

ENTERED

**TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET**

The following constitutes the order of the Court.

Signed March 28, 2005.

Barbara J. Houser

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

**OVERLAND UNDERWRITING
MANAGERS, INC.**

Debtor.

UNIVERSAL INSURANCE EXCHANGE

Movant,

V.

**OVERLAND UNDERWRITING
MANAGERS, INC.,**

Respondent.

[illegible]

CASE NO. 04-82393-BJH-7

Chapter 7

**Memorandum Opinion and Order Denying Universal Insurance Exchange’s
Second Motion for Relief from Automatic Stay**

Before the Court is the Second Motion for Relief from Automatic Stay in Order to Proceed

in Southern Carriers Case (“Motion”) filed by Universal Insurance Exchange (“Movant”). The Court has jurisdiction over the Motion in accordance with 28 U.S.C. §§ 1334 and 157(b). For the reasons outlined below, the Court concludes that the Motion should be denied.¹

The Movant brought a declaratory judgment action against Southern Carriers in the 68th Judicial District Court of Dallas, Texas (the “State Court Litigation”). Southern Carriers added seven entities to the lawsuit, including Overland Underwriting Managers, Inc. (the “Debtor”). Southern Carriers has asserted a third-party claim against the Debtor in the State Court Litigation. Movant has not asserted any claims against the Debtor in the State Court Litigation. But, the state court abated and closed the case on November 22, 2004 because the state court received notification of the Debtor’s bankruptcy.

The Movant filed a motion to reopen the State Court Litigation on November 30, 2004, arguing that the automatic stay operates only to stay the claim asserted by Southern Carriers as a third-party plaintiff against the Debtor as a third-party defendant. In response, Trans Insurance Services – another third-party defendant in the State Court Litigation – filed a motion to clarify the effect of bankruptcy, arguing that the automatic stay operates to stay the State Court Litigation in its

¹At the March 3, 2005 hearing on the Motion, this Court was apprised that the Movant may not have standing to bring the Motion. The Movant is arguably not a direct creditor of the Debtor. But, under 11 U.S.C. § 362(d), any “party in interest” may seek relief from the automatic stay. While the term “party in interest” is not defined in the Code, some courts have held that creditor status is not a necessary prerequisite to being a “party in interest.” See *In re B & I Realty Co.*, 158 B.R. 220 (Bankr. W.D. Wash. 1993); *Vieland v. First Fed. Sav. Bank (In re Vieland)*, 41 B.R. 134, 138 (Bankr. N.D. Ohio 1984); but see *Roslyn Sav. Bank v. Comcoach Corp. (In re Comcoach Corp.)*, 698 F.2d 571, 573 (2d Cir. 1983) (stating that a party must be “either a creditor or a debtor to invoke the [bankruptcy] court’s jurisdiction”; the moving party sought to have the stay lifted so as to name the debtor as an added defendant in a state foreclosure action). Rather, these courts consider whether the moving party has an interest of its own to have standing to move for relief from stay. See *B & I Realty*, 158 B.R. at 223. A party that is not a direct creditor of the debtor, but could assert a state action against the debtor and would be adversely affected by the automatic stay, has been found to be a party in interest when that party has no recourse in the state court action. See *Brown Transp. Truckload v. Humboldt Express (In re Brizendine)*, 118 B.R. 889, 894 (Bankr. N.D. Ga. 1990).

In this case, and unlike the *Comcoach* case, the state court has stayed the litigation. Since the Movant is adversely affected by the automatic stay, this Court finds that the Movant has standing to move for relief from stay.

entirety. On December 27, 2004, the state court heard the motion to reopen and the motion to clarify;² the state court decided that the State Court Litigation would remain stayed and closed until April 1, 2005, “unless the Bankruptcy Court lifts the stay.” *See* Movant’s Exhibit No. 7.

The Movant now requests that this Court lift the automatic stay with respect to the Debtor so that the entire State Court Litigation could proceed to judgment. This Court is not inclined to lift the stay against the Debtor. Any party who has a claim against the Debtor can simply file a proof of claim here. It makes no sense to require the Chapter 7 trustee to participate in the State Court Litigation.

Alternatively, the Movant requests that this Court issue an order clarifying for the state court that the automatic stay does not apply to parties in the State Court Litigation other than the Debtor. This request must be denied for two reasons. First, it appears that the state court has already determined that the automatic stay applies to all parties in the State Court Litigation. State courts have concurrent jurisdiction to determine the applicability of the automatic stay. *See Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 345 (5th Cir. 2003) (stating that “[s]tate courts . . . routinely rule on the applicability of a bankruptcy stay or permanent injunction to state judicial proceedings”). Since it appears that the state court made a determination that the automatic stay applies to all parties in the State Court Litigation, this Court is precluded by the Rooker-Feldman doctrine from sitting as an appellate court of the state court’s determination. *See Reitnauer v. Tex. Exotic Feline Found., Inc. (In re Reitnauer)*, 152 F.3d 341, 343 (5th Cir. 1998) (stating that the Rooker-Feldman doctrine “provides that lower federal courts lack jurisdictional authority to sit in appellate review of state court decisions”).

²The state court also heard a motion to extend the automatic stay to another third-party defendant.

Second, to the extent that the Movant requests that this Court advise the state court that its decision is legally incorrect, such an order would essentially be an advisory opinion. This Court cannot issue advisory opinions. *See Flast v. Cohen*, 392 U.S. 83, 96 (1968) (stating that “the implicit policies embodied in Article III, and not history alone, impose the rule against advisory opinions on federal courts”). For this reason, Movant’s alternative requested relief must also be denied.

For these reasons, it is **ORDERED** that the Motion is hereby **DENIED**.

END OF ORDER