

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:03-bk-04054-ABB
Chapter 7

SUSAN S. EL-KHACHIB,

Debtor.

**ORDER DETERMINING STATUS OF
MEDICAL CLAIMS**

This matter came on for hearing on September 19, 2005 on the Trustee's Motion for Determination of Status of Letters of Protection (Doc. No. 48). The issue is whether certain medical expenses related to a personal injury settlement may be classified as administrative claims. After reviewing the pleadings and considering the parties' arguments and the applicable law, this Court finds those medical services which preserved the estate, were provided post-petition, and properly filed claims constitute administrative claims. Medical services rendered pre-petition and properly filed as claims are general unsecured claims.

JURISDICTION

This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§157 and 1334(b). This is a core proceeding as to which the Court is authorized to hear and determine all matters regarding this case in accordance with 28 U.S.C. §157(b)(2)(B).

FINDINGS OF FACT

Susan S. El-Khachib ("the debtor") sustained injuries in an automobile accident on January 6, 2003. She retained the law firm of Davis and Miles, P.A. ("the firm") to represent her in the personal injury claim. The debtor filed for relief under Chapter 7 of the Bankruptcy Code on May 11, 2003. Property of the bankruptcy estate includes the personal injury claim. The firm was appointed to represent the estate in connection with resolution of the personal injury claim on March 23, 2004. (Doc. No. 17).

Special counsel obtained a proposed settlement in the matter. The Trustee filed a Motion for approval of the settlement through a twenty-day negative notice provision. (Doc. No. 41). In support of the Motion, the Trustee indicated, "Per special

counsel, none of the medical providers were given letters of protection and their claims do not result in enforceable liens against the settlement proceeds." (Doc. No. 41, n.3). An Order Approving Proposed Compromise of Controversy, after no objections were filed, was entered. (Doc. No. 42).

Special counsel applied for an award of contingency fees and expenses in the amount of \$15,000.00 in fees and \$773.21 in costs. (Doc. No. 24). A ruling on Special Counsel's request for fees and costs was withheld pending determination of the status of letters of protection issued to certain health care service providers. (Doc. No. 47). The Trustee seeks clarification as to classifying any claims which may arise as a result of the letters of protection.

The firm issued letters of protection on January 6, 2003 to First Choice Medical Center/David A. Libert, M.D. ("FCMC"), Advanced Pain Clinic ("APC"), and Jewett Orthopedic Clinic ("JOC"). The text of all three letters read in part:

As you can appreciate, this case may take an undetermined length of time to conclude. In view of this, we felt that you would be more indulgent in awaiting payment of this debt if you knew that our client has authorized us to pay this debt as any potential recovery disbursement allows.

Doc. No. 48, att.1,2&3.

The letters were issued to facilitate the debtor's continued medical care while settlement of the personal injury claim was pending.

Pre-petition services were provided as follows:

- FCMC in the sum of \$11,240.00
-4179.38 paid by Allstate Insurance Co
\$7,060.62 Balance
- JOC in the sum of \$665.00
- Open MRI of Orlando ("OMO") in the sum of \$18,187.50
with a \$2,853.05 Balance

A review of the claims register reflects an "unknown" claim filed by JOC in the sum of \$439.00 and an unsecured claim for OMO in the sum of \$702.00. Claims are not reflected as filed for FCMC unless filed under another name. The deadline for filing proofs of claims was October 28, 2004.¹

¹ A review of the claims register indicates claims filed by: Health Central \$462.00 (unsecured); Jewett \$439.00

Post-petition services were provided as follows:

- FCMC in the sum of \$9,824.25
-1,494.07 paid by Blue Cross Blue Shield
- 45.00 paid by debtor
\$8,285.18 Balance
- APC in the sum of \$3,180.00 which remains outstanding
- JOC in the sum of \$226.13
-36.52 paid by Blue Cross Blue Shield
\$189.61 Balance
- Florida Heart Group ("FHG") in the sum of \$3,513.04 (a portion was paid by debtor and Blue Cross Blue Shield)

The Proposed Compromise of Controversy was approved on February 1, 2005. (Doc. No. 42). The settlement of the personal injury claim provided the bankruptcy estate \$45,000.00.

The Trustee's motions state:

Davis and the Davis Firm advises the trustee that the health care providers under the letters of protection provided services in connection with the personal injury claim and were necessary in the recovery of the settlement amount paid to the estate.

Doc. Nos. 48 & 50, ¶ 13.

All of the above referenced health care providers provided services in connection with the personal injury claim and were necessary in the recovery of the settlement amount paid to the estate. No objections regarding payment of these claims have been filed.

(unclassified); Medical Center Radiology \$231.00 (unsecured); Open MRI \$702.00 (unsecured) and Ronald Woodburn M.D. \$120.02 (unsecured). It is possible the aforementioned claims were filed under one of these names.

² Special Counsel, James R. Davis, provided two letters to the court addressing medical claims. The first letter (Doc. No. 54) provided information as to those health care providers who had letters of protection. The court requested information on the other health care providers who did not have letters of protection. Document No. 56 addresses this issue in part. It indicates Florida Heart Group provided post-petition services, some of which were paid by the debtor and Blue Cross Blue Shield. It indicates Florida Heart Group wrote off the outstanding balance due to the bankruptcy filing. It does not specify the amount of the balance.

CONCLUSIONS OF LAW

The Trustee seeks clarification of the classification of these personal injury related claims in administering the estate, authority to disburse approved administrative expense claims and requests that service of any order entered in connection with this motion be limited to the Trustee, counsel for the Trustee, the Davis Firm, the Office of the United States Trustee, the health care providers outlined above, any objecting party, and any other party to the proposed transaction.

Administrative Claims are governed by 11 U.S.C. § 503(b) which states in pertinent part:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –

(1)(A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered *after* the commencement of the case;

11 U.S.C. § 503(b)(1)(A)(i) (emphasis added).

Although claims for medical services are not specifically delineated, the Eleventh Circuit has held Section 503(b)'s categories to be illustrative rather than exhaustive. In re Colortex Ind., Inc., 19 F.3d 1371, 1377 (11th Cir. 1994). In a case where medical services have benefited the estate and no objections were filed, the court may exercise its discretion in approving administrative expenses. In re Zell, 2005 WL 2483325 (Bankr.M.D.Fla. Oct. 3, 2005). No objections have been filed in this matter and there is no dispute that these medical services were necessary, preserved and benefited the estate.

FCMC, JOC and OMO provided pre-petition services to the debtor that benefited the estate. Administrative claims are intended for those who help preserve and administer the estate. Colortex at 1377. However, Section 503(b) specifies administrative expenses are for services rendered *after* the case is filed. The pre-petition services of FCMC, JOC and OMO are not administrative claims pursuant to the plain language of Section 503(b) even though they benefited the estate.

Section 503(b) clearly distinguishes claims of service providers based upon whether those services were provided before or after the filing of the bankruptcy petition. FCMC, APC, JOC and FHG provided services to the debtor after the case was

filed which were necessary and beneficial to preservation of the estate. Those service providers have claims for administrative expenses pursuant to Section 503(b).

The Supreme Court has cautioned that treating creditors differently who are otherwise on a parity unjustly enriches the debtor. If one claimant is to be preferred over others, the statute should be clear. Nathanson v. NLRB, 344 U.S. 25, 29, 73 S. Ct. 80, 83, 97 L. Ed. 23 (1952). Letters of protection are not a determining factor in the allowance of administrative expenses under the specific language of Section 503(b). The letters of protection may have led some of the health care service providers to believe they would be paid out of the settlement proceeds. That may explain why some of the providers have not filed claims in this case. Others have filed unsecured claims that provided post-petition services entitling them to administrative claims.

So long as the services rendered by the health care providers benefited the estate, were provided post-petition, and claims are properly filed, they may be allowed as administrative expenses regardless of whether letters of protection were issued. Those services rendered pre-petition are general unsecured claims to the extent claims are properly filed regardless of letters of protection. The health care service providers shall be permitted additional time to file or amend their appropriate claims.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that health care service providers shall have twenty-eight days from the date of this Order to file or amend a proof of claim; it is further

ORDERED, ADJUDGED and DECREED that to the extent the following claims are properly filed or if it is established they were properly filed under another name, they constitute allowed administrative expenses pursuant to 11 U.S.C. § 503(b): First Choice Medical Center/David A. Libert, M.D. in the sum of \$8,285.18;³ Advanced Pain Clinic in the sum of \$3,180.00; Jewett Orthopedic Clinic in the sum of \$189.61;⁴ and Florida Heart Group in the sum of \$3,513.04 less any payments made; it is further

³ Post-petition services of \$9,824.25 - \$1,494.07 paid by Blue Cross Blue Shield - \$45.00 paid by the debtor = \$8,285.18.

⁴ Post-petition services of \$226.13 - \$36.52 paid by Blue Cross Blue Shield = \$189.61.

ORDERED, ADJUDGED and DECREED that to the extent the following claims are properly filed or if it is established they were properly filed under another name, they constitute allowed general unsecured claims: First Choice Medical Center/David A. Libert, M.D. in the sum of \$7,060.62;⁵ Jewett Orthopedic Clinic in the sum of \$665.00; and Open MRI of Orlando in the sum of \$2,853.05;⁶ it is further

ORDERED, ADJUDGED and DECREED that the Trustee has authority to disburse payment of the approved claims in accordance with 11 U.S.C. § 726; and it is further

ORDERED, ADJUDGED and DECREED that service of this order be limited to the Trustee, counsel for the Trustee, the Davis Firm, the Office of the United States Trustee, the health care providers outlined herein, any objecting party, and any other party to the proposed transaction.

DONE AND ORDERED in Orlando, Florida, this 10th day of January, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁵ Pre-petition services of \$11,240.00 - \$4,179.38 paid by Allstate Insurance Company = \$7,060.62.

⁶ Pre-petition services of \$8,187.50 with a present outstanding balance of \$2,853.05.