

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| In Re: | § | |
| | § | |
| Sadler Clinic, PLLC, | § | Case No.: 12-34546 |
| | § | |
| and | § | |
| | § | |
| Montgomery County | § | Case No.: 12-34547 |
| Management Company, LLC | § | |
| | § | JOINTLY ADMINISTERED |
| Debtors | § | |
| | § | (Chapter 7) |

**TRUSTEE’S MOTION TO COMPROMISE CONTROVERSY
WITH CARDINAL HEALTH 200, LLC
[Related to Docket Nos. 372 & 374]**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Allison Byman, Chapter 7 Trustee (“*Trustee*”) for the bankruptcy estates of Sadler Clinic, PLLC (“*Sadler*”) and Montgomery County Management Company, LLC

(“**MCMC**”) (collectively, the “**Debtors**”), and files her *Motion to Compromise Controversy with Cardinal Health 200, LLC* (the “**Motion**”).

RELIEF REQUESTED

1. By this Motion, the Trustee seeks approval of her settlement with Cardinal Health 200, LLC (“**Cardinal Health**”). The settlement is as follows: (i) Cardinal Health waives and releases any and all 11 U.S.C. § 503 administrative expense claims, if any, against the Debtors’ bankruptcy estates; (ii) the Trustee as representative of the Debtors’ bankruptcy estates waives and releases any and all 11 U.S.C. § 547 claims, if any, against Cardinal Health; and (iii) Cardinal Health shall be permitted relief from the automatic stay to setoff: (a) \$27,089.84 in certain prepetition credits owed by Cardinal Health to Sadler against \$42,400.20 owed by Sadler to Cardinal Health with respect to certain unpaid pre-petition invoices; and (b) \$410.57 in certain pre-petition credits owed by Cardinal Health to the MCMC against \$13,380.20 owed by MCMC to Cardinal Health with respect to certain unpaid pre-petition invoices.

2. As set forth herein, the Trustee asserts that the proposed settlement is fair, equitable and in the best interest of the Estates.

BACKGROUND

3. Prepetition, Sadler was a medical provider with multiple locations. Purportedly, MCMC is a wholly owned subsidiary of Sadler that provided asset and management services to Sadler.

4. Based on information and belief, prepetition, Cardinal Health provided certain medical related goods to both Sadler and MCMC.

5. On June 15, 2012 (the “**Petition Date**”), Sadler and MCMC each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Court designated the cases as complex on June 19, 2012, and granted joint administration of the cases on June 20, 2012. The cases are not substantively consolidated and each maintains a separate Claims Register.

7. In response to Question 3b on its Statement of Financial Affairs, MCMC identified five payments, totaling \$41,097.91, made to Cardinal Health within the 90 days prior to the Petition Date. [See Docket No. 93-7, p. 14].

8. On July 23, 2012, Cardinal Health filed Claim Number 74 asserting a pre-petition unsecured claim in the amount of \$42,400.20 against the Sadler bankruptcy estate. On the same date, Cardinal Health filed Claim Number 88 asserting a pre-petition unsecured claim in the amount of \$13,380.20 against the MCMC bankruptcy estate.

9. On August 2, 2012, the Court entered its *Order Converting Case to Chapter 7* [Docket No. 204]. Thereafter, Allison Byman was appointed Chapter 7 Trustee to administer the assets of the bankruptcy Estates.

10. On December 11, 2012, Cardinal Health filed its *Verified Motion of Cardinal Health 200, LLC for Entry of an Order Allowing Administrative Expense Claims* (the “**Administrative Claim Motion**”) asserting the following purported administrative expense claims against the Debtors:

- (i) a \$3,344.63 Section 503(b)(9) claim against Sadler;
- (ii) a \$831.43 Section 503(b)(9) claim against MCMC;
- (iii) a \$8,411.19 Section 503(b)(1) post-petition claim against Sadler; and
- (iv) a \$437.83 Section 503(b)(1) post-petition claim against MCMC.

[See Docket No. 372].

11. Also on December 11, 2012, Cardinal Health filed its *Verified Motion of Cardinal Health 200, LLC for Entry of an Order Granting Relief from the Automatic Stay, for Cause, to Setoff Mutual Pre-Petition Obligations* (the “**Relief from Stay Motion**”) seeking relief from the automatic stay so that it may exercise its setoff rights pursuant to 11 U.S.C. § 553 of certain purported credits of each of the Debtors against certain purported debts owed by each of the Debtors to the Movant. [See Docket No. 374].

12. On December 28, 2012, the Trustee timely filed her objections to the Relief from Stay Motion and the Administrative Claim Motion. [See Docket Nos. 390 & 391]. The Trustee objected to both motions on a number of grounds, including 11 U.S.C. § 502(d). [See Docket Nos. 390 & 391].

AUTHORITIES GOVERNING COMPROMISES

13. FED. R. BANKR. P. 9019 authorizes bankruptcy courts to approve compromises and settlements with the trustee. Ultimately, a compromise must be “fair, equitable, and in the best interest of the estate.” *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). When considering whether a compromise is “fair, equitable and in the best interest of the estate,” the Court must weigh the “terms of the compromise with the likely rewards of litigation.” *Id.* Within the 5th Circuit, courts must consider (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) difficulty of collection of any judgment; (iii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (iv) all other factors bearing on the wisdom of the compromise; (v) the extent to which the settlement is truly the product of arms-length bargaining and not of fraud or collusion; and (vi) deference to the concerns of creditors. *Protective Committee for Independent Stock-*

holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968); *In re Jackson Brewing Co.*, 624 F.2d at 602.

14. Although the Trustee bears the burden of establishing that the proposed compromises are in the best interest of the Estates, compromises are a normal part of the bankruptcy process and oftentimes a desirable and wise method of bringing to a close proceedings that are otherwise lengthy, complicated and costly. As such, the Trustee's burden is not high. *In re Shankman*, No. 08-36327, 2010 WL 743297, at *3 (Bankr. S.D. Tex. Mar. 2, 2010). The decision to approve a compromise lies within the Court's discretion, and the Court "need not conduct a mini-trial to determine the probable outcome of any claims waived in the settlement." *Id.* (quoting *In re Cajun Elec. Power Co-Op, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997)). "The Trustee need only show that . . . [her] decision falls within the 'range of reasonable litigation alternatives.'" *Id.* (*internal citations omitted*).

THE SETTLEMENT

15. Subject to Court approval, the Trustee and Cardinal Health have agreed to the following settlement of the Cardinal Health's Relief from Stay Motion and the Administrative Claim Motion:

- i. Cardinal Health waives and releases any and all 11 U.S.C. § 503 administrative expense claims, if any, against the Debtors' bankruptcy estates;
- ii. the Trustee as representative of the Debtors' bankruptcy estates waives and releases any and all 11 U.S.C. § 547 claims, if any, against Cardinal Health; and
- iii. Cardinal Health shall be permitted relief from the automatic stay to setoff:

- a) \$27,089.84 in certain prepetition credits owed by Cardinal Health to Sadler against \$42,400.20 owed by Sadler to Cardinal Health with respect to certain unpaid pre-petition invoices; and
- b) \$410.57 in certain pre-petition credits owed by Cardinal Health to the MCMC against \$13,380.20 owed by MCMC to Cardinal Health with respect to certain unpaid pre-petition invoices;

16. The proposed settlement is fair, equitable and in the best interest of the Estates. Such proposed settlement is the product of arms-length bargaining and not of fraud or collusion.

17. **Probability of Success.** Cardinal Health asserts that it provided \$3,344.63 worth of goods to the Sadler within the 20 days prior to the Petition Date and \$8,411.19 to Sadler during the course of its Chapter 11 bankruptcy case. Cardinal Health further asserts that it provided \$831.43 worth of goods to MCMC within the 20 days prior to the Petition Date and \$437.83 to MCMC during the course of its Chapter 11 bankruptcy case.

18. However, the invoices attached to Cardinal Health's Administrative Claim Motion demonstrate that the goods purportedly delivered to Sadler within the 20 days prior to the Petition Date were shipped more than a month prior to the Petition Date. Further, Cardinal Health did not provide documentation demonstrating that the goods purportedly delivered to MCMC within the 20 days prior to the Petition Date were actually delivered at that time.

19. It is Cardinal Health's burden to prove that its goods provided a benefit to the Debtors' chapter 11 bankruptcy estates. The Trustee concedes that Cardinal Health may be able to establish that certain amounts were incurred as an actual, necessary cost and expense of preserving either Debtor's Estate during the Chapter 11.

20. It appears that Cardinal Health would likely be successful in establishing that it delivered \$8,849.02 in goods post-petition to the bankruptcy estates. However, the Trustee

believes she would be successful in defending against Cardinal Health's Section 503(b)(9) claims.

21. MCMC identified five payments, totaling \$41,097.91, made to Cardinal Health within the 90 days prior to the Petition Date. [See Docket No. 93-7, p. 14]. Sadler did not list any prepetition payments made to Cardinal Health within 90 days prior to the Petition Date. The Trustee's investigation of the books and records for both estates comports with the Debtors' representations regarding their payments to Cardinal Health within the 90 days prior to the Petition Date.

22. The Trustee believes it is more likely than not that she would establish the elements of a preference claim against Cardinal Health. The Trustee's investigation disclosed that \$22,751.25 of those five payments were made on account of an antecedent debt. MCMC was presumed insolvent at the time and the \$22,751.25 allowed Cardinal Health to receive more than it would have received in a chapter 7 liquidation.

23. Cardinal Health provided documentation, including shipping records, purporting to evidence that \$14,015.91 of the \$22,751.25 may likely be insulated from avoidance by the 11 U.S.C. § 547(c)(4) new value defense. Without further discovery into any other 11 U.S.C. § 547 defenses, the Trustee believes that she would likely be successful in avoiding \$8,735.34 under 11 U.S.C. § 547.

24. The settlement takes into consideration the strength of Cardinal Health's purported Section 503(b)(1) and Section 503(b)(9) administrative expense claims against both bankruptcy estates, as well as Cardinal Health's defenses to any preference action brought by the Trustee, and the likelihood that Cardinal Health would prevail in some measure on such

defenses. It also takes into consideration the risks, costs and potential benefits to the bankruptcy estate associated with litigating the above matters.

25. After consideration of the above, Trustee believes that the compromise between the Trustee and Cardinal Health is reasonable under the circumstances.

26. **Difficulty of Collection of Any Judgment.** This prong does not apply to either the Administrative Claim Motion or Relief from Stay Motion. However, it does apply to the MCMC bankruptcy estate's potential 11 U.S.C. § 547 claim. At this time, the Trustee has no reason to doubt that if a judgment was awarded against Cardinal Health such judgment could be collected, but the estate would incur collection costs. However, the Trustee is unaware of Cardinal Health's financial condition.

27. **Complexity and Duration of the Litigation.** The factual and legal issues involved in the administrative claims litigation and the motion for relief litigation are not complex. Cardinal Health carries the burden to prove that its purported Section 503(b)(9) claims and that the Chapter 11 products were a necessary cost and expense of preserving the bankruptcy estates. The preference litigation appears to involve fairly straight forward factual and legal issues. The Trustee carries the burden to prove the elements of a preferential transfer. After the Trustee satisfies her burden, the burden shifts to Cardinal Health to prove its asserted defenses.

28. The Trustee believes in her business judgment that a non-consensual resolution of Cardinal Health's claims would be costly as it would require litigation, and given the amounts at issue the proposed compromise is proper.

29. **Deference to Creditors.** For the reasons stated above, the Trustee in her business judgment has determined that the proposed settlement is fair, equitable and in the best

interest of the creditors. This pleading will be served on creditors for any comment or objections they may have.

WHEREFORE, PREMISES CONSIDERED, Allison Byman, Chapter 7 Trustee, prays that the Court (i) grant this Motion; (ii) approve the settlement as set forth herein; (iii) authorize the parties to take all actions and execute all documents necessary to effectuate the compromise; and (iv) for such other relief as the Court finds appropriate and just to grant.

Respectfully submitted,

/s/ Simon Mayer

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