

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re:

Little River Healthcare Holdings, LLC *et al.*,
Debtors.

Chapter 7

Case No.
18-60526-rbk
(Jointly Administered)

**DEBTOR'S REPLY TO UNITEDHEALTHCARE INSURANCE COMPANY'S
RESERVATION OF RIGHTS REGARDING THE INTERIM FEE APPLICATION OF
DUANE MORRIS LLP FOR OCTOBER 1, 2022 THROUGH MAY 31, 2023**

United's so-called Reservation of Rights ("Reservation," ECF No. 1439) regarding Duane Morris LLP's Interim Fee Application ("Fee Application," ECF No. 1437) is not actually a reservation of rights, but rather, an *ad hominem* attack against the Trustee and Duane Morris. United has done this before, with the Court rightly admonishing United for "wasting time and money" on something that is "not really even an objection" and engaging in "mischief," before ultimately approving Duane Morris's prior fee-application. *See* Hearing on Interim Application for Compensation, Oct. 4, 2022, Tr: 5:10-19; *see also* Order Approving Interim Fee Application (ECF No. 1371). Consistent with its scorched-earth approach to date,¹ United has again filed another "non-objection objection," attacking: the Court's decisions to approve modification of the retention orders of other counsel to take lead counsel roles in Adversary Proceedings, the Trustee's case, the value of Duane Morris's time, and the business judgment decision-making authority of the Trustee. The Court should once again reject United's *further* efforts to drain the Estate.

The Trustee would love to treat United's Reservation as what it is – yet another needless

¹ Since United's Counsel seems eager to directly and personally attack the Trustee's counsel, Duane Morris will simply note that United's conduct in this case speaks for itself as to why the Trustee has been forced to incur substantial time and expense.

waste of time and money – and ignore it. However, the substantive content of United’s Reservation is so intentionally and flagrantly false that it unfortunately demands a response from the Estate on the most egregious falsehoods.

United falsely claims that no interest of the Estate has been advanced during the Fee Period. *See* Reservation at 2. United, the Trustee, the Court, and anyone familiar with the Adversary Proceeding dockets knows that these proceedings have been vigorously litigated on multiple fronts. *See* Fee Application, Ex. A at 6-7. Duane Morris defended against (and prosecuted) numerous motions on various matters (including extensive discovery disputes); took and defended dozens of depositions (including of non-parties); concluded fact discovery in both Adversary Proceedings; defended the Estate against a Motion for Summary Judgment (which would have otherwise resulted in a Payor Dispute being dismissed); successfully obtained summary judgment relief (in part) against one of the Payors; and undertook numerous other actions. *Id.* Ultimately, both Adversary Proceedings are now ready to be tried—a significant advancement of the Estate’s interest in the face of aggressive litigation tactics from the Estate’s multiple adversaries.²

United also questions the modified retention of Graves Dougherty and Jackson Walker for the United and Blue Cross cases, respectively, and mischaracterizes their roles. As an initial matter, this Court has already approved the new lead counsels’ roles. *See* ECF Nos. 1428 and 1429. Any arguments against their roles are belated collateral attacks of this Court’s prior orders. United’s further complaints that there will be “future fee requests from replacement counsel for time spent catching up on the years of litigation Duane Morris handled,” (Reservation at 2-3) are likewise completely without basis. Besides the fact that Duane Morris still remains counsel in an

² Also, contrary to United’s claims that the hours billed by Duane Morris were “mostly partner time” (Reservation at 2), the clear majority was actually billed by non-partners; a fact *easily* discernable by simply looking at a table in the Fee Application. Fee Application at 10-11. Of the 3,422.5 hours billed by Duane Morris, 1,246.9 were by partners, 2,175.6 were by non-partners. *Id.* Yet another example of a false *ad hominem* attack United is so eager to perpetuate.

advisory role and has not “abandoned” the Estate (*see* Reservation at 2), United appears to overlook that Jackson Walker has been counsel to the Estate for over three years (*see* ECF No. 1141) and is already well versed in the facts at issue in the Blue Cross Adversary Proceeding. Most egregiously, United acts as if Graves Dougherty is “new” to the United proceeding, but not only has Graves been the Trustee’s bankruptcy counsel since the conversion, it has also been co-counsel on the United Adversary Proceeding – on every pleading – *since day one* of the United case (*see, e.g.*, Original Complaint, Adv. Proc. No. 20-06093-rbk, ECF No. 1).³

As this Court is aware, Duane Morris has consistently tried to minimize cost and expense; it was the Payors – including United – who engaged in scorched earth litigation; filing motion after motion, engaging in frivolous and unnecessary third party discovery (e.g. spending hours badgering non-party witnesses solely invoking their Fifth Amendment rights or repeatedly stating they knew nothing), and filing baseless non-objections to interim fee applications. All of these required Estate engagement and clearly were actions designed to drain the Estate. Yet, now it is one of the same Payors – United – that complains of the high fees resulting from their own actions.

Ultimately, United questions the decision-making of the Trustee. And if the Trustee had listened to these exact same arguments that were being made by Blue Cross during the prior Arbitration, he (with Duane Morris as counsel) would have never been able to secure \$100 million in recovery—enabling the trustee to repay the Estate’s secured lender—and further enabling the Trustee’s ability to pursue additional potential recoveries for unsecured creditors.

Duane Morris’s Fee Application should be granted, and United should be admonished, again, to cease its vexatious tactics. The Trustee further requests all other relief to which he may be entitled.

³ In fact, a search of the United Adversary Proceeding docket results in 122 hits for Graves Dougherty’s lead bankruptcy counsel Brian Cumings and 86 hits for Duane Morris’s lead counsel Brad Thompson. But again, United is more interested in baseless attacks than accepting any degree of responsibility for its own vexatious conduct.

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Respectfully submitted,

/s/ Brad Thompson

Brad Thompson

State Bar No. 24046968

BThompson@duanemorris.com

Jacob P. Arechiga

State Bar No. 24069309

JArechiga@duanemorris.com

DUANE MORRIS LLP

Las Cimas IV

900 S. Capital of Texas Hwy, Suite 300

Austin, TX 78746-5435

Tel.: (512) 277-2247

Fax: (512) 277-2301

Brian Pandya

Virginia State Bar No. 72233

BHPandya@duanemorris.com

DUANE MORRIS LLP

901 New York Ave NW, Suite 700

Washington, DC 20001

Tel (202) 777-7807 Fax: (202) 478-2811

**SPECIAL COUNSEL TO JAMES
STUDENSKY, CHAPTER 7 TRUSTEE**

Brian T. Cumings

State Bar No. 24082882

**GRAVES, DOUGHERTY, HEARON &
MOODY, P.C.**

401 Congress Avenue, Suite 2700

Austin, TX 78701

Telephone: 512.480.5626

Facsimile: 512.536.9926

bcumings@gdhm.com

**COUNSEL FOR JAMES STUDENSKY,
CHAPTER 7 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2023, the foregoing pleading was sent to counsel for the defendants by email or via electronic notice through the Court's CM/ECF System, as set forth below:

Eric S. Goldstein
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
(860) 251-5000
egoldstein@goodwin.com

Andrew G. Jubinsky
State Bar No. 11043000
andy.jubinsky@figdav.com
Figari + Davenport, LLP
901 Main Street, Suite 3400
Dallas, Texas 75202
(214) 939-2000
Andy.jubinsky@figdav.com

Jeffrey S. Gleason
Jamie R. Kurtz
Gregory S. Voshell
Marcus A. Guith
Robins Kaplan LLP
800 LaSalle Ave., Suite 2800
Minneapolis, MN 55402
(612) 349-8500
jgleason@robinskaplan.com
jkurtz@robinskaplan.com
gvoshell@robinskaplan.com
mguith@robinskaplan.com

*Counsel for UnitedHealthcare Insurance Company,
United Healthcare of Texas, Inc., UnitedHealthcare
Benefits of Texas, Inc., and UnitedHealthcare
Community Plan of Texas, L.L.C.*

By: /s/ Brad Thompson
Brad Thompson