

**RECEIVER'S OBJECTION TO MOVANT, JOHN ROGERS'S MOTION TO LIFT STAY
[ECF NO. 272]**

Deborah D. Williamson, in her capacity as the Court-appointed Receiver (the "Receiver") for the Receivership Parties (as defined in the Receivership Order) and receivership estates (collectively, the "Estates") in the above-captioned case (the "Case" or the "Receivership"), hereby files this *Receiver's Objection to Movant, John Rogers's Motion to Lift Stay [ECF No. 272]* (the "Objection"), pursuant to this Court's *Order Appointing Receiver* [ECF No. 17] (the "Receivership Order"),¹ to the *Motion to Lift Stay* [ECF No. 272] (the "Motion") of Movant, John Rogers ("Rogers").

RELEVANT FACTS

1. Rogers filed *Plaintiff's Original Petition* in the 90th Judicial District Court in Young County, Texas, on June 11, 2020, solely against Arcooil Corp. ("Arcooil"). Rogers filed his first amended petition on April 8, 2021, adding Barron Petroleum LLC ("Barron") as a defendant. Rogers's state court lawsuit against Arcooil and Barron is styled as Cause No. 34143, *John Rogers v. Arcooil Corp and Barron Petroleum, LLC* (the "State Court Suit") in Young County, Texas. The State Court lawsuit seeks damages for an alleged tort or accident.

2. Prior to the Receivership, Arcooil and Barron were represented by Cotton, Bledsoe, Tighe & Dawson, P.C. in the State Court Suit. Arcooil and Barron filed their *Defendants' First Amended Answer and Special Exceptions to Plaintiff John Rogers' Amended Petition* on June 23, 2021, in the State Court Suit.

3. Rogers's live pleading in the State Court Suit is *Plaintiff's Second Amended Petition* (the "Petition"), which was filed on November 30, 2021—two days prior to this Court's

¹ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed in the Receivership Order.

appointment of the Receiver and entry of the Receivership Order. A copy of Rogers's Petition is attached hereto as **Exhibit A**. According to his Petition, Rogers **solely seeks monetary damages** against Arcooil and Barron. *See* Petition, at p. 6.

4. Upon information and belief, there is no insurance policy or coverage applicable to this claim.

PROCEDURAL BACKGROUND

5. On December 1, 2021, Plaintiff, the Securities and Exchange Commission (the "Commission"), filed its *Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief*, which included an application for the appointment of a receiver for the Receivership Parties [ECF No. 3], including Arcooil and Barron.

6. On December 2, 2021, this Court determined that entry of an order appointing a receiver over the Receivership Parties was both necessary and appropriate to marshal, conserve, hold, and operate all of the Receivership Parties' assets pending further order of this Court. Accordingly, the Court entered the Receivership Order on December 2, 2021, appointing Deborah D. Williamson as the Receiver over the Receivership Estates in this Case.

7. The Receivership Order provides that "[t]his Court takes exclusive jurisdiction and possession of the assets of, whatever kind and wherever situated, of the . . . Receivership Parties." Receivership Order, ¶ 1.

8. The Receivership Order directed the Receiver to take possession and control over all funds, property, and other assets in the possession of, or under the control of Receivership Parties. Receivership Order, ¶ 8.

9. Further, the Receivership Order stayed all litigation involving the Receivership Parties. Receivership Order, ¶¶ 37–39. Specifically, the Receivership Order provides:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings and voluntary or involuntary bankruptcy cases or petitions, arbitration proceedings, foreclosure actions, Texas Railroad Commission proceedings, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Parties, including subsidiaries and partnerships; or, (d) any of the Receivership Parties' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

Receivership Order, ¶ 37. The Receivership Order also states that "[t]he parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process." Receivership Order, ¶ 38.

10. As a result of the Receivership, the State Court Suit is stayed, pending further order of this Court.

OBJECTION

11. Rogers filed his Motion on October 25, 2022—nearly eleven (11) months into the Receivership. In his Motion, Rogers seeks to lift the stay provision in the Receivership Order "to continue [to] pursue the [State Court Suit] cause of action for his personal injury damages." Motion, ¶ 2. Rogers also seeks "to proceed with the state court litigation to judgment to liquidate [his] claim." Motion, ¶ 6. Further, Rogers seeks "to execute, levy, and collect upon such judgment as may be obtained" against Arcooil and Barron. Motion, ¶ 6.

12. This Court retains exclusive jurisdiction of all Receivership Assets and Property, and it is not necessary to lift the stay in the State Court Suit as Rogers alleges.

13. The Receiver has been unable to identify any insurance policy or insurance coverage available for this claim. The Receiver objects to otherwise lifting the stay in the State Court Suit given the provisions of the Receivership Order entered by this Court, particularly since Rogers seeks only monetary damages from Arcooil and Barron.

14. Lifting the stay with respect to the State Court Suit will upend the provisions of the Receivership Order, and force the Receiver to retain counsel for defense in the State Court Suit. The Receiver's attention is currently focused on recovery of Receivership Assets and Receivership Property for the benefit of all Receivership Parties' creditors and stakeholders. As the asset recovery process is completed, the Receiver anticipates requesting Court approval of an efficient claims review and approval process.

15. As this Court is aware, the Receiver and her Retained Professionals are diligently working on reconciliation of investor, vendor, and other creditor claims against the Receivership Parties in order to propose a claims and disbursement process for Court approval in accordance with the Receivership Order.

16. Rogers will have the ability to file a claim against Arcooil and Barron for his alleged monetary damages once a claims process is approved by this Court.

17. By keeping the claim under the exclusive control of this Court, in due course Rogers will have the ability, along with all other creditors and claimants, to submit a claim, have the claim reviewed in a prompt manner, and potentially receive a distribution to the extent permitted in a distribution process approved by this Court. Lifting the stay now with respect to the State Court Suit will take the claim outside of the exclusive control of this Court, take the claim outside of a claims review process, and may be wasteful of Estates resources.

WHEREFORE, the Receiver respectfully requests that this Court deny Rogers's Motion in its entirety, and grant the Receiver such other and further relief that this Court deems just and proper.

Dated: November 15, 2022

Respectfully submitted,

By: /s/Danielle N. Rushing

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COUNSEL TO RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2022, the foregoing was served via CM/ECF and via email on counsel for Plaintiff, Securities and Exchange Commission and Movant, John Rogers.

/s/ Danielle N. Rushing

Danielle N. Rushing

EXHIBIT A

Filed: 11/30/2021 4:26 PM
Jamie Freese-Land
District Clerk
Young County, Texas
Brittany Howard

CAUSE NO. 34143

JOHN ROGERS

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IN THE DISTRICT COURT OF

VS.

YOUNG COUNTY, TEXAS

ARCOOIL CORP

90th JUDICIAL DISTRICT

PLAINTIFF’S SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JOHN ROGERS, Plaintiff herein, complaining of Defendants, ARCOOIL CORP. and BARRON PETROLEUM, LLC., and for cause of action, Plaintiff would respectfully show the Court the following:

I. DISCOVERY LEVEL

Discovery in this matter is intended to be conducted under Level 3 of Texas Rules of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

II. PARTIES

Plaintiff is a resident of Graham, Young County, Texas.

Defendant, ARCOOIL CORP., is a Texas company and service is not necessary at this time. Defendant has already been served and filed its answer.

Defendant, BARRON PETROLEUM, LLC., is a Texas company and service is not necessary at this time. Defendant has already been served and filed its answer.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the controversy because the damages are in excess of the minimum jurisdictional limits of the Court. Venue is proper in this Court in that a substantial

part of the events or omissions giving rise to the cause of action at issue occurred in Young County, Texas.

IV. FACTS

Plaintiff would show that on or about December 16, 2019, Plaintiff was employed by Defendant ARCOOIL CORP., and was working on a wet and muddy catwalk area, that was placed on an area owed and/or controlled by Defendant BARRON PETROLEUM, LLC. The catwalk area did not have slip pad and/or rig flooring safety matting and/or guardrails and/or any railing when Plaintiff slip and fell sustaining injuries. Defendants knew or should have known of the safety hazard and, yet, failed to provide slip pad and/or rig flooring safety matting and/or railings. Defendant failure to properly train, supervise, and operate the well and/or adequate and necessary train its employee and/or provide necessary slip and fall protection resulted in Plaintiff suffering severe damages. Defendants failure also encompass failure to provide a safe working place and/or adequate and necessary safety matting and/or safety material/equipment and/or railing resulted in Plaintiff suffering severe and permanent injuries to his back, buttock, legs, shoulder and body generally.

V. NEGLIGENCE

Plaintiff would show that the incident made the basis of this suit, his injuries and damages arose from the negligence of the Defendants, through their respective agents, servants and/or employees.

Plaintiff further alleges that Defendants, their agents, servants and/or employees negligently caused or permitted such condition to exist, in spite of the fact that Defendants' agents, servants and/or employees knew, or in the exercise of ordinary care should have known, of the existence of

the dangerous condition and that there was a likelihood of someone being injured as happened to the Plaintiff.

Further, Defendants, their agents, servants and/or employees were guilty of certain acts and/or omissions, each and all amounting to reckless and/or negligence. Said acts and/or omissions include, without limitation, the following:

- a. In failing to foresee the likelihood of injury imposed by its respective agents, servants and/or employees;
- b. In failing to control the conduct of the its respective agents, servants and/or employees;
- c. In failing to provide adequate and necessary slip and fall equipment and/or material;
- d. In failing to use ordinary care to prevent foreseeable injury;
- e. In failing to use ordinary care in taking precautions to protect the safety of others;
- f. In failing to implement or install proper safety devices or guards to prevent foreseeable injury to others;
- g. In failing to provide a reasonably safe workplace for its employees/independent contractors and/or others;
- h. In failing to properly train and supervise its employee and contractions, and
- h. In committing various acts and/or omissions of negligence, both statutory and common law, to be specified in detail at the time of trial.

Each of the foregoing negligent acts and/or omissions, whether taken singularly or in combination, was a proximate cause of Plaintiff's injuries and damages, which are described below.

VI. DAMAGES

As a proximate result of the incident made the basis of this suit and Defendants reckless and/or negligent acts and/or omission, the Plaintiff brings this suit against the Defendants

individually and/or through their respective agents, servants, and/or employees to recover damages for the following:

- (1) Past medical bills and expenses incurred as a proximate result of the accident made the basis of this suit;
- (2) Future medical bills and expenses that in all reasonable probability will be incurred as a proximate result of the accident made the basis of this suit;
- (3) Mental anguish, physical pain and suffering, disability, and loss of enjoyment of life in the past and all reasonable probability, would be sustained in the future;
- (4) Physical impairment in the past and in the future;
- (5) Loss of earnings and loss of earning capacity;
- (6) Disfigurement in the past;
- (7) Disfigurement in the future;
- (8) Pre-judgment and post-judgment interest; and
- (9) Such other and further items of damages as may be supplemented as a result of the discovery performed in this suit.

Plaintiff would further show that he was gainfully employed at the time of the accident in question and has suffered damages from loss of earnings and loss of earning capacity in the past and that his capacity to earn wages in the future has been substantially impaired and injured as a result of this accident.

The above-listed elements of damages were brought about to occur and were proximately caused by the reckless and/or negligence acts and/or omission of the Defendants herein.

Although the amount to be awarded herein to Plaintiff for his actual damages is a matter lying largely within the discretion of the jury, Plaintiff would show that said amount greatly exceeds the minimum jurisdiction of this Honorable Court. In this regard, Plaintiff requests that the Jury award him fair and reasonable compensation for Plaintiff's damages. Based on the information

currently available to Plaintiff, Plaintiff seeks monetary relief according to Texas Rules of Civil Procedure 47(c)(5) to fairly and reasonably compensate him for his injuries, damages and losses.

VII. RESPONDEAT SUPERIOR.

Plaintiff would further show that at all times material hereto, Defendant's agents, servants, and/or employees were acting within the course and scope of their employment with Defendants. As such, Defendants are vicariously liable for any and all acts of negligence on the part of Defendant's agents, servants, and/or employees under the doctrine of *respondeat superior*.

VIII. EXEMPLARY DAMAGES

Plaintiff further alleges that the Defendants' acts and/or omissions, directly and/or indirectly, as described herein, were the result of the Defendants' heedless and reckless disregard for the safety of Plaintiff. Defendants' acts and/or omissions when viewed objectively involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. By reason of the Defendants' gross negligence and malice, Plaintiff hereby seeks recovery of exemplary damages.

IX. JURY DEMAND

Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

X. REQUIRED DISCLOSURES

Under the authority of Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants provide their initial disclosures within thirty (30) days after the filing of the first answer or general appearance, the information or material described in Rule 194.2(b).

XI. RULE 193.7 NOTICE

Plaintiff intends to use all Defendants' discovery responses as evidence at trial in accordance with such right and privileges established by Texas Rule of Civil Procedure 193.7.

XII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be duly cited in terms of law to appear and answer herein, and that upon final hearing, Plaintiff has judgment against said Defendants, which are within the minimal jurisdictional limits of this Court, for both pre- and post-judgment interest thereon at the legal rate, exemplary damages, for cost of court, and for such other and further relief, special or general, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

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