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

In re: Josefina Lopez, Debtor.	Case No.: 2:21-bk-16378-ER Chapter: 7 **MEMORANDUM OF DECISION DENYING MOTION FOR RECONSIDERATION** **[RELATES TO DOC. NO. 93]** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Victoria Fire & Casualty Company (the "Insurer") and Josefina Lopez (the "Debtor," and together with the Insurer, the "Movants") seek reconsideration (the "Motion for Reconsideration")[1] of the *Memorandum of Decision Denying Motion for an Order Finding that the Debtor's Defensive Appellate Rights Are Not Property of the Estate Or, in the Alternative, for an Order Compelling the Chapter 7 Trustee to Abandon the Debtor's Defensive Appellate Rights* (the "Memorandum").[2] (Although the Motion for Reconsideration is brought jointly by the Insurer and the Debtor, the Insurer has acknowledged that it bears the financial exposure in connection with this matter.[3] Therefore, for the sake of simplicity, the Court generally refers to the Movants collectively as "the Insurer," unless the context otherwise requires.)

The Motion for Reconsideration is opposed by the Chapter 7 Trustee (the "Trustee").[4] Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),[5] the Court finds the Motion for

[1] Bankr. Doc. No. 93.
[2] Bankr. Doc. No. 89.
[3] *See* Motion for Reconsideration at ¶ 93 ("In short, although [the Debtor] is the defendant in the action, [the Debtor] has already received a discharge while all the financial exposure lies with [the Insurer].").
[4] Bankr. Doc. No. 115.

Reconsideration to be suitable for disposition without oral argument. For the reasons set forth below, the Motion for Reconsideration is **DENIED**.

I. Procedural and Factual Background

The procedural and factual background of this matter is set forth at length in the Memorandum, and is repeated herein only to the extent necessary to address the arguments raised in the Motion for Reconsideration. To briefly summarize, in the Memorandum, the Court found that the Debtor's right to appeal against an approximately $60 million judgment entered against her (the "State Court Judgment") is property of the estate, and that the Trustee could not be compelled to abandon the estate's rights in two appeals of the Judgment (the "Appeals").

The State Court Judgment is in favor of Eric Bejar and Christina Bejar (the "Bejars"), and arises from a motor vehicle accident involving the Debtor and Eric Bejar. Shortly after the Debtor sought bankruptcy protection, the Court lifted the automatic stay to permit the Bejars to pursue the claims that ultimately gave rise to the Judgment (the "RFS Order").[6]

The Insurer caused the Appeals of the State Court Judgment to be filed in the Debtor's name on March 7, 2022 and June 27, 2022.[7] The State Appellate Court has indicated that it may dismiss the Appeals because they were filed by the Debtor during a time when only the Trustee had standing to represent the Debtor's interests in the litigation.

The ultimate effect of the Memorandum is to significantly increase the likelihood that the State Appellate Court will dismiss the Appeals. Dismissal could significantly increase the Insurer's liability to the estate. Approximately five months prior to seeking bankruptcy protection, the Debtor received $62,500 from the Insurer in exchange for agreeing not to pursue against the Insurer a claim for bad-faith failure to settle within policy limits (the "Prepetition Settlement Agreement").[8] The Trustee has indicated that he may pursue an action against the Insurer to avoid the Prepetition Settlement Agreement. If the Trustee were to prevail in such an avoidance action, and if it were ultimately established that the Insurer is liable for failing to settle within policy limits, the Insurer could potentially be liable to the estate in an amount equal to the State Court Judgment.

In the Motion for Reconsideration, the Insurer argues that the RFS Order "ensured that … the control of [the Debtor's] defense rights in the litigation, including the right to appeal an adverse judgment, passed to the Movants."[9] The Insurer's position is that as a result of the RFS Order, the estate was divested of its interest in the Debtor's defensive appellate rights.[10] The Insurer

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[5] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

[6] Bankr. Doc. No. 19.

[7] The March appeal is an appeal of the State Court Judgment itself; the June appeal is an appeal of the costs awarded to the Bejars.

[8] Bankr. Doc. No. 80, Ex. A.

[9] Bankr. Doc. No. 93 at p. 34.

[10] *See* Motion for Reconsideration at ¶ 52 ("The Court's analysis begins with the assumption that the rights to file the Appeals belonged to the Trustee at the time the Appeals were filed—an

further argues that regardless of whether the defensive appellate rights are estate property, the effect of the RFS Order was to give the Insurer the right to pursue the Appeals.[11] The Insurer requests that the Court alter the Memorandum to "reflect that the Appeals were properly filed and that the Movants may pursue the Appeals, without further involvement of the Bankruptcy Court or the Trustee."[12]

II. Findings of Fact and Conclusions of Law

Reconsideration is "an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted). A motion for reconsideration may not be used "to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Haw. 1990), *aff'd and remanded sub nom. Greco v. Troy Corp.*, 952 F.2d 406 (9th Cir. 1991); *see also In re Mannie*, 299 B.R. 603, 608 (Bankr. N.D. Cal. 2003) (internal citation omitted) ("A motion to reconsider should not be used 'to ask the court "to rethink what the court had already thought through—rightly or wrongly"—or to reiterate arguments previously raised.'").

The Insurer asserts that the Memorandum "presents a narrow set of background facts while omitting numerous other facts that are both undisputed and critical to the outcome, and as a result, depicts the circumstances as though through a fish-eye lens, obscuring the real picture."[13] The Insurer requests that the Court supplement the Memorandum so that it contains additional findings of fact that the Insurer contends are necessary to provide appropriate context.

As would be expected in a case involving a judgment in excess of $60 million, the facts and procedural history of this matter is complex. The Memorandum discussed the facts and procedural history most relevant to the Court's analysis and its conclusion. It did not set forth every single fact or every single procedural maneuver that has occurred in this complicated case. Even the Court's streamlined discussion was eight single-spaced pages long.

The Court declines the Insurer's request to issue a supplemental Memorandum containing the additional details concerning the procedural history of this matter which the Insurer contends are favorable to its position. To the extent that certain matters were not discussed in greater detail in the Memorandum, it was because those matters were only minimally relevant to the Court's conclusions.

Further, the Court notes that although the Insurer criticizes the Memorandum for failing to contain a detailed discussion of facts that the Insurer asserts are favorable to its position, that same criticism could also be levelled at the Insurer's own Motion for Reconsideration. To give but one example, the Motion for Reconsideration does not mention facts unfavorable to the

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assumption that … was made without taking into account the Stay Relief Order and how such orders are routinely understood and implemented.").

[11] *Id.* at ¶¶ 79–80 ("This Court clearly erred in failing to examine the terms of the [RFS Order], and had it done so, it would have had to conclude that the Appeals taken by [the Debtor], as guided by [the Insurer] (the real party in interest) were necessarily authorized by virtue of the Court having allowed the Bejars' litigation against [the Debtor] to go forward. Although stay relief does not *expressly* entail a transfer of property rights, the practical effect of it is that stay relief to allow litigation to go forward against a chapter 7 debtor does so.").

[12] *Id.* at ¶ 1(b).

[13] *Id.* at ¶ 12.

Insurer—including, for example, that on November 22, 2022, the State Court issued a tentative ruling indicating that it was inclined to deny the Insurer's motion for authorization to intervene in the Appeals.[14] (The State Court took the matter under submission after the hearing and has not yet issued a final ruling).

The Insurer's primary argument is that the RFS Order gave the Debtor the right to pursue the Appeals, and that as a result of the entry of the RFS Order, the "Appeals were properly filed and that the Movants may pursue the Appeals, without further involvement of the Bankruptcy Court or the Trustee."[15] The Insurer is not entitled to reconsideration of the Memorandum on this ground. The RFS Order addressed the scope of the automatic stay; it did not address the separate issues of whether the Debtor's defensive appellate rights are property of the estate, and which party has standing to pursue those defensive appellate rights. The Insurer's argument that the RFS Order gave the Debtor standing to file the Appeals conflates these entirely separate issues. As set forth in the Memorandum, it is well established that an order lifting the automatic stay does not "by itself release the estate's interest in the property" with respect to which the stay has been lifted. *Catalano v. Comm'r*, 279 F.3d 682, 686–87 (9th Cir. 2002) (internal quotations and citations omitted).

Throughout the Motion for Reconsideration, the Insurer argues that the findings in the Memorandum prejudice its due process rights by preventing it from challenging the State Court Judgment on the Debtor's behalf. What this argument overlooks is the fact that the situation in which the Insurer now finds itself is entirely of its own making. As the Court noted in the Memorandum, at the time the Appeals were filed, the Insurer could have sought authorization from the Trustee to file the Appeals in the estate's name, or at the very least sought the Trustee's authorization to file the Appeals. Doing so would have eliminated any risk that the Appeals could be dismissed on standing grounds. As the Court stated in the Memorandum: "The situation in which the Insurer now finds itself results not from overreach by the Trustee, but rather from the Insurer's failure to proceed properly with respect to the March 7, 2022 appeal."[16]

III. Conclusion

Based upon the foregoing, the Motion for Reconsideration is **DENIED**. The Court will enter an order consistent with this Memorandum of Decision.

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[14] *See* Minute Order issued by the Superior Court of California, County of Los Angeles, Case No. BC675339, dated November 14, 2022.

[15] *Id.* at ¶ 1(b).

[16] Memorandum at p. 7.

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Date: February 6, 2023

Ernest M. Robles
United States Bankruptcy Judge