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Holding Unsecured Claims

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:
12 PLEASANT CARE CORPORATION, *et al.*,
13 Debtors.

- 14 Affects All Debtors
15 Affects Pleasant Care Corporation Only
16 Affects SNF Properties Incorporated Only
17 Affects PCC Health Services, Inc. Only
18 Affects Atlas Care Enterprises, Inc. Only
19 Affects Ember Care Corporation Only
20

Case No.: LA 07-12312-EC

Chapter 11

Jointly Administered with Cases Nos.:

Case No. LA 07-12316-EC
Case No. LA 07-12319-EC
Case No. LA 07-12322-EC
Case No. LA 07-12326-EC

**EVIDENTIARY OBJECTIONS OF
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS
RELATING TO DECLARATIONS
AND DOCUMENTS SUBMITTED BY
OFFICE OF THE U.S. TRUSTEE IN
SUPPORT OF MOTION TO APPOINT
A CHAPTER 11 TRUSTEE [DOCKET
NO. 112]**

Hearing:

Date: May 2, 2007
Time: 1:30 p.m.
Place: Courtroom 1639
Edward R. Roybal Fed. Bldg.
255 East Temple Street
Los Angeles, CA 90012

1 The Committee of Creditors Holding Unsecured Claims (the “Committee”) hereby submits
 2 its evidentiary objections to the declarations and accompanying exhibits proffered by the United
 3 States Trustee in support of its *Motion of the United States Trustee for Appointment of a Chapter 11*
 4 *Trustee* [Docket No. 112].

5 A. Declaration of Russell Clementson [dated April 6, 2007]		
6 Paragraph number	7 Objectionable statement or exhibit	8 Evidentiary objections
9 ¶4	10 Entire paragraph and Exhibit B	11 The alleged press release taken from a website is hearsay not admissible pursuant to any exception under the Rules of Evidence. The alleged statement of the California Attorney General within the alleged press release is hearsay within hearsay.
12 B. Declaration of Kelly Bagby [undated]		
13 Paragraph number	14 Objectionable statement or exhibit	15 Evidentiary objections
16 ¶4	17 Exhibit B (the Monitor Report)	18 The Committee objects to Exhibit B, which purports to be a report by a party other than the Declarant. It is, therefore, hearsay. F. R. Evid. 801. There is no information which would suggest the Declarant intended to offer the document under any exception to the Hearsay Rule, and, in any event, the Declaration lacks any foundation or authentication in support of the Exhibit.

C. Declaration of Allan D. Stegemann [Dated April 5, 2007]		
Paragraph number	Objectionable statement or exhibit	Evidentiary objections
¶¶ 5-11 (paragraph 11 comprises pages 3-24 of the Declaration)	¶¶ 5-11 purport to summarize out of court reports in the possession of the Declarant.	<p>Best Evidence Rule. To prove the content of a writing, the original writing or a copy thereof is required. This is sometimes referred to as the "best evidence" rule, as in "the document is the best evidence of its own contents." Fed. R. Evid. 1002. Thus, while a witness may identify a document for purposes such as authentication, any testimony about the contents of that document is inadmissible if the original or a copy is available. See, e.g., <u>In re Chateaugay Corp.</u>, 116 B.R. 887, 905 (Bankr. S.D.N.Y. 1990) (quoting <u>Gordon v. United States</u>, 344 U.S. 414, 421, 97 L. Ed. 447, 73 S. Ct. 369 (1953) ("The elementary wisdom of the best evidence rule rests on the facts that the document is a more reliable, complete and accurate source of information as to its contents and meaning than anyone's description . . .")).</p> <p>Hearsay. It is fundamental that evidence, including declarations, must relate to matters of fact. See 1 <u>Wigmore on Evidence</u> §1 (Tillers ed. 1983). Witnesses may testify only regarding facts of which they have personal knowledge. The Federal Rules of Evidence require that a witness have personal knowledge of the matter. The only exception to this general rule relates to opinion testimony by a witness who is qualified as an expert. Expert opinions may be based upon facts or data of a type reasonably relied upon by experts in the particular field informing opinions or inferences. A non-expert witness, however, "is required to have personal knowledge of the facts on which the [witness's] opinion is based." Barry Russell, <u>Bankruptcy Evidence Manual</u> § 602.1, p. 224 (1990 ed.). Here the proponent of the Declaration makes no effort to qualify the Declarant as an expert and no foundation is provided to show the Declarant is an expert. To the contrary, the Declaration in the first and unnumbered paragraph expressly states that this Declaration is based merely on a review of the books and records of the Declarant's business. Further, a cursory review of the text of ¶ 11 reveals that the Declarant is merely repeating the out of court statements of someone else, for the truth of the matters asserted in those statements – classic hearsay.</p>

D. Declaration of Shawn Andrews [Dated: March 26, 2007]		
Paragraph number	Objectionable statement or exhibit	Evidentiary objections
¶6	“evidence of grave dangers to the patients”	Beyond the scope of the Declarant’s personal knowledge. The Declarant is a financial employee of the lender and is based in Chicago. He is not qualified to offer an opinion on whether any conduct in California creates a danger to the Debtors’ patients.
¶7, 25(a)	“failure to comply with the minimum health care compliance requirements under California law” and the same description in ¶25(a)	Beyond the scope of the Declarant’s personal knowledge. The Declarant is a financial employee of the lender and is based in Chicago. He is not qualified to offer an opinion on whether the Debtors complied with California state health laws.
¶¶ 11 – 24, 27, 2829, 31, 32	All paragraphs which summarize the loan documents.	Best Evidence Rule
¶ 25(b)	All references to the state or federal decertification of facilities. All references to information gained from reading Mr. Guiliano’s reports.	Hearsay
¶25(d)	All references to information gathered on the internet, as well as from searches performed by Corporation Service Company.	Hearsay
¶25(f),(g), (h), (i),	All references to information gathered from Mr. Graff.	Hearsay
¶25(j)¶	All references to information obtained from Mr. Guiliano.	Hearsay

1	E. Declaration of Joyce Johnson [Dated March 24, 2007]		
2	Paragraph number	Objectionable statement or exhibit	Evidentiary objections.
3			
4	¶¶4, 5,	Entire text of paragraphs.	Hearsay.
5	¶¶7,8,9	Entire text of paragraphs.	Best Evidence Rule.
6	F. Declaration of John J. Guiliano [Dated March 19, 2007] and Exhibit 7 to the Request for		
7	Judicial Notice filed on March 29, 2007		
8	Paragraph number	Objectionable statement or exhibit	Evidentiary objections
9			
10	¶5	The exhibit referenced in the paragraph 5, which is itself included in the request for judicial notice filed on March 29, 2007, as Exhibit 7, is nothing more than a summary of other reports (“At the Request of Bridge, I have prepared a Report summarizing the findings”)	Hearsay. The report is merely Mr. Guiliano repeating someone else’s out of court statements for the truth of the matter asserted. Best Evidence Rule. To the extent the findings he purports to summarize are written documents, the summary of the findings is objectionable.
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16	G. Declaration of Holly Roark [Dated March 25, 2007]		
17	Paragraph number	Objectionable statement or exhibit	Evidentiary objections
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19	¶3 and all reference to information gained from the internet	The paragraph’s attempt to authenticate hearsay from the internet.	Hearsay
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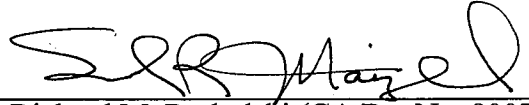
1 H. Complaint, Exhibit 3 and Stipulation, Exhibit 4, to the US Trustee's request for judicial
2 notice, filed March 29, 2007

3 Objection to both documents
4 on the basis that the Court may
5 take judicial notice of the
6 document filed in another
7 court only for the purpose of
8 establishing such case existed
9 – not for the purpose of
10 establishing the truth of the
11 matters asserted therein. *See,*
12 *e.g., Kramer v. Time Warner,*
Inc., 937 F.2d 767, 774 (2d
Cir. 1991). Additionally there
is no effort to authenticate
either document or lay a
foundation for the admission
of either document.

13 Dated: April 18, 2007

PACHULSKI STANG ZIEHL YOUNG
JONES & WEINTRAUB LLP

14
15 By



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Unsecured Creditors

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
CITY OF LOS ANGELES)

I, Joyce A. Higgins, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, Suite 1100, Los Angeles, California 90067.

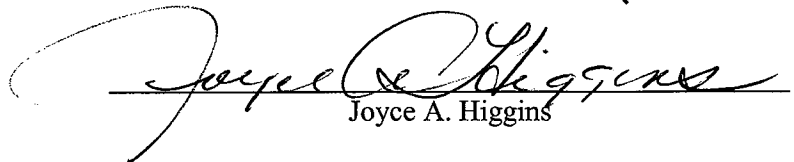
On April 18, 2007, I caused to be served the **EVIDENTIARY OBJECTIONS OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS RELATING TO DECLARATIONS AND DOCUMENTS SUBMITTED BY OFFICE OF THE U.S. TRUSTEE IN SUPPORT OF MOTION TO APPOINT A CHAPTER 11 TRUSTEE [DOCKET NO. 112]**, in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Please see attached Service List

- (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY NOTICE OF ELECTRONIC FILING) I caused to be served the above-described document by means of electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, for parties and/or counsel who are registered ECF Users.
- (BY FAX) I caused to be transmitted the above-described document by facsimile machine to the fax number(s) as shown. The transmission was reported as complete and without error. (Service by Facsimile Transmission to those parties on the attached List with fax numbers indicated.)
- (BY PERSONAL SERVICE) By causing to be delivered by hand to the offices of the addressee(s).
- (BY OVERNIGHT DELIVERY) By sending by _____ to the addressee(s) as indicated on the attached list.

I declare under penalty of perjury under the laws of the United States of America that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 18, 2007, at Los Angeles, California.


Joyce A. Higgins

Service List

1
2 OFFICE OF THE UNITED STATES TRUSTEE

3 Alvin Mar
4 Office of the U.S. Trustee
5 725 S. Figueroa St. Suite 2600
6 Los Angeles, CA 90017

7 DEBTORS

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