

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
) Case No. 00-389 (MFW)
)
INTEGRATED HEALTH SERVICES, INC., *et al.*,) (Jointly Administered)
)
)
) Ref. Docket Nos. 10766 and 10790
)
)
Debtors.)

**IHS LIQUIDATING LLC’S RESPONSE TO (i) VERIFIED APPLICATION OF
CAPOZZI AND ASSOCIATES FOR FINAL APPROVAL AND ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES AND
(ii) LIMITED OBJECTION OF ABE BRIARWOOD CORP.**

IHS Liquidating LLC (the “Liquidating LLC”) submits this response (“Response”) to (i) the *Verified Application of Capozzi and Associates, P C for Final Approval and Allowance of Compensation and Reimbursement of Expenses*, dated March 12, 2004 [Docket No. 10766] (the “Capozzi Application”) and (ii) the *Limited Objection of Abe Briarwood Corp. to Verified Application of Capozzi and Associates for Final Approval and Allowance of Compensation and Reimbursements of Expenses* [Docket No. 10790] (the “Briarwood Objection”). In support of the Response, the Liquidating LLC represents as follows:

RELEVANT FACTS

1. On February 2, 2000, Integrated Health Services, Inc. (“IHS”) and certain of its direct and indirect subsidiaries (collectively, with IHS, “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq* (the “Bankruptcy Code”). Each of the Debtors has emerged from these chapter 11 cases as reorganized entities pursuant to the Amended Joint Plan of Reorganization of Integrated Health

Services, Inc. and Its Subsidiaries Under Chapter 11 of the Bankruptcy Code (the “Plan”), which was confirmed by Order of this Court dated May 12, 2003 and became effective September 9, 2003 (the “Effective Date”).

2. Pursuant to the Plan, the Debtors were authorized to implement the Sale Transactions¹ in accordance with the Stock Purchase Agreement dated January 28, 2003 (the “Sale Agreement”) between IHS and Abe Briarwood Corp. (“Briarwood”). Pursuant to the Sale Agreement, Briarwood acquired all of the Debtors’ assets and liabilities, other than those constituting “Excluded Assets” and “Excluded Liabilities.” The Excluded Assets and Excluded Liabilities, which are set forth in Schedules III and IV to the Sale Agreement, were transferred to the Liquidating LLC. Copies of Schedules III and IV are attached hereto as Exhibits “A” and “B”.²

3. Capozzi and Associates, P.C. (“Capozzi”) is a law firm that was retained by the Debtors as an “ordinary course” professional pursuant to a “first day” order of the Court.³

4. On March 12, 2004, Capozzi filed the Capozzi Application, pursuant to which it seeks, among other things, allowance and payment of unpaid fees in the amount of \$31,926.23 and reimbursement of expenses incurred in the amount of \$254.71 (the “Unpaid Fees”). Because the Unpaid Fees were allegedly incurred during the pendency of the chapter 11 cases and do not constitute Excluded Liabilities, the Liquidating LLC has no direct knowledge of

¹ All capitalized terms not defined herein have the meaning ascribed in the Plan and Sale Agreement.

² The Schedules of Excluded Assets and Excluded Liabilities were subsequently amended by separate stipulations, but the amendments are not relevant to the Capozzi Application or the Briarwood Objection and are intentionally omitted.

³ See Order dated February 2, 2000 [Docket No. 17].

or interest in the subject matter of the Capozzi Application. Accordingly, this Response does not reflect any consideration of the merits of the Capozzi Application.

5. On March 23, 2004, Briarwood filed the Briarwood Objection, by which it states that the Liquidating LLC, and not Briarwood, is responsible for the Unpaid Fees. The purported basis for Briarwood's position is that the Unpaid Fees are Excluded Liabilities, because (i) Excluded Liabilities include "[a]ll administrative expenses incurred by Seller for professional services rendered in connection with its reorganization" and (ii) according to Briarwood, the Unpaid Fees "are directly related to a cash asset." See Briarwood Objection at ¶¶ 1, 2.

RESPONSE

6. The Liquidating LLC is constrained to file this Response in order to refute the misstatements and mischaracterizations set forth in the Briarwood Objection. The Unpaid Fees simply do not constitute Excluded Liabilities. First, the Unpaid Fees do not constitute "administrative expenses incurred by Seller for professional services rendered in connection with its reorganization." As the parties both recognized during the negotiation of the Sale Agreement, and as the parties have otherwise recognized since the consummation of the Sale Agreement, this category of Excluded Liabilities consists of liabilities of professional services related to the administration of the Debtors' bankruptcy cases and the consummation of the Plan and Sale Agreement. Those professionals which provided "ordinary course" services relating to the ongoing operations of the Debtors, or other services not directly related to the reorganization, were assumed by the Reorganized Debtors, along with all other administrative expense claims incurred in the ordinary course of the Debtors' businesses. Indeed, in all other instances of which the Liquidating LLC is aware, "ordinary course" professional fees that were unpaid as of the

Effective Date have been satisfied by Briarwood through its contract partner, an affiliate of Trans Healthcare, Inc.

7. Additionally, Briarwood's claim that the Unpaid Fees are "directly related to a cash asset" that "presumably flowed through to the Liquidating LLC" is baseless. The Liquidating LLC has not received any cash from Capozzi. Any funds that were obtained by Capozzi prior to the Effective Date and received by the Debtors would have become part of the Debtors' working capital, was used in the Debtors' ongoing operation of their businesses well prior to the Effective Date, and would not flow to the Liquidating LLC. Therefore, there is no basis for the assertion that the Unpaid Fees are Liabilities relating to an Excluded Asset.

WHEREFORE, the Liquidating LLC submits that the Court should overrule the Briarwood Objection and find that the Unpaid Fees, if they are allowed, are not liabilities of the Liquidating LLC. To the extent the Court does not overrule the Briarwood Objection, the Liquidating LLC reserves its right to oppose the Capozzi Application on any grounds and submit further papers at a later time.

Dated: Wilmington, Delaware
April 2, 2004



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Exhibit A

Schedule III - Excluded Assets

IHS supplemental executive retirement plans (i.e., SERP).

Cash (which excludes deposits and prepaid items).

That certain note from Stephen P. Linehan in favor of Seller in the original principal amount of three hundred thousand dollars (\$300,000).

That certain note from the Tutera Brothers in favor of Seller.

Interests in the Elder Health and Capitol Health joint ventures.

Bankruptcy-related retainers and deposits.

Artwork belonging to Seller.

Sparks (Maryland) Campus Headquarters.

Official Committee of Unsecured Creditors of Integrated Health Services, Inc. v. Robert N. Elkins, et al., Case No. 00-389 (MFW) (U.S. Bankruptcy Court for the District of Delaware) (IHS is named as a nominal defendant).

All employee loans and advances.

Rights of the Seller under the Agreement.

Integrated Health Services, Inc. v. M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, No. 682 M.D. 2002.

All preference, fraudulent conveyance and avoidance actions, including without limitation, the avoidance actions set forth below:

1. Integrated Health Services, Inc. v. Accountants Inc. Services (Adv. No. 02-1736)
2. Integrated Health Services, Inc. v. American Express Company (Adv. No 02-1737).
3. Integrated Health Services, Inc. v. Anthony R. Masso (Adv. No. 02-1822).
4. Integrated Health Services, Inc. v. Associated Receivables Funding, Inc. (Adv. No. 02-1819).
5. Integrated Health Services, Inc. v. ATC Healthcare Services, Inc. (Adv. No 02-1738).
6. Integrated Health Services, Inc. v. Baltimore Electric and Gas Company (Adv. No.02-1739)

- 7 Integrated Health Services, Inc and Symphony Health Services, Inc. v. BT Office Products International, Inc. (n/k/a Corporate Express Office Products, Inc.) (Adv. No. 02-1824)
8. Integrated Health Services, Inc v. Comprehensive Consulting Solutions, LLC (Adv. No. 02-1740)
9. Integrated Health Services, Inc. v. Critical Care Concepts, Inc. (Adv. No. 02-1741).
- 10 Symphony Health Services, Inc. v. Danka Financial Services and Danka Industries, Inc. (Adv. No. 02-1818).
11. Integrated Health Services, Inc. et al v. Dooley and Mack Constructors, Inc. et al (Adv. No. 02-1742).
12. Integrated Health Services, Inc v. Florida Power & Light (Adv. No. 02-1807).
- 13 Integrated Health Services, Inc. v. Francis P. Kirley (Adv. No. 02-1820).
14. Integrated Health Services, Inc v. General Electric Capital Corp. (Adv. No. 02-1744).
15. Integrated Health Services, Inc. v. Health Care Management Corporation (Adv. No. 02-1745)
16. Integrated Health Services, Inc. v. Highland Healthcare (Adv. No. 02-1746).
17. Integrated Health Services, Inc. v. Hyatt Corporation (Adv. No. 02-1808).
18. Integrated Health Services, Inc. v. IOS Capital, Inc. (Adv. No. 02-1748)
- 19 Integrated Health Services, Inc. v. J and M Construction Company Incorporated (Adv. No. 02-1749).
20. Integrated Health Services, Inc. et al v. Litchfield Investment Company, LLC (Adv. No. 02-1846).
21. Symphony Health Services, Inc. v. MCSI Computer Supplies (Adv. No. 02-1823).
22. Integrated Health Services, Inc. v. Medicare Equipment Company (Adv. No. 02-1750).
- 23 Integrated Health Services, Inc. v. Medical Connection Inc (Adv. No. 02-1813)
- 24 Integrated Health Services, Inc. v. National Abandoned Property Processing Corp (Adv. No. 02-1811).

25. Integrated Health Services, Inc. v. RDA Consultants Limited (n/k/a RDA Corporation) (Adv. No. 02-1751).
26. Symphony Health Services, Inc. v. Rouse Teachers Properties (Adv. No. 02-1821).
27. Integrated Health Services, Inc. v. SmithKline Beecham Clinic Laboratories (adv. No. 02-1752)
28. Integrated Health Services, Inc. v. Sprint Corporation, Ltd. (Adv. No. 02-1753)
29. Integrated Health Services, Inc. v. Starmed Health Personnel, Inc. (Adv. No. 02-1754).
30. Integrated Health Services, Inc. v. TXU Electric (Adv. No. 02-1815).
31. Integrated Health Services, Inc. v. Unisys Corporation (Adv. No. 02-1755).
32. All causes of action against Monarch Properties L.P. (subject to tolling agreement which expires November 30, 2002)*
33. All causes of action against Pharmacia, Inc. (subject to tolling agreement which expires February 1, 2003)*

* As of the date this schedule was filed with the Court, the statutes of limitations on all causes of action against these proposed defendants were tolled pursuant to stipulations so ordered by the Bankruptcy Court. The Debtors and the Reorganized Debtors reserve the right to assert any causes of action against these defendants for which the time for asserting them has not expired

Exhibit B

Schedule IV - Excluded Liabilities

All administrative expenses incurred by Seller for professional services rendered in connection with its reorganization.

Up to four million five hundred thousand dollars (\$4,500,000) in respect of certain employee severance costs.

All pre-petition liabilities discharged pursuant to the Plan of Reorganization.

The outstanding balance as of the Closing of the Debtor in Possession Financing dated March 27, 2002.

All pre-petition liabilities relating to directors' or officers' indemnification claims.

All post-petition liabilities relating to directors' or officers' indemnification claims instituted by the Seller's creditors.

Taxes arising from the disposition of Rotech Healthcare Inc.

Promissory Note in the original principal amount of \$5,000,000 made by the Seller in favor of Rotech Healthcare Inc. (assigned to Rotech Medical Corporation).

Countersuit against Seller in the case of Integrated Health Services, Inc. et al v. Litchfield Investment Company, LLC (Adv. No. 02-1846).

Liabilities of the Seller under the Agreement.

Liabilities relating to Excluded Assets.

Liabilities relating to the direct and indirect inactive, non-debtor subsidiaries listed below:

Subsidiary	Direct Owner			
ABC Pharmaceuticals, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Asia Care, Inc	N	Direct	Integrated Health Services, Inc	Inactive
COA Therapy Technology Corp	N	Indirect	RehabWorks, Inc	Inactive
Elizabeth Co., Inc	N	Direct	Integrated Health Services, Inc	Inactive
HCP III Jesup, Inc	N	Indirect	Health Care Properties III, Incorporated	Inactive
IHS Acquisition No 101, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 104, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 105, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 109, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 110, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 115, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 116, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 117, Inc	N	Direct	Integrated Health Services, Inc	Inactive

Subsidiary			Direct Owner	
IHS Acquisition No 118, Inc.	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No 159, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition No. 177, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition XIX, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Acquisition XXII, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Chicago Post-Acute Network, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Facility Management, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS of Dana, Inc	N	Direct	Integrated Health Services, Inc	Inactive
IHS Realty Company, Inc.	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services at Carol, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services at Cincinnati, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services at King David Center, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services Development, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services Franchising Co., Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services NPR, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services of Naples, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services of Skyview II, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Health Services of Skyview, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Managed Care, Inc	N	Direct	Integrated Health Services, Inc	Inactive
Integrated Physician Group Services, Inc.	N	Direct	Integrated Health Services, Inc	Inactive
Medical Supply of America, Inc	N	Indirect	Community Care of America, Inc	Inactive
Palestine Nursing Center, Inc	N	Indirect	Arbor Living Centers of Texas, Inc	Inactive
SHCM Atlanta, Inc	N	Indirect	SHCM Holdings, Inc	Inactive
Signature Home Care of Florida, Inc	N	Indirect	Signature Home Care Group, Inc	Inactive
Signature Home Care of Georgia, Inc	N	Indirect	Signature Home Care Group, Inc	Inactive
Signature Home Care of San Antonio, Inc	N	Indirect	Signature Home Care Group, Inc	Inactive
Signature Home Care Services of San Antonio, Inc	N	Indirect	Signature Home Care Group, Inc	Inactive
Signature Management Services, Inc	N	Indirect	Signature Home Care Group, Inc	Inactive
Signature Receivables Corp	N	Indirect	Signature Home Care Group, Inc	Inactive
Rehab People's Agency of Wichita, Inc	N	Indirect	Rehab People, Inc	Inactive
VTA Therapy Technologies Corp.	N	Indirect	VTA Management Services, Inc	Inactive