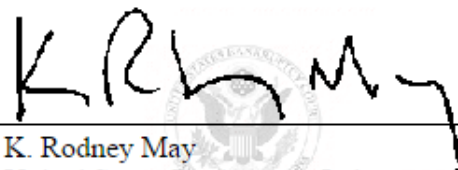


ORDERED.

Dated: December 02, 2016

  
K. Rodney May  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re

UNIVERSAL HEALTH CARE  
GROUP, INC.,

Case No. 8:13-bk-01520-KRM  
Chapter 11

Debtor.

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SONEET R. KAPILA, as Chapter 11 Trustee  
of Universal Health Care Group, Inc.,

Plaintiff,

vs.

Adv. No. 8:15-ap-220-KRM

DON DEFOSSET et al.,

Defendants.

\_\_\_\_\_/

**ORDER DENYING PLAINTIFF'S MOTION  
FOR AMENDMENT AND ADDITIONAL FINDINGS  
UNDER ORDER DENYING MOTION FOR PRELIMINARY  
INJUNCTION AND ORDER DISMISSING ADVERSARY PROCEEDING**

THIS CASE came on for hearing on September 29, 2016, regarding the Plaintiff's *Motion for Amendment and Additional Findings under Order Denying Motion for Preliminary Injunction (Doc. No. 122) and Order Dismissing Adversary Proceeding (Doc. No.123) (Docket #128)* (the

“Motion”), as well as the *Defendants’ Response in Opposition to Post-Confirmation Liquidating Agent’s Motion for Amendment and Additional Findings under Order Denying Motion for Preliminary Injunction (Doc. No. 122) and Order Dismissing Adversary Proceeding (Doc. No. 123) (Docket #131)*, *Request for Judicial Notice (Docket #132)*, *Notice of Filing (Docket #133)*, and *Notice of Filing Corrected Exhibit “B” to Minority Shareholders’ Response in Opposition to Post-Confirmation Liquidating Agent’s Motion for Amendment and Additional Findings under Order Denying Motion for Preliminary Injunction, and Order Dismissing Adversary Proceeding (Docket #134)* filed by the Defendants (collectively, the “Response”).<sup>1</sup> Through the Motion, the Plaintiff, Soneet R. Kapila as Liquidating Agent (the “Liquidating Agent”) for the bankruptcy estate of Universal Health Care Group, Inc. (“Universal”), moves the Court to amend its findings or make additional findings beyond those expressed in the *Order Denying Motion for Preliminary Injunction (Docket #122)* (the “Injunction Order”) and the *Order Dismissing Adversary Proceeding (Docket #123)* (the “Dismissal Order”).

While the Motion is presented as a request to amend and make additional findings, it is essentially a motion for reconsideration. The Liquidating Agent asserts that the Court overlooked its power and authority to issue an injunction under 11 U.S.C. §105(a), based its decisions in the Injunction Order and the Dismissal Order “on the fact that the Court overlooked its real power,”<sup>2</sup> and “found as a matter of law that [the Court] had no power and jurisdiction [to issue an injunction].”<sup>3</sup> As grounds for the Motion, the Liquidating Agent references several excerpts from

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<sup>1</sup> Post-hearing, the Defendants filed their *Post-Hearing Submission in Opposition to Post-Confirmation Liquidating Agent’s Motion for Reconsideration (Docket #136)* and *Defendants’ Response to Motion for Determination of Whether Court wants Liquidating Agent to file Response to Defendants’ Post-Hearing Submission (Docket #138)*, and the Plaintiff filed a *Motion for Determination of Whether Court wants Liquidating Agent to file Response to Defendants’ Post-Hearing Submission (Docket #137)*. The Court concluded that it did not need to consider any additional filings.

<sup>2</sup> Motion, p. 7.

<sup>3</sup> Motion, p. 12.

the Court's oral findings of fact and conclusions of law from the August 8, 2016 hearing,<sup>4</sup> and attempts to support his position through a bevy of cases that this Court had previously considered (and has again reviewed).

The Liquidating Agent's Motion is not well taken because it misinterprets the Court's ruling. The Court's ruling was premised on the conclusion that it does have the inherent authority to issue an injunction under §105(a) *when it is appropriate*;<sup>5</sup> but, that does not automatically mean that it should.<sup>6</sup> A party seeking injunctive relief through §105(a) must satisfy the four elements of Rule 65, Federal Rules of Civil Procedure.<sup>7</sup>

The Liquidating Agent cannot show a substantial likelihood of success on the merits, and therefore is not entitled to an injunction. The Liquidating Agent's *Amended Complaint* (**Docket #78**) asserts two claims: Count I is for declaratory judgment finding that the Defendants' state court action is in violation of the automatic stay; Count II is an action for injunctive relief. The Court found Defendants' state court claims, as set forth in their amended complaint filed on August 25, 2016 against non-Debtor third parties, consists entirely and exclusively of direct, independent claims, not derivative claims that would be property of the bankruptcy estate. Their claims,

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<sup>4</sup> A transcript of the August 8, 2016 hearing can be found at **Docket #126** (the "Transcript") and is also attached as "Exhibit A" of the Motion.

<sup>5</sup> See Transcript, p.12, lines 19-23.

<sup>6</sup> The Court is unaware of any 11<sup>th</sup> Circuit case that absolutely requires the issuance of an injunction in the circumstance of a trustee and a creditor pursuing different claims against common defendants simply because this Court has the power to do so. This Court continues to find persuasive Judge Mark's reasoning in *In re CHS Electronics, Inc.*, 261 B.R. 538, 544 (Bankr. S.D. Fla. 2001) that a bankruptcy trustee (or liquidating trustee) with a competing claim does not obtain any different status or rights than a non-bankruptcy plaintiff with an unliquidated claim against third-parties which may be covered by non-estate asset insurance proceeds about to be used to settle or satisfy a claim of other plaintiffs. The Liquidating Agent does not obtain super-plaintiff powers in causes of actions against common third parties, and is merely another litigant wishing to pursue claims that may be payable from D & O proceeds.

<sup>7</sup> See *Altman v. David & Dingle Family Dentistry (In re EZ Pay Servs.)*, 389 B.R. 751, 756 (Bankr. M.D.Fla. 2007); *In re Olympia Holding Corporation*, 161 B.R. 524, 528 (M.D.Fla. 1993); *In re Regency Realty Associates*, 179 B.R. 717, 720 (Bankr. M.D.Fla. 1995).

therefore, are not subject to the provisions of 11 U.S.C. §362(a).<sup>8</sup> Accordingly, Count I fails. Count II also fails for similar reasons.<sup>9</sup>

Further, the Liquidating Agent cannot show that he or his trust will suffer irreparable harm unless an injunction is issued. As stated previously, the Defendants are not pursuing claims that are property of the estate. The Debtor's chapter 11 plan has been confirmed.<sup>10</sup> There is no threat of usurpation of assets, divergent rulings, or hindrance the administration of the estate.<sup>11</sup> While the Court is cognizant that the Liquidating Agent may experience "collateral impact" without the injunction, this is not irreparable harm. Even though the insurance company may be reluctant to finalize a settlement with the Liquidating Agent while the Defendants' state court action is pending, that is not an absolute bar to settlement. The Defendants have direct, independent claims, and have the right to assert them, whether now or in the future; the insurance company surely knows this, and those claims may affect the insurance company's settlement offer regardless of when the Defendants get their opportunity to pursue their claims.

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<sup>8</sup> Transcript, p. 10, line 19 through p. 11, line 6.

<sup>9</sup> Count II seeks an injunction to prevent prosecution by the Defendants for actions "related to and derivative of [Universal]" "pending resolution of the contested matters outlined herein." The Court has determined that the Defendants' state court action, as set forth in their amended complaint, does not seek to prosecute a derivative action, which would be property of the estate.

<sup>10</sup> The *Final Order Confirming Chapter 11 Trustee's Liquidating Plan for Universal Health Care Group, Inc. dated April 16, 2015 (Main Case Docket #1646)* was entered on August 18, 2015. The confirmation order for jointly administered case *In re American Managed Care, LLC*, Case No.: 8:13-bk-05952-KRM (**Main Case Docket #1648**), was also entered on August 18, 2015.

<sup>11</sup> Anything recovered by the Defendants in their state court action is not property of the estate, and therefore is not subject to the bankruptcy plan's distribution scheme.

A bankruptcy court has the inherent power under 11 U.S.C. §105(a) to issue an injunction against third parties in appropriate circumstances. However, the moving party must still meet and satisfy the traditional requirements for such relief under F.R.C.P. Rule 65. Accordingly, it is

**ORDERED:**

That the Motion is hereby DENIED.

Attorney Ketchey is directed to file a proof of service of this order on Defendants' counsel within 3 days of entry of the order.