

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE:	)	Chapter 11
	)	
INTEGRATED HEALTH SERVICES,	)	Case Nos. 00-389 (MFW)
INC., et al.,	)	through 00-825 (MFW)
	)	
Debtors.	)	(Jointly Administered Under
	)	Case No. 00-389 (MFW))

**MEMORANDUM OPINION<sup>1</sup>**

This matter is before the Court on the Motion of Buchanan/SCC for an Order Modifying and Clarifying the Court's Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals ("the Motion"). In its Motion, Buchanan seeks an order precluding the Debtors from paying any professionals' fees incurred from any particular Debtor, unless it is clear that their services benefitted that Debtor's estate. The Debtors oppose the Motion. For the reasons set forth below, we grant the Motion, in part.

I. FACTUAL BACKGROUND

On February 2, 2000, Integrated Health Services, Inc. ("IHS") and 437 of its affiliates filed voluntary petitions under chapter 11 of the Bankruptcy Code. That same day, on Motion of the Debtors, we entered an Order allowing the cases to be jointly administered. No Order has been entered substantively

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<sup>1</sup> This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to contested matters by Rule 9014.

consolidating the Debtors. On February 2, 2000, we also entered an administrative Order authorizing the Debtors to maintain their existing centralized cash management system, which allowed the Debtors to follow their prepetition practice of sweeping funds from each of the Debtors' depository accounts into a centralized concentration account. The Debtors electronically track each Debtor's receipts and disbursements through the system. We also entered an Order permitting the filing of fee applications on a monthly basis by all professionals retained under section 327 of the Bankruptcy Code ("the Fee Procedures Order"). The effect of these Orders has been to permit, inter alia, the Debtors' professionals to be paid on a monthly basis from the concentration account.

In May, 2000, IHS, CCA and CCA Acquisition filed a Motion seeking authority to reject an accounting agreement between CCA and Buchanan, which CCA Acquisition had guaranteed. The Debtors sought to reject that agreement because it imposed a financial burden on them (requiring CCA to cover losses at the Countryside Manor Nursing Home) without any prospect of a benefit to the Debtors in the immediate future. Under the Debtors' cash management system, IHS had been funding the payments due by CCA under the agreement and the continuing losses at the CCA level increased the intercompany debt. Buchanan opposed the Motion asserting that: (1) the contract was not executory and, therefore, not capable of being rejected under section 365; (2) it would be inequitable for CCA to reject the contract; and

(3) the Debtors were obligated to continue to make the payments required under the contract because of the entry of an Order authorizing the Debtors to pay certain prepetition obligations owed to critical vendors and certain representations made to Buchanan. After hearing testimony and arguments at a hearing held on May 16, 2000, we overruled Buchanan's objections and granted the Debtors' motion to reject the contract.

Subsequently, Buchanan filed a Motion for allowance and payment of an administrative claim allegedly due under the rejected contract. Buchanan asserted that it was entitled to an administrative claim in the amount of \$158,231.78 against CCA, CCA Acquisition and IHS. The Debtors opposed the Motion. After hearing testimony and argument on the Motion on July 7, 2000, we determined that Buchanan had an administrative claim against CCA and CCA Acquisition (as guarantor) in the amount of \$50,647.31. However, we did not direct CCA and CCA Acquisition to pay that administrative claim because those Debtors had established that they had no assets and were administratively insolvent.<sup>2</sup> We reserved payment of Buchanan's administrative claim until confirmation of a plan by CCA and CCA Acquisition (at which time all administrative claims would have to be paid pursuant to section 1129(a)(9) of the Bankruptcy Code) or it was otherwise

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<sup>2</sup> In fact, the Debtors asserted that the only asset which CCA owned was the contract with Buchanan which was unprofitable and had been rejected.

determined that CCA and CCA Acquisition had sufficient assets to pay all administrative claimants in full.

Subsequently, Buchanan filed the instant Motion. The Debtors opposed the Motion.

## II. JURISDICTION

This Court has jurisdiction over the instant matter, which is a core proceeding pursuant to 28 U.S.C. § 1334 and §157(b)(1), (b)(2)(A), (B), (M), and (O).

## III. ARGUMENT

The Debtors, and their counsel, oppose the Motion asserting that: (1) the Motion fails to meet the standards for reconsideration of our Order dated February 2, 2000; (2) it is impossible for their counsel to delineate what services were rendered for a specific Debtor; and (3) all services rendered by counsel should be compensable by all Debtors since they benefitted all the Debtors.

### A. Reconsideration

The Debtors argue that Buchanan's Motion is a motion for reconsideration under Rule 9024 of the Federal Rules of Bankruptcy Procedure, which incorporates Rule 60(b) of the Federal Rules of Civil Procedure. Under Rule 60(b), an order may be reconsidered only upon a showing of

(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).

We disagree with the Debtors' analysis. The Fee Procedures Order was an administrative order which merely specified procedures for the filing and allowance of fee applications in this jointly administered case. It was not a judgment or order entered in a contested matter. In fact, it was entered on the first day of this proceeding without notice to any party in interest other than the United States Trustee. Such administrative orders are always subject to modification by the Court, either sua sponte or on motion of any party-in-interest. See, e.g., Sill Corp. v. United States, 343 F.2d 411, 420 (10th Cir. 1965)(amending pretrial order); Winn-Senter Constr. Co. v. Healy Enter., No. 90-2173-0, 1992 WL 97764, at \*2 (D. Kan. April 30, 1992)(pretrial orders "may always be modified in the interest of the administration of justice"). Thus, we conclude that we may modify the Fee Procedures Order without the necessity to meet the requirements of Rule 60(b).

Even if Rule 60(b) were applicable, we find that reconsideration is appropriate under Rule 60(b)(5) and (6) because facts have changed since we entered the Fee Procedures Order on the first day of this case. Specifically, despite the assertions of the Debtors that the Order was procedural only and did not adversely affect any substantive rights of any creditor, that now appears to be incorrect. In fact, as we conclude below, the Order does adversely affect creditors of the jointly administered Debtors which, unlike CCA and CCA Acquisition, are administratively solvent. Therefore, we conclude that it is no longer equitable for the Order to have prospective effect and reasons exist for the modification of the Order.

B. Services Can Be Delineated

The Debtors also assert that the Fee Procedures Order should not be modified as requested by Buchanan to require the professionals to delineate what services were rendered for each Debtor because it is impossible to do so with respect to all 438 Debtors in this case and the administrative burden on the professionals would be enormous with no corresponding benefit to the Debtors or their estates.

We agree with the Debtors to the extent Buchanan seeks an Order requiring 438 separate monthly fee applications by all professionals for the Debtors. Since these are jointly administered estates, many of the activities performed by the professionals for the Debtors do benefit all the Debtors. To

require those professionals to separate each activity so it may partially bill each of the 438 Debtors would be arithmetically challenging. Conversely, we would not allow counsel to bill each estate in full for each activity (such as preparation and prosecution of a motion for extension of the exclusivity period) although it could be argued that that activity did benefit each Debtor. Joint administration of these estates, by requiring the filing of only one motion for all Debtors, results in significant savings for the estates.

However, joint administration is procedural only and cannot be allowed to adversely impact creditors' rights.

The purpose of joint administration is to make case administration easier and less expensive than in separate cases, without affecting the substantive rights of creditors (including inter-debtor claims).

In re Hutter Construction Co., Inc., 126 B.R. 1005, 1012 (Bankr. E.D. Wisc. 1991)(quoting In re Parkway Calabasas Ltd., 89 B.R. 832, 836 (Bankr. C.D. Cal. 1988)).

While Buchanan's Motion seeks to preclude any professional from seeking payment of its fees from any Debtor's estate unless it can be established that the professional provided services for that particular Debtor, Buchanan's interests are limited to those Debtors against whom it has a claim, CCA and CCA Acquisition. Because we have already determined that the CCA and CCA Acquisition estates are administratively insolvent, we cannot conclude that the administrative claims of counsel for those Debtors should be paid from the other Debtors' estates.

Permitting IHS and the other Debtors to pay the counsel fees for CCA and CCA Acquisition, without the prospects of repayment, adversely affects the creditors of those other Debtors' estates by reducing their potential recovery.

Furthermore, given the requirements for specificity and separate recordation of time by task in fee applications,<sup>3</sup> we reject the Debtors' argument that it is not possible or is too burdensome for professionals to delineate what services were performed for the CCA or CCA Acquisition estates. In fact, as is clear from the submission filed by counsel for the Debtors at our direction, Debtors' counsel were able to delineate what services were performed by them on behalf of the CCA or CCA Acquisition estates, namely those services rendered in connection with the Motion to reject the Buchanan contract and the Motion of Buchanan for allowance of administrative claim.<sup>4</sup>

C. Services Performed for All Debtors

The Debtors also assert that, in this case, counsel's activities in connection with the Motion to reject the Buchanan contract and the Motion of Buchanan for allowance of administrative claim benefitted not just the CCA and CCA

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<sup>3</sup> See, e.g., In re Busy Beaver Building Centers, Inc., 19 F.3d 833, 845 (3d Cir. 1994).

<sup>4</sup> There was no evidence presented that any of the other professionals in this case performed services limited to CCA and CCA Acquisition. Therefore, we deny the Motion as to any professional except counsel for the Debtors.

Acquisition estates but all the Debtors' estates. Specifically, they emphasize that Buchanan was asserting an administrative claim against IHS as well as CCA and CCA Acquisition and that, by virtue of the centralized cash management system, IHS was funding the losses of CCA.

However, even the Debtors do not argue that the services rendered with respect to the Buchanan matters had any cognizable benefit to any of the other Debtors, other than IHS, CCA and CCA Acquisition. Further, it is clear that at least as to the rejection of the Buchanan contract and the Buchanan Motion for allowance of administrative claim, the services performed by counsel for the Debtors largely benefitted CCA and CCA Acquisition. Although Buchanan did assert that IHS was liable for that claim, it presented little support for that claim and we easily rejected it. However, as noted above, Buchanan's assertion of a claim for administrative status against CCA and CCA Acquisition had merit.

Therefore, we see no reason to authorize payment of counsel's fees for defense of the Buchanan Motions from any of the Debtors except CCA and CCA Acquisition. Since we have found those Debtors to be administratively insolvent, their counsel's fees cannot be paid at this time.

#### D. Amount of Claim

At our direction, counsel for the Debtors provided on September 14, 2000, a statement of what portion of their fee

applications involved work on the CCA or CCA Acquisition matters. After review of the submission, we conclude that \$26,535.00 was the amount of fees incurred by counsel for the Debtors on those matters.<sup>5</sup>

IV. CONCLUSION

For the foregoing reasons, we grant in part the Motion of Buchanan/SCC for an Order Modifying and Clarifying the Court's Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals.

An appropriate Order is attached.

BY THE COURT:

Dated: October 10, 2000

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Mary F. Walrath  
United States Bankruptcy Judge

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<sup>5</sup> Although counsel for the Debtors assert that \$20,796 of the fees requested by them related to those two matters, we are unable to determine how they calculated that number, because the highlighted entries on the bills attached to the submission in fact total \$26,535.00.

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Debtors.	)	(Jointly Administered Under
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**O R D E R**

**AND NOW**, this **10TH** day of **OCTOBER, 2000**, upon consideration of the Motion of Buchanan/SCC for an Order Modifying and Clarifying the Court's Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and the Debtors' Answer thereto, and after a hearing held on August 24, 2000, it is hereby

**ORDERED** that the Motion is **GRANTED IN PART**; and it is further

**ORDERED** that, until and unless an order is entered confirming a plan of reorganization or it is determined that the CCA Acquisition I, Inc., or Community Care of America, Inc., estates have sufficient assets to pay all administrative claimants, the Debtors shall not pay any fees of counsel for the Debtors rendered on behalf of those two Debtors, including fees incurred by Parker Chapin, LLP, counsel for the Debtors, in the amount of \$26,535.00 between April 1 and July 31, 2000; and it is further

**ORDERED** that the above reduction is reflected in an Order approving fees for that firm for the month of July, 2000.

BY THE COURT:

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Mary F. Walrath  
United States Bankruptcy Judge

cc: See attached

SERVICE LIST

James A. Patton, Esquire  
Robert S. Brady, Esquire  
Joel A. Waite, Esquire  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
11th Floor, One Rodney Square North  
P.O. Box 391  
Wilmington, DE 19899-0391  
Counsel for Integrated Health  
Services, Inc., et al.

Michael J. Crames, Esquire  
Arthur Steinberg, Esquire  
Marc D. Rosenberg, Esquire  
KAYE SCHOLER FIERMAN HAYS & HANDLER, LLP  
425 Park Avenue  
New York, NY 10022  
Counsel for Integrated Health  
Services, Inc., et al.

Charles P. Greenman, Esquire  
Lee Stremba, Esquire  
PARKER CHAPIN, LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
Counsel for Integrated Health  
Services, Inc., et al.

Michael R. Lastowski, Esquire  
DUANE, MORRIS & HECKSCHER LLP  
1201 Orange Street  
10th Floor  
Wilmington, DE 19801  
Counsel for Buchanan/SCC, Inc.

Richard W. Wolfe, Esquire  
4800 Nob Hill Road  
Fort Lauderdale, FL 33351  
Counsel for Buchanan/SCC, Inc.

Joanne B. Wills, Esquire  
Steven K. Kortanek, Esquire  
Maria Aprile Sawczuk, Esquire  
KLEHR HARRISON HARVEY BRANZBURG & ELLERS LLP  
919 Market Street  
Suite 1000  
Wilmington, DE 19801  
Counsel for the Official Committee  
of Unsecured Creditors

Glenn Rice, Esquire  
William Silverman, Esquire  
OTTERBOURG STEINDLER HOUSTON & ROSEN, PC  
230 Park Avenue  
New York, NY 10169  
Counsel for the Official Committee  
of Unsecured Creditors

Daniel K. Astin, Esquire  
Maria Giannarakis, Esquire  
OFFICE OF THE UNITED STATES TRUSTEE  
601 Walnut Street  
Suite 950 West  
Philadelphia, PA 19106