

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FILED

MAY 19 2000

GRANT PRICE
CLERK, U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA
BY: _____, DEPUTY

IN RE:

QUALICARE, INC.,

Debtor.

CASE NO. BK- 97 - 16891 BH

CHAPTER 7

**APPLICATION FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

COMES NOW John Mashburn ("Applicant"), of the firm of Garvin, Agee, Carlton and Mashburn, L.L.P., legal counsel for the Trustee herein in the matters described below, and hereby requests approval of the Court of interim compensation and reimbursement of expenses for Applicant and in support thereof respectfully represents and shows the Court the following:

1. By Order and approval of this Court, the Trustee previously retained Applicant as his counsel to pursue recovery of and from the U.S. Department of Health and Human Services ("HHS"), and Palmetto Government Benefit Administrators ("Palmetto"), for claims relating to turnover of property of the estate held by such entities and relating to apparent violations of 11 U.S.C. § 362 by such entities or others.
2. Pursuant to 11 U.S.C. §§330, 331, Applicant brings the instant application for interim compensation and reimbursement of expenses. Applicant previously made one request for compensation or reimbursement filed August 10, 1999 and approved in the total amount of \$5,208.70.
3. The services performed by Applicant for the period of this Application include:

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- a. Continued review of documentation of the claims, investigation of the actions of the various parties, and research of legal issues involved in the claims including potential causes of action and potential defenses to the same;
- b. Communications with auditors and accountants for the estate as necessary for pursuit of the claims;
- c. Research for and drafting of briefs in opposition to motion to dismiss and motion to abstain; Argument of same before the Court;
- d. Provision of ongoing legal advise to the Trustee regarding current litigation, possible new litigation and planning of strategy for proceeding;
- e. Research and investigation of new but related cause of action against third party; and
- f. Communications with opposing counsel, witnesses, accountants and others related to ongoing and new litigation.

4. The time period for this application is from August 9, 1999 through April 21, 2000.

5. Applicant has incurred \$28.55 in expenses in representation of the trustee herein as is shown on the detailed statement of costs incurred hereto as Exhibit "A." Said costs were both reasonable and necessary to the services provided to the trustee.

6. Applicant has expended a total of 45.90 hours in representation of the trustee as is shown on the detailed time records attached hereto as Exhibit "A."

7. Applicant seeks interim compensation for his services at the rate of \$75.00 per hour for a total compensation of \$3,442.50.

8. Pursuant to this Court's order approving employment of Applicant, Applicant is employed on a hybrid hourly rate / contingent fee for his services which essentially compensates Applicant at the rate of \$75.00 per hour plus 10% of any recovery up to an amount sufficient to fully pay all unsecured claims and (40%) of any recovery in excess of such amount. No recovery has been obtained by Applicant as of the date of this Application.

9. The services provided by Applicant were both necessary to the administration of the estate and beneficial toward completion of this case. Applicant's Complaint on behalf of the trustee seeks turnover of more than one million dollars, further seeks actual and punitive damages for willful violation of the automatic stay, and further seeks equitable relief of an accounting of additional sums which may be owing and property of the estate. The recovery sought is the balance of funds owed and belonging to the debtor, a portion of which was recovered by the trustee prior to retaining Applicant.

10. The services performed by Applicant were performed in a reasonable amount of time given the complexity, importance, and nature of the task addressed and, in particular, the complex jurisdictional, accounting and procedural issues to be addressed; the parties involved; and the relief sought.

11. The compensation sought by Applicant is reasonable based on the customary compensation charged by comparably skilled practitioners in other cases. The amount sought is substantially less than would be charged at Applicant's usual hourly rate of \$125.00, which rate is at or below the usual rates charged by similarly skilled attorneys for such services. The reduced hourly rate and the minimal 10% contingent fee (until all unsecured claims are paid) result in substantial savings to the estate. The time requirements, opposition by seven attorneys representing the defendants, the risks of recovery, the likelihood of appeals being commenced by the parties and the complexity of the issues further demonstrate the reasonableness of the requested compensation.

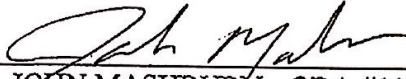
12. No payments have been made or promised to Applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case. No agreement or understanding exists between Applicant and any other entity for the sharing of compensation to be received for

services in connection with the case excepting any agreement for sharing of compensation between members of Applicant's law firm.

WHEREFORE, the Applicant, John Mashburn of the firm of Garvin, Agee, Carlton and Mashburn, requests that this Court issue it's Order allowing the sum of \$3,442.50 as interim compensation and the sum of \$28.55 as reimbursement of expenses to be paid by the trustee upon entry of an Order allowing the same as an administrative expense of this estate.

Respectfully submitted,

GARVIN, AGEE, CARLTON & MASHBURN, L.L.P.

By 
JOHN MASHBURN - OBA #12763
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204 North Robinson
Oklahoma City, Ok. 73102
(405) 232-9996
fax (405) 232-4061

Applicant and Attorney for Trustee

CERTIFICATE OF SERVICE

I hereby certify that separate Notice of the foregoing Application and of the hearing upon the same in compliance with Fed.R.Bankr.P. 2002(c)(2), which is being filed concurrently herewith, was mailed, postage paid, this day, May 19, 2000, to all parties on the attached matrix being the parties designated by the Court's order limiting notice entered herein on June 24, 1998.


JOHN MASHBURN

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JACOBSON & LAASCH
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OK BUSINESS INSURERS, L.L.C.
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ROBERT G. SHOEMAKER, ESQ.
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V. BURNS HARGIS, ESQ.
MCAFFEE & TAFT
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GRETCHEN CRAWFORD
ASSISTANT D.A.
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STATE OF OKLAHOMA
OKLA EMPL SECURIT COMM
WILL ROGERS MEMORIAL BLVD.
OKLAHOMA CITY, OK 73152

American Medical Disposal, Inc.
DON J. TIMBERLAKE
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May 19, 2000

Lyle R. Nelson, Trustee
204 N. Robinson, Ste. 2100
Oklahoma City, OK 73102

RE: QUALICARE, INC., BK- 97 - 16891 BH

STATEMENT

DATE	SERVICES PERFORMED	
8/9/99	Receipt and review of appeal correspondence from Palmetto.	0.20
8/9/99	Telephone conference with attorney for Palmetto who called regarding scheduling of hearings; Review of file and general review of relation of arguments upon motions to dismiss and our motion for summary judgment.	0.40
8/9/99	Preparation of Application for compensation and reimbursement; Preparation of notice for same; Review of previous order limiting notice; Telephone conference with court staff regarding notice logistics and hearing dates.	1.90
8/10/99	Conference with trustee; Filed application for fees and reimbursement at bankruptcy court; Mailed to parties in interest.	0.30
8/11/99	Review of file, briefs, supporting documents, authorities, etc., in preparation for hearing tomorrow.	1.40
8/12/99	Conference with trustee; Appear in Bankruptcy Court; Waited for case to be called and presented arguments in opposition to motions to dismiss by Palmetto and HHS; Conference with trustee.	2.90

EXHIBIT A

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8/12/99	Research and review of statutory authorities related to abstention of the bankruptcy court.	1.10
8/16/99	Telephone conference with attorney for HHS who called regarding settlement offer; Review of file.	0.20
8/17/99	Conference with Trustee regarding settlement talks.	0.30
8/17/99	Investigation of missing documents and cost reports relative to overcoming claims of HHS.	0.60
8/18/99	Conference with Trustee regarding settlement and counter offer.	0.10
8/18/99	Receipt and review of field audit documentation relating to Palmetto's 1998 review of documents and cost reports.	1.40
8/18/99	Review of file and additional research on claims by HHS; Drafted lengthy settlement response letter to U.S. Attorney; Conference with Trustee to review same; Faxed and mailed to U.S. Attorney.	1.70
8/19/99	Research for and initial drafting of supplemental brief on issue of abstention in response to motions to dismiss by defendants; Research of various abstention statutes and authorities; Research of consent to jurisdiction and waiver of immunity issues; Review of file and research related to factors influencing court's decision whether to abstain.	6.40
8/19/99	Conference with trustee regarding research preliminary findings and issues to address; Discussion of strategy for proceeding.	0.30
8/23/99	Continued research of abstention, informal proof of claim, and jurisdiction issues; Telephone conferences with accountants for the estate regarding abstention issues.	1.80
8/23/99	Final drafting and revision of Supplemental Brief regarding abstention and related issues.	3.60
8/23/99	Filed brief in Bankruptcy Court; Mailed copies to parties and delivered copy to trustee.	0.30
8/25/99	Review of bankruptcy file and docket searching for filing of supplemental brief by HHS - not received yet.	0.20
8/25/99	Receipt and review of supplemental brief of HHS.	0.50

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8/25/99	Research of authorities cited by HHS and research of procedural and related matters regarding abstention under §305; Research of cases regarding abstention in favor of administrative hearings; Review of file regarding effect on other matters if entire bankruptcy is suspended.	2.40
9/17/99	Receipt and review of scheduling conference memorandum; Conference with Trustee regarding same; Memorandum to file.	0.20
9/21/99	Review of file in preparation for hearing on fee application.	0.20
9/22/99	Prepared Order on fee application; Appeared in Bankruptcy Court for fee application hearing and presented Order.	0.60
9/27/99	Review of file and conference with Trustee in preparation for scheduling conference.	0.70
9/27/99	Appeared in bankruptcy court for scheduling conference.	0.90
9/27/99	Review of appeal procedures and previous correspondence regarding administrative appeals; Extended telephone conference with U.S. Attorney regarding same and possible settlement discussions; Memorandum to file.	1.20
10/4/99	Receipt and review of correspondence from U.S. Attorney; Review of file; Conference with Trustee regarding appeal.	0.40
10/8/99	Extended conference with Mr. Bruner, Mr. McPherson, and the Trustee regarding the HHS appeal, needed documentation, preparation of 1997 cost report and related issues; Memorandum to file.	3.40
10/25/99	Review of file materials and previous pleadings and correspondence regarding appeal; Letter to HHS and U.S. Attorney regarding the appeal.	1.70
11/1/99	Review of file.	0.20
11/4/99	Telephone conference with trustee regarding accountants.	0.10
11/8/99	Conference with trustee regarding appeal; Review of file; Memorandum to file.	0.30
11/29/99	Telephone conferences with Mr. Bruner and Mr. McPherson regarding status of cost reports and review of documents; Review of file.	0.70

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12/8/99	Review of pending appeal matters; Review of potential new claim of debtor.	0.30
12/15/99	Review of file; Call to Mr. Bruner leaving message to call.	0.10
1/10/00	Review of file; Fax letter to US Attorney regarding inspection of documents.	0.30
1/18/00	Conference with accountant regarding review of records and information needed to proceed; Memorandum to file.	0.80
1/18/00	Review of previous briefing exhibits planning and strategy for proceeding and potential third party claims.	0.60
1/18/00	Conference with trustee regarding status of the case and strategy for proceeding.	0.30
1/19/00	Conference with trustee regarding information from US Trustee.	0.10
2/14/00	Conference with trustee regarding new action against former attorney for debtor.	0.30
2/14/00	Research of malpractice claim against former attorney for debtor.	0.80
3/8/00	Conference with Trustee.	0.10
3/9/00	Receipt and review of grand jury invitation to Rodney McPherson; Review of file.	0.20
3/20/00	Receipt and review of correspondence from U.S. Attorney; Memorandum to file.	0.10
3/28/00	Review of file; Conference with trustee regarding legal malpractice action on behalf of debtor.	0.60
3/28/00	Receipt and review of Monarch Management records.	1.40
3/29/00	Research for filing of legal malpractice action; Review of files and cost reports for same.	0.60
4/3/00	Research and consideration of alternative forums for malpractice suit; initial drafting of Petition for Malpractice claim.	0.40
4/21/00	Review of file; continued preparation and planning of new malpractice action.	0.30

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	TOTAL HOURS	45.90
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Previous Statement	\$	5,208.70
Less Payment	\$	5,208.70
Balance Forward	\$	0.00
Current Work:		
45.90 hours @ \$ 75.00	\$	3,442.50
TOTAL CURRENT FEES:	\$	3,442.50

COSTS EXPENDED:

8/10/99	Copy charge (59 @ 15¢)(fee app)		8.85
8/10/99	Postage (fee app)		4.95
8/19/99	Copy charge at county law library		2.60
8/23/99	Copy charge (70 @ 15¢)(Supp. Brief Mot. to Dismiss		10.50
8/23/99	Postage		1.65
	TOTAL COSTS	\$	28.55
	TOTAL COSTS AND FEES DUE	\$	3,471.05