

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 2
JUDGE LOUISE DeCARL ADLER, PRESIDING
THURSDAY, DECEMBER 18, 2014

11:00 AM

1 - 14-09522-LA Ch 11 PRECISION MEDICAL HOLDINGS, INC.

EMERGENCY APPLICATION FOR APPOINTMENT OF CHAPTER 11
TRUSTEE . FILED BY JEFFRY A. DAVIS ON BEHALF OF NIKOLAY SAVCHUK,
TORREY PINES PRECISION MEDICAL, LLC (Fr 12/12/14)

ATTORNEY: PHILIP J GIACINTI (ALLEDGED DEBTOR)
ATTORNEY: JEFFREY ISAACS (ALLEDGED DEBTOR)
PETITION CREDITOR: JEFFRY A. DAVIS

02:00 PM

1 - 13-07983-LA Ch 13 **MATTHEW CRAMPTON SMITH**
ADV: 13-90279 **JASON M. KERLAN v. MATTHEW CRAMPTON SMITH**
PRE-TRIAL STATUS CONFERENCE (Fr 9/25/14)

ATTORNEY: JASON KERLAN (JASON M. KERLAN)
ATTORNEY: CHERYL L. STENGEL (MATTHEW CRAMPTON SMITH)

2 - 12-11974-LA Ch 7 **ROBERT MICHAEL & PETRA SADLER**
TRUSTEE'S MOTION TO COMPEL DEBTORS' COOPERATION AND
TURNOVER; AND ALTERNATIVELY TO SURCHARGE OR SET OFF
DEBTORS' EXEMPTION FILED BY YOSINA M. LISSEBECK ON BEHALF OF
CHRISTOPHER BARCLAY. (Fr 12/11/14)

ATTORNEY: ANDREW H. GRIFFIN (PETRA SADLER, ROBERT MICHAEL SADLER)

3 - 11-04720-LA Ch 7 **J. DOUGLASS & PEGGY L. JENNINGS**
ADV: 12-90333 **J. DOUGLASS JENNINGS & PEGGY L. JENNINGS v. LESLIE T.
GLADSTONE**
1) TRUSTEE'S MOTION FOR JUDGMENT ON THE PLEADINGS FILED BY
PETER L. DUNCAN ON BEHALF OF LESLIE T. GLADSTONE.
2) PRE-TRIAL STATUS CONFERENCE (fr. 11/6/14)

ATTORNEY: L. SCOTT KEEHN (J. DOUGLASS JENNINGS, PEGGY L. JENNINGS)
ATTORNEY: MICHAEL Y. MACKINNON (LESLIE T. GLADSTONE)
ATTORNEY: PETER L. DUNCAN (LESLIE T. GLADSTONE)

4 - 12-09553-LA Ch 11 **SECURE INTERNET COMMERCE NETWORK, INC.**
1) (stip/settlemtt fld 12/17) TRUSTEE'S OBJECTION TO CLAIM NO. 21 OF
STUART SCHAFFER (Fr 12/4/14)

2) TRUSTEE'S OBJECTION TO CLAIM NO. 98 OF MANAGEMENT
ENTERPRISES, INC.

Tentative Ruling: Objection to Claim 98 **GRANTED IN PART; TREATED AS CONTESTED
MATTER AND SET FOR EVIDENTIARY HEARING IN PART.**

Granted as to disallowance of \$239,350 per response of claimant
conceding this amount should be "zeroed out".

Set for evidentiary hearing as to remaining amount of claim. Parties
to meet in confer in advance of this hearing to discuss amount of time
required for discovery. Court will set a discovery cut-off; matter to be
treated as contested matter and FRBP 7001 et seq rules applied.

ATTORNEY: JENNIFER E. DUTY (JEANNE GODDARD, CH. 11 TRUSTEE, JEANNE
GODDARD, CHAPTER 11 TRUSTEE)
US TRUSTEE: KRISTIN MIHELIC
ATTORNEY: CRAIG E. DWYER (SECURE INTERNET COMMERCE NETWORK, INC.)

02:00 PM

5 - 08-13249-LA Ch 7 BARRATT AMERICAN INCORPORATED

- 1) THIRD INTERIM APPLICATION FOR INTERIM PROFESSIONAL COMPENSATION FOR ASSET MANAGEMENT CONSULTANTS OF VIRGINIA, OTHER PROFESSIONAL, PERIOD: 11/11/2011 TO 11/5/2014, FEE: \$ 3,451.14, FILED BY SUSAN C. STEVENSON

Tentative Ruling: Court has reviewed Third Interim Application for Compensation and Expense Reimbursement filed by the collection agent for the Ch. 7 trustee. The compensation requested is in accordance with the employment agreement for 25% percent of collections. Accordingly, this Court awards the requested compensation in full on an interim basis. There are no costs reimbursement requests.

This award is made with the usual caveats: (1) There is no determination of reasonableness being made by the Court at this time and (2) the amounts awarded are subject to surcharge should this estate prove administratively insolvent.

As this application is unopposed, the representative of Asset Management Consultants of Virginia is excused from appearing at this hearing and an order should be submitted forthwith.

- 2) NINTH INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED BY PYLE SIMS DUNCAN & STEVENSON, ATTORNEYS FOR RICHARD M. KIPPERMAN, CH. 7 TRUSTEE PERIOD: 4/1/14 TO 10/31/14 FEES \$128,981.50; COSTS \$977.84

Tentative Ruling: Court has reviewed Ninth Interim Application for Compensation and Expense Reimbursement filed by the Attorney for Ch. 7 trustee. Court commends counsel for her thorough explanation of not only the services for this interim period but also those for the many prior interim periods. It greatly assists the Court in evaluating this application.

Based on the narrative, the services rendered appear necessary and the charges therefor reasonable. The Court awards the fees and costs requested in full on an interim basis.

This award is made with the usual caveats: (1) There is no determination of reasonableness being made by the Court at this time and (2) the amounts awarded are subject to surcharge should this estate prove administratively insolvent.

As this application is unopposed, if counsel is prepared to accept the tentative ruling, the firm's representative should notify the courtroom deputy and appearances will be excused on this matter and an order should be submitted forthwith.

ATTORNEY: MARC J. WINTHROP (BARRATT AMERICAN INCORPORATED)
ATTORNEY: RICHARD H. GOLUBOW (BARRATT AMERICAN INCORPORATED)

02:00 PM

6 - 12-12349-LA Ch 7 MARIA CROCKETT

- 1) FIRST AND FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR R DEAN JOHNSON, ACCOUNTANT, PERIOD: 5/30/2013 TO 10/27/2014, FEE: \$ 1918.00, EXPENSES: \$122.24.

Tentative Ruling: Court has reviewed First and Final Application for Compensation and Expense Reimbursement filed by accountant for the Ch. 7 trustee and finds services necessary and charges for same reasonable. Court awards amounts requested in full.

As this application is unopposed, Mr. Johnson is excused from attending this hearing and may submit an order forthwith. However, as it appears this estate may be administratively insolvent, some proration of Mr. Johnson's fees will have to occur for all admin. claimants to be treated *pari passu*.

- 2) FIRST AND FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR LEONARD J. ACKERMAN, CH 7 TRUSTEE, PERIOD: 09/6/12 TO 11/14/14 FEES \$21,930.57; COSTS \$30.88

Tentative Ruling: Court has reviewed First and Final Application for Compensation and Expense Reimbursement filed by the Ch. 7 trustee and finds services necessary and well-document and the statutory commission reasonable in light of those services. Court awards statutory amount plus cost reimbursement requested in full. Court will authorize an "up to" award of \$200 as actual costs reimbursement necessary to close the estate.

NOTE TO TRUSTEE: Court reminds trustee to disclose net amount available to pay admin. exp. claims and distributions to priority and unsecured creditors in his future fee applications.

As this application is unopposed, Mr. Ackerman is excused from attending this hearing and may submit an order forthwith. It appears this estate may be administratively insolvent and in that event, trustee's commission will be required to be prorated along with those of other admin. exp. claimants.

3) FIRST AND FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED BY LAW OFFICE OF WILLIAM P. FENNELL, APLC, ATTORNEYS FOR CH. 7 TRUSTEE, PERIOD: 10/10/12 TO 12/18/14 FEES \$58,517.00; COSTS \$698.39

Tentative Ruling: Court has reviewed First and Final Application for Compensation and Expense Reimbursement filed by counsel for the Ch. 7 trustee and finds services necessary and charges for same reasonable in light of the difficulties with the debtor. It is unquestionable that counsel was dealing with a difficult debtor and the fees incurred were correspondingly higher. Court awards the fees and costs requested in full. Court authorizes an "up to" award for post-application services actually rendered to the trustee not to exceed \$500.

NOTE TO COUNSEL: It is imperative that counsel provide an accurate statement of the funds available to pay admin. exp. claims and distributions to priority and unsecured creditors. Counsel's application in one place represents the estate has in excess of \$373K in funds [p. 2:28], which appears to be the **gross** and not the net received from sale of the real property because counsel's application [p.8:24-6] then states that the net received was slightly greater than \$78K.

As this application is unopposed, counsel is excused from attending this hearing and may submit an order forthwith. However, as it appears this estate may be administratively insolvent, counsel will be required to prorate his fees/costs with other administrative expense claimants to achieve *pari passu*.

ATTORNEY: MARIA CROCKETT (MARIA CROCKETT)

02:00 PM

7 - 13-02370-LA Ch 7 JEFFERY EDWARD BENJAMIN

FIRST AND FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR R. DEAN JOHNSON, ACCOUNTANT, PERIOD: 5/8/2014 TO 10/30/2014, FEE: \$ 852.00, EXPENSES: \$172.73.

Tentative Ruling: Court has reviewed First and Final Application for Compensation and Expense Reimbursement filed by accountant for the Ch. 7 trustee and finds services necessary and charges for same reasonable. Court awards amounts requested in full.

As this application is unopposed, Mr. Johnson is excused from attending this hearing and may submit an order forthwith.

ATTORNEY: MICHAEL D. LONDON (JEFFERY EDWARD BENJAMIN)

02:00 PM

8 - 14-05158-LA Ch 7 MARIA PAWLIK

REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND JPMORGAN CHASE BANK, N.A. (Fr 11/13/14)

Tentative Ruling: **NEW TENTATIVE FOR HEARING OF DEC. 18, 2014:** Motion to Reaffirm Debt **DENIED**. Debtor(s) was to file additional documents by 12/11/14. Nothing has been timely filed. Court reaffirms tentative ruling for hearing held 11/13/14 which denied this reaffirmation agreement. Debtor(s) appearance at this hearing is excused. Court will prepare order denying the reaffirmation agreement.

ATTORNEY: HENRY AHRENS (MARIA PAWLIK)

9 - 14-08142-LA Ch 7 JOSE HEREDIA TOSCANO

DEBTOR'S MOTION TO TRANSFER VENUE FILED BY TODD J. HILTS

Tentative Ruling: Motion **GRANTED**. Unopposed.

Appearance excused. Submit order forthwith.

ATTORNEY: TODD J. HILTS (JOSE HEREDIA TOSCANO)

02:30 PM

1 - 11-04720-LA Ch 7 J. DOUGLASS & PEGGY L. JENNINGS
OBJECTIONS TO DEBTOR'S CLAIM OF EXEMPTIONS FILED BY LESLIE
GLADSTONE, TRUSTEE (Fr 8/21/14)

2 - 11-04720-LA Ch 7 J. DOUGLASS & PEGGY L. JENNINGS
ADV: 13-90073 LESLIE T. GLADSTONE v. SUSAN P KRYSTEK
PRE-TRIAL STATUS CONFERENCE (Fr 11/20/14)

ATTORNEY: MICHAEL Y. MACKINNON (LESLIE T. GLADSTONE)
ATTORNEY: DONALD P. TREMBLAY (SUSAN P KRYSTEK)

3 - 11-04720-LA Ch 7 J. DOUGLASS & PEGGY L. JENNINGS
ADV: 13-90072 LESLIE T. GLADSTONE v. APRIL M GIFFIN, ET AL
PRE-TRIAL STATUS CONFERENCE (Fr 11/20/14)

ATTORNEY: MICHAEL Y. MACKINNON (LESLIE T. GLADSTONE)
ATTORNEY: DONALD P. TREMBLAY (APRIL M GIFFIN, ET AL)

4 - 14-03405-LA Ch 11 DIANE CANALES GRANT
ORDER RE: CHAPTER 11 PETITION 1)SETTING STATUS CONFERENCE;
2)SETTING COMPLIANCE DEADLINES; AND 3)SETTING SANCTIONS, IF
APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT
OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF
NONCOMPLIANCE WITH ABOVE REFERENCE REQUIREMENTS (Fr
10/30/14)

ATTORNEY: ANTHONY EGBASE (DIANE CANALES GRANT)

02:30 PM

5 - 14-02949-LA Ch 11 BRIAN DUNN

1) DEBTOR'S MOTION TO EXTEND EXCLUSIVE PERIODS WITHIN WHICH TO FILE AND CONFIRM A PLAN OF REORGANIZATION

Tentative Ruling: Motion to Extend Exclusivity **DENIED**. Debtor is confused about the statute. As a small business debtor, he lost exclusivity 180 days after his case was filed. See 11 U.S.C. Sec. 1121(3)(1). That date was 10/13/14. In order to extend the exclusive period, he should have filed his motion before the exclusive period elapsed.

However, the termination of exclusivity does not mean he cannot file a plan and d/s--only that he has lost the exclusive right to do so. By statute, debtor has 300 days from the filing of his case (or 2/10/15) to file his plan and d/s. See 11 U.S.C. Sec. 1121(e)(2). This outside deadline has not expired.

If debtor makes the showing required by 11 U.S.C. Sec. 1121(3)(3)(A)-(C), including moving for and obtaining entry of an order **before** the 2/10/15 deadline, he may be able to obtain an extension of the 300 day deadline. However, he has not made that motion nor satisfied those criteria.

This motion denied without prejudice.

2) ORDER RE: CHAPTER 11 PETITION 1) SETTING STATUS CONFERENCE; 2) SETTING COMPLIANCE DEADLINES; AND 3) SETTING SANCTIONS, IF APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF NONCOMPLIANCE WITH ABOVE-REFERENCE REQUIREMENTS (Fr 12/11/14)

ATTORNEY: BRIAN J. DUNN (BRIAN DUNN)

02:30 PM

6 - 13-11224-LA Ch 11 JOSEPH PHILIP AFSHARI

- 1) ORDER RE: CHAPTER 11 PETITION 1) SETTING STATUS CONFERENCE; 2)SETTING COMPLIANCE DEADLINES; AND 3)SETTING SANCTIONS, IF APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF NON-COMPLIANCE WITH ABOVE REFERENCE REQUIREMENTS (Fr 11/20/14)
- 2) STATUS CONFERENCE ON MOTION FOR RELIEF FROM STAY, RS # JBM1 .00 FILED BY J. BARRETT MARUM ON BEHALF OF SIMMONS FIRST NATIONAL BANK
- 3) SUPERIOR BANK'S MOTION FOR RELIEF FROM STAY, RS # TBG-1 FILED BY THOMAS B. GORRILL

Tentative Ruling: MATTER CONTINUED BY JOINT STIPULATION TO Jan. 8, 2015 at 2:30 p.m.

However, parties should note tentative below which was posted prior to receipt of the stipulation. Since parties have stipulated to this continuance, no appearance required of movant's counsel at this hearing.

Tentative ruling for 12/18/14

Motion for Relief from Stay **to be set for evidentiary hearing.** Court finds as a preliminary matter that movant's unauthenticated, stale-dated and flawed appraisal (See Dec. of Afshari, ECF #204-2) is insufficient to persuade the Court at this junction that stay relief should be granted at a preliminary hearing.

Counsel for Superior Bank and debtor should meet and confer in advance of this hearing and determine what, if any, further discovery need be taken in advance of a final hearing. If movant is going to obtain a new appraisal, Court recommends this matter be denied at this time without prejudice to re-filing based on new evidence.

- 4) FIRST AMENDED DISCLOSURE STATEMENT FILED BY GUSTAVO E. BRAVO (Fr 11/20/14)

Tentative Ruling: MATTER OFF CALENDAR. The Second Amended Disclosure Statement has been filed but Court cannot locate a notice of hearing putting that matter on this calendar.

- 5) DEBTOR'S MOTION TO APPROVE THE SALE OF REAL PROPERTY, TO COMPENSATE REAL ESTATE BROKER AND TO APPROVE SETTLEMENT AGREEMENT BETWEEN DEBTOR AND SIMMONS FIRST NATIONAL BANK

Tentative Ruling: Motion GRANTED. Unopposed. It appears that this settlement is a favorable resolution of Simmons Bank's claim against the debtor and the sale will substantially reduce the claim of Bank.

ATTORNEY: JOHN L. SMAHA (JOSEPH PHILIP AFSHARI)
ATTORNEY: GUSTAVO E. BRAVO (JOSEPH PHILIP AFSHARI, JOSPEH PHILIP AFSHARI)
ATTORNEY: JOHN PAUL TEAGUE (JOSEPH PHILIP AFSHARI)