

June 2026

Restructuring & Debt Capital Solutions Group Bulletin

District Court Vacates and Remands Genesis Stay Extension to Non-Debtors

In *In re Genesis*, the U.S. District Court for the Northern District of Texas vacated a Bankruptcy Court order extending the automatic stay to protect non-debtor affiliates and co-defendants of Genesis Healthcare from tort litigation during the debtors' chapter 11 cases and remanded for further proceedings consistent with its opinion. The District Court also denied a request to certify a direct appeal of the stay extension order to the Fifth Circuit.

Regarding its decision to vacate the stay order, the District Court held that, under *Feld v. Zale Corp.* (*In re Zale Corp.*), 62 F.3d 746 (5th Cir. 1995), a bankruptcy court may temporarily enjoin third-party actions against non-debtors only in "unusual circumstances" and only after commencement of an adversary proceeding and compliance with the procedural and substantive requirements for a preliminary injunction, and found reversible error because the Bankruptcy Court granted stay-extension relief by motion practice despite objections from personal injury, wrongful death and healthcare negligence claimants. The District Court further concluded that the Bankruptcy Court had not adequately applied the preliminary injunction factors, including its assessment of "success on the merits" and the harm to claimants barred from pursuing non-debtor claims. At the same time, the District Court rejected the argument that *Purdue Pharma* categorically prohibits temporary non-debtor injunctions and directed that any renewed relief must "hew to" *Zale*. The decision underscores that debtors seeking to pause litigation against non-debtors must follow the appropriate process and build a procedurally proper injunction record, even where the relief is temporary and tied to the reorganization.

Bankruptcy Court Denies Emergency DIP Financing in *In re Ascend Elements*

In *In re Ascend Elements, Inc.*, the U.S. Bankruptcy Court for the Southern District of Texas denied the debtors' request for a \$30

Did You Know...

- Partner [Liz Osborne](#) was named a finalist for *International Financial Law Review's* Women in Business Law EMEA Awards in the "Restructuring & Insolvency Lawyer of the Year" category. Liz also took part in the Cambridge Forum's European Forum on International Restructuring. Participants explored current issues in complex cross-border restructuring and shared insights from different jurisdictional perspectives.
- Partner [Kyle Kimpler](#) spoke on a panel at the American Bar Association's Business Law Spring Meeting. The panel explored how digital assets, government forfeiture actions and IP-backed collateral can upend lien priority and enforcement in ways that conventional secured-lending playbooks fail to anticipate.
- Partner [Sung Pak](#) spoke on a panel at the International Bar Association's International Financial Law Conference that explored cross-border perspectives on how up-tiers, drop-downs, distressed disposals and cooperation agreements are being deployed and challenged across jurisdictions.

million emergency DIP facility from the stalking horse bidder, which was opposed by the UCC and a mechanics' lienholder. Approximately \$18.8 million of the proposed DIP proceeds would have been transferred to a non-debtor Polish subsidiary to fund a land purchase option expiring at the end of May. The Court found this transfer did not constitute an emergency justifying approval on shortened notice, and questioned whether the debtors would have authority to make such a transfer absent full notice and an opportunity to object, given that out-of-ordinary-course transactions require separate court authorization.

The Court further found the DIP and the proposed sale were "contractually fused." Because the DIP lender was also the stalking horse bidder and the DIP facility was integrated into the

credit bid for substantially all of the debtors' assets, the Court observed that if the stalking horse was not the winning bidder, the transfer to non-debtor entities could be of no benefit to the estate.

Critically, the secured lenders had conditioned cash collateral consent on DIP approval. Following denial, the Court rejected the UCC's request for nonconsensual cash collateral use, finding the request was not properly before the Court. This left the debtors without a funding mechanism for operations or the sale process. The debtors have since pivoted to a piecemeal asset sale strategy.

This decision highlights three practical takeaways. First, emergency DIP requests face an uphill battle where the majority of proceeds will flow to non-debtor affiliates rather than fund the estate. Second, structurally tying a DIP facility to a stalking horse bid may invite close judicial scrutiny—particularly where the lender and bidder are the same party. Third, conditioning cash collateral consent on DIP approval carries significant downside risk: if financing is denied, the debtor may be left without any funding path and under immediate pressure to convert or pivot strategy.

Please contact any of our Restructuring & Debt Capital Solutions Group Partners to discuss these or other topics in greater depth:



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