

**FILED**

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

**MAY 19 1999**

CLERK OF U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA  
BY: \_\_\_\_\_, DEPUTY

IN RE: QUALICARE, INC.,

Debtor.

CASE NO. BK- 97 - 16891 BH

CHAPTER 7

\_\_\_\_\_  
LYLE R. NELSON, U.S. Bankruptcy Trustee  
on Behalf of Qualicare, Inc.,  
Plaintiff.

v.

UNITED STATES OF AMERICA,  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; and PALMETTO  
GOVERNMENT BENEFITS  
ADMINISTRATORS, a Division of Blue  
Cross and Blue Shield, a South Carolina  
Corporation,

Defendants.

ADVERSARY NO.

**99-1185BH**

**COMPLAINT**

COMES NOW Lyle R. Nelson, U.S. Bankruptcy Trustee for and on behalf of Qualicare, Inc.,  
(herein "Qualicare"), Debtor in case number BK- 97 - 16891 BH, and for his cause of action against  
the Defendants respectfully alleges and states as follows:

**JURISDICTIONAL ALLEGATIONS**

1. This is an action brought by the Trustee of a bankruptcy estate to recover and administer property of the estate and to seek relief for violations of the automatic stay of 11 U.S.C. §362;
2. This Court has exclusive subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1334(e) and this is a core proceeding pursuant to 28 U.S.C. § 157.

**FACTS COMMON TO ALL COUNTS**

Plaintiff incorporates each and every allegation above as if fully restated herein and further alleges as follows:

3. Qualicare filed a Petition for relief under Chapter 7 of the United States Bankruptcy Code on July 14, 1997.
4. At the time of Qualicare's bankruptcy filing, it was a provider of services to Medicare patients under agreement with the United States Department of Health and Human Services (herein "HHS").
5. Palmetto Government Benefits Administrators (herein "Palmetto") is a division of a private South Carolina corporation and is an independent contractor operating under contract with HHS to administer payments to providers such as Qualicare for services rendered to Medicare patients.
6. Palmetto is not a "governmental entity" or "governmental unit."
7. Palmetto holds no immunity from any claims or relief prayed for herein.
8. Pursuant to Notice to File Claims filed and mailed November 20, 1997 the deadline for filing of claims herein expired February 18, 1998.
9. Defendants have not filed a claim in the Qualicare bankruptcy.
10. Defendants are now time barred from filing any claims in the Qualicare bankruptcy.

**COUNT I**

Plaintiff incorporates each and every allegation above as if fully restated herein and further alleges as follows:

11. Subsequent to his appointment herein, Plaintiff submitted charges to Palmetto for pre-petition Medicare patient services rendered by Qualicare.



12. On or about November 26, 1997, Palmetto determined that of such charges, \$1,668,598.39 was properly reimbursable, due and owing to Plaintiff as shown upon Palmetto's "Summary" of reimbursements due attached hereto and incorporated herein as Exhibit "A."

13. Said \$1,668,598.39 was and is property of the bankruptcy estate.

14. Notwithstanding such determination of indebtedness to Plaintiff, and despite repeated demands for payment on behalf of Plaintiff, Palmetto and HHS refused to remit payment until approximately February 6, 1998 when it remitted a partial payment of \$579,431.12.

15. Defendants have wholly failed and refused to remit the balance owing of such approved and reimbursable charges in the amount of \$1,089,167.20.

16. Pursuant to 12 O.S. § 936, Plaintiff is entitled to a reasonable attorney's fee for being forced to bring this action.

WHEREFORE, Plaintiff prays that he have and recover judgment of and from the Defendants, United States of America, Department of Health and Human Services and Palmetto Government Benefits Administrators, jointly and severally, for the sum of \$1,089,167.20 together with interest as provide by law from November 26, 1997, until paid, a reasonable attorneys' fee, and all costs of this action, that the Court Order Defendants to forthwith turnover such property of the estate to the Plaintiff and that Plaintiff have such other and further relief to which he may be entitled.

#### COUNT II

Plaintiff incorporates each and every allegation above as if fully restated herein and further alleges as follows:

17. After determining its indebtedness to Plaintiff of \$1,668,598.39 as set forth in Count I, and with actual notice of the pendency of Qualicare's bankruptcy, Palmetto assessed amounts

23. On December 2, 1998, Palmetto issued written notice to Plaintiff, as Trustee, of reopening the 1995 cost report of Qualicare for the purpose of adjusting the same to disallow and recover previously approved management fees of \$752,393.00.

24. On December 4, 1998, Palmetto issued written notice to Plaintiff, as Trustee, of its determination that Qualicare was indebted to Palmetto in the amount of \$2,016,859.00 for the 1995 fiscal year. Said purported indebtedness arises primarily from Palmetto's unilateral, post-petition disallowance of professional and management fees of \$771,819.00 incurred by Qualicare (and previously approved) and a post-petition "adjustment" (without explanation) of the amount of interim payments made to Qualicare in 1995. By said notice, Palmetto now contends it made interim payments to Qualicare of \$1,405,073.00 in excess of the amount Palmetto previously determined it had made.

25. On December 4, 1998, Palmetto issued written notice to Plaintiff, as Trustee, of its determination that Qualicare was indebted to Palmetto in the amount of \$957,034.00 for the 1996 fiscal year arising primarily from Palmetto's post-petition, unilateral adjustment and disallowance of professional and management fees incurred by Qualicare.

26. Defendants' actions set forth above constitute proceedings to recover a claim against the debtor which could have been commenced before the commencement of this bankruptcy case, in violation of 11 U.S.C. § 362(a)(1).

27. Defendants' actions set forth above constitute actions to obtain possession of property of the estate or to exercise control over property of the estate, in violation of 11 U.S.C. § 362(a)(3).

28. Defendants' actions set forth above constitute actions to setoff a debt owing to the debtor which arose before the commencement of this bankruptcy case against a purported claim against the debtor, in violation of 11 U.S.C. § 362(a)(6).



29. Defendants' actions were not actions in furtherance of any governmental police or regulatory power and were not otherwise excluded from the automatic stay.

30. Defendants' actions herein were solely designed to advance their pecuniary interests.

31. The majority of the actions of Defendants set forth above occurred after July 31, 1998 when this Court found in another home healthcare bankruptcy proceeding that the same said Defendants' acts of withholding post-petition payments for purported pre-petition debts were and "will be considered violations of the automatic stay." See *In re Healthback, LLC*, 226 B.R. 464 (Bankr.W.D.Okla. 1998).

32. The actions of Defendants set forth above constitute repeated acts of willful, flagrant violation of the automatic stay imposed by 11 U.S.C. § 362 and were carried out in open disregard of the automatic stay and in utter defiance of the of the authority and specific rulings of this Court.

33. The actions of defendants, including all audits, assessments, demands, setoffs and adjustments, being in violation of the automatic stay imposed by 11 U.S.C. § 362, are void.

34. Defendants' actions have forced the Plaintiff to incur great expense including expenses of attorneys, accountants, auditors and others and have otherwise damaged Plaintiff.

35. The actions of Palmetto were further motivated by a compensation scheme which reportedly rewards Palmetto for costs or charges which it disallows or does not pay to providers, whether properly or improperly, further indicating that Palmetto has willfully and maliciously acted in violation of its contractual obligations to the debtor and in violation of the automatic stay.

WHEREFORE, Plaintiff prays that he have and recover of and from the Defendants, United States of America, Department of Health and Human Services and Palmetto Government Benefits Administrators, jointly and severally, judgment determining the actions set forth above were in willful violation of the automatic stay imposed by 11 U.S.C. § 362, judgment setting aside such actions as

void, judgment for actual damages in an amount to be determined by the Court including attorneys' fees and all costs of this action and, as to Palmetto Government Benefits Administrators, judgment against Defendant and in favor of Plaintiff for punitive damages in an amount to be determined by the Court.

### COUNT III

Plaintiff incorporates each and every allegation above as if fully restated herein and further alleges as follows:

36. Subsequent to the filing of the petition for relief herein, Plaintiff submitted approximately \$6,208,404.97 of charges to Palmetto for pre-petition Medicare patient services rendered by Qualicare.

37. Said charges, not included in the charges set forth in Count I, had not previously been submitted to Palmetto for payment and represent services primarily rendered in fiscal years 1994, 1995, 1996 and 1997.

38. Said charges were timely presented by the Plaintiff pursuant to 11 U.S.C. § 108.

39. Plaintiff believes the reimbursable amount of such charges is approximately \$4,302,747.94 which sum further affects the Medicare / non-Medicare ratios applicable to cost reimbursements to Plaintiff.

40. Palmetto has wrongfully denied or rejected such charges asserting they were not timely submitted.

41. Plaintiff is further informed and alleges that Palmetto has assessed, both pre-petition and post-petition, a blanket percentage "cost adjustment" against amounts owing or previously paid upon Qualicare's cost reports.



42. Such cost adjustments were a blanket "percentage of cost" disallowance based solely on an average of costs disallowed or adjusted in audits of other providers.

43. Such cost adjustments were in breach of the provider agreements and were unilaterally imposed by Palmetto on Qualicare and other providers knowing that the such providers would not or could not bear the legal expense and risk of retaliation associated with contesting the same.

44. Pursuant to 12 O.S. § 936, Plaintiff is entitled to a reasonable attorney's fee for being forced to bring this action.

WHEREFORE, Plaintiff prays that he have and recover of and from the Defendants, United States of America, Department of Health and Human Services and Palmetto Government Benefits Administrators, jointly and severally, judgment for the amount due upon such charges or such improper adjustments in such amount as the Court determines is due and owing after an accounting by Defendants, together with interest as provide by law until paid, a reasonable attorneys' fee, and all costs of this action and that Plaintiff have such other and further relief to which he may be entitled.

Respectfully submitted,

GARVIN, AGEE, CARLTON & MASHBURN

By



JOHN MASHBURN - OBA #12763

2100 City Place  
204 North Robinson  
Oklahoma City, Ok. 73102  
(405) 232-9996  
fax (405) 232-4061  
Attorneys for Plaintiff

Attorney's Lien Claimed

PALNETTO GOVERNMENT BENEFITS ADMIN I-20 & ALPINE ROAD  
377259 QUALICARE, INC.

COLUMBIA SC 29219

TEL# 8037364730

PAID DATE: 11/26/97

REMITT : 428 PAGE :

## CLAIM DATA:

DAYS:  
COST : 812  
CNOVD : 6812  
NCOVDY: 8

CHARGES:  
CNOVD : 2,649,234.70  
NCOVD : .00  
MERIES: .00

PROF COMP : .00  
HSP PAYMT : .00  
DEDUCTIBLES : .00  
COINSURANCE : .00  
PAT REFUND : .00  
INTEREST : .00  
CONTRACT ADJ: 900,636.31  
HCPCS AMOUNT: .00  
NET REIMB : 1,668,598.39

## SUMMARY

PASS THRU AMOUNTS:	:	
CAPITAL	:	.00
RETURN ON EQUITY	:	.00
DIRECT MEDICAL EDUCATION	:	.00
KIDNEY ACQUISITION	:	.00
BAD DEBT	:	.00
NON PHYSICIAN ANESTHETISTS	:	.00
TOTAL PASS THRU	:	.00
PIP PAYMENTS	:	.00
SETTLEMENT PAYMENTS	:	.00
ACCELERATED PAYMENTS	:	.00
REFUNDS	:	.00
PENALTY RELEASE	:	.00

WITHHOLD FROM PAYMENTS	:	
CLAIMS ACCOUNTS RECEIVABLE	:	45,787.47-
ACCELERATED PAYMENTS	:	.00
PENALTY	:	1,161,511.54-
SETTLEMENT	:	461,299.18-
TOTAL WITHHOLD	:	2,668,598.39-

## PROVIDER PAYMENT RECAP: 377259

PAYMENTS:	
DRG OUT AMT	.00
INTEREST	.00
HCPCS AMT	.00
NET REIMB	1,668,598.39
TOTAL PASS THRU	.00
PIP PAYMENTS	.00
SETTLEMENT PAYMENTS	.00
ACCELERATED PAYMENTS	.00
REFUNDS	.00
PENALTY RELEASE	.00

WITHHOLD	1,668,598.39-
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PROVIDER PAYMENT	.00
(PAYMENTS MINUS WITHHOLD)	

CHECK/EFT NUMBER:

EXHIBIT A



PALMETTO GOVERNMENT BENEFITS ADMIN I-20 & ALPINE ROAD  
 377259 QUALICARE, INC.

COLUMBIA SC 29219 TEL# 8037364730  
 PAID DATE: 01/14/1998 BENITS : 431 PAGE :

CLAIM DATA:

DAYS:  
 COST : 0  
 COUNTRY : 0  
 NCOVDY: 0

CHARGES:  
 CVD : .00  
 NCOVD : .00  
 DENIED: .00

PROF COMP : .00  
 MSP PAYMT : .00  
 DEDUCTIBLES : .00  
 COINSURANCE : .00  
 PAT REFUND : .00  
 INTEREST : .00  
 CONTRACT ADJ: .00  
 HCPCS AMOUNT: .00  
 NET REIMB : .00

SUMMARY

PASS THRU AMOUNTS:  
 CAPITAL : .00  
 RETURN ON EQUITY : .00  
 DIRECT MEDICAL EDUCATION : .00  
 KIDNEY ACQUISITION : .00  
 BAD DEBT : .00  
 NON PHYSICIAN ANESTHETISTS: .00  
 TOTAL PASS THRU : .00  
 PIP PAYMENTS : .00  
 SETTLEMENT PAYMENTS : .00  
 ACCELERATED PAYMENTS : .00  
 REFUNDS : .00  
 PENALTY RELEASE : 579,431.12

WITHHOLD FROM PAYMENTS :  
 CLAIMS ACCOUNTS RECEIVABLE: .00  
 ACCELERATED PAYMENTS : .00  
 PENALTY : .00  
 SETTLEMENT : .00  
 TOTAL WITHHOLD : .00

PROVIDER PAYMENT RECAP: 377259

PAYMENTS:  
 DRG OUT AMT : .00  
 INTEREST : .00  
 HCPCS AMT : .00  
 NET REIMB : .00  
 TOTAL PASS THRU : .00  
 MEMORIALIA ADD-ON : .00  
 PIP PAYMENTS : .00  
 SETTLEMENT PAYMENTS: .00  
 ACCELERATED PAYMENTS: .00  
 REFUNDS : .00  
 PENALTY RELEASE : 579,431.12  
 WITHHOLD : .00

PROVIDER PAYMENT : 579,431.12 CHECK/EFT NUMBER:  
 (PAYMENTS MINUS WITHHOLD)

EXHIBIT B



B 104  
(Rev. 2/92)**ADVERSARY PROCEEDING COVER SHEET**  
(Instructions on Reverse)**99-1185 BH**ADVERSARY PROCEEDING NUMBER  
(Court Use Only)**PLAINTIFFS**LYLE R. NELSON, U.S. Bankruptcy Trustee on  
Behalf of Qualicare, Inc.,**DEFENDANTS**UNITED STATES OF AMERICA,  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; and PALMETTO GOVERNMENT  
BENEFITS ADMINISTRATORS, a Division of  
Blue Cross and Blue Shield, a South Carolina  
Corporation,**ATTORNEYS (Firm Name, Address, and Telephone No.)**John Mashburn  
GARVIN, AGEE, CARLTON & MASHBURN  
204 North Robinson, Suite 2100  
Oklahoma City, OK 73102**ATTORNEYS (If Known)**United States Attorney's Office  
210 West Park Avenue, Suite 400  
Oklahoma City, OK 73102**PARTY (Check one box only)**☐ 1 U.S. PLAINTIFF☒ 2 U.S. DEFENDANT☐ 3 U.S. NOT A PARTY**CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)**

Action brought by the Trustee of a bankruptcy estate to recover and administer property of the estate and to seek relief for violations of the automatic stay of 11 U.S.C. §362

**NATURE OF SUIT**

(Check the one most appropriate box only.)

- ☒ 454 To Recover Money or Property  
☐ 435 To Determine Validity, Priority, or  
Extent of a Lien or Other Interest in  
Property  
☐ 458 To obtain approval for the sale of  
both the interest of the estate and  
of a co-owner in property  
☐ 424 To object or to revoke a discharge  
11 U.S.C. §727
- ☐ 455 To revoke an order of confirmation  
of a Chap. 11, Chap. 12, or Chap. 13 Plan  
☐ 426 To determine the dischargeability  
of a debt 11 U.S.C. §523  
☐ 434 To obtain an injunction or other  
equitable relief  
☐ 457 To subordinate any allowed claim  
or interest except where such  
subordination is provided in a plan
- ☐ 456 To obtain a declaratory judgment  
relating to any of foregoing causes  
of action  
☐ 459 To determine a claim or cause of  
action removed to a bankruptcy  
court  
☐ 498 Other (specify)

**ORIGIN OF  
PROCEEDINGS**

(Check one box only.)

☐ 1 Original  
Proceeding☐ 2 Removed  
Proceeding☐ 4 Reinstated  
or Reopened☐ 5 Transferred  
from Another  
Bankruptcy  
Court☐ CHECK IF THIS IS A CLASS  
ACTION UNDER F.R.C.P. 23**DEMAND**

NEAREST THOUSAND

\$ 1,089,000.00

**OTHER RELIEF SOUGHT**

stay violation damages, Accounting

☐ JURY  
DEMAND**BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES****NAME OF DEBTOR**

Qualicare Inc.

**BANKRUPTCY CASE NO.**

BK 97-16891 BH

**DISTRICT IN WHICH CASE IS PENDING**

Western

**DIVISIONAL OFFICE****NAME OF JUDGE**

Bohanon

**RELATED ADVERSARY PROCEEDING (IF ANY)****PLAINTIFF****DEFENDANT****ADVERSARY PROCEEDING NO.****DISTRICT****DIVISIONAL OFFICE****NAME OF JUDGE****FILING  
FEE (Check one box only.)**☐ FEE ATTACHED☐ FEE NOT REQUIRED☒ FEE IS DEFERRED**DATE**

5/19/99

**PRINT NAME**

John Mashburn

**SIGNATURE OF ATTORNEY (OR PLAINTIFF)**

John Mashburn