

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:	*	Chapter 7
CHARIS HOSPITAL, LLC	*	Case No. 01-10616
DEBTOR	*	
* * * * * *	*	

RESPONSE TO MOTION TO OBTAIN ACCEPTABLE REMEDY

On May 12, 2005, William D. Carroll, III, a purported creditor of the bankruptcy estate, filed a "Motion to Obtain Acceptable Remedy" (the "Motion") ostensibly arguing, *inter alia*, that the Chapter 11 liquidating trustee failed in its duties.

Mr. Chiasson, the duly appointed Chapter 7 Trustee, does not take a position with respect to the allegations asserted by Mr. Carroll against the Chapter 11 Liquidating Trustee. However, Mr. Carroll has also made allegations against Mr. Chiasson and his attorneys, and to that limited extent, Mr. Chiasson files this response to Mr. Carroll's motion.

I. THE 341 MEETING

In several instances, Mr. Carroll's Motion complains about Mr. Chiasson's handling of the 341 meeting of creditors. Michael Perry attended the 341 meeting on behalf of his client, the Chapter 11 liquidating trustee. Contrary to Mr. Carroll's suggestions, Mr. Perry was able to answer the questions which are properly raised in a 341 meeting. Mr. Perry did state that certain of the Trustee's questions could only be answered by reviewing a

secret settlement agreement that he had never seen, but that was subsequently revealed to have been entered into.

Mr. Carroll also complains that the 341 meeting "ultimately became an inquiry into what information I [Mr. Carroll] maintained regarding the liquidator's conduct." Mr. Carroll, however, was not placed under oath and thus was not formally questioned by Mr. Chiasson. Rather, Mr. Carroll initiated his own participation at the meeting, and only after making accusatory statements was he asked to provide supporting documents for his numerous contentions of fraud and conspiracy which he has continuously maintained against the liquidator.

For example, Mr. Chiasson subsequently inquired as to Mr. Carroll's allegations of conflict of interest between CalMed and William Plains, the principal of ICC. In response to these requests for information and evidence, Mr. Carroll has failed to produce a single document which would substantiate his claims. The Trustee's own independent investigation has likewise revealed no such evidence.

II. THE VAUGHN MOTIONS

Mr. Carroll also accuses the Chapter 7 Trustee of failing "to satisfy [his] fiduciary and legal duties" by objecting to Mr. Vaughn's (counsel for the Debtor) representation of Mr. Carroll (a purported creditor of the Debtor), although he acknowledges that the Trustee was "technically correct" in objecting to such representation.¹

Additionally, Mr. Carroll accuses the Trustee and his counsel of not fulfilling "their stated intentions" with respect to the liquidator's final report. As Mr. Carroll again

¹The Trustee submits that attorney ethical rules are not "technicalities."

acknowledges, however, the Trustee's stated intentions were not to object to the liquidator's final report, and he has fulfilled that stated intention.

Further, the Trustee certainly never discouraged Mr. Carroll from filing an objection, as is implied in Mr. Carroll's statements. The Trustee's only concern was that Mr. Carroll should get his own attorney, not the Debtor's attorney.

III. THE 2001 MEDICARE COST REPORT

The Trustee has done everything in his power to ensure that the 2001 Medicare cost report was accurately and truthfully filed. Counsel for the Chapter 7 Trustee did submit the 2001 cost report. Mr. Carroll states that there are concerns over the "legitimacy and accuracy" of that report. However, the Chapter 7 Trustee submitted the cost report with the best available information. Mr. Carroll's specific complaint that the Chapter 7 Trustee allowed additional "management fees" to be reported on the cost report is actually not a complaint at all. The reason the 2001 cost report shows that the estate owes money to Medicare, is because the Debtor did not properly account for its costs in 2001. If the 2001 cost report had been able to honestly demonstrate even higher management fees or costs, then those costs are offset against the payments made by Medicare to the Debtor prior to its filing.² If the 2001 cost report did not reflect management fees, then the estate's debt to Medicare would actually be higher. If the Debtor and its fiduciaries had maintained adequate records while the hospital was open, the Trustee certainly would have included

²Medicare operates under the assumption that certain services should cost a certain amount and thus the cost report ought to reflect a certain level of expenditures for every dollar paid out by Medicare. Medicare accounts for payments made to providers, whereas the provider is supposed to account for costs.

those additional costs on the 2001 cost report, as doing so would have reduced the estate debt or revealed a potential asset.

IV. THE SEALED SETTLEMENT

Mr. Carroll makes several statements concerning the sealed settlement agreement which he entered into along with his parents, David Vaughn, ICC, and ostensibly the Debtor. Specifically, Mr. Carroll states:

"When queried during the 341 creditors' meeting, counsel for the liquidator, whose client was not a participant in the settlement agreement and not bound by its provisions, indicated that it was prohibited per the terms of the adversarial settlement agreement, which proved to be false and misleading."

The Trustee simply disagrees with Mr. Carroll's interpretation of the sealed settlement agreement. Upon learning of the so-called sealed settlement agreement, and upon the refusal of the estate's special counsel, David Vaughn, to turn over the documents related to that sealed settlement agreement, the Trustee was forced to file a Motion for Turnover which was subsequently granted by this Court.

This Court should review the sealed settlement agreement in conjunction with the numerous allegations made against the Chapter 7 Trustee and its attorneys, as several of the complaints levied by Mr. Carroll are addressed therein. After the entry of a proper protective order, or the unsealing of the settlement agreement, the Trustee will point out the inconsistencies between Mr. Carroll's allegations and his actions.³

³The Trustee does not point to the specific allegations in the Carroll motion because doing so would in some way be revealing terms of the sealed settlement agreement.

Respectfully submitted,

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