

1629 K STREET NW, SUITE 300  
WASHINGTON, D.C. 20006

  
HAMILTON LINCOLN  
LAW INSTITUTE

Theodore H. Frank  
(703) 203-3848  
ted.frank@hlli.org

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Hon. Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
One First Street NE  
Washington, DC 20543

Re: *Perryman v. Romero*, No. 18-1074

Dear Mr. Harris:

On June 11, 2019, Respondent Provide Commerce, Inc. filed a Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings with this Court. In response to that Notice, Petitioner Brian Perryman states that if certiorari is not denied, he intends to file a motion in the United States Bankruptcy Court for the District of Delaware under 11 U.S.C. § 362(d)(1) to lift the stay.

The fraud allegations in this case are not dischargeable in bankruptcy. *Cf. Husky Intern. Electronics, Inc. v. Ritz*, 536 U.S. \_\_\_, 136 S. Ct. 1581 (2016). We thus believe the lower court is likely to lift the stay if the Court grants or stays certiorari because it benefits the creditors to know the scope of the estate's non-dischargeable obligations in a case very near its end, especially when there is a definitive asset purchase agreement in place taking Provide out of the estate. *Cf., e.g., In re Porter*, 371 B.R. 739, 751 (Bankr. E.D. Pa.) (lifting stay "so that the appeal may be prosecuted fully by both parties and all issues considered by the appellate court"). Furthermore, the prepackaged reorganization includes FTD's "definitive asset purchase agreement" to sell Provide to "an affiliate of Nexus Capital Management LP," subject to higher bids, which will ultimately take Provide out of the bankruptcy and end the stay when executed. FTD Press Release (Jun. 3, 2019), *available at* <http://investor.ftdcompanies.com/news-releases/news-release-details/ftd-companies-inc-files-voluntary-chapter-11-petitions>.

Because resolution of motions to lift stays take several months in the District of Delaware, if the Court is so inclined, it may hold the pending petition for certiorari for future conference. *Cf. Bench Memo*, No. 92-613, Papers of Justice Harry A. Blackmun (November 17, 1992) (clerk Jeffrey Lamken recommends that petition for writ of certiorari be held pending periodic reports of bankruptcies); *id.* at 11 (note by J. Blackmun of hold for stay). Similarly, Petitioner will file regular updates regarding the status of Petitioner's motion to lift the automatic stay.

Respondent Romero cites *DTD Enterprises, Inc. v. Wells*, 130 S. Ct. 7 (2009), as an example of the Court denying certiorari, but the case is readily distinguishable. This is an appeal of a final judgment, and there will be no further opportunity to protect the absent class members' rights from class counsel's breach of fiduciary duty if a certiorari denial finalizes the judgment. In contrast, *DTD* was "interlocutory," 130 S.Ct. at 8, with the additional problem of the intermediate courts of appeal refusing to hear the case, so granting the petition would have required the *DTD* Court to construe New Jersey law without a state appellate decision. Any "procedural obstacle" the automatic stay presents in this case may be ultimately surmounted with Perryman's motion to lift the stay or the finalization of the sale of Provide and is not cause for denial of certiorari.

Respectfully submitted,

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Theodore H. Frank  
*Counsel of Record for*  
*Petitioner Brian Perryman*

cc: Counsel of Record  
Deepak Gupta, Esq.