

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

9:00 AM

**6:16-18520 Bruce Edward Hutchison**

**Chapter 7**

**#1.00**

Duringer Law Group, PLC - movant attorney

Motion for Relief from Stay

John Dodd vs. DEBTOR  
(Motion filed 9/26/16)  
(Cont. from 10/18/16)

Re: 67921 20th Ave., Desert Hot Springs, CA 92241

Docket 10

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Since no response was filed by the debtor on or before October 31, 2016, the motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). This motion has been filed to proceed with an unlawful detainer action. This action must go forward because the debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed.

The 14-day stay provided by Rule 4001(a)(3) is waived.

Also, grant annulment.

Confirm no stay is in effect as to movant as to the property at 67921 20th Ave., Desert Hot Springs, CA upon entry of the order granting the motion.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Bruce Edward Hutchison

Pro Se

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

---

9:00 AM

**CONT... Bruce Edward Hutchison**

**Chapter 7**

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**6:14-19238 Healthcare Industry Self Insurance Program of Cali**

**Chapter 7**

**#1.00**

Hrg. on approval of Motion filed 8/23/16 Settlement with Temple Hospital Corporation, Beyer Park Villas, William Chance, Robert Foran, Simcha Mandelbaum, Ronald Mayer, Paul Pinckney, David Schachter, Randy Taylor, Michael Uranga, Navigators Specialty Insurance Company And Starr Indemnity & Liability Company

(Cont. from 9/20/16)

Docket 148

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Chapter 7 Trustee Howard Grobstein ("Trustee") moves for entry of an order approving a settlement (the "Motion") by and among the bankruptcy estate (the "Estate") of Healthcare Industry Self Insurance Program of California, Inc. ("Debtor") and Temple Hospital Corporation, Beyer Park Villas, William Chance, Robert Foran et al.

The Trustee is a party to three state court actions, described in the Motion as the Livermore Action, the Eva Care Action and the Liberty Mutual Action. Briefly, Debtor was an entity that collected contributions from its members and then used these moneys to administer and pay workers' compensation claims. Unfortunately, insufficient funds were collected to cover the anticipated cost of claims, and the California Self-Insurers Fund (the "Security Fund") stepped in and began to administer and pay such claims. Security Fund filed claim number 52 in this case for \$34,908,031. These events ultimately led to the commencement of the three state court actions named above. In the Livermore Action, the Debtor filed a complaint seeking a recovery against Livermore & Associates, Inc. ("Livermore") – one of the two parties objecting to the proposed settlement – alleging that Livermore mishandled claims and engaged in improper overbilling and otherwise breached duties to Debtor. In the Eva Care Action, Temple Hospital Corporation and Beyer Park Villas filed a complaint brought as a derivative action on Debtor's behalf alleging that various Debtor board members (the "Settling Individual Defendants") had breached various duties. The Trustee joined this

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**CONT... Healthcare Industry Self Insurance Program of Cali Chapter 7**

action by filing a complaint in intervention. In the Liberty Mutual Action, Liberty Mutual Insurance Company and Security Fund brought an action against Debtor and hundreds of its members and former members for alleged damages in excess of \$57 million arising from Debtor's default and the revocation of Debtor's certificate to self-insure.

Debtor and now the Estate are insureds under certain liability policies issued by Navigators Specialty Insurance Company ("Navigators") and Starr Indemnity & Liability Co. ("Starr"). Each of these policies has a so-called self-eroding policy limit feature that results in costs of defense eroding the limit of policy coverage. Navigators and Starr are currently defending the Settling Individual Defendants in the Eva Care Action under a full reservation of rights. Navigators previously was defending Debtor in the Liberty Mutual Action under a full reservation of rights. Importantly, Navigators has represented that the remaining limit on the Navigators policy is \$3.6 million and Starr has represented that the remaining limit on the Starr policy is \$2.65 million.

Under the proposed settlement agreement (the "Settlement Agreement") that is now before the Court, Navigators will pay the Trustee \$2,650,000, Starr will pay the Trustee \$2,650,000 and each of the Settling Individual Defendants will pay the Trustee \$6,250 apiece for an aggregate of \$50,000. Thus, the Settlement Agreement, if approved by this Court and if determined to be in good faith by the Orange County Superior Court (such Superior Court approval being a condition to the effectiveness of the Settlement Agreement), will bring \$5,350,000 into the Estate. Further, the Trustee and other plaintiffs will dismiss with prejudice claims asserted against the Settling Individual Defendants in the Eva Care Action. Navigators, Starr and the Individual Settling Defendants will not file or otherwise assert any claims in Debtor's bankruptcy case and will withdraw any proof of claim previously filed. With limited exceptions, the parties to the Settlement Agreement will execute mutual releases of any and all known or unknown claims.

This matter arises under Federal Rule of Bankruptcy Procedure 9019, which authorizes the Court to approve a compromise or settlement following notice and a hearing. The United States Court of Appeals for the Ninth Circuit has determined that a bankruptcy court must consider the following factors in determining the fairness, reasonableness and adequacy of a proposed settlement: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**CONT... Healthcare Industry Self Insurance Program of Cali Chapter 7**

premises. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir.), cert. denied, 479 U.S. 854 (1986). The Trustee, as the party proposing the compromise, has the burden of proof to establish that the settlement is fair and equitable. *A & C Properties at 1381; Allen v. Rainsdon (In re Allen)*, No. ID-13-1107-JuKiKu, 2013 Bankr. LEXIS 5193, at \*8 (U.S. B.A.P. 9th Cir. Dec. 9, 2013); *Paulson v. Mitchell (In re Paulson)*, No. OR-10-1173-MkHJu, 2011 Bankr. LEXIS 2060, at \*18 (U.S. B.A.P. 9th Cir. May 10, 2011).

Here, the Trustee's probability of success in the actions described above falls clearly into the speculative category. These are not open and shut cases where liability is certain and the only real question is damages. The Settling Individual Defendants deny any wrongdoing whatsoever and may have strong defenses under the business judgment rule. Further, they may have an important defense that plaintiffs Temple Hospital Corporation and Beyer Park Villas lack standing and are subject to statute of limitation defenses. If these defenses are successful in eliminating these two plaintiffs, the Trustee would remain the only viable plaintiff and this could greatly reduce his recovery against the Individual Settling Defendants.

The Trustee's ability to collect against Navigators and Starr is thrown into doubt because of the self-eroding nature of the policies whereby costs of defense reduce coverage. One dollar of defense costs reduces policy coverage by one dollar. Continued protracted litigation could greatly reduce ultimate collection for this reason. The proposed Settlement Agreement, if approved, essentially functions as an important stop-loss preventing further erosion of insurance coverage. Thus, prompt settlement preserves and protects collection value. Given that such collection value exceeds \$5 million, this is an important asset to protect.

Collection by the Trustee of a favorable judgment against the Individual Settling Defendants is also subject to serious doubt. If Navigators and Starr are successful in asserting defenses to coverage under the rights they have reserved, the Individual Settling Defendants could be personally liable for sizable defense costs, and the Trustee would have to compete with their attorneys and their other creditors to collect from them.

The Court agrees with the Trustee that litigation of the claims being settled is likely to be complex and time-consuming. The Trustee is protected against cost and expense by his contingency fee agreement with his special litigation counsel, but this still leaves the litigation as time-consuming and inconvenient from the Trustee's perspective because a substantial amount of discovery will be required and the defendants may elect to file cross claims, which will further complicate and delay the litigation. The complexity here is

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**CONT... Healthcare Industry Self Insurance Program of Cali**

**Chapter 7**

exacerbated by the fact that the Debtor operated from July 2004 until the time the Security Fund took it over and closed it down in April 2013. This is a very long window of time in which to analyze when claims accrued, when they were filed, what amounts were reserved, etc. An over-reservation for one claim seemingly would help balance out and perhaps even nullify an under-reservation for another claim. In short, the complexity is immense.

The paramount interest of creditors is to bring money into the Estate to pay their claims and, at the same time, to avoid liquidating valuable estate assets below fair market value. It is quite clear to the Court that the proposed Settlement Agreement is hugely in creditors' interests because it enables the Trustee to essentially trade highly speculative, complex, costly and time-consuming litigation for an immediate infusion of over \$5 million in cash. Based upon the evidence presented, the Court does not view this as a situation where the Trustee is liquidating estate assets below their fair market value. Colloquially, this settlement might well be characterized as a "no-brainer."

Nevertheless, creditors/parties in interest Livermore, Healthcare Facilities of America, LLC and the Executor of the estate of Timothy Noland (collectively, the "Opposing Parties") oppose the Motion, arguing that the settlement is not in good faith and is expressly designed to injure third parties, including the Security Fund. The Court notes, however, that the Security Fund has not joined in the Opposing Parties' opposition nor has itself objected in this Court to the proposed Settlement Agreement or Motion.

The arguments made by the Opposing Parties lack merit for a variety of reasons. First, their contention that this is a so-called "low-ball" settlement fails because Navigators and Starr are agreeing to pay amounts equal to or approaching policy limits and the Opposing Parties offer only speculation that the Individual Settling Defendants have large individual net worths. Second, their allegation that Timothy Noland was an insured and that Starr is refusing to defend him in no way establishes collusion between the Trustee, on one hand, and Navigant, Starr and the Individual Settling Defendants, on the other hand. Likewise, the allegation that Navigators is refusing to defend Livermore fails to show collusion between the Trustee and the other settling parties. Third, regarding the *A & C Properties* factors, the Opposing Parties make no showing whatsoever that the litigation being settled is not time-consuming and complex. Nor do they show that the Trustee has an iron-clad case against the Individual Settling Defendants.

Section 5 of the Settlement Agreement provides that Navigators is buying back the

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**CONT... Healthcare Industry Self Insurance Program of Cali Chapter 7**

Navigators Policy in its entirety and that the "Named Insured", the Trustee "is relinquishing any and all rights under the Navigators Policy." The Opposing Parties contend this is an unauthorized and illegal transaction that prejudices their rights. The defect in this argument is that the Opposing Parties are not signatories to the Settlement Agreement and therefore are not bound by its terms. If they have rights in the Navigators Policy, presumably they can continue to exercise those rights because the Trustee lacks the power to sell or convey something the Trustee does not own. If they have no such rights, then no issue is presented.

The Court finds that the Trustee has met his burden of proof and has shown the settlement is fair and equitable and should be approved. For these reasons, the Court grants the Motion.

TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Healthcare Industry Self Insurance

Represented By  
Hutchison B Meltzer

**Trustee(s):**

Howard B Grobstein (TR)

Represented By  
Richard K Diamond  
Steven J Schwartz  
George E Schulman  
Jeffrey B Ellis  
John N Tedford

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**6:16-14859 Desert Springs Financial LLC**

**Chapter 11**

**#2.00**

Hrg. on Motion, of Shin/RPL, Objecting To, and Seeking Disallowance of Murray Altmans Self- Scheduled \$2,520,241 Claim for Indemnification, Scheduled in DSF Case as Not Disputed, Contingent or Unliquidate

Docket 223

**\*\*\* VACATED \*\*\* REASON: Continued to 12/6/16 at 2:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Desert Springs Financial LLC

Represented By  
M Wayne Tucker

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

2:00 PM

**6:12-18155 Martin Cabral and Amelia A. Cabral**

**Chapter 7**

**#3.00**

Hrg. on Trustee's Final Report; Applications for Compensation

Docket 0

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

In a case under chapter 7 or 11, the court may allow reasonable compensation under § 330 to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. 11 U.S.C. § 326(a).

The Court finds that the Trustee's requested compensation meets the requirements of 11 U.S.C. § 326(a) and represents reasonable compensation for actual, necessary services rendered in the administration of this estate.

The compensation is approved as to the Trustee, with fees in the amount of \$4,779.75 and expenses in the amount of \$85.62.

The compensation is approved as to the Trustee's attorneys, with fees in the amount of \$7,963.00 and expenses in the amount of \$147.71.

The compensation is approved as to the Trustee's accountant, with fees in the amount of \$1,728.00 and expenses in the amount of \$72.35.

The actual proposed distributions are approved.

**CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.**

**Party Information**

**Debtor(s):**

Martin Cabral

Represented By  
Stephen D Brittain

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

**Tuesday, November 15, 2016**

**Hearing Room 225**

---

2:00 PM

**CONT... Martin Cabral and Amelia A. Cabral**

**Chapter 7**

**Joint Debtor(s):**

Amelia A. Cabral

Represented By  
Stephen D Brittain

**Trustee(s):**

Steven M Speier (TR)

Represented By  
Robert P Goe  
Lezzlie E Hornsby  
Lezzlie E Hornsby