

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

- - - - - x
In re: :

HMCA (Carolina), INC. : BK No. 90-03402(ANV)
Debtor Chapter 11

- - - - - x
In re: :

HMCA (PR), INC. : BK No. 90-03403(ANV)
Debtor Chapter 11

- - - - - x

ORDER TO SHOW CAUSE

These consolidated cases arose largely because of a series of disputes between Debtors and the Puerto Rico Department of Health ("DOH") relating to the operation by Debtor HMCA (Carolina), Inc. of the Carolina Area Hospital (the "Hospital") pursuant to a contract between Debtor and the DOH. One of such disputes concerned the entitlement to Medicare receivables pertaining to the period in which Debtor operated the Hospital. The bankruptcy proceedings involved evidentiary hearings and substantial litigation between Debtor and agencies of the government of Puerto Rico. The disputes and the ensuing withholding of contractual payments by the DOH not only affected Debtor's estate in bankruptcy, but also adversely affected the services offered by the Hospital to medical indigent patients.

In 1991, after the bankruptcy had been filed and as part of the ongoing dispute, DOH sent a written ex parte communication to the Medicare fiscal intermediary, Cooperativa

BK No. 90-03402(ANV); BK No. 90-03403(ANV)
de Seguros de Vida ("COSVI") in a covert effort to interfere with and affect COSVI's determination of the Medicare receivables due Debtor for services rendered during Debtor's operation of the Hospital. On June 24, 1991, after affording the DOH a full opportunity to be heard, this Court issued an Injunction expressly prohibiting the DOH or its agents from in any way opposing, delaying or otherwise hindering Debtor's receipt of outstanding Medicare receivables. This Court expressly found that the DOH's conduct was willful, exceptionally outrageous, and had been designed in bad faith to frustrate and interfere with Debtor's reorganization efforts. The Court further noted that the DOH had absolutely no regard for the welfare of patients who were put at increased medical risk as a result of its conduct. See Order of June 24, 1991 (**Docket # 248**) (hereafter referred to as the "Injunction").

In the Injunction, this Court recognized that actual and punitive damages were warranted against the DOH, assessed attorneys' fees against the DOH, issued an express permanent prohibition against recurrence of such conduct, and gave an express warning that personal sanctions would be recommended for future violations. (**Docket # 248** at p. 5).

Thereafter, Debtors and the Puerto Rico government agencies reached a Global Settlement Agreement, after which this Court approved a Chapter 11 reorganization plan that involved the transfer of the operation of the Hospital by the Debtor to the DOH effective on midnight of September 30, 1992, and the

retention by the Debtor of all Medicare receivables pertaining to the period in which the Debtor operated the Hospital. A new Medicare provider number was issued to the DOH relating to Medicare receivables for services rendered after the September 30, 1992 transfer date. Certain of the Debtor's Medicare claims under the prior provider number relating to the period in which the Debtor had operated the Hospital had been initially denied by Medicare and remained subject to litigation, negotiation and/or administrative proceedings between the Debtor and the federal Health Care Financing Administration ("HCFA"). However, it was crystal clear under the Global Settlement Agreement, and the approved Reorganization Plan as presented to and discussed with the Court with the participation of DOH and all parties in interest, that Medicare receivables relating to the period in which the Debtor operated the Hospital were and would remain the property of the Debtor.

In 1997, HCFA decided that the Debtor was indeed entitled to the aforementioned disputed Medicare receivables, which receivables pertained to the period in which the Debtor was operating the Hospital. In March 1997, this Court held a hearing directing payment of said receivables to the Debtor, so as to be able to promptly close this case. However, on April 10, 1997, the Secretary of DOH sent an ex parte letter to COSVI (similar to the 1992 letter that gave rise to the Injunction), that had the clear effect of questioning Debtor's entitlement

to such Medicare receivables and interfering therewith. Thereafter, DOH claimed entitlement to said Medicare receivables before this Court. After such matter was (again) fully litigated and (again) decided adversely to the DOH, this Court imposed sanctions on the DOH and personal sanctions against individuals who had participated in 1997 and thereafter in the process of claiming entitlement to the Debtor's Medicare receivables. It was, and is, this Court's intent to identify the individual person(s) who were involved in those contemptuous acts, as well as the extent in which they were or should have been (personally or constructively) aware of the Injunction that was violated, or failed to take reasonable steps to prevent the lawless pursuance of assets in which the DOH clearly had no stake.

After initial discovery ordered by the Court was conducted on this matter, an evidentiary hearing was held on April 28 and 29, 2004. From the exhibits and testimony rendered at that hearing, it was disclosed that certain additional persons other than those who testified therein may have been involved or participated in the process that resulted in the DOH's bad faith efforts to intercept the Debtor's Medicare receivables in 1997 and thereafter.

Accordingly, inasmuch as the persons named below may have evidence relevant to the instant proceedings, or could potentially have a direct involvement in the matters that are the object of the Court's investigation, the following persons

Dr. Carmen Feliciano de Melecio

Reina Colón de Rodríguez

Olga Rodríguez Castro

Ileana Colón Carlo

Blanca Mera Roure

are hereby **ORDERED TO SHOW CAUSE in writing**, by no later than February 18, 2005, setting forth:

- (1) Whether these individuals had any involvement or participation whatsoever in the process that culminated in the DOH's claim and pursuance of Debtor's Medicare receivables in 1997 and thereafter, and/or in the DOH's April 10, 1997 letter to COSVI with respect to Medicare receivables of the Carolina Area Hospital relating to services rendered therein during Debtor's operation thereof. If so, the persons who are the object of this Order are directed to provide, on or before February 18, 2005, a written summary no longer than five (5) pages describing the nature of their involvement in such matters. No other topics are to be discussed other than the topic of the person's involvement in the DOH's claim or pursuance in 1997 or thereafter of Medicare receivables relating to services provided at the Hospital during the Debtor's operation thereof.
- (2) Whether there is any reason that the aforementioned persons who are the object of this Order are precluded in any way from testifying or giving evidence in the continuation of the evidentiary hearing in this matter, such as by assertion of privilege, or otherwise.

The evidentiary hearing on this matter will resume on April 19 and 20, 2005, at 9:30 a.m. Any additional discovery desired by the parties in interest, or by any of the above named parties, must be completed on or before March 31, 2005, and shall be given priority and treated by the parties and the Court on an expedited basis. Requests for continuances of the evidentiary hearing date will not be entertained.

BK No. 90-03402(ANV); BK No. 90-03403(ANV)

The above named persons are hereby given notice that the present proceedings are part of an investigation ordered by the Court, and that if the evidence at the conclusion of the investigation establishes their knowing or willful participation in acts that violated the Injunction, or that they knowingly or willfully interfered with the bankruptcy process, sanctions (including monetary penalties) may be personally imposed on them.

Debtor is ordered to serve a copy of this Order to Show Cause on the aforementioned persons no later than January 28, 2005, and to file an informative motion with the Court certifying such service.

Dated at Providence, Rhode Island, this 20th day of January, 2005.



Arthur N. Votolato
U.S. Bankruptcy Judge*

*Of the District of Rhode Island, sitting by designation.