

LOEB & LOEB LLP
BERNARD R. GIVEN II (SBN 134718)
bgiven@loeb.com
GUY MACAROL (Admitted Pro Hac Vice)
gmacarol@loeb.com
10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067
Telephone: 310.282.2000
Facsimile: 310.282.2200

SCHUYLER G. CARROLL (Admitted Pro Hac Vice)
scarroll@loeb.com
DANIEL B. BESI KOF (Admitted Pro Hac Vice)
dbesikof@loeb.com
345 Park Ave.
New York, NY 10154
Telephone: 212.407.4000
Facsimile: 212.407.4400

Attorneys for Official Committee of Unsecured
Creditors of Ittella International LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

☐ ITTELLA INTERNATIONAL LLC, a
California limited liability company;
☐ ITTELLA'S CHEF, LLC, a California
limited liability company;
☐ TATTOOED CHEF, INC. a Delaware
corporation;
☐ MYJOJO, INC. a Delaware corporation;
☐ NEW MEXICO FOOD
DISTRIBUTORS, INC., a New Mexico
corporation;
☐ KARSTEN TORTILLA FACTORY,
LLC, a New Mexico limited liability
company;
☐ BCI ACQUISITION, INC., a Delaware
corporation;
☐ TTCF-NM HOLDINGS INC., a New
Mexico corporation,
☒ All Debtors

Debtors and
Debtors-in-Possession.

Case No.: 2:23-bk-14154-SK

(Jointly administered with Case Nos.
2:23-bk-14161-WB; 2:23-bk-14159-SK; 2:23-bk-
14157-BR; 2:23-bk-14156-NB;
2:23-bk-14158-DS; 2:23-bk-14155-NB;
2:23-bk-14160-BR)

Chapter 11 Cases

**OBJECTION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS OF ITTELLA
INTERNATIONAL LLC TO
DEBTORS' NOTICE OF MOTION
AND MOTION RE APPROVAL OF
STIPULATION MODIFYING
AUTOMATIC STAY TO THE
EXTENT REQUIRED TO ALLOW
INSURERS TO FUND UNDER
DIRECTOR AND OFFICER
POLICIES**

1 The Official Committee of Unsecured Creditors of Ittella International LLC
2 (the “Ittella Committee”), by and through its undersigned counsel, hereby files this
3 objection (this “Objection”) to the *Debtors’ Notice of Motion and Motion re Approval of*
4 *Stipulation Modifying Automatic Stay to the Extent Required to Allow Insurers to Fund*
5 *Under Director and Officer Policies* [Docket No. 478] (the “Motion”). In support of this
6 Objection, the Ittella Committee respectfully represents as follows:

7
8 **INTRODUCTION**

9 This Objection is filed to articulate the Ittella Committee’s concerns regarding the
10 Motion, so that the Court has the benefit of the Ittella Committee’s perspective and
11 arguments. In particular, the Ittella Committee files this Objection to request that the
12 Court retain appropriate supervision over the funds disbursed according to the Motion, by:
13 (i) imposing a firm limit on insurance proceeds that can be expended in connection with
14 Defense Costs (*i.e.*, a “cap”); (ii) requiring defense counsel submit fee applications to the
15 Court before advancement of any Defense Costs¹ may occur; (iii) providing copies of such
16 fee applications to the Ittella Committee and allowing it 30 days to object to such fee
17 applications on bases including reasonableness and inclusion of unnecessary and/or
18 duplicative fees; and (iv) for the Court to retain jurisdiction over the matters set forth in the
19 Stipulation should any dispute arise.

20 **OBJECTION**

21 The Ittella Committee opposes the relief sought in the Motion to the extent that it
22 would permit unsupervised and unlimited advancements of Defense Costs, without notice
23 and without court approval of professional fees, to be made out of the Debtors’ insurance
24 proceeds—unencumbered funds which could and should be applied to satisfy claims of
25 other creditors, including claims and causes of action the Ittella Committee may assert in
26 relation to the Insured Individuals and their conduct. Absent the imposition of a cap on
27 Defense Costs together with proper fee supervision from the Court, the Ittella Committee

28 ¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them
in the Motion.

1 submits that the proposed Stipulation is not appropriate under the facts and circumstances
2 of these chapter 11 cases. Therefore, as currently presented, the Ittella Committee opposes
3 approval of the Motion and the Stipulation. The Ittella Committee's concerns are further
4 articulated below:

5 **1. It Is Premature to Determine Whether the Insurance Proceeds Are Property of**
6 **the Estate (and They May Be).**

7 A gating issue is whether the Insurance Policies and their proceeds are property of
8 the Debtors' estates. Assuming that they are, pursuant to applicable case law, the relief
9 sought by the Ittella Committee is an appropriate safeguard on the use of estate resources.

10 Numerous courts have determined that a debtor's insurance policies are property of
11 the estate. *See Macarthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 91-92 (2d Cir. 1988);
12 *In re Davis*, 730 F.2d 176, 184, n.25 (5th Cir. 1984); *A.H. Robins Co. v. Piccinin (In re*
13 *A.H. Robins Co.)*, 788 F.2d 994, 1001-02 (4th Cir.), *cert. denied*, 107 S. Ct. 251 (1986);
14 *accord In re Sine*, No. 17-44377, 2018 Bankr. LEXIS 2553, at *19 (Bankr. W.D. Wash.
15 Aug. 24, 2018) ("Courts have generally held that insurance policies themselves and the
16 debtor's rights under such policies are property of the debtor's estate."). Accordingly, the
17 Ittella Committee submits that this Court has jurisdiction over the Insurance Policies.² *See*
18 *Straton v. New*, 283 U.S. 318, 320-21 (1931) (bankruptcy court has jurisdiction over all of
19 the property of the debtor's estate, wherever located).

20 While the case law is consistent that insurance policies are property of the estate,
21 there remains some uncertainty whether the proceeds of such policies are estate property.
22 *See In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010) ("However, the
23 courts are in disagreement over whether the proceeds of a liability insurance policy are
24 property of the estate." (quoting *In re Allied Digital Techs. Corp.*, 306 B.R. 505, 509
25 (Bankr. D. Del. 2004)); *In re SVB Fin. Grp.*, 650 B.R. 790, 798 (Bankr. S.D.N.Y. 2023)

27 ² The Debtors would seem to agree with the Ittella Committee's position that the Court has
28 jurisdiction over the Insurance Policies, as they have asked this Court for permission before advancing
Defense Costs against them.

(quoting same). Generally, courts must analyze the question in light of the facts of each case. *See In re Sfuzzi, Inc.*, 191 B.R. 664, 668 (Bankr. N.D. Tex. 1996); *In re CyberMedica, Inc.*, 280 B.R. 12, 17 (Bankr. D. Mass. 2002). But here, there are insufficient facts even to attempt to resolve the question, as the Motion discloses very little about the Insurance Policies other than the scant information contained on Exhibit A to the Motion. Coverage limits and other key details are not present in this exhibit.

As such, the Ittella Committee submits it is premature to determine whether the proceeds of the Insurance Policies are property of the estate. Other courts in similar positions have deferred this issue to a later date. *See, e.g., In re MF Global Holdings Ltd.*, 469 B.R. 177, 187 (Bankr. S.D.N.Y. 2012) (finding that the Court need not resolve whether policy proceeds are property of the estate in order to determine whether reasonable defense costs should be advanced).³ Given the lack of certainty as to whether the policy proceeds are estate property and the overwhelming likelihood that the Insurance Policies themselves are property of the estate, the Ittella Committee submits that it is appropriate for the Court to take jurisdiction over the matter at issue and impose reasonable limitations on the use of the proceeds of the Insurance Policies as set forth in this Objection.

2. The Ittella Committee's Proposed Hard Cap and Fee Objection Requirements for Defense Costs Are Appropriate.

The Ittella Committee does not seek to outright disallow the use of all proceeds from the Insurance Policies for Defense Costs. Rather, the Ittella Committee is merely requesting that a reasonable limit be imposed on the amount of proceeds that can be advanced. In light of the lack of information regarding coverage limits and exclusions contained in Exhibit A to the Motion, the Ittella Committee is unable to determine an exact dollar amount that might be appropriate for this cap. However, the Ittella Committee

³ While the Bankruptcy Court for the Southern District of New York ultimately found the proceeds of the insurance policies not to be property of the estates in *In re MF Global Holdings Ltd.*, 515 B.R. 193 (Bankr. S.D.N.Y. 2014), the original 2012 opinion remains good law and reflective of the appropriate analysis at this point in the case, when details about the Insurance Policies and their limits remain scarce.

1 submits that a cap of no greater than 10% of the total aggregate coverage limits for
2 Defense Costs should be imposed, with the exact dollar amount subject to the evidence
3 adduced by the Directors and Officers. *See In re MF Global Holdings Ltd.*, 469 B.R. at
4 197 (imposing cap of \$30 million on use of insurance proceeds for defense costs,
5 representing less than 24% of the debtors' aggregate insurance coverage of \$127.475
6 million).

7 The Ittella Committee believes that the imposition of this cap, together with the
8 requirement that all Defense Costs be submitted to this Court in a fee application subject to
9 reasonable notice and objection procedures, will provide sufficient supervision of estate
10 resources to prevent waste and ensure the availability of insurance proceeds for future
11 claims and causes of action. *See id.*; *see also In re SVB Fin. Grp.*, 650 B.R. 790, 802
12 (Bankr. S.D.N.Y. 2023) (imposing fee reporting requirements and court approval of
13 settlements); *In re Beach First Nat. Bancshares, Inc.*, 451 B.R. 406, 411 (Bankr. D.S.C.
14 2011) (requiring insurer to notify the trustee of the amount of fees being paid).

15 RESERVATION OF RIGHTS

16 The Ittella Committee reserves its rights with respect to the Motion, including to file
17 additional briefing on the Motion and to seek modification of the Stipulation, as may be
18 appropriate.

19 CONCLUSION

20 WHEREFORE, the Ittella Committee respectfully requests that the Court sustain
21 this Objection and grant such other and further relief as may be just and proper.

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23 [Remainder of page intentionally left blank.]
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1 Dated: October 25, 2023

LOEB & LOEB LLP
BERNARD R. GIVEN II
SCHUYLER G. CARROLL
DANIEL B. BESIKOF
GUY MACAROL

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4
5 By: /s/ Bernard R. Given, II
Bernard R. Given II

6 Attorneys for OFFICIAL COMMITTEE OF
7 UNSECURED CREDITORS OF ITTELLA
8 INTERNATIONAL LLC
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Blvd., Suite 2200, Los Angeles, California 90067.

A true and correct copy of the foregoing document entitled (*specify*): **OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ITTELLA INTERNATIONAL LLC TO DEBTORS' NOTICE OF MOTION AND MOTION RE APPROVAL OF STIPULATION MODIFYING AUTOMATIC STAY TO THE EXTENT REQUIRED TO ALLOW INSURERS TO FUND UNDER DIRECTOR AND OFFICER POLICIES**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **10/25/2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **10/25/2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Sandra R. Klein
United States Bankruptcy Court
255 E. Temple Street, Suite 1582
Courtroom 1575
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/25/2023 Fiona McKeown
Date Printed Name

/s/ Fiona McKeown
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

- Mark A Amendola mamendola@martynlawfirm.com
- Todd M Arnold tma@lnbyg.com
- Marshall J August maugust@frandzel.com, rsantamaria@frandzel.com
- Tanya Behnam tbehnam@polsinelli.com, tanyabehnam@gmail.com; ccripe@polsinelli.com; ladocketing@polsinelli.com
- Michael Jay Berger michael.berger@bankruptcypower.com, yathida.nipha@bankruptcypower.com; michael.berger@ecf.inforuptcy.com
- Daren Brinkman firm@brinkmanlaw.com, 7764052420@filings.docketbird.com
- Robert Carrasco rmc@lnbyg.com
- Abram Feuerstein abram.s.feuerstein@usdoj.gov
- John-Patrick M Fritz jpf@lnbyg.com, JPF.LNBYB@ecf.inforuptcy.com
- Michael I. Gottfried mgottfried@elkinskalt.com, cavila@elkinskalt.com, lwageman@elkinskalt.com, docketing@elkinskalt.com
- Everett L Green everett.l.green@usdoj.gov
- David S Hagen davidhagenlaw@gmail.com
- Mark S Horoupian mark.horoupian@gmlaw.com, mhoroupian@ecf.courtdrive.com; cheryl.caldwell@gmlaw.com; karen.files@gmlaw.com
- K Kenneth Kotler kotler@kenkotler.com, linda@kenkotler.com
- Jeffrey A Krieger jkrieger@ggfirm.com, kwoodson@greenbergglusker.com; calendar@greenbergglusker.com; jking@greenbergglusker.com
- Aaron J Malo amalo@sheppardmullin.com, clopez@sheppardmullin.com; abilly@sheppardmullin.com
- Ron Maroko ron.maroko@usdoj.gov
- Kyle J Mathews kmathews@sheppardmullin.com
- David W. Meadows david@davidwmeadowslaw.com
- Angela Z Miller amiller@phillipslytle.com, styrone@phillipslytle.com

- John A Moe john.moe@dentons.com, glenda.spratt@dentons.com; derry.kalve@dentons.com
- Tania M Moyron tania.moyron@dentons.com, rebecca.wicks@dentons.com;
kathryn.howard@dentons.com; derry.kalve@dentons.com; glenda.spratt@dentons.com;
DOCKET.GENERAL.LIT.LOS@dentons.com
- Alan I Nahmias anahmias@mbn.law, jdale@mbn.law
- David L. Neale dln@lnbyg.com
- Matthew D. Resnik Matt@rhmfir m.com, roksana@rhmfir m.com; rosario@rhmfir m.com;
sloan@rhmfir m.com; priscilla@rhmfir m.com; rebecca@rhmfir m.com;david@rhmfir m.com;
susie@rhmfir m.com; max@rhmfir m.com; russ@rhmfir m.com
- Edward Rubacha er@jhkmlaw.com, docket@jhc.law; am@jhc.law
- Paul R Shankman PShankman@fortislaw.com, info@fortislaw.com
- Amit Kumar Sharma amit.sharma@aisinfo.com
- David Samuel Shevitz david@shevitzlawfirm.com, shevitzlawfirm@ecf.courtdrive.com;
r48785@notify.bestcase.com; Jose@shevitzlawfirm.com
- Ronald P Slates rslates2@rslateslaw.com, scannavan@rslateslaw.com;
slatesecf@rslateslaw.com
- Lindsey L Smith lls@lnbyg.com, lls@ecf.inforuptcy.com
- Randy S Snyder rsnyder@rsslegal.com
- Alan G Tippie Alan.Tippie@gmlaw.com, atippie@ecf.courtdrive.com;
Karen.Files@gmlaw.com, patricia.dillamar@gmlaw.com, denise.walker@gmlaw.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Glenn S Walter gwalter@honigman.com
- Roye Zur rzur@elkinskalt.com, cavila@elkinskalt.com; lwageman@elkinskalt.com;
1648609420@filings.docketbird.com