IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re:	§	Chapter 7
	§	
LITTLE RIVER HEALTHCARE HOLDINGS, LLC, *et al.*	§	Case No. 18-60526-rbk
	§	
	§	
Debtors.[1]	§	(Jointly Administered)
	§	

LIMITED OBJECTION OF WALLER LANSDEN DORTCH & DAVIS, LLP TO EMERGENCY MOTION FOR ORDER (I) AUTHORIZING CHAPTER 7 TRUSTEE TO (A) LIQUIDATE AND PROTECT ESTATE ASSETS, (B) USE CASH COLLATERAL AND GRANT ADEQUATE PROTECTION, AND (C) CONTINUE CASH MANAGEMENT SYSTEM, AND (II) GRANT RELATED RELIEF

TO THE HONORABLE RONALD B. KING, UNITED STATES BANKRUPTCY JUDGE:

Waller Lansden Dortch & Davis, LLP ("***Waller***"), counsel to the above-captioned debtors (collectively, the "***Debtors***[2]") in the Debtors' Chapter 11 Cases (as defined below) and holder of an allowed administrative claim in the Debtors' chapter 7 cases, files this limited objection ("***Limited Objection***") to the entry of an order authorizing and approving the *Emergency Motion for Order (I) Authorizing Chapter 7 Trustee to (A) Liquidate and Protect Estate Assets, (B) Use Cash Collateral and Grant Adequate Protection, and (C) Continue Cash Management System, and (II) Grant Related Relief* [Doc. 605] (the "***Motion***").[3] In support of its Limited Objection, Waller states as follows:

[1] The Debtors in the chapter 7 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Compass Pointe Holdings, LLC (1142), Little River Healthcare Holdings, LLC (7956), Timberlands Healthcare, LLC (1890), King's Daughters Pharmacy, LLC (7097), Rockdale Blackhawk, LLC (0791), Little River Healthcare - Physicians of King's Daughters, LLC (5264), Cantera Way Ventures, LLC (7815), and Little River Healthcare Management, LLC (6688). The Debtors' mailing address is 1700 Brazos Ave, Rockdale, TX 76567.

[2] The Debtors were debtors in possession from the July 24, 2018 until December 7, 2018 when these cases were converted to proceedings pursuant to chapter 7.

[3] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

BACKGROUND

1. On July 24, 2018 (the "***Petition Date***"), each of the Debtors commenced cases under chapter 11 of the Bankruptcy Code (the "***Chapter 11 Cases***"). The Debtors operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until the Cases were converted to cases under Chapter 7 of the Bankruptcy Code by order of this Court on December 7, 2018 [Doc. 547] (the "***Conversion Order***"). No request for the appointment of a trustee or examiner was made in the Chapter 11 Cases. An Official Committee of Unsecured Creditors (the "***Committee***") was appointed by the United States Trustee on August 21, 2018. James Studensky is currently serving as the interim Chapter 7 Trustee (the "***Trustee***").

2. The Court approved the retention of the law firm of Waller as counsel for the Debtors in the Chapter 11 Cases effective as of the Petition Date by an order entered September 18, 2018 [Doc. 230].

3. On October 23, 2018, the Court entered a final order authorizing the Debtors to use case collateral and obtain post-petition financing [Doc. 346, as modified by Doc. 474] (collectively, the "***Final DIP Order***").

4. On January 9, 2019, the Court approved Waller's first and final application for allowance of compensation for services rendered and reimbursement of expenses incurred from the Petition Date through December 7, 2018 [Doc. 684].

FINAL DIP ORDER – ESCROWS AND CARVE-OUTS

5. The Debtors, Committee, and their professionals, including Waller, negotiated at arms' length with the Agent for the inclusion of certain provisions in the Final DIP Order to ensure the prompt and full payment of the Debtors' and Committee's allowed professional fees

and expenses. These bargained-for provisions incorporated into the Final DIP Order include, among others, the establishment of: a) the Professional Fee Escrow[4] accounts that were to be funded weekly for the benefit of the Debtors' and Committee's professionals; b) the November Carve-Out in the amount of $808,969 for Debtors' professionals and $150,000 for Committee professionals; and (c) the Burial Carve-Out (the November Carve-Out and Burial Carve-Out are collectively referred to herein as the "***Carve-Outs***") in an aggregate amount not to exceed $250,000 for Debtor Professionals, and $40,000 for Committee Professionals to be used to pay fees earned and expenses incurred subsequent to the occurrence of a Post-Petition Default.[5] Final DIP Order ¶¶ 70-71. [6]

6. In summary, the Carve-Outs require the funding of the following amounts:

a. Debtors' Professionals
   i. November Carve-Out: $808,969
   ii. Burial Carve-Out: $250,000
   iii. Total Debtor Professional Carve-Outs: $1,058,969

b. Committee's Professionals
   i. November Carve-Out: $150,000
   ii. Burial Carve-Out: $40,000
   iii. Total Committee Professional Carve-Outs: $190,000

7. The Carve-Outs are an essential feature of the Final DIP Order made applicable to these Chapter 7 Cases pursuant to paragraph 92 of the Final DIP Order and paragraph 6 of the Conversion Order.

LIMITED OBJECTION

8. The Motion seeks, among other things, approval of the Trustee's consensual use of Cash Collateral. The order as proposed authorizes the Trustee to transfer to the Agent up to

[4] Capitalized terms used but not defined in this paragraph 4 shall have the meanings ascribed to them in the Final DIP Order.
[5] The Burial Carve-Out is applicable for fees and expenses incurred from November 29, 2018 through the date of conversion, December 7, 2018.
[6] This summary is qualified in its entirety by the full language set forth in the Final DIP Order.

$1,000,000 and further authorizes transfers on a monthly basis (or more frequently as determined by the Trustee) of all Cash Collateral in the Trustee's possession in excess of a certain, specified reserve amount. The proposed order further authorizes the Agent to apply such transfers of Cash Collateral to the DIP Obligations, the Lenders' Pre-Petition Claim, and/or related fees, costs, expenses, and charges.

9. While Waller does not object to the Trustee's use of Cash Collateral, it files this Limited Objection to ensure that the Carve-Outs are honored and fully funded prior to any amounts being transferred to Agent. As such, Waller requests this Court condition the turnover of any Cash Collateral to Agent on the immediate and full funding of the Carve-Outs, as necessary, to allow payment of all allowed professional fees and expenses.[7] Requiring that the Carve-Outs be funded prior to allowing Agent to apply Cash Collateral to, among other things, its pre- and post-petition claims will ensure that the Trustee and all parties and professionals are in compliance with the Final DIP Order. Absent this requested relief, Agent may benefit from the application of the Cash Collateral at the outset of these Chapter 7 Cases only for there later to be insufficient cash to fund the Carve-Outs at the end of the cases—this outcome would be unfair and run contrary to the explicit requirements of the Final DIP Order. *See East Coast Miner LLC v. Nixon Peabody LLP (In re Licking River Mining, LLC)*, Case No. 17-6310, 2018 US. App. LEXIS 36677 (6th Cir. 2018) (enforcing carve-out for benefit of chapter 11 debtor and committee professionals after conversion of the cases to chapter 7); *Fire Eagle, LLC v. Spillman Development Group*, Case No. 05-14415 (W.D. Tex. May 20, 2008) (affirming bankruptcy court

[7] This Limited Objection does not address issues pertaining to the Professional Fee Escrow accounts which Waller understands contains $1,939,050.96 for the Debtors' professionals and $44,550.59 for the Committee's professionals. Waller reserves all rights and remedies with respect to the Professional Fee Escrow accounts.

order authorizing chapter 7 trustee to pay chapter 11 professional fees from cash collateral pursuant to cash collateral order carve-out).[8]

WHEREFORE, Waller respectfully requests the Court condition the turnover of Cash Collateral to Agent on Trustee first fully funding the Carve-Outs for payment of allowed professional fees and expenses.

DATED: January 18, 2019

Respectfully submitted,

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[8] A courtesy copy of *Fire Eagle, LLC v. Spillman Development Group*, Case No. 05-14415 (W.D. Tex. May 20, 2008) is attached hereto as **Exhibit A**.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Limited Objection has been served by the Court's ECF e-filing notification on all parties receiving such notices on January 18, 2019 (as listed on the service list attached hereto) and via email on the parties listed below.

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FIRE EAGLE, LLC,	§	
	§	
APPELLANT,	§	
	§	05-14415
V.	§	CAUSE NO. A-08-CA-0110 LY
	§	
SPILLMAN DEVELOPMENT	§	
GROUP, LTD., DEBTOR,	§	
HOHMANN, TAUB & SUMMERS, L.L.P.,	§	
RESPONDER TO TRUSTEE'S MOTIONS,	§	
RON INGALLS, CH. 7 TRUSTEE,	§	
SPILLMAN INVESTMENT	§	
GROUP, LTD,	§	
PALISADES DEVELOPERS, LTD.,	§	
DONALD C. WALDEN,	§	
STEPHEN W. GURASICH, JR.,	§	
ROBERT H. WEST, AND	§	
RICHARD TOPFER, INSIDERS AND	§	
RESPONDERS TO TRUSTEE'S	§	
MOTIONS,	§	
	§	
APPELLEES.	§	
	§	

MEMORANDUM OPINION AND ORDER

Before the Court is the above styled and numbered cause of action, by which Appellant Fire Eagle LLC appeals the Bankruptcy Court's Order Regarding Trustee's Motion To Determine Status of Cash and Use Thereof, rendered December 19, 2007, and the Bankruptcy Court's denial of Fire Eagle's motion for reconsideration, rendered January 2, 2008, in the underlying converted Chapter 7 liquidation bankruptcy proceeding, *In re Spillman Development Group, Ltd.*[1] No. 05-14415-FRM,

[1] Spillman Development Group ("Spillman") commenced a Chapter 11 reorganization proceeding on August 1, 2005. The Bankruptcy Court converted that proceeding to Chapter 7 liquidation on April 4, 2007 (Bankruptcy Document No. 413).

Order Regarding Trustee's Motion To Determine Status Of Cash and Use Thereof (Bankr. W.D. Tex. Dec. 19, 2007) (Bankruptcy Document No. 498); Order (Bankr. W.D. Tex. Jan. 2, 2008) (Bankruptcy Document No. 502). On appeal, Fire Eagle contends that the Bankruptcy Court erred by ordering Ron Ingalls, Chapter 7 Trustee for Debtor Spillman, to pay Appellee Hohmann, Taub & Summers, L.L.P.'s ("HTS") attorney's fees in the amount of $78,086.65, incurred for services HTS rendered for Spillman during Spillman's Chapter 11 proceeding, from cash collateral pursuant to a provision in the Bankruptcy Court's First Amended Agreed Final Order Authorizing Use of Cash Collateral, rendered September 6, 2005 (Bankruptcy Document No. 40) ("Agreed Cash Collateral Order"). Fire Eagle contends that the Bankruptcy Court erroneously determined that the Agreed Cash Collateral Order contained a carve-out provision pursuant to which the Bankruptcy Court could order HTS's attorney's fees paid out of cash collateral. Alternatively, Fire Eagle contends that the Bankruptcy Court erred by giving priority to and ordering payment of HTS's attorney's fees, because HTS's fees are Chapter 11 administrative expenses and are, therefore, subordinate to the Chapter 7 Trustee's administrative expenses. Fire Eagle contends that HTS's attorney's fees should be paid along with other claimants and creditors on a *pro rata* basis after the Chapter 7 Trustee's administrative expenses are paid. *See* 11 U.S.C. § 726(b). Fire Eagle contends that on either ground, this Court should reverse the Bankruptcy Court's Order Regarding Trustee's Motion To Determine Status of Cash and Use Thereof and, as the Chapter 7 Trustee Ingalls has paid HTS's fees as ordered, render judgment that HTS refund to Ingalls the $78,086.65 payment.

Fire Eagle and HTS briefed the issues and the Court heard oral argument on April 24, 2008, at which each party was represented by counsel (Clerk's Document Nos. 5, 6, & 7). Having reviewed and considered the briefing and arguments of counsel, several orders and a Memorandum

Opinion rendered by the Bankruptcy Court, the record before the Bankruptcy Court, and the applicable law, the Court will overrule Fire Eagle's contentions, affirm the Bankruptcy Court's Order Regarding Trustee's Motion To Determine Status of Cash and Use Thereof, affirm the Bankruptcy Court's denial of Fire Eagle's motion for reconsideration, and deny Fire Eagle's request that HTS refund to Chapter 7 Trustee Ingalls the $78,086.65 payment.

Background

Debtor Spillman's primary asset was a ground lease and smaller owned tracts used for operation of the Falcon Head Golf Course in Austin, Texas. Fire Eagle originally was the second lienholder, holding substantially all of Spillman's assets behind American Bank of Texas. Later, Fire Eagle became the first lienholder.

During the Chapter 11 proceeding, the Bankruptcy Court rendered the Agreed Cash Collateral Order, which outlined certain uses and budgets for cash collateral Spillman, who at the time was a debtor in possession, had on hand and which the ongoing golf course business continued to generate (Bankruptcy Document No. 40). Paragraph 25 of the Agreed Cash Collateral Order provides:

> Except as may be provided in the Budget(s), the Debtor agrees that it will not use Cash Collateral (a) to pay any administrative expenses of the Case, other than the payment of professional fees as approved by the Bankruptcy Court, or (b) to make transfers to insiders of the Debtor, as that term is defined in Section 101(31) of the Bankruptcy Code. Notwithstanding the above, the Debtor shall be authorized to pay the quarterly fees to the U.S. Trustee.

By Paragraph 38, the Agreed Cash Collateral Order shall

> continue to inure to the benefit of the Debtor and the Bank and they shall be binding upon (a) the Debtor and its respective successors and

> assigns, including any trustee or other fiduciary hereafter appointed as the Debtor's legal representatives or with respect to property of the Debtor's estate, whether under Chapter 11 of the Bankruptcy Code or any subsequent Chapter 7 case, and (b) all creditors of the Debtor and other parties in interest.

After rendition of the Agreed Cash Collateral Order and while Spillman was still proceeding under Chapter 11, the Bankruptcy Court granted Spillman's request to employ HTS as its counsel on February 9, 2006 (Bankruptcy Document No. 58). HTS rendered legal services to Spillman and, upon concluding business with Spillman, HTS filed a Final Application For Allowance of Fees and Expenses on March 7, 2007 (Bankruptcy Document No. 402).

The Bankruptcy Court converted Spillman's Chapter 11 proceeding to a Chapter 7 proceeding and appointed Ingalls as Chapter 7 Trustee on April 4, 2007 (Bankruptcy Document No. 413). In July 2007, the Bankruptcy Court conducted an evidentiary hearing regarding HTS's fee application, at which all parties were represented by counsel, and on September 20, 2007, rendered an Order that awarded HTS its attorney's fees and expenses, albeit in a reduced amount from that HTS requested, and ordered that "all remaining sums due and owing to [HTS] be, and they are hereby ordered paid" (Bankruptcy Document No. 465) (the "Fee Order"). In conjunction with the Fee Order, the Bankruptcy Court rendered a Memorandum Opinion that outlined the various services HTS rendered for Spillman, included detailed findings of fact and conclusions of law, and fully explained the reasons for its ruling on HTS's fee application (Bankruptcy Document No. 466). By its Memorandum Opinion, the Bankruptcy Court specifically found, "There are no other co-equal administrative claimants in this case. The [HTS attorney's] fees to the extent allowed, will be paid out of the cash collateral of Fire Eagle pursuant to the carve out provisions of the [Cash Collateral Order]." No appeal was taken from the Fee Order.

In October 2007, Chapter 7 Trustee Ingalls filed a Motion To Determine Status Of Cash And Use Thereof (Bankruptcy Document No. 472) and a Motion To Designate the Priority Status of an Administrative Claim of HTS (Bankruptcy Document No. 473) by which Ingalls contended that HTS's attorney's-fee claim for services rendered to Spillman during Chapter 11 proceedings was inferior or subordinate to Ingalls's Chapter 7 administrative claims and that the cash collateral held by Ingalls should not be used to pay HTS's attorney's fees claim ahead of Chapter 7 administrative claims. In December 2007, the Bankruptcy Court held a hearing on the motions, reviewed its previous orders, and rendered the Order Regarding Trustee's Motion To Determine Status Of Cash and Use Thereof, which denied Ingalls contentions, ordered that HTS be paid from the cash collateral funds currently held by Ingalls, and that Ingalls immediately pay HTS's fees previously awarded by the Fee Order which remained due (Bankruptcy Document No. 498).[2] Fire Eagle then moved for reconsideration, which the Bankruptcy Court found frivolous and denied on January 2, 2008 (Bankruptcy Document No. 502). Fire Eagle appeals the December 19 Order Regarding Trustee's Motion To Determine Status Of Cash and Use Thereof and the January 2 Denial of Fire Eagle's motion for reconsideration. The Chapter 7 Trustee Ingalls, in accordance with these orders, paid HTS $78,086.65, the awarded attorney's fees, from the cash collateral, and is not a party to this appeal.

Analysis

Determining the use of cash collateral is a core bankruptcy proceeding. *See* 28 U.S.C. § 157(b)(2)(M). When reviewing a bankruptcy court's decision in a core proceeding, the district

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[2] The Bankruptcy Court denied as moot the Trustee's Motion to Designate Priority Status (Bankruptcy Document No. 497).

court functions as an appellate court and applies the standard of review generally applied in federal-court appeals. *See Webb v. Reserve Life Ins. Co.*, 954 F.2d 1102, 1103-04 (5th Cir. 1992). District courts review questions of law from bankruptcy proceedings using a *de novo* standard. *See Coston v. Bank of Malvern*, 987 F.2d 1096, 1099 (5th Cir. 1992). Findings of fact are reviewed under a "clearly erroneous" standard. *See Heartland Fed. Sav. & Loan Ass'n. v. Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1193 (5th Cir. 1993). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court, based on the entire record and evidence is left with a firm and definite conviction that a mistake has been committed. *See Haber Oil Co. v. Swinehart*, 12 F.3d 426, 434 (5th Cir. 1994). On appeal this Court may affirm, modify, or reverse a bankruptcy judge's order, or may remand the cause with instructions for further proceedings. *See* Fed. R. Bankr. P. 8013.

Fire Eagle asserts that the Bankruptcy Court erroneously determined that HTS's attorney's fees incurred during Spillman's Chapter 11 proceeding are subject to payment pursuant to a carve-out provision in paragraph 25 of the Bankruptcy Court's Agreed Cash Collateral Order. Fire Eagle contends that paragraph 25 fails to contain an effective carve-out provision because lacking are certain necessary specifics, in particular an amount certain. *See In re Blackwood Assocs., L.P.*, 153 F.3d 61, 65 (2d Cir. 1998); *see also In re White Glove, Inc.*, 1998 WL 731611, *6-7 (Bankr. E.D. Pa. Oct. 14, 1998); *In re FYM Clinical Lab, Inc.*, 1993 WL 288541, *5 n. 4 (Bankr. S.D.N.Y. June 17, 1993). Absent a carve-out provision, Fire Eagle argues, the Bankruptcy Court's subsequent order that the Chapter 7 Trustee pay HTS's attorney's fees out of the cash collateral, "results in a non-voluntary surcharge on the collateral of Fire Eagle." Additionally, Fire Eagle contends that the

Bankruptcy Court improperly allowed HTS's subordinate Chapter 11 administrative claim to be paid ahead of the Chapter 7 Trustee's administrative expenses. *See* 11 U.S.C. § 726(b).

HTS responds that the Bankruptcy Court correctly determined that HTS's attorney's fees incurred during the Chapter 11 proceeding are within the carve-out provision in the Agreed Cash Collateral Order, and, as the Bankruptcy Court noted in its Memorandum Opinion rendered in conjunction with its Fee Order, there were no other co-equal administrative claimants in the case. Additionally, HTS contends that Fire Eagle by appeal attempts an improper collateral attack on the Bankruptcy Court's final orders, particularly the Agreed Cash Collateral Order and the Fee Order and Memorandum Opinion regarding payment of HTS's attorney's fees. *See In re Patriot Contracting Corp.*, 2006 WL 4452840 * 3 (Bankr. D. N.J. 2006) (cash collateral order is final appealable order); *In re US Flow Corp.*, 332 B.R. 792, 796 (Bankr. W.D. Mich. 2005) (cash collateral order is final appealable order); *In re Discount Family Boats of Texas, Inc.*, 233 B.R. 365, 370 (Bankr. E.D. Tex. 1999) (cash collateral order is final appealable order); *see generally Peele v. Cunningham*, 218 F.3d 443 (5th Cir. 2000) (attorney's fee order is final appealable order); *In re DN Assoc.*, 3 F.3d 512 (1st Cir. 1993) (attorney's fee order is final appealable order).

Assuming without deciding that Fire Eagle's appeal is not an improper collateral attack on the Bankruptcy Court's Agreed Cash Collateral Order or the Bankruptcy Court's Fee Order and Memorandum Opinion regarding payment of HTS's attorney's fees, this Court finds that the Agreed Cash Collateral Order contains a carve-out provision, pursuant to which the Bankruptcy Court properly ordered HTS's attorney's fees paid.

Although Fire Eagle argues that a cash-collateral order that contains a carve-out provision must contain certain particulars, the Court finds a dearth of statutory authority or controlling caselaw

that establishes a form or list of items that are necessary for an effective carve-out provision. As "carve out" is undefined by the Bankruptcy Code, the term, which is commonly included in cash-collateral orders may mean different things to different parties. *See In re California Webbing Indus. Inc.*, 370 B.R. 480, 483 (Bankr. D. R.I. 2007). Carve outs have come to include: "(a) the amount to be set aside; (b) how the fund should be applied; and (c) whether the fund's continued availability is dependent on the occurrence or nonoccurence of a specific event." *Id.*

Referring again to paragraph 25, the Cash Collateral Order provides,

> Except as may be provided in the Budget(s), the Debtor agrees that it will not use Cash Collateral (a) *to pay any administrative expenses of the Case, other than the payment of professional fees as approved by the Bankruptcy Court*, or (b) to make transfers to insiders of the Debtor, as that term is defined in Section 101(31) of the Bankruptcy Code. Notwithstanding the above, the Debtor shall be authorized to pay the quarterly fees to the U.S. Trustee.

(Emphasis added.) This Court finds that paragraph 25, by its terms, reflects that professional fees, in an amount yet to be determined and approved by the Bankruptcy Court, are to be paid from cash collateral. Based on the bankruptcy record, it is apparent to this Court that the payment of professional fees from cash collateral was envisioned by the parties when the Bankruptcy Court rendered the Agreed Cash Collateral Order. Here, the Bankruptcy Court, which has maintained continuous supervision over all of Spillman's bankruptcy proceedings, approved the parties' cash-collateral agreement by signing the Agreed Cash Collateral Order, which expressly provides that administrative expenses may be paid out of cash collateral in an amount approved by the Bankruptcy Court. The Bankruptcy Court, by its Fee Order, interpreted its Cash Collateral Order, determined that there were no co-equal claimants under the carve-out provision, evaluated the services HTS

provided to Spillman and HTS's requested fees, reduced the amount of fees it would approve, and ordered that the fees be paid pursuant to the carve-out provision of the Cash Collateral Order. Further, by the Memorandum Opinion, the Bankruptcy Court found that HTS's services and legal assistance ensured the continued operation of the primary asset in the case, the Falcon Head Golf Course, and aided in preserving the assets of the estate and maximizing their value for the benefit of the estate and the creditors. The Memorandum Opinion provides,

> Here, counsel's services resulted in indentifiable, tangible, and material benefits to the estate when viewed in hindsight. The Debtor's operations produced in excess of $750,000.00 in cash collateral that was ultimately paid to Fire Eagle as the second lien holder on the property. the property of the estate was preserved and the operations conducted were orderly and in compliance with Title 11. When Fire Eagle took over operations pursuant to its successful § 363(k) bid, it was handed a functioning and coherent business operation.

The Bankruptcy Court closed its Memorandum Opinion noting that "to the extent other assets are liquidated and/or recovered through litigation or otherwise, the remaining creditors will have a greater share of whatever those assets bring."

Based on the particular facts and circumstances in this case, the Court finds no error in the Bankruptcy Court's order that the Chapter 7 Trustee pay HTS's attorney's fees from cash collateral in the amount awarded by the Bankruptcy Court. Here, the parties agreed to provisions which the Bankruptcy Court incorporated into the Agreed Cash Collateral Order, and specifically they agreed that the Bankruptcy Court could order professional fees paid from cash collateral, in an amount to be approved by the Bankruptcy Court, which is precisely what the Bankruptcy Court did.

Having reviewed the entire bankruptcy proceeding in this cause, the Court holds that the challenged orders of the Bankruptcy Court should be affirmed.

IT IS ORDERED that the Bankruptcy Court's Order Regarding Trustee's Motion To Determine Status Of Cash and Use Thereof rendered December 19, 2007, and the Bankruptcy Court's order denying Fire Eagle's motion for reconsideration rendered January 2, 2008, (Bankruptcy Document Nos. 498 & 502) are **AFFIRMED**.

SIGNED this 20th day of May, 2008.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE