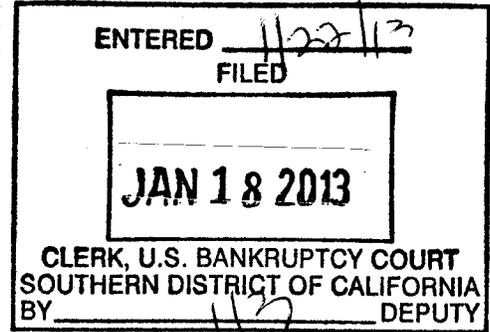


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re ) Case No. 12-00026-PB11  
12 )  
12 DAVID M. ANDERSON, )  
13 )  
13 Debtor. ) ORDER ON MOTIONS TO ESTIMATE  
14 ) CLAIM, FOR RELIEF FROM STAY,  
14 ) FOR PROTECTIVE ORDER, AND FOR  
15 ) RULE 2004 EXAMS  
15 )  
16 )  
16 )  
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18 In 2010 Victoria Place, LLC and James Lessley filed suit in  
19 state court against Mr. Anderson and others. Proceedings were  
20 delayed by Probate proceedings following the death of Mr. George  
21 Szabo, and were still pending when Mr. Anderson filed the instant  
22 Chapter 11 proceeding on January 3, 2012.

23 Since the filing, there has been a flurry of activity. Mr.  
24 Anderson applied for, and was granted an order for Rule 2004 exam  
25 of Mr. Lessley and Victoria Place. They, in turn, filed the  
26 pending motion for relief from stay, and an application for a

1 protective order staying or limiting the 2004 exam. They also  
2 filed their own request for a Rule 2004 exam, which debtor does  
3 not oppose in principle, but raises concerns about the order in  
4 which the exam should be conducted, as well as the breadth of the  
5 requested document production.

6 In opposition to the motion for relief from stay, debtor has  
7 argued that he wants the case to proceed quickly. He has already  
8 filed a draft of a proposed disclosure statement. Debtor advised  
9 the Court and other parties that he intended to ask the Court to  
10 estimate the claims of Mr. Lessley and of Victoria Place, which  
11 would allow the plan to proceed to confirmation.

12 This Court required the parties to brief the issue of  
13 whether the claims of Mr. Lessley and Victoria Place are amenable  
14 to estimation under 11 U.S.C. § 502(c), and they have done so.  
15 Having reviewed those pleadings and the supporting documents, the  
16 Court finds and concludes that most of their claims sound in  
17 tort, are not susceptible of ready calculation and, while the  
18 acts giving rise to liability have already occurred (if at all),  
19 liability has not been fixed.

20 As this Court wrote in its interim order on stay relief,  
21 "the court needs to resolve whether estimation is available to  
22 debtor and whether it will advance confirmation of a plan of  
23 reorganization." As noted, the Court has concluded that  
24 estimation is theoretically available. That satisfies one part

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1 of the test under § 502(c). The other part requires the Court to  
2 find that administration of the case would be unduly delayed if  
3 estimation were not utilized.

4 Since the onset of the case, there have been two dominant  
5 claims. One by Mile High Banks, and the claims of Mr. Lessley  
6 and Victoria Place. Much of the potential litigation concerning  
7 the Mile High Banks claim has been avoided by the purchase of  
8 that claim by the Szabo probate estate. That leaves the claims  
9 of Mr. Lessley and Victoria Place to be resolved. The state  
10 court litigation included non-debtor defendants, among them the  
11 Szabo probate estate. The state court complaint asserts multiple  
12 claims, and in the last analysis, the claims need to be  
13 liquidated as against Mr. Anderson. Given the nature of the  
14 multiple claims, their complexity, and the possibility of shared  
15 liability, attempts at estimation will pretty much require  
16 complete resolution, which Mr. Lessley and Victoria Place are  
17 ultimately entitled to anyway. In short, the estimation process  
18 will not adequately address the Lessley and Victoria Place claims  
19 absent a full-blown trial. That result is necessary in order  
20 prepare a plan to provide for it. Even if debtor had sufficient  
21 assets to pay those claims in full, the debtor is equally  
22 entitled to have the amount of the claims resolved. The only  
23 apparent alternative to litigation is for the debtor to persuade  
24 Lessley and Victoria Place that all assets of the estate have  
25 been identified and valued, such that the maximum amount of  
26 estate assets available to all creditors is determinable.

1 Unfortunately, the continued sparring of both sides over  
2 competing Rule 2004 exams and corresponding protective orders,  
3 has kept that process from advancing. Indeed, in the past week  
4 the debtor has filed a new motion for protective order against a  
5 noticed deposition and document production by debtor, set for  
6 hearing on February 13.

7 For the foregoing reasons, the Court finds and concludes: 1)  
8 Estimation of the Lessley and Victoria Place claims is not likely  
9 to accelerate the path to confirmation of a Chapter 11 plan.  
10 Rather, the claims need to be litigated to determination, unless  
11 sooner agreed upon or capped by agreement. It is unfortunate  
12 that is so because the costs of that process will diminish the  
13 assets available in the estate to pay what is found to be owed on  
14 those claims. The parties need some level of confidence that the  
15 nature and amount of available assets are known, before there is  
16 a meaningful chance for resolution by agreement. Accordingly,  
17 the Court concludes the estimation process of 11 U.S.C. § 502  
18 will not shorten the road to confirmation of a plan.

19 Second, and for the above reasons, the Court is persuaded  
20 that relief from stay should be granted to Lessley and Victoria  
21 Place to pursue the state court litigation to judgment. Any  
22 judgment adverse to Mr. Anderson shall be brought back to this  
23 Court as an amendment to those claims, and for incorporation into  
24 any proposed plan.

25 Third, because the automatic stay will be modified by the  
26 Order to allow the state court litigation to proceed, the utility

1 of a Rule 2004 exam by Mr. Anderson is obviated by both the  
2 panoply of discovery available in the state court, as well as the  
3 possible discovery available to Mr. Anderson in this Court on his  
4 objections to the claims, to the extent the discovery is not  
5 duplicative. A Rule 2004 exam is still available to Mr. Lessley  
6 and Victoria Place, but very limited in scope to identifying  
7 assets and liabilities of the bankruptcy estate. Accordingly,  
8 the prior motions for protective orders concerning the Rule 2004  
9 exams are moot, and are hereby denied as such.

10 The remaining question is the newest motion for protective  
11 order by Mr. Anderson. He has been subpoenaed to be deposed and  
12 to produce documents, and he seeks to limit his testimony and  
13 production to the plaintiffs' claims against non-debtor  
14 defendants. In this Court's view, granting relief from stay to  
15 allow the state court case to proceed to judgment as to Mr.  
16 Anderson meets the argument he advances in his latest motion for  
17 protective order. State court rules of discovery will apply.  
18 Accordingly, the Court hereby vacates the hearing on that motion,  
19 presently set for February 13, 2013.

20 As noted, still pending are debtor's objections to the  
21 Lessley and Victoria Place claims. Those objections are no  
22 longer under submission, and will trail resolution of the state  
23 court proceedings as to any liability of Mr. Anderson, if any.

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**CONCLUSION**

For the foregoing reasons, the Court finds and concludes:

1. Debtor's motion to estimate the claims of Mr. Lessley and Victoria Place is denied.
2. The automatic stay in place in this case is modified to permit Mr. Lessley and Victoria Place to litigate the pending state court lawsuit to judgment, before bringing any such judgment back to this Court for inclusion in any plan. The stay is not modified to permit Mr. Lessley and/or Victoria Place to take any action to improve their level of priority by creating any writs of attachment or other liens against property of the debtor or the bankruptcy estate.
3. Debtor's order for a 2004 exam of Mr. Lessley and/or Victoria Place is vacated. Debtor may pursue discovery under applicable rules for the contested matters of debtor's objections to those claims.
4. Mr. Lessley and Victoria Place's request and order for a 2004 exam is also vacated, although they may reapply for such an exam limited in scope to the nature, extent, value and whereabouts of all assets and/or liabilities of the estate.
5. The competing motions for protective orders regarding the dueling 2004 exams are denied.

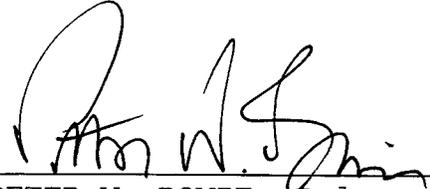
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6. Debtor's hearing on his latest motion for protective order, filed January 9, 2013 and set for hearing February 13 is vacated because the motion is moot with modification of the automatic stay to allow the state court litigation to proceed.

IT IS SO ORDERED.

DATED: JAN 8 2013

  
\_\_\_\_\_  
PETER W. BOWIE, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

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In re Bankruptcy Case No(s). 12-00026-PB11  
Adversary No(s).

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**Order on Motions to Estimate Claim, for Relief from Stay,  
for Protective Order, and for Rule 2004 Exam**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

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Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on January 18, 2013.

  
\_\_\_\_\_  
Molly D. Shuman  
Judicial Assistant to the Honorable Peter W. Bowie