

D-1-GV-13-000384

THE STATE OF TEXAS
Plaintiff

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

UNIVERSAL HMO OF TEXAS, INC.
Defendant

345th JUDICIAL DISTRICT

**MOTION TO AUTHORIZE ENTRY INTO AGREEMENT WITH THE TRUSTEE OF
UNIVERSAL HEALTH CARE GROUP, INC., BANKUNITED, N.A. AND THE NEVADA
SDR TO RESOLVE ISSUES IN THE UNIVERSAL HEALTH GROUP, INC.
BANKRUPTCY PROCEEDING**

TO THE HONORABLE JUDGE OF SAID COURT:

Jean Johnson, Special Deputy Receiver (“the Texas SDR”) of Universal HMO of Texas, Inc., (hereinafter collectively referred to as “Universal Texas”), now files this *Motion to Authorize Entry into an Agreement with the Trustee of Universal Health Group, Inc. (“the Trustee”); BankUnited, N.A. [on its own behalf and as purported administrative agent for several lenders]; and the Nevada SDR to Resolve Issues in the Universal Health Group, Inc. Bankruptcy Proceeding* (the “Motion”). In support of this Motion, the SDR respectfully shows the Court the following:

THE RELIEF SOUGHT BY THIS MOTION

The Texas SDR requests authority to enter into and perform a settlement agreement which resolves pending disputes in the bankruptcy proceedings for Universal Texas’ parent company.

Soneet Kapila, the chapter 11 trustee for Universal Health Care Group, Inc. (Universal Texas's parent) moved the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, to appoint J. Mark Abernathy, CPA, as a director of Universal HMO of Texas, Inc. [*In re Universal Health Care Group, Inc., et al.*, Case Number 8:13-bk001520-KRM]. The Texas SDR and Cantilo & Bennett, LLP, as Special Deputy Receiver of Universal Health Care of Nevada, Inc. (the "Nevada SDR" and "UHCN", respectively) filed strenuous oppositions, citing among other things the ineligibility of the two HMOs for bankruptcy relief in light of the exclusion for domestic insurance companies contained in 11 U.S.C. §109. The parties agreed to a term sheet ("Term Sheet") pursuant to which the Trustee and BankUnited withdraw their motion with prejudice to seeking in the future to institute a bankruptcy proceeding for the Texas and Nevada HMOs. In return, the Texas and Nevada SDRs agree to retain Mark Abernathy's firm, Berkeley Research Group ("BRG") on a contingent basis to analyze and seek to pursue any Medicare Risk Adjustment recoverables owed to the two HMOs, assuming that a reasonably acceptable rate is set and approved by this Court. The Texas SDR seeks approval of this Court to consummate this settlement term sheet to retain Mr. Abernathy's firm on a contingent basis to assist with MRA collection and to effectuate the transactions set forth in the Term Sheet.

I. BACKGROUND

1. Pursuant to Chapter 443 of the Texas Insurance Code (hereinafter the "Code"), this Court placed Universal Texas into receivership on April 18, 2013, for purposes of rehabilitation and appointed Eleanor Kitzman, the Commissioner of the Texas Department of Insurance, as Receiver.

2. Jean Johnson was appointed as SDR on April 29, 2013, and she is fully authorized to file this Motion pursuant to Section 443.154 of the Code.

3. On February 11, 2014, the holding company Trustee filed a Motion for Entry of an Order (A) Authorizing the Trustee to Appoint Mark Abernathy as the Sole Director, of Certain of the Debtor's Subsidiaries; (B) Directing Mark Abernathy to Evaluate the Appropriateness of Filing Chapter 11 Bankruptcy Petitions for those Subsidiaries and (C) Authorizing Mark Abernathy to File Chapter 11 Bankruptcy Petitions for those Subsidiaries.

4. The Texas SDR, the Nevada SDR, the Florida Receiver of two Florida insurance company affiliates, and a policyholder group all filed oppositions to this effort. The matter pendes before the Hon. K. Rodney May in the Tampa Division of the United States Bankruptcy Court for the Middle District of Florida.

5. The bankruptcy court set evidentiary hearings on one aspect of the motion for June 9, 2014 and June 10, 2014. The bankruptcy court had already permitted briefing and heard argument on the applicability of 11 U.S.C. §109. The bankruptcy court has not yet ruled on the issues raised by the motion. The Texas SDR attaches the proposed term sheet as Exhibit "A-1" to the Affidavit of Jean Johnson. Under the term sheet, the Trustee and BankUnited agree to withdraw their motion with prejudice. In return, the Texas SDR agrees to retain BRG as a consultant to assist in collecting Medicare Risk Adjustment ("MRA") recoverables.

6. The agreement embodied by the Term Sheet contemplates a two-step process. In step one, BRG plans to analyze MRA recoverables to determine if it believes it can assist in collection of those recoverables. The receivership estate will not be responsible for paying BRG for this step, as BankUnited has agreed to pay BRG's compensation. If BRG believes its

services offer the prospect to benefit the Texas and Nevada HMO estates, the SDRs agree to retain BRG on a contingency to pursue those MRA recoverables, assuming that the contingency rate reasonably acceptable to all parties is agreed, and approved by this Court. The Texas and Nevada SDRs agree to discuss whether BRG expertise provides additional opportunities for it to consult as to potential recoverable in addition to the Medicare Risk Adjustments.

7. The parties' agreement requires the approval of this Court, of the Nevada receivership court, and of the bankruptcy court.

II. AUTHORITY

1. This Court has jurisdiction over the subject matter of this Motion pursuant to Chapter 443 of the Code.

2. Under Section 443.154(a) of the Code, the SDR has all the powers of the Receiver, unless specifically limited by the Receiver. Section 443.15.

3. The SDR on behalf of the Liquidator determines compensation for contractors. Section 443.154(b) of the Code. Sections 443.007 and 443.154 of the Code permit the SDR to seek approval of a settlement. The SDR, pursuant to Section 443.015 of the Code, applies to this Court to approve a contract with BRG.

4. The subject matter of the Application has been referred to the Special Master appointed in this proceeding in accordance with Section III Paragraphs 13 and 15 of the Order of Reference to Master entered on May 22, 2013.

III. ANALYSIS AND RECOMMENDATION

1. The SDR asserts that 11 U.S.C. §109 makes Universal Texas ineligible to be a bankrupt debtor. The Trustee and BankUnited disagree. The resolution provided by the Term

Sheet permits the parties to avoid expensive and protracted litigation over this issue. The Term Sheet addresses concerns that BankUnited and the Trustee expressed about preserving MRA recoverables through the retention of a contractor by the SDRs acceptable to them. The SDR offers her affidavit supporting this compromise; that affidavit is attached as Exhibit “A” and incorporated herein for all purposes.

IV. NOTICE

1. The SDR sent notice of the submission of this Motion to all known parties of interest shown on the Certificate of Service, including all who have requested to be placed on the Certificate of Service. The SDR will also post this Motion on its website located at <http://universalhmotexasreceiver.com>.

V. RELIEF REQUESTED

1. Based on the foregoing, the SDR respectfully requests that the Court enter an order permitting entry into the settlement reflected in the Term Sheet, including authorizing both the retention of Berkeley Research Group and the steps to effectuate the transactions set forth in the Term Sheet.

2. The SDR also requests all other just and equitable relief.

Respectfully submitted,

Wisener Nunnally Gold, L.L.P.

original signed by

By:

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Cause No. D-1-GV-13-000384

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MOTION TO AUTHORIZE ENTRY INTO AGREEMENT WITH THE TRUSTEE OF
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TO RESOLVE ISSUES IN THE UNIVERSAL HEALTH GROUP, INC.

BANKRUPTCY PROCEEDING— Page 6

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with Tex. Ins. Code §443.007(d) this the 6th day of June, 2014.

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