseph R. Franzinelli, a copy of which is attached hereto as **Exhibit B**.

8. Norma J. Petrich believes that cause exists to grant it expedited relief on its motion for relief from stay for the following reasons:

- Unless Norma J. Petrich is granted expedited relief, Norma J. Petrich will be unable to obtain a hearing before this court for approximately one more month, and the deadline to file a complaint objecting to discharge of debtor will have expired on October 12, 2004.

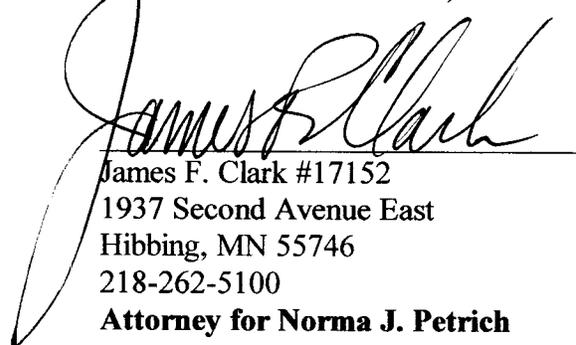
- Norma J. Petrich is requesting this motion to lift the stay allowing her to proceed against the debtor only to the extent of his insurance coverage with American Family Insurance Company and not against the debtor's personal assets.
- Norma J. Petrch has given reasonable faxed notice of its motions to debtors' counsel, the Chapter 7 trustee, and the United States Trustee.

9. Pursuant to 11 U.S.C. § 524(a)(1), a plaintiff may be allowed to proceed with unliquidated tort claims for the purpose of collecting the judgments from insurance companies. Here, since this is a Chapter 7 liquidation, the insurance coverage described above is not necessary for an effective reorganization. Therefore, Norma J. Petrich is entitled ro relief from the automatic stay to proceed against Joseph & Julie Franzinelli to the extent of any insurance coverage available.

10. These motions are also based on the accompanying affidavit of James F. Clark. **WHEREFORE**, Norma J. Petrich requests that the court enter a order granting her expedited relief and relief from the automatic stay of 11 U.S.C. § 524 to proceed against Joseph and Julie Franzinelli and American Family Insurance Company, and for such other and further relief as the court deems appropriate under the circumstances.

Dated: September 24, 2004

CLARK LAW OFFICES, P.C.



James F. Clark #17152
1937 Second Avenue East
Hibbing, MN 55746
218-262-5100
Attorney for Norma J. Petrich

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

Norma Jean Petrich,

Case Type: Personal Injury

Court File No.: _____

Plaintiff,

vs.

SUMMONS

(To be tried in the City of Hibbing)

Victoria Renee Cholich,

and

Joseph Richard Franzinelli,

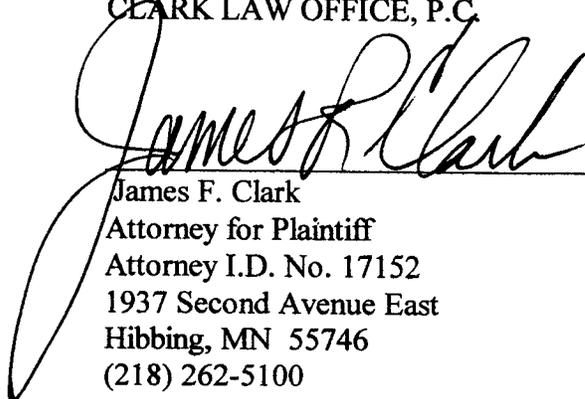
Defendants.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff's attorney an Answer to the Complaint, which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 30th day of April, 2004

CLARK LAW OFFICE, P.C.


James F. Clark

Attorney for Plaintiff

Attorney I.D. No. 17152

1937 Second Avenue East

Hibbing, MN 55746

(218) 262-5100

Exhibit
A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Norma Jean Petrich,

Case Type: Personal Injury
Court File No.: _____

Plaintiff,

vs.

COMPLAINT

(To be tried in the City of Hibbing)

Victoria Renee Cholich,

and

Joseph Richard Franzinelli,

Defendants.

COMES NOW THE PLAINTIFF and complains of Defendants, and for her cause thereof states and alleges as follows:

I.

That on or about March 21, 2002, at or near the intersection of 4th Avenue East and 26th Street East, in the City of Hibbing, County of St. Louis, State of Minnesota, the defendant Victoria Renee Cholich carelessly and negligently, operated defendant Joseph Richard Franzinelli's automobile so as to cause it to collide with plaintiff's vehicle.

II.

That at all times material herein the defendant Victoria Renee Cholich was operating an automobile owned by defendant Joseph Richard Franzinelli, with his permission and consent.

III.

III.

That as a direct and proximate result of the negligence and carelessness of the defendant, Victoria Renee Cholich, plaintiff was seriously and permanently injured, suffered and will in the future suffer great pain of body and mind.

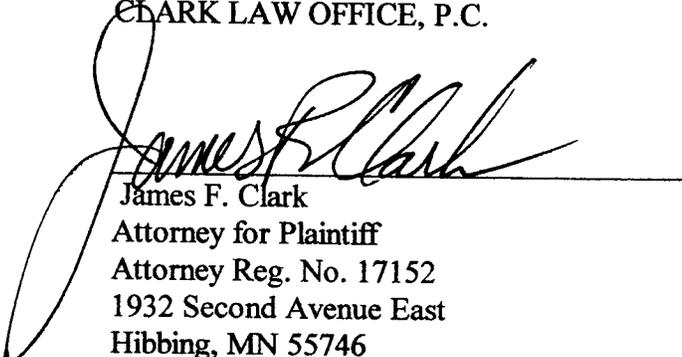
IV.

That as a direct and proximate result of the negligence and carelessness of the defendant, Victoria Renee Cholich, the plaintiff has in the past been caused to expend sums of money for the medical care and treatment of her injuries, and in the future will be required to expend sums of money for medical treatment of her injuries.

WHEREFORE, Plaintiff prays for judgment against the defendants in an amount in excess of Fifty Thousand Dollars (\$50,000), together with her costs and disbursements herein.

Dated this 30th day of April, 2004

CLARK LAW OFFICE, P.C.



James F. Clark

Attorney for Plaintiff

Attorney Reg. No. 17152

1932 Second Avenue East

Hibbing, MN 55746

(218)262-5100

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

Duluth 218-726-2338
Hibbing 218-262-0132
Virginia 218-749-7170

AFFIDAVIT OF SERVICE

I hereby certify that on the 6th day of May, 2004, at 1500 .M.,
at Heritage Manor Health Care Center, City / Town
of Chisholm, in the County of St. Louis, State of Minnesota, I duly served the following:

- | | |
|--|---|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Order (Proposed) |
| <input type="checkbox"/> Affidavit and Order in Supplementary Proceedings | <input type="checkbox"/> Subpoena: Witness Fees: \$ _____ |
| <input type="checkbox"/> Amended Order | <input checked="" type="checkbox"/> Summons & Complaint |
| <input type="checkbox"/> Cancellation of Contract for Deed | <input type="checkbox"/> Summons & Complaint in Unlawful Detainer |
| <input type="checkbox"/> Execution, Levy & Certificate, Fees \$15.00 | <input type="checkbox"/> Summons & Notice |
| <input type="checkbox"/> Garnishment Summons & Notice, Disclosure, Fees \$15.00 | <input type="checkbox"/> Summons & Petition in Dissolution of Marriage |
| <input type="checkbox"/> Notice of Mortgage Foreclosure and Homestead Designation Notice | <input type="checkbox"/> Statement of Claim |
| <input type="checkbox"/> Notice of Motion, Motion and Affidavit | <input type="checkbox"/> Request for Production of Statements and Documents |
| <input type="checkbox"/> Order | <input type="checkbox"/> Interrogatories |
| <input type="checkbox"/> Order for Protection | <input type="checkbox"/> Notice of Taking Deposition |
| <input type="checkbox"/> Order for Harassment | |
| <input type="checkbox"/> Order to Show Cause | |
| <input type="checkbox"/> Other: _____ | |

UPON: Joseph Richard Franzinelli

- By personally leaving a copy with: Him.
- By leaving a copy at the place of His/Her usual abode with: _____
_____, a person of suitable age and discretion residing therein.

CERTIFICATE OF UNSERVED PROCESS

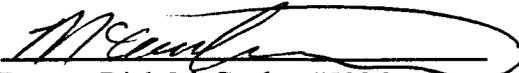
The attached process is returned for the following reason (s):

- | | |
|--|---|
| <input type="checkbox"/> Person unknown at address | <input type="checkbox"/> Service canceled by litigant |
| <input type="checkbox"/> No such address | <input type="checkbox"/> Unable to get response |
| <input type="checkbox"/> Person moved, new address unknown | <input type="checkbox"/> Not found |
| <input type="checkbox"/> Other: _____ | |

SHERIFF OF ST. LOUIS COUNTY

DATE: 5-6-04

SHERIFF'S FEE: \$ 45.00

BY: 
Deputy Rich McCauley #5226

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

Norma Jean Petrich,
Plaintiff,

PERSONAL INJURY
Court File No.:
Judge:

vs.

Victoria Renee Cholich, and
Joseph Richard Franzinelli,
Defendant.

ANSWER

Victoria Cholich and Joseph Franzinelli make the following Answer to Plaintiff's

Complaint:

1. Except as hereinafter specifically admitted, qualified or otherwise explained, deny each and every allegation set forth in said Complaint.

2. Admit the allegations contained in paragraph 2 of the Complaint.

3. Admit that an automobile accident occurred at or about the time and place alleged in the Complaint.

3. Are without information sufficient to form a belief concerning Plaintiff's claims of injury and damage.

4. Allege that if Plaintiff has been injured or damaged, the injuries and damages were caused by the negligence of Plaintiff or others over whom Victoria Cholich and Joseph Franzinelli had no control and for whose conduct they are not responsible.

WHEREFORE, Victoria Cholich and Joseph Franzinelli respectfully request that Plaintiff's Complaint be dismissed and that they be awarded their costs and disbursements hereir

Exhibit
B

together with such other further relief as the Court deems just and equitable.

Dated: 5/25/04

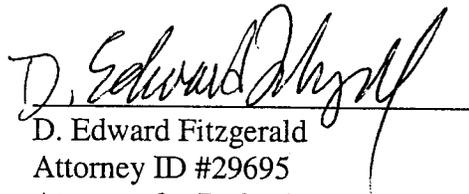


D. Edward Fitzgerald
Attorney ID #29695
Attorney for Defendants
610 Alworth Building
306 W. Superior Street
Duluth, MN 55802
(218) 727-6734

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: 5/26/04



D. Edward Fitzgerald
Attorney ID #29695
Attorney for Defendants
610 Alworth Building
306 W. Superior Street
Duluth, MN 55802
(218) 727-6734

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy No. 04-50747-GFK
In Chapter 7 Proceedings

JOSEPH R. FRANZINELLI
and JULIE A. FRANZINELLI,

MEMORANDUM OF LAW

INTRODUCTION

Norma J. Petrich has made a motion for expedited relief and motion for relief from the automatic stay. The Affidavit of James F. Clark correctly identifies the relevant documents and the facts with respect to debtor Joseph R. Franzinelli are set forth in greater detail in the underlying motion pleadings.

Briefly, there is a negligence claim against Joseph R. Franzinelli. During the pendency of this action, defendant filed for bankruptcy. Defendant had insurance coverage through American Family Insurance Company for the injuries which are the subject matter of this claim. Defendant has disclosed the applicable limits of insurance to be \$30,000 per person/\$60,000 per occurrence.

ISSUE

CAN A PLAINTIFF RECOVER FOR INJURIES IN A NEGLIGENCE CLAIM WHEN THE DEFENDANT HAS BEEN DISCHARGED IN BANKRUPTCY BUT WAS INSURED AGAINST THE LOSS?

It is undisputed among the courts which have addressed this issue that a plaintiff may proceed with an unliquidated tort claim against an insured debtor who has been discharged in bankruptcy. Contrary to defendant's assertion, a bankruptcy determination does not void the bankrupt's debts, but, rather, prohibits collection of the debts from the assets of the debtor. There is no prohibition against collection of the obligation from others, including insurers.

11 U.S.C. § 524 (a) (1) (1986), upon which defendant relies in the present case, provides:

(a) A discharge in a case under this title....--

- (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under Section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;**

11 U.S.C. § 524 (a) (1) (1986) and Supp. 1986) (emphasis added).

This statute has been construed to allow plaintiffs to proceed with unliquidated tort claims for the purpose of collecting the judgments from insurance companies. In In Re Mann, 58 B.R. 953 (Bankr. W.D. Va. 1986), the plaintiff was allowed to re-open a bankruptcy proceeding after discharge of the defendant debtor, who was not insured against the loss. The plaintiff had been in an automobile accident with the debtor and sought to recover under the uninsured motorist clause of her own policy. The defendant, asserted § 524 as a defense. The court cited Collier on Bankruptcy, stating:

Section 524 insures that a discharge will be completely effective and operate as an injunction against enforcement of a judgment or the commencement or continuation of an action in other courts to collect or recover a debt as a personal liability of the debtor.

Id. At 956 (emphasis in original) quoting 3 Collier on Bankruptcy, ¶524.01 at 524-4 (15th Ed. 1985). The court in Mann recognized § 524 (e) which states that “[E]xcept as provided in subsection (a) (3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for , such debt.” Id. The court continued:

Whereas the provisions of § 524 are intended to protect the debtor from personal liability, § 524 (e) indicates that it was not to affect the liability

of third parties nor prevent establishing such liability through whatever means required....In discussing the scope of [this section], Collier notes that “When it is necessary to commence or continue a suit against a debtor in order, for example, to establish liability of another, ... such suit would not be barred.;

Id. citing 3 Collier on Bankruptcy, ¶524.01 at 524-16. The court allowed the plaintiff to continue her action for the purpose of determining the defendant’s liability, but prohibited her from trying to collect the judgment from the debtor personally. The court stated: “The injunction is required only when continuance of the civil suit will result in efforts to collect a judgment award from the debtor or his property.” Id. At 958, citing Matter of McGraw, 18 B.R. 140 (Bankr. W.D. Wis. 1982). The court in Mann continued:

[T]he state court action will not be continued to collect the judgment from the debtor personally. The sole purpose for maintaining the suit is to obtain a judgment establishing the uninsured motorist’s liability....Establishing this liability is a prerequisite to any right to recover....The Debtor and his property are not subject to any risk and maintenance of the suit does not frustrate the policy of the Bankruptcy Code in giving the Debtor a fresh start in his economic life.

Id. at 958.

Additionally, the court adopted the argument raised in Elliot v. Hardison, 25 B.R. 305 (D.Va. 1982), noting that the insurance company presumably had factored into its premium charges the cost of assuming the risk of providing the uninsured motorist coverage. Moreover, the company was entitled to share in a special Uninsured Motorist Fund. The court held that if the state court action were not allowed to proceed, “[T]he insurance company would in effect escape potential liability and be unjustly enriched.” Id. citing Elliot v. Hardison, 25 B.R. at 305.

The court in Mann concluded:

To preclude [the plaintiff] from proceeding with the state court action effectively prevents any possibility of recovering for her alleged damages. It would be inequitable to deny her recovery on her expected

protection simply by virtue of the fact that the person with whom she had a collision subsequently filed a petition with and was discharged....The opportunity to litigate the issue of liability is a significant right which cannot be easily set aside despite the existence of these proceedings.

Id. At 959 (citations omitted) (emphasis added).

In Matter of McGraw, 18 B.R. 140 (Bankr. W.D. Wis. 1982), the court allowed the plaintiff to proceed with his unliquidated claim against the debtors's former employer under the doctrine of respondeat superior. The court lifted the 11 U.S.C. § 362 stay and the 11 U.S.C. § 362 stay and the 11 U.S.C. § 524 injunction for the limited purpose of determining the debtor's liability for an automobile accident. The court reasoned that:

11 U.S.C. § 524 requires a permanent injunction to be issued prohibiting the continuation of a civil suit against the debtor. However, the reach of 11 U.S.C. § 524 is limited. 11 U.S.C. § 524 states that a discharge 'operates as an injunction against.... continuation of an action,...to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor.... Thus, the statutory language itself, places limits on the scope of the 11 U.S.C. § 524 injunction. The injunction is only required when the continuation of a civil suit will result in efforts to collect from the debtor or his property a judgment award. Because the plaintiff's have agreed to seek no enforcement against him, either McGraw nor his property is in any jeopardy due to the continuation of the suit.

Id. At 142 (emphasis in original).

Another case involving an unliquidated tort claim is Rowe v. Ford Motor Company, 34 B.R. 680 (M.D. Ala. 1983), a wrongful death case in which the plaintiff brought an action on behalf of his son who was killed in an automobile accident with the uninsured defendant. The court allowed the Plaintiff to continue the suit after the defendant's discharge in bankruptcy for the purposes of determining his liability so that the plaintiff could collect from his own uninsured motorist policy. The court reasoned that the plaintiff's right to recover depended on the legal

liability of the defendant.

The cases decided under the former Bankruptcy Act also support plaintiff's position in the present case. In Kutza v. Parker, 185 N.E.2d 53 (Ohio App. 1962), the Plaintiff sued for injuries incurred in an automobile accident with the defendant. While the suit was pending, the defendant filed a petition in bankruptcy and was subsequently discharged. The case went to trial after the discharge. The defendant asserted his discharge in bankruptcy as defense. A verdict was then rendered for the plaintiff. The court articulated the identical issue as in the present case:

Does a defense and proof of adjudication and discharge in bankruptcy of an unliquidated claim for personal injuries arising out of a tort action preclude the injured party from obtaining a judgment against the bankrupt-tort-feasor in a civil action, where, at the time the action arose, the bankrupt-tort-feasor was injured under a standard policy of automobile liability insurance?

Id. At 54. The court reiterated the general rule that “[A] discharge in bankruptcy does not operate to destroy the debt, but does affect a release of the bankrupt which bars the collection of the debt...Id. at 55. The court gave effect to Ohio’s statute fixing absolute liability on insurance companies, stating:

[I]t is essential that courts permit the rendition of a judgment against the bankrupt, for the reason that the insurance company is liable under its contract notwithstanding the discharge in bankruptcy of the insured; and to fix the extent of the insurance liability, if any, the tort claim must be determined on its merits.

It therefore follows that the defense of bankruptcy in an action of the kind under consideration does not permit it to be interposed to prevent a judgment on the merits in the negligence action, but only operates to prevent execution against the defendant on the judgment.

Id.

Kutza was decided according to Section 16 of the 1898 Bankruptcy Act, which provided that: “The liability of a person who is a co-debtor with, or guarantor or in any manner a surety

for, a bankrupt shall not be altered by the discharge of such bankrupt.” 11 U.S.C § 34 (1898). Section 524 9e) is the amended Act’s counterpart. See infra p. 3. The court in Kutza held that the provision evidenced a legislative intent to “confine operation of the Act to a nonrelease of claims against parties liable with the bankrupt, even though unliquidated, as in the case of personal injury claims based upon negligence. Kutza v. Parker, 185 N.E.2d at 55.

Similarly, the Kansas Supreme Court addressed this issue in Johnson v. Bondurant, 187 Kan. 637, 359 P.2d 861 (1961). In that case, the plaintiff sought to continue the personal injury action against the defendant who was covered by a liability policy and discharged in bankruptcy during the pendency of the suit. The court again relied on the provision in the former Bankruptcy Act, discussed earlier, which provided that the liability of co-debtors, guarantors and sureties would not be altered by the discharge of the bankrupt. The Supreme Court found that an insurance company fell within the scope of this provision, stating:

[I]t is unnecessary to determine specifically that the insurer is a co-debtor, or a guarantor, or in any manner a surety for the assured, but it is clear that the insurer falls within one of these classifications. However, we are inclined to the view that the status of liability insurer against loss is that of a guarantor, guaranteeing to pay in the event of liability determined and predicted on a judgment. Consequently the liability of [the defendant’s insurance company] is not altered by the discharge of the bankrupt.

Id. At 864-5 quoting Miller v. Collins, 328 Mo. 313, 40 S.W.2d 1062, 1065 (1983). The court noted that although Miller involved a judgment obtained prior to the discharge in bankruptcy, the reasoning was still applicable. Again, the court reiterated the principle that the plaintiff could not collect from the defendant personally from any judgment rendered, but rather from the debtor’s insurer under the liability policy. Additionally, in the case of In Re Gil-Bern Industries, Inc., 6

C.B.C. 100 (Bankr. D.Mass. 1975), also decided under the former Bankruptcy Act, the court allowed the plaintiffs, who were injured on the defendant's construction site, to proceed with their unliquidated claim against the debtor's liability insurer. The court reasoned that although the negligence action was a dischargeable obligation,

[T]he courts recognizing that a discharge is a bar to collection from the debtor but does not void the obligation and that discharge is intended for the personal relief and rehabilitation of the debtor, have employed various equitable theories to allow recovery against sureties and insurers where to do so is compatible with the debtor's possessive relief from its obligations, which is the intent of the discharge.

Id. at 101. The court in this case also noted Massachusetts's "absolute liability" statute for liability insurers, which was similar to that in Kutza v. Parker, 185 N.E.2d at 53, discussed earlier. The court in Gil-Bern held that the statute evidenced legislative intent "to make the paid insurer responsible irrespective of the subsequent status of the insured." Gil-Bern, 6 C.B.C. at 102.

Similarly, in Matthews Cadillac, Inc. v. Phoenix of Hartford Insurance Company, 90 Cal. App.3d 393, 153 Cal. Rptr. 267 (1979), the plaintiff was permitted to pursue his action against the discharged bankrupt to judgment for the purpose of enforcing liability against the bankrupt's insurer. The plaintiff's sued the defendants for breach of contract, breach of warranty, negligence, and property damage. The court cited Hill v. Harding, 130 U.S. 699 (1889), which held that a state could render judgment against a discharged bankrupt with a perpetual stay of execution, but enabling the plaintiff to proceed against the surety. The court noted that although Hill was decided under the predecessor statute to the former Bankruptcy Act § 16 (under which Matthews Cadillac was decided), the principle of law remained the same.

Pursuant to Minn. Stat. 60A.08, Subd. 6, governing the bankruptcy or insolvency of an

insured:

Every bond or policy of insurance issued in this state insuring against either actual loss suffered by the insured, and imposed by law for damages on account of personal injury, death, or injury to property caused by accident, or legal liability imposed upon the insured by reason of such injuries or death, shall notwithstanding anything in the policy to the contrary, be deemed to contain the following condition: The bankruptcy or insolvency of the insured shall not relieve the insurer of any of its obligations under this policy, and in case an execution against the insured on a final judgment is returned unsatisfied, then such judgment creditor shall have a right of action on this policy against the company to the same extent that the insured would have, had the insured paid the final judgment.

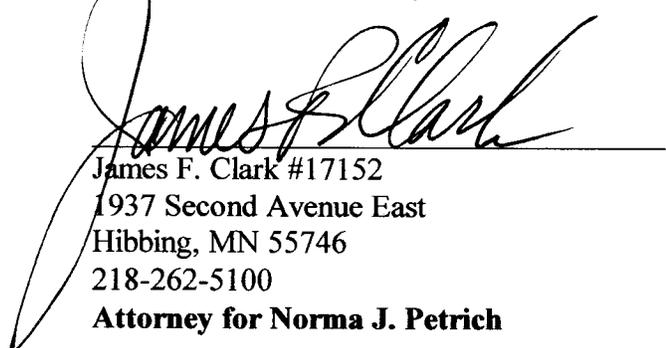
Minn. Stat. § 60A.08, Subd. 6 (1986) (emphasis added).

CONCLUSION

There is overwhelming support for plaintiffs' position in this case. The continuation of the action will not frustrate the policy consideration of keeping the debtor's estate free from risk. Finally, defendant's discharge does not relieve his insurance company of its contractual obligation, which would be unjustly enriched if the plaintiffs' claim were not allowed to proceed.

Dated: September 24, 2004

CLARK LAW OFFICES, P.C.



James F. Clark #17152
1937 Second Avenue East
Hibbing, MN 55746
218-262-5100
Attorney for Norma J. Petrich

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION**

In Re:

Bankruptcy No. 04-5-747-GFK
In Chapter 7 Proceedings

JOSEPH R. FRANZINELLI,
and JULIE A. FRANZINELLI,

Debtors.

AFFIDAVIT

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

JAMES F. CLARK, being first duly sworn on oath, deposes and says:

1. Your affiant is the attorney employed by Clark Law Offices, P.C., 1937 Second Avenue East, Hibbing, Minnesota, 55746, for Norma J. Petrich of 3725 Fourth Avenue East, Hibbing, Minnesota, 55746.
2. On behalf of Norma J. Petrich, your affiant has cause to be served and filed a notice of hearing and motion for expedited relief and motion for relief from stay, whereby Norma J. Petrich seeks expedited relief and relief from the automatic stay to execute on a state court cause of action attached to the underlying motion pleadings. This affidavit is made in support of Local Rule 9006-1(d).
3. On September 24, 2004, your affiant telephoned the law offices of Peter C. Greenlee to inform debtors' attorney that your affiant has caused to be served and filed ta notice of hearing and motion for expedited relief and motion for relief from stay scheduled for hearing October 6, 2004, at 1:30 p.m. In addition, your affiant caused the motion pleadings to be faxed to the law offices of Peter C. Greenlee on

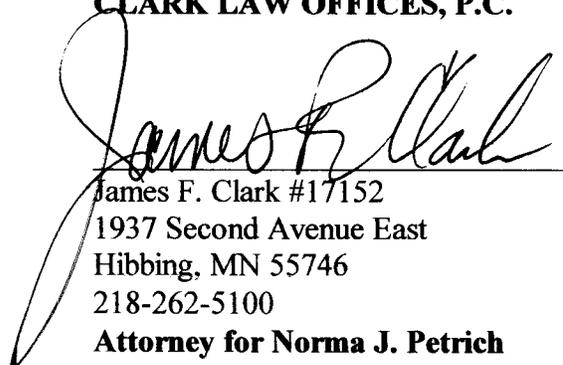
September 24, 2004.

4. In addition, your affiant caused the motion pleadings to be faxed to the Chapter 7 trustee's office and the United States Trustee's office on September 24, 2004.

FURTHER YOUR AFFIANT SAYETH NOT.

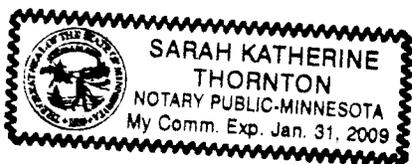
Dated: September 24, 2004

CLARK LAW OFFICES, P.C.


James F. Clark #17152
1937 Second Avenue East
Hibbing, MN 55746
218-262-5100
Attorney for Norma J. Petrich

Subscribed and sworn to before me
this 24th day of September, 2004.


Notary Public



U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Joseph R. Franzinelli and Julie A. Franzinelli

Debtor(s): Bankruptcy No.: 04-50747-GFK
In Chapter 7 Proceedings

UNSWORN DECLARATION FOR PROOF OF SERVICE VIA FAX AND U.S. MAIL

SARAH THORNTON, employed by Clark Law Offices, P.C., attorney licensed to practice law in this court, with office address of 1937 Second Avenue East, Hibbing, Minnesota, 55746, declares that on September 24, 2004, I served; **Notice of Hearing and Motion for Expedited Relief and Motion for Relief From Stay by Norma J. Petrich; Memorandum of Law; Affidavit of James F. Clark; and Proposed Order** upon each of the entities named below by FAXING to each of them a copy thereof and by mailing to each of them a copy thereof by enclosing same in an envelope, with first class postage prepaid and depositing same in the post office at Hibbing, Minnesota, addressed to each of them as follows:

United States Trustee
US Courthouse Rm 416
515 West First Street
Duluth, MN 55802
Via Facsimile: 218-529-3606
and U.S. Mail

Chapter 7 Trustee
Robert R. Kanuit
4815 W Arrowhead Rd, Suite 230
Hermantown, MN 55811
Via Facsimile: 218-722-7744
and U.S. Mail

(Attorney for Debtors)
Peter C. Greenlee
Greenlee Law Office
1907 Third Avenue East
Hibbing, MN 55746
Via Facsimile: 218-729-0628
and U.S. Mail

(Debtor)
Joseph R. Franzinelli
1827 ½ 8th Ave E
Hibbing, MN 55746

(Attorney for Joseph R. Franzinelli)
D. Edward Fitzgerald
610 Alworth Building
306 West Superior Street
Duluth, MN 55802

And I declare, under penalty of perjury, that the forgoing is true and correct.

Dated: September 24, 2004

Signed: 
Sarah Thornton

CLARK LAW OFFICE, P.C.

1937 SECOND AVENUE EAST
HIBBING, MINNESOTA 55746-1647

TELEPHONE: 218/262-5100
FAX: 218/262-5107

RECEIVED

2004 SEP 27 AM 11:55

U.S. DISTRICT COURT
DULUTH, MN

September 24, 2004

United States Trustee
US Courthouse Rm 416
515 West First Street
Duluth, MN 55802

Chapter 7 Trustee
Robert R. Kanuit
4815 W Arrowhead Rd, Suite 230
Hermantown, MN 55811

D. Edward Fitzgerald
610 Alworth Building
306 West Superior Street
Duluth, MN 55802

Peter C. Greenlee
Greenlee Law Office
1907 Third Avenue East
Hibbing, MN 55746

Joseph R. Franzinelli
1827 1/2 8th Ave E
Hibbing, MN 55746

In Re: **Joseph R. Franzinelli and Julie A. Franzinelli**

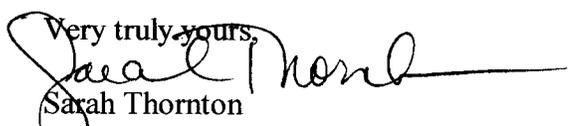
Debtor(s): Bankruptcy No.: 04-50747-GFK
In Chapter 7 Proceedings

Dear Gentlemen:

Enclosed and served upon you please find the following; **Notice of Hearing and Motion for Expedited Relief and Motion for Relief From Stay by Norma J. Petrich; Memorandum of Law; Affidavit of James F. Clark; and Proposed Order** in regard to the above captioned matter.

Should you have any further questions, please feel free to call.

Very truly yours,


Sarah Thornton

Secretary to Mr. Clark

srt
Enclosures
cc:Ms. Norma Petrich

27219
9-30-04

CLARK LAW OFFICE, P.C.

1937 SECOND AVENUE EAST
HIBBING, MINNESOTA 55746-1647

TELEPHONE: 218/262-5100
FAX: 218/262-5107

RECEIVED

2004 SEP 30 AM 9:57

U.S. BANKRUPTCY COURT
DULUTH, MN

September 29, 2004

United States Trustee
US Courthouse Rm 416
515 West First Street
Duluth, MN 55802

**In Re: JOSEPH R. FRANZINELLI
 and JULIE A. FRANZINELLI
 Bankruptcy No. 04-50747-GFK
 In Chapter 7 Proceedings**

Dear Sir/Madame:

Pursuant to your conversation with Mr. Clark in regard to the filing of the above captioned matter, enclosed please find a check in the amount of \$150 for filing fees.

Should you have any further questions, please feel free to call.

Very truly yours,



Sarah Thornton
Secretary to Mr. Clark

srt
Enclosure

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Bankruptcy No. 04-50747-GFK
In Chapter 7 Proceedings

JOSEPH R. FRANZINELLI,
and JULIE A. FRANZINELLI,

Debtors.

ORDER

Upon the Motion of Norma J. Petrich for an Order Lifting the Automatic Stay imposed by 11 U.S.C. 36 (a), by and through her attorney, James F. Clark 1937 Second Avenue East, Hibbing, Minnesota, 55746, upon all the files, records and proceedings herein, the court being advised in the premises, now finds that cause exists to grant Norma J. Petrich expedited relief and relief from the automatic stay.

NOW THEREFORE, **IT IS HEREBY ORDERED** that:

1. Norma J. Petrich's motion for expedited relief is hereby granted.
2. That the Automatic Stay imposed by 11 U.S.C. §36 (a) is modified to permit the action to proceed against the Debtors in St. Louis County District Court, Sixth Judicial Court, State of Minnesota , pursuant to the Notice of Motion and Motion by Norma J. Petrich.
3. Notwithstanding Fed. R. Bankr. P.4001(a)(3), this order is effective immediately.

Dated at Duluth, Minnesota, this _____ day of October, 2004.

United States Bankruptcy
Court Judge