Docket #0124 Date Filed: 8/21/2023

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

| | |
|---|---|
| ANANT KUMAR TRIPATI,<br><br>Plaintiff,<br><br>v.<br><br>SARA TIRSCHWELL, et al,<br><br>Defendants. | Adversary Proceeding # 23-03072<br><br>Assigned to: Bankruptcy Judge Christopher M. Lopez |

**STATE OF ARIZONA DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS AGAINST COUNSEL AND DEFENDANTS (DOC. 93)**

Defendants Struck Love Bojanowski and Acedo, PLC,[1] Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz[2] (collectively, "State of Arizona Defendants"), submit this response in opposition to Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants (Doc. 93). For the following reasons, Plaintiff Tripati's Motion should be denied because it is unintelligible, improper, and Plaintiff has otherwise failed to meet his burden of establishing that he is entitled to sanctions under Fed. R. Bankr. P. 9011(c).

## I. RELEVANT BACKGROUND.

Tripati filed his original Adversary Complaint on May 1, 2023. (Doc. 1.) On May 15, Tripati filed an "Omnibus Motion to Amend Adversary and Consolidate ECF 244; 261; 280 and Proof of Claims," and attached a "Corrected Verified Adversary Complaint" as an attachment to that motion (referred to as the "Amended Adversary Complaint."). (Doc. 4, 4-1.) On May 19,

[1] The Adversary Complaint incorrectly refers to this Defendant as "Struck Wieneke & Love PLC."

[2] The Adversary Complaint misspells these Defendants' names as "Ullibari" and "Boschuweicz."

Tripati filed summonses and certificates of service indicating that only his original Adversary Complaint was mailed to the State of Arizona Defendants. (*See* Doc. 7, 11, 12, 19.) To date, Plaintiff has not served the State of Arizona Defendants with the Amended Adversary Complaint. Nonetheless, the adversary action simply rehashes the same claims he made against them in *Tripati v. Wexford Health Sources, Inc.*, No. 2:20-CV-00427, 2022 WL 1516780 (W.D. Pa. Feb. 14, 2022), which were dismissed by United States District Court for the Western District of Pennsylvania and affirmed by the Third Circuit. *Id.*, 2022 WL 1013446, at *3 (W.D. Pa. Apr. 5, 2022); *Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022).

On June 5, State of Arizona Defendants filed a Motion to Screen Plaintiff's Pro Se Inmate Adversary Complaint pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, and Request for an Extension of Time to File a Responsive Pleading. (Doc. 25.) That motion is currently pending. On July 17, Tripati filed a flurry of applications for default, including his Applications to the Clerk for Entry of Default Against Morrissey, Erwin, and Johnson, for failure to plead or otherwise respond to his complaint. (*See* Doc. 74, 75, 78.) Morrissey, Erwin, and Johnson were never served with either the original Adversary Complaint or the Amended Adversary Complaint. On July 19, the State of Arizona Defendants—including Morrissey, Erwin, and Johnson—filed a Motion to Screen the Amended Adversary Complaint.[3] (Doc. 86.) That motion is also pending.

[3] In that Motion, Defendants Erwin, Morrissey, and Johnson specifically noted that they had not appeared in this case due to lack of service, and that they moved for screening for the limited purpose of preventing a default judgment against them. (*See* Doc. 86 at 1, n.3.)

On approximately July 10, 2023, counsel for the State of Arizona Defendants received Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants in the mail. (Exhibit 1 is a true and correct copy of the Motion received by the State of Arizona Defendants on or about July 10, 2023.)

On July 31, 2023, Plaintiff filed a Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants, which was different from the motion mailed to undersigned counsel on July 10. (Doc. 93; *see also* Ex. 1.) In support of his request for Rule 11 sanctions, Plaintiff appears to allege that he requested certain documents from the State of Arizona Defendants and/or undersigned counsel, but that he was not provided with the documents he requested. (Doc. 93 at 7-8.) He claims that he informed counsel that if he was provided with the documents and they did not show fraud, he would dismiss his claims. (*Id.* at 7.) He also claims that undersigned counsel requested that the Court screen Plaintiff's adversary complaint under the PLRA knowing that the PLRA does not apply to bankruptcy proceedings, and has "deceived" the Court by arguing that the claims in Plaintiff's adversary action were previously litigated when they were not. (*Id.* at 12-13, 17, 20-21.) He also alleges that the Ninth Circuit, Third Circuit, District of Arizona, and Arizona State courts refused to review his spoliation claims against Defendants, although it is unclear what this means or what he is referring to. (*Id.* at 15, 17.) In addition, Plaintiff alleges that the underlying Chapter 11 bankruptcy petition filed by Tehum Care Services, Inc. was filed in bad faith and is fraudulent. (*Id.* at 11-12.)

Plaintiff also requests that the Court utilize its "inherent power" to impose sanctions on Defendants and to appoint a special prosecutor under 111 U.S.C. 105(a) to prosecute them. (*Id.* at 19-20, 22.) He claims that no lawyer should have filed the underlying bankruptcy action, which he alleges is fraudulent, and that the lawyers who filed for bankruptcy knew they were acting in

bad faith in violation of Rule 11. (*Id.* at 20.) Plaintiff appears to allege that all Defendants and their counsel in the adversary action were involved in the filing of the underlying bankruptcy action and allegedly "perpetrated one of the biggest frauds in the United States Bankruptcy Court history," which warrants sanctions. (*Id.* at 20-22)

## II. LEGAL ARGUMENT.

Rule 11 of the Federal Rules of Civil Procedure does not apply in federal bankruptcy court. Instead, Rule 9011 of the Federal Rules of Bankruptcy applies, and provides in relevant part that:

> "[b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

Fed. R. Bankr. P. 9011(b).

Sanctions may be awarded under Rule 9011(c) and can be initiated by motion or on the Court's own initiative. *See* Fed. R. Bankr. P. 9011(c) ("If, after notice and reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation."); *see also* Fed. R. Bankr. P. 9011(c)(1)(A)-(B). A motion for sanctions must describe the specific conduct alleged to have violated subdivision (b) and must be served in accordance with Rule 7004. Fed. R. Bankr. P. 9011(c)(1)(A). The motion for sanctions may not be presented to the Court unless, within 21

days after service of the motion, "the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)." *Id.* Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2). Fed. R. Bankr. P. 9011(c)(2)(A). And Rule 9011(d) expressly states that Rule 9011 does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037. Fed. R. Bankr. P. 9011(d).

Rule 9011 is "essentially identical" to Fed. R. Civ. P. 11, and courts may apply Rule 11 jurisprudence when considering sanctions brought pursuant to Fed. R. Bankr. 9011. *In re David*, 487 B.R. 843, 868 (Bankr. S.D. Tex. 2013); *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 586 (5th Cir. 2008). The burden of proof is on the moving party to establish that sanctions are appropriate. If a prima facie case is made, only then does the burden shift to the attorney or party against whom sanctions are sought to demonstrate a legitimate basis for the offending filing. *In re KPMA Partnership Ltd.*, 2006 WL 2868978, at *1 (Bankr. S.D. Tex. Oct. 5, 2006). "[S]anctions are normally reserved for rare and exceptional case[s] where the action is clearly frivolous, legally unreasonable, or without legal foundation or brought for an improper purpose. It is an extraordinary remedy, one to be exercised with extreme caution." *Sievert v. Howmedica Osteonics Corp.*, 2020 WL 2507678, at *3 (N.D. Tex. May 15, 2020).

Furthermore, courts have the inherent power to award sanctions for bad faith and abusive litigation tactics in a bankruptcy court proceeding. *See F.D.I.C. v. Maxxam, Inc.*, 523 F.3d 566, 590-594 (5th Cir. 2008) (stating that court's inherent power to sanction is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs") (emphasis in original); *In re Case*, 937 F.2d 1014, 1023 (5th Cir. 1991) (holding that the bankruptcy court

"has the inherent power to award sanctions for bad-faith conduct in a bankruptcy court proceeding.")). The standard for imposing such sanctions is "extremely high" and must be established by clear and convincing evidence. *Goldin v. Bartholow*, 166 F.3d 710, 722 (5th Cir. 1999); *In re Parsley*, 384 B.R. 138, 180 (Bankr. S.D. Tex. 2008). To award sanctions, the court must find that the "very temple of justice has been defiled" by the party's conduct. *Knight v. Luedtke (In re Yorkshire, LLC)*, 540 F.3d 328, 332 (5th Cir. 2008).

**A. Plaintiff's Failure to Strictly Comply with Rule 9011(c)(1) Is Fatal to His Motion for Sanctions.**

Strict compliance with Fed. R. Bank. P. 9011(c)(1) is a mandatory prerequisite to an award of sanctions. *See Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995) ("The plain language of the rule indicates that this notice and opportunity prior to filing is mandatory."); *see also Tompkins v. Cyr*, 202 F.3d 770, 788 (5th Cir. 2000) (affirming denial of sanctions because (1) the defendant failed to serve a copy of the motion on the respondents twenty-one days prior to filing with the court, and (2) the defendant did not file motion until after the trial had concluded). Strict compliance means that each respondent must be served with a copy of the to-be-filed motion for sanctions at least 21 days in advance of filing the motion. *See Tilton*, 64 F.3d at 216 (denying sanctions motion for failure to serve defendants and defense counsel with the motion prior to filing). In addition, the served motion and the filed motion must be identical. *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 389 (5th Cir. 2022) ("We hold today that the Rule 11 safe harbor provision requires identicality."). Failure to strictly comply with Fed. R. Bank. P. 9011(c)(1) is fatal to a party's request for sanctions. *See Pratt*, 524 F.3d at 588.

Here, it is obvious from the face of Plaintiff's filed Motion and the motion served on undersigned counsel on July 10, 2023, that the motions are not identical, as Plaintiff's filed Motion contains two additional pages. (*See* Ex. 1.) Because the motions are not identical, Plaintiff has

failed to strictly comply with Fed. R. Bank. P. 9011(c)(1), which is fatal to his request for sanctions. Plaintiff's Motion should be denied on this basis alone.

**B. Plaintiff Is Not Entitled to Sanctions Under Rule 9011(c)(1).**

Plaintiff claims that the State of Arizona Defendants improperly moved for screening under the PLRA despite knowing that the PLRA does not apply to bankruptcy proceedings, that they failed to provide him with requested documents, and that they were somehow involved in the filing of the underlying bankruptcy action by Tehum Care Services, Inc., and that the bankruptcy was filed in bad faith and is fraudulent. (Doc. 93 at 7-8, 11-13, 17, 20-21.) All of these allegations are unsupported speculation, and do not satisfy Plaintiff's burden to establish a prima facie case for sanctions. *In re KPMA*, 2006 WL 2868978 at *1.

First, the State of Arizona Defendants had no involvement in Tehum Care Services, Inc.'s Chapter 11 bankruptcy filing. Nor is there any basis for Plaintiff's fanciful conspiracy theory that these defendants were somehow engaged in a scheme whereby Tehum Care Services, Inc. fraudulently petitioned for bankruptcy in bad faith. There is no evidence or inference to support such a frivolous assertion.

Next, the State of Arizona Defendants relied on valid legal precedent in moving for screening of Plaintiff's Adversary Complaint under the PLRA. (Doc. 25 at 2, n.4.) Plaintiff fails to provide *any* authority supporting his assertion that the PLRA does not apply to pro se inmate complaints in adversary bankruptcy actions despite his contention otherwise. (Doc. 93 at 12-13.) The fact that Plaintiff does not agree with the arguments asserted by the State of Defendants in their motions to screen his complaints under the PLRA does not establish a prima facie case for sanctions under Rule 9011(b)(2). Moreover, Plaintiff's allegation that he was not found to have committed fraud upon the court, or that his "racketeering issues" were not decided against him are meritless. (*See* Doc. 93 at 12; *see also* Doc. 25 at 2-7.) Such vague and conclusory allegations do

not establish that Plaintiff is entitled to sanctions. *See* Fed. R. Bankr. P. 9011(c)(1)(A); *see also Jeanty v. Txfm, Inc.*, 2020 WL 8084980, at *1-2 (E.D. Tex. Nov. 24, 2020), *report and recommendation adopted*, 2021 WL 89982 (E.D. Tex. Jan. 11, 2021) (denying Rule 11 motion based on general allegations of fraud on the court, false representations, and filing documents without a legal basis for failing to describe specific conduct that allegedly violates the rule); *Alley Bros., LLC v. Krishnan*, 2019 WL 1614625, at *2 (E.D. Tex. Apr. 16, 2019) (overruling defendants' arguments regarding their Rule 11 motion because they raised "only conclusory allegations, which do not support granting such relief").

Third, the State of Arizona Defendants have no record of Plaintiff requesting the documents alleged in his Motion. (*See* Doc. 93 at 7-8.) Even if Plaintiff did request these documents, Rule 9011 does not apply to discovery requests. *See* Fed. R. Bankr. P. 9011(d). And Plaintiff is not entitled to discovery at this juncture, particularly because Defendants have not been served with formal discovery requests, have not met and conferred, and have not attended a Rule 26(f) case management conference. *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)"); *see also* Fed. R. Bankr. P. 7026 ("Rule 26 F.R.Civ.P. applies in adversary proceedings."). Moreover, Plaintiff should not be permitted to engage in litigation blackmail whereby he purportedly demands documents prematurely and then moves for sanctions for Defendants' alleged failure to produce them. Plaintiff's vague and unsupported request for sanctions based on the State of Arizona Defendants' alleged failure to provide him with documents is therefore improper and should be denied.

Finally, and for the reasons stated above, Plaintiff has not met the "extremely high" burden in establishing by clear and convincing evidence that he is entitled to sanctions under this Court's

inherent power. *Goldin*, 166 F.3d at 722; *In re Parsley*, 384 B.R. at 180. Aside from Plaintiff's general and vague assertions as to all Defendants, there is no specific allegation against the State of Arizona Defendants establishing fraud or bad faith, particularly with respect to the underlying bankruptcy action. *See David*, 487 B.R. at 870 (general complaints of misconduct are insufficient; "[t]he imposition of sanctions using inherent power must be accompanied by a specific finding of bad faith."). Plaintiff's request for "inherent power" sanctions should be denied.

**C. Plaintiff Is Not Entitled to the Appointment of a Special Prosecutor.**

Plaintiff requests that the Court appoint a special prosecutor to prosecute Defendants under 111 U.S.C. § 105(a). (Doc. 93 at 19-20.) But 111 U.S.C. § 105(a) does not appear to exist. If Plaintiff is requesting that the Court appoint a special prosecutor under 11 U.S.C. § 105(a), this request also fails. 11 U.S.C. § 105(a) states that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" and that the Court is not precluded from "taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." This provision does not entitle Plaintiff to the appointment of a special prosecutor. Nor has Plaintiff provided any authority showing that he is entitled to a special prosecutor "to prosecute" defendants in a pro se inmate adversary action improperly brought in federal bankruptcy court. Plaintiff's request for the appointment of a special prosecutor is frivolous, baseless, and should be denied.

## III. CONCLUSION.

For the reasons above, the State of Arizona Defendants respectfully request that the Court deny Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants (Doc. 93) in its entirety.

Dated this 21st day of August 2023.

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck
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*Attorneys for Defendants Struck Love Bojanowski & Acedo, PLC., Daniel P. Struck, Betty Ulibarri, Diane Bohuszewicz, and Michael Gottfried*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the __ day of August 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

On the same date, I served a true copy of the foregoing on Pro Se Plaintiff my first class mail, postage prepaid:

Anant Kumar Tripati, #102081
ASPC Yuma
P.O. Box 8909
San Luis, AZ 85349

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck
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Chandler, AZ 85226

*Attorneys for Defendants Struck Love Bojanowski & Acedo, PLC., Daniel P. Struck, Betty Ulibarri, Diane Bohuszewicz, and Michael Gottfried*

# EXHIBIT 1

Anant Kumar Tripati 102081
P.O Box 8909 Yuma AZ 85349
July 7, 2023

RECEIVED
JUL 10 2023
BY:

Dear Counsel:

Please find the motion for sanctions that I intend to file, absent your taking corrective action by July 31, 2023. You may contact me at 928 627 8871 ext 17226 or 17361 in the event you wish to discuss this.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | |
|---|---|
| In Re:<br>Tehum Care Services, Inc<br><br>Debtor. | Case No: 23-90086 (CML)<br>CHAPTER 11 |
| Anant Kumar Tripati<br>Plaintiff,<br>Vs.<br>Sarah Tirschwell, et al.,<br>Defendants. | Adv. Pro. No. 23-03072 (CML) |



**MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS AGAINST COUNSEL AND DEFENDANTS**

**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through counsel.**

Plaintiff asks this court for an order imposing inherent power and Rule 11 Sanctions against counsel and Defendants. In support thereof he submits.

## PROOF OF COMPLIANCE

¶ I served this motion on counsel, waited 30 days and then filed it. *In re Rollings 2008 Bankr. Lexis 993 (Bankr. SD Tx March 31, 2008)*

## TABLE OF CONTENTS

PROOF OF COMPLIANCE ..... 2
TABLE OF CONTENTS ..... 2
CASES ..... 3
MEET AND CONFER ..... 4
DEBTOR , SARA TIRSCHWELL AND VALITAS, , GRAYREED, AARON M. KAUFMAN ESQ, LYDIA R. WEBB ESQ, AMBER M. CARSON, ESQ, JASON S. BROOKNER ESQ; NORTON ROSE FULBRIGHT US LLP; JASON I. BLANCHARD ESQ; KRISTIAN W. GLUCK, ESQ; JULIE G. HARRISON, ESQ; HAYWARD PLLC; MARK A. WEISBART ESQ; MELISSA HAYWARD ESQ ..... 4
QUINTAIROS PRIETO WOOD & BOYER ;NICHOLE ROWEY ;LORI METCALF ; JOSEPH SCOTT CONLON ;RENAUD COOK DRURY MESAROS PA; KELLY JOAN MORRISSEY; MICHAEL E. GOTTFRIED ; PAUL CARTER ; DARYL JOHNSON ; JULIA ERWIN ;DIANE BOSCHUWEICZ; DANIEL P. STRUCK ;STRUCK LOVE, BOJANOWSKI & ACEDO PLLC; SARAH L BARNES ; BROENING OBERG WOODS & WILSON PC; GORDON & REES; ANNIE C. MATTHEWS ESQ; MEGAN M. ADEYEMO ESQ; BRENT MARTINELLE ESQ; ..... 7
LEXINGTON, ZEICHNER ELIMAN & KRAUSE LLP; YOAV M. GRIVER ESQ; MICHAEL S. DAVIS ESQ; ..... 7
PERTINENT FACTS ..... 8
THIS BANKRUPTCY WAS FILED IN BAD FAITH ..... 10
A. AS ALL THESE LAWYERS HAVE ADOPTED STRUCK TO DIVERT ATTENTION FROM THIS FRAUDULENT BANKRUPTCY ..... 11
NONE OF THE COURTS THAT THESE LAWYERS REFER TO FOUND THE CLAIMS FRIVOLOUS OR VEXATIOUS ..... 12
WHO DID WHAT WHERE WHEN AND HOW HAS BEEN CLEARLY SET FORTH IN ECF 1 IN COMPLIANCE WITH RULES 8 AND 9 ..... 13
UNDER THE INJURY DISCOVERY RULE THESE CLAIMS ACCRUED WHEN THE BANKRUPTCY WAS FILED NOT WHEN I KNEW OF THE EVIDENCE ..... 14
STRUCK HAS COME OUTRIGHT AND DECEIVED THIS JUDGE BY STATING THESE CLAIMS WERE PREVIOUSLY LITIGATED ..... 15
ECF 1 AND 4 CLEARLY STATE THAT THE FAILURE OF THE LIABILITY INSURER TO FOLLOW ITS OWN POLICIES AND PROCEDURES CAUSED THE INJURY. ..... 15
THE ENTERPRISE AND DEFENDANTS ARE DISTINCT ..... 15
THESE LAWYERS AND DEFENDANTS MUST BE SANCTIONED ..... 17
CONCLUSION ..... 19

## Cases

*Alcorn County v Interstate Supplies, 731 F2d 1160, 1168 (5th Cir 1984)* ..... 15
*Armstrong v Davis, 2012 USD 135389 (ED Tex 2012)* ..... 16
*Bishop v Corbitt Marie Ways Inc, 802 F2d 122 (5th Cir. 1986).* ..... 16
*Bruner v Baker, 506 F.3d 1021, 1026 (10th Cir 2007)* ..... 15
*Cadle Co v Pratt (In re Pratt) 2008 Bankr. Lexis 2103 ( Bankr N>D>Tex. July 30, 2008)* ..... 16
Flores v Safadi (In re Safadi) 2010 Bankr. Lexis 1979 (Bankr. Ariz. 2010) ..... 12
Hennings v Barian, 822 F2d 688 7th Cir 1987) ..... 18
*In re Midwest Donut Inc 1998 Bankr. Lexis 1333 (Bankr. ND Tex 1988)* ..... 16
*In re "Placid oil Co, 463 BR 803 (Bankr. N.D TX 2012)* ..... 9
*In re French Gardens Ltd, 1986 Bankr. Lexis 6894 (SD Tex 1986)* ..... 17
In re French, 162 BR 541(Bankr D SD 1994) ..... 17
*In Re International Sys & Controls Corp Sec Litigation, 693 F2d 1235, 1242 (5th Cir. 1982)* ..... 17
In re Legrand, 2022 Bankr. Lexis 894 (Bank. EDCA 2022) ..... 17
**In re LTL Mgmt, LLC, 64 F4th 84, 110 (3rd Cir. 2023)** ..... 10
In re Phillips, 2008 Bankr Lexis 412 (SD Tx 2008) ..... 17



*In re Placid oil Co, 163 BR 803 (Bankr. ND Tex. 2012) @ 813* ..... 13
*In re Rogers 2002 Bankr. Lexis 1963 (ND Tx 2002)* ..... 17
In re Rollings 2008 Bankr. Lexis 993 (Bankr. SD Tx March 31, 2008) ..... 3
Ins. Corp. V. Compagnie Des Bauxites, 456 U.S. 694 (1982) ..... 14
Jeffreys v Extended, 784 F Supp 146 (D Del. 1992) ..... 18
*Khurana v Innovative Health Care Sys Inc, 130 F3d 143, 155-56 (5th Cir. 1997)* ..... 14
*La Porte Constrc Co v Bayshore National Bank. 85 F.2d 1254, 1256 (5th Cir. 1986)* ..... 13
*Lawson v Dallas County, 286 F.3d 257, 263-264(5thCir. 2002)* ..... 15
*Leeds Building Products v Moore-Handley Inc (In re Leeds Building Products) 18 BR 1006 (Bankr. ND Ga 1995)* ..... 16
*Old Time Enter Inc v Int'l Coffee Corp. 862 F.2d 1213 (5th Cir. 1989)* ..... 14
Payless Wholesale Distribs., Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570, 571 (1st Cir. 1993) ..... 14
*Piotrowski v City of Houston, 237 F3d 567, 578 (5th Cir. 2001)* ..... 15
*Richardson v Hidy Honda Inc (in re Richardson) 1998 USDist. Lexis 9811 (D.Wy. 1998)* ..... 12
*Rotella v Wood, 528 US 549, 556 (2000)* ..... 13
*Ruiz v Estelle, 679 F.2d 1115, 1154-55(5th Cir. 1982)* ..... 15
Sedima SPRL v Index Co, 473 US 475 (1985) ..... 18
*Shaffer v Williams, 794 F.2d 1030 (5th Cir. 1986)* ..... 15
State ex rel Corbin v Tolleson, 773 P.2d 490 (1989) ..... 14
*Tennessee Student Assistance Corp v Hood, 541 US 540 (2004)* ..... 12
*United States v Donzinger, 38 F4th 290 (2nd Cir. 2022)* ..... 16
*United States v Posado-Ros, 158 F3d 832 (5th Cir. 1998)* ..... 14
*Us V Soudan, 812 F2d 920, 927 (5th Cir. 1987)* ..... 18
Whelan v Winchester Production Corp, 319 F.3d 225, 230 (5th Cir. 2003) ..... 16

## MEET AND CONFER

**Debtor , Sara Tirschwell and Valitas, , GrayReed, Aaron M. Kaufman Esq, Lydia R. Webb Esq, Amber M. Carson, Esq, Jason S. Brookner Esq; Norton Rose Fulbright US LLP; Jason I. Blanchard Esq; Kristian W. Gluck, Esq; Julie G. Harrison, Esq; Hayward PLLC; Mark A. Weisbart Esq; Melissa Hayward Esq**

¶ I contacted counsel for the Debtor and as Sara Tirschwell and Valitas have no counsel, I also contacted them. I asked them to provide the following documents and they did not. I informed them these documents, if they show, there was no fraud etc, I shall dismiss my claims.

a. Any facts, documents information submitted to counsel for the purpose of filing the bankruptcy petition and schedules, to include notes metadata, minutes of

meetings. See In re French, 162 BR 541, 548 (Bankr. D.SD 1994) (information submitted to counsel to prepare bankruptcy petition and schedules, are not privileged.)

b. Any emails and metadata on any emails and documents that discuss the transfer of the bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, , including the bibliographic information.

c. Any emails and metadata on any emails and documents that discuss obtaining from the United States and its agencies, funds for pandemic relief by Corizon, , including the bibliographic information.

d. Any emails and metadata on any emails and documents that discuss the 25 contracts cancelled or not renewed with Corizon, , including the bibliographic information

e Any emails and metadata on any emails and documents were allegations have been made against Corizon for concealment of evidence, , including the bibliographic information

f. Any emails and metadata on any emails and documents that bonuses received by Corizon on its contracts no matter how the bonuses have been labelled, , including the bibliographic information

g Any emails and metadata on any emails and documents that discuss sanctions against Corizon for litigation misconduct, including for failing to disclose evidence in litigation, including court orders, including the bibliographic information

h. Any emails and metadata on any emails and documents that assert Corizon falsifying records, including the bibliographic information.

i Any documents submitted independent counsel to negotiate the loan;



j. Any communications between Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC that concerns the bankruptcy filing and forming of Tehum, Corizon, YesCare, CHS TX

k. Any communications between any of the Defendants and Corizon

l. Any communications between the liability insurer(s and Corizon.

m. Any cooperation agreements between Corizon, Wexford, Centurion, ADCRR, Naphcare

n Any information reviewed by Ankura, Russell Perry that support or contradict the Perry Declarations/ reports

o. Any SEC Final Rule 201(4)-7 Advisers Act and 38a-1 Investment Company Act, or any filings with any state and/or federal agencies by Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, 2012-2023

p. Filings with any federal and/or state agencies by Defendants as to prison health care.2016-2023

q Any compliance/noncompliance reports, as to the 25 Corizon contracts cancelled

r. Any filings by Wexford, Centurion, as to any contract cancelled 1/1/18 to date

s. Any reports submitted by Wexford, Centurion, Corizon, ADCRR as mandated by Parsons aka Jensen, 1/1/16 to date.



**QUINTAIROS PRIETO WOOD & BOYER ;NICHOLE ROWEY ;LORI METCALF ; JOSEPH SCOTT CONLON ;RENAUD COOK DRURY MESAROS PA; KELLY JOAN MORRISSEY; MICHAEL E. GOTTFRIED ; PAUL CARTER ; DARYL JOHNSON ; JULIA ERWIN ;DIANE BOSCHUWEICZ; DANIEL P. STRUCK ;STRUCK LOVE, BOJANOWSKI & ACEDO PLLC; SARAH L BARNES ; BROENING OBERG WOODS & WILSON PC; GORDON & REES; ANNIE C. MATTHEWS ESQ; MEGAN M. ADEYEMO ESQ; BRENT MARTINELLE ESQ;**

¶ I contacted counsel and asked them to provide the following documents and they did not I informed them these documents, if they show, there was no fraud etc, I shall dismiss my claims.

a Any documents showing that the judges in the District Court, Ninth and Third Circuits in the cases that are a subject of this litigation, found my claims frivolous or vexatious as they allege;

b. Any documents showing the predicate acts in ECF 1, 4 were previously before any of the courts they say previously adjudicated these cases

**LEXINGTON, ZEICHNER ELIMAN & KRAUSE LLP; YOAV M. GRIVER ESQ; MICHAEL S. DAVIS ESQ;**

¶ I contacted counsel and asked them to provide the following documents and they did not I informed them these documents, if they show, that the insurer did not act inappropriately, I shall dismiss my claims



a Any policies, guidelines, standards for issuing liability insurance coverage to healthcare providers

b Any applications submitted by , Corizon, for coverage, along with any agreements and contacts with them

c. Any policies, guidelines, standards for processing healthcare claims and any agreements, contracts with Corizon, for processing claims by inmates

d. Any claims submitted by prisoners against Corizon 2013-2016

e. Any settlements of claims by prisoners against Corizon (2013-2016

¶ I gave them my phone number and informed them they may contact me. They did not.

**PERTINENT FACTS**

¶ After Corizon lost 25 contracts, it restructured through a Texas Divisional Merger. In April 2022 Corizon converted to a Texas Corporation Days later three of its sister companies merged into Corizon Health, the surviving corporation These corporate entities are alter egos of each other, and are acting as mere instrumentality for fraud upon Article III Judges, pandemic fraud, healthcare fraud and fraud upon prisoners

¶ The instrumentality through a Divisional Merger transferred to another instrumentality CHS TX, a bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, and retained Corizon CEO Sara Tirschwell

¶ Corizon then changed its name to Tehum, retained all expired contracts, liabilities, right to collect on its insurance policies, in furtherance of its fraudulent activities After the merger YesCare Inc owned by CHS TX CEO Sara Tirschwell acquired CHS TX, doing business as Corizon, later changing its name to Tehum Care Services, Inc, the Debtor

¶ At all times M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC were actively involved in every aspect of these reorganization.

¶ These fraudulent activities include fraud upon Article III Courts, pandemic and healthcare fraud, amongst others and M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC had knowledge of these activities

¶ As a matter of investment strategy and in furtherance of aiding the fraudulent activities of Corizon, Tehum transferred assets and liabilities to three different entities, with approval of M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC expecting to be shielded by bankruptcy courts, from the fraudulent activities upon Article III Courts.

¶ Tehum , M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC was aware of the litigation that Corizon was a party to ,and in particular though aware, did not review fraud upon Article III Courts, spoliation and other litigation misconduct that were perpetrated in Article III Courts

¶After fraudulently conveying assets from Corizon, Tehum has filed for Chapter 11 protection M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC guaranteed the necessary financially backing they needed,

¶ The investors in Tehum, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC, were at all times aware of the fraudulent activities and made a tactical decision to ingest in Tehum, counting on this court, relieving Tehum of their obligations, as a result of fraud upon Article III courts etc



¶ The movant Tripati is involved in litigation with Corizon that involve fraud upon Article III Courts and spoliation amongst others in federal courts in Arizona, Pittsburgh, the Third and Ninth Circuits.

¶ Tehum , its investors M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC and Corizon knew the consequences of their conduct at all times

¶ Fraud upon Article III Courts is the prime aim of this Bankruptcy

¶Tripati has before the Third Circuit Court of Appeals a motion to recall the mandate is being pending. This relates to spoliation of evidence by Corizon amongst others

¶Before the Ninth Circuit Court of Appeals there is an appeal on spoliation.

¶United States District Court District of Arizona are matters before the District Court in Arizona and relate to spoliation of evidence Judges involved in these cases have expended substantial time in these matters The United States District Court for the District of Arizona has found against Corizon, Centurion and the prison system

**This Bankruptcy Was Filed In Bad Faith**

¶ *In re LTL Mgmt, LLC, 64 F4th 84, 110 (3rd Cir 2023)* the court dismissed the bankruptcy, finding it was filed in bad faith, with no valid bankruptcy purpose. This bankruptcy concerns the unprecedented use of the Texas Two Step because the Debtor placed all corporate liability in a defunct entity with no assets, and then having that entity declare bankruptcy, which the Bankruptcy Code was not designed for, as it is fraud under Husky

¶ *In re "Placid oil Co, 463 BR 803 (Bankr. N.D TX 2012) reads*



> **" Under the Bankruptcy Code "claim" is defined as "a right to payment, whether or not such right is reduced to a judgment ...or unsecured" 111 USC 101(5)(10). "The legislative history of the Bankruptcy Code indicates that Congress intended the term "claim" "to be given broad interpretation so that all legal obligations of the debtor, no matter how remote or contingent will be able to b e dealt with in the Bankruptcy case"**

¶ (ECF 4@ 103)

> **Because of their identity of interests, the cooperation agreements that they have entered into, and as these Defendants are alter egos of each other, they are named as parties. These Defendants were arties, to the spoliation claims in the District and Circuit Courts. Without their joinder, I cannot get complete relief, because, as the Debtor has filed for this bankruptcy, the Circuit Court and District courts have, as required by law, declined to hear my spoliation claims.**

**A. As All These Lawyers Have Adopted Struck To Divert Attention from this Fraudulent Bankruptcy**

¶ Daniel Struck filed ECF 25 that asked for screening 1, aware that screening does not apply in bankruptcy because the cases were previously screened and ordered briefed. In pp 2-5 he argues my litigation history with full knowledge that the judges have refused to address these because they found the claims with merit Struck in pp 5 states I was found to have perpetrated fraud upon the court, when the Ninth Circuit reversed and remanded finding the conduct was not fraud upon the court, as it had no bearing on the issues before the court He argues that the racketeering issues were decided against me, when he by reviewing the complaint, knows they were not. Pp 6-7

¶ Brent Martinelli Esq, Megan M Adeyemo Esq, Joseph Scott Conlon Esq all joined Struck

¶ Jason Brookner Esq in ECF 27 spends para 8-11, fn 2 on litigation history without investigation and with full knowledge that they had no bearing on the spoliation claims before the court He @ 13 -15 misstates the law and facts as to standing, injury @ 16, enterprise @17, person @ 18, pattern @21. Though as set forth above Rule 8 and 9 have



been complied, he argues otherwise @ 22-25, misstating the predicate acts He misstates relevance of predicate cats @ 30, misstating the law on fling amended complaints @ 31-32.

¶Kristian Gluck Esq in ECF 32 misstates the facts and law on RICO pp 12-22 and declaratory judgment pp 23-24

¶ Melissa Hayward Esq in ECF 34 FN 3 argues litigation adopting Struck, falsely argues Rules 8-9 have not been met @ 13-14, incorrectly argues limitations have expired @ 16-17, erroneously argues no plausible ICO claim @ 18-23, no plausible Arizona RICO @ 26-29 and lack of standing @ 30.

¶Michael Davis Esq argues three year limitations for RICO pp 1, the complaint does not satisfy Rules 8-9 at 1-2, 7-9; no plausible RICO pp 3, 10-81, misstates law in fn 2 that ECF 4 should not been allowed to be filed, states no allegations against Lexington. However in pp 4 he sets forth allegations against Lexington I made in detail, misstates accrual and limitations pp 5-6, states in FN 3 that CIV 16-0282 previously decided this matter, argues lack of standing and no conspiracy.

**None Of The Courts That These Lawyers Refer To Found The Claims Frivolous Or Vexatious**

¶A three judge panel of the Ninth Circuit screened thee clams and ordered briefing (ECF 32-2 pp 6 at 5). The court after Corizon filed a suggestion for bankruptcy, declined to decide the issues as to Corizon, ( EX F ECF 32-3 pp 9 at 58, 61)

¶The Third Circuit had before it a petition on spoliation, which the court declined to consider, as to all Defendants because of this Bankruptcy. (EX F ECF 32-3 pp 10 @ 79, 80, 81) After research Tripati did not seek certiorari, for it would be contempt of court, to file certiorari when this bankruptcy is pending The claims before this bench are similar to the

claims before the Third Circuit on spoliation and name the Defendants in the Third Circuit 1

**Who Did What Where When and How Has Been Clearly Set Forth In ECF 1 In Compliance With Rules 8 And 9**

| | |
|---|---|
| Struck Struck law firm | ECF 1 @ 353, 358-361, 364, 365, 368, 380, 385, 393, 394, 397, 402-404, 405, 409-412 |
| Erwin | ECF 1 @ 381 |
| ADCRR | ECF 1 @ 382, 384, 388-392 |
| BOSCHUWEICZ And ULLIBARRI | ECF1 @ 381, 385 |
| Centurion, Barnes, Broening Oberg Woods & Wilson PC | ECF 1 @ 381, 401 |
| Gottfried | ECF 1 @ 353, 357-361, 364, 365,368, 380, 381, 385, 393, 394, 397, 401, 402-405, 409, 412 |
| Tirschwell, M2, Valitas, O'Keefe | ECF @ 1339-349 |
| Wexford | ECF 1 @358, 363, 373, 377, 378, 380, 381, 407 |

[1] Paul Carter, Daryl Johnson, Julia Erwin and Kelly Morrissey were all served summons and the complaint, at their last known addresses, and Struck has failed to respond Actual receipt is not required under BR 7004(b)(1) *Flores v Safadi (In re Safadi) 2010 Bankr Lexis. 1979 (Bankr. Ariz. 2010)*Serving within two days after summons were received and at the last known address, is proper and constitutes good cause under *Richardson v Hidy Honda Inc (in re Richardson) 1998 USDist. Lexis. 9814 (D.Wy. 1998)* According to *Tennessee Student Assistance Corp v Hood, 541 US 540 (2004)* this court must consider the substance of the adversary filed, and not the title of the document. The substance of the adversary is a claim against the estate of the Debtor and those whom it trusted. Husky. After being given the notice and opportunity to respond, these Defendants have failed to respond. *Barner v Saxon Mtg. Services, 2008 US Dist. Lexis. 105341 (SD Miss. Sept. 30, 2008) affd. 597 F.3d 651 (5th Cir. 2010)*



| | |
|---|---|
| Weber Gallagher Simpson Stapleton Fires & Newby LLP | ECF 1@ 372, 374-376 380, 381 |
| Corizon | ECF 1 @ 351-356; 359-362; 364-370; 381-381; 381, 393-394; 396, 398, 399-400; 403-406; 408-409 |
| Quintairos Prieto Wood & Boyer :Nichole Rowey; Metcalf | ECF 1@ 3357, 380-381, 401 |
| Joseph Scott Conlon ;Renaud Cook Drury Mesaros PA | ECF 1 @ 358, 380-381; 402 |
| Jones Skelton Hochuli | ECF 1 @ 372, 375, 376 |
| INJURY | ECF 1@ 11-13; 417-421 |

**Under The Injury Discovery Rule These Claims Accrued When The Bankruptcy Was Filed Not When I Knew Of The Evidence**

¶ *Rotella v Wood, 528 US 549, 556 (2000) :La Porte Constrc Co. v Bayshore National Bank. 85 F.2d 1254, 1256 (5th Cir 1986) In re Placid oil Co, 463 BR 803 (Bankr. ND Tex. 2012) @ 813* state only when there is injury, can one file suit Lexington argues correctly that the clams are about spoliation (pp 2-3) but confuses the date the claims accrued in this case and the date I discovered the claims The date of the spoliation claims is different from the accrual date (ECF 1 @ 1, 4, 44-45 )

> **"As a consequence of this scheme I was unable to have the Third Circuit, Ninth Circuit, District of Arizona, Arizona State Courts review my spoliation claims against Defendants and their agents, employees and subordinates." (ECF 1 @ 45)**



¶The Supreme Court Has Held When Documents Have Been Destroyed, The Plaintiff Has Been Deemed To Have Established Personal Jurisdiction *Ins. Corp. V. Compagnie Des Bauxites, 456 U.S. 694 (1982)* (Affirming Order That Imposed Sanction Of Deeming Personal Jurisdiction Established) "

**Struck Has Come Outright and Deceived This Judge by Stating These Claims Were Previously Litigated**

¶ These causes of action were not previously decided "Once a court decides an issue of fact or law necessary to its judgment, hat decision precludes relitigation of the same issue on a different cause of action ' *Matter of Lewisville Properties Inc, 849 F.2d 946, 949 (5th Cir. 1988)*

**ECF 1 And 4 Clearly State That the Failure Of The Liability Insurer To Follow Its Own Policies And Procedures Caused The Injury**

**The Enterprise and Defendants Are Distinct**

¶Lexington through contractual business relationship participated in the operations of the Correctional Health Enterprise, defined as **(ECF 1 @ 437 ECF 4 @ 494)**

> **During all times the enterprise Correctional Health, made of Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation and Liability Insurers, was engaged in interstate commerce, in that the enterprise acquired, financed Corizon's services all around the nation.**

¶ This satisfies the test in *Old Time Enter Inc v Int'l Coffee Corp, 862 F.2d 1213 (5th Cir 1989)*. Lexington participated in the operations of the enterprise by diverting from its



written policies *United States v Posado-Ros, 158 F3d 832 (5th Cir 1998)* benefiting Defendants *Khurana v Innovative Health Care Sys Inc, 130 F3d 143, 155-56 (5th Cir 1997)*

¶It provided coverage in violation of its own written policies that enabled Corizon Lexington gave tacit authorization to the misconduct It thereby set in motion a series of events which they should have known would cause the violations Lexington had distinct roles then the enterprise, with Wexford, Corizon, Centurion, Naphcare and the enterprise benefiting As it had actual or constructive knowledge of Defendants misconduct, by issuing coverage, it caused the misconduct

¶ I am one of the thousands of victims of the Debtor enabled amongst other by Lexington In pp 4 Lexington correctly sets forth ECF 1 pp 8-11, 427-421 as alleging the misconduct Lexington engaged in

¶ The verified complaint states that liability insurers (ECF1 @ 8, 11, 417-421, ECF 4 @ 474-478 ) "set in motion a series of events which they should have known would cause the violations *Bruner v Baker, 506 F.3d 1021, 1026 (10th Cir 2007)* These series of events re : Liability Insurers making substantial and not minor departures from their policies and practices *Wassum v City of Bellaire Texas, 861 F.2d 453, 456 (5th Cir 1998)*

¶These departures are liability insurers being aware of unlawful practices by Defendants *Ruiz v Estelle, 679 F.2d 1115, 1154-55(5th Cir 1982)* The coverage was provided by Liability Insurers pursuant to their exceptions to their practices and policies made for the Debtor *Lawson v Dallas County, 286 F.3d 257, 263-264(5thCir 2002)*

¶As a consequence liability insurers had actual or constructive knowledge of Defendants misconduct *Piotrowski v City of Houston, 237 F3d 567, 578 (5th Cir 2001)*, thereby giving tacit authorization to the misconduct

¶This enterprise is an associated in fact enterprise and ongoing *Alcorn County v Interstate Supplies, 731 F2d 1160, 1168 (5th Cir. 1984) Shaffer v Williams, 794 F.2d 1030 (5th Cir. 1986)* The racketeering income benefits the enterprise and Defendants *Bishop v Corbitt Marie Ways Inc, 802 F2d 122 (5th Cir. 1986)*. The enterprise and Defendants played entirely distinct roles as set forth in the predicate acts.

**THESE LAWYERS AND DEFENDANTS MUST BE SANCTIONED**

¶Bankruptcy courts have the inherent power to impose sanctions for bad faith conduct. *Cadle Co. v Pratt (In re Pratt) 2008 Bankr. Lexis 2103 ( Bankr. N.D.Tex. July 30, 2008)*

¶ Federal courts have the authority to appoint special prosecutors to prosecute misconduct before the court. This court pursuant to 111 USC 105(a) and *United States v Donzinger, 38 F4th 290 (2nd Cir. 2022)*. As counsel and Defendants have perpetrated fraud upon this court and the bankruptcy process, a special prosecutor is appropriate.

¶ Under the objective standard, no lawyer would have filed this bankruptcy and because it is plain that the Texas restructuring was fraudulent. These lawyers knew they were acting in bad faith, with knowledge that their actions do not satisfy Rule 11, were fraudulent and illegal, at the time they filed their pleadings. *Leeds Building Products v Moore-Handley Inc (In re Leeds Building Products) 18 BR 1006 (Bankr. ND Ga 1995)*

¶ In this case joint liability is appropriate as Defendants and counsel are sophisticated, acted in bad faith and perpetrated one of the biggest frauds in the United States Bankruptcy Court history. *In re Midwest Donut Inc 1998 Bankr. Lexis 1333 (Bankr. ND Tex 1988)*

¶ The bankruptcy Petition, motions to dismiss and screen:



- Were filed to manipulate the bankruptcy process and perpetrate the biggest fraud in United States Bankruptcy history. *Armstrong v Davis, 2012 USD 135389 (ED Tex 2012)*
- They are not well grounded in fact and law. *In re French Gardens Ltd, 1986 Bankr. Lexis 6894 (SD Tex 1986)*
- They were filed without counsel performing their duty to investigate. *In re Phillips, 2008 Bankr.Lexis 412 (SD Tx 2008)*
- These were filed to harass and delay these proceedings. *In re R0gers 2002 Bankr. Lexis 1963 (ND Tx 2002)*
- The pleadings, arguments, bankruptcy schedules, petition and Ankura declarations all contain falsehoods and are not privileged. In re Legrand, 2022 Bankr. Lexis 894 (Bank. EDCA 2022) In re French, 162 BR 541(Bankr. D.SD. 1994)
- The attorney client privilege was used to commit these crimes, hence they are waived under the crime fraud exception. *In Re International Sys. & Controls Corp Sec Litigation, 693 F2d 1235, 1242 (5th Cir. 1982) Us V Soudan, 812 F2d 920, 927 (5th Cir. 1987)*

¶The amicus in the Chapter 11 states correctly

- **"The Debtor, previously operating as Corizon Health, Inc, now seeks to abuse Texas corporate law and the U.S. bankruptcy system to avoid liability for over a decade of wrongdoing." "These concerns are further magnified in light Corizon's unprecedented use of Texas divisional merger to shield its assets and execution of a potentially collusive funding agreement"**
- ¶ El-Amin through counsel states



- **"The Debtor went so far as to suggest at the June 13, 2013 status hearing the Debtor should be the sole gatekeeper in determining who can and should be allowed to participate...(and not this Court) (ECF 718 @ 8) because this Bankruptcy is "a fraudulent transaction" (pp 9)**

**CONCLUSION**

¶These lawyers and Defendants must be sanctioned. As they perpetrated fraud upon this judge and court, a special prosecutor should be appointed to prosecute them. The bankruptcy must be dismissed.

Respectfully submitted.

Anant Kumar Tripati

Copies eserved on counsel

Respectfully submitted.

Anant Kumar Tripati

Copies eserved on counsel

INMATE MAIL: ARIZONA DEPARTMENT OF CORRECTIONS
Inmate
ADC#
Arizona State Prison Complex
Unit
City AZ

PHOENIX AZ 852
8 JUL 2023 PM 9 L

FOREVER
USA

Sincere love
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SANCTIONS NOTICE

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

| | |
|---|---|
| ANANT KUMAR TRIPATI,<br><br>Plaintiff,<br><br>v.<br><br>SARA TIRSCHWELL, et al,<br><br>Defendants. | Adversary Proceeding # 23-03072<br><br>Assigned to: Bankruptcy Judge Christopher M. Lopez |

**ORDER DENYING PLAINTIFF'S MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS AGAINST COUNSEL AND DEFENDANTS**

ON THIS DAY came to be heard Defendants Struck Love Bojanowski and Acedo, PLC, Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz's Response to Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants (Doc. 93). After reviewing the Response, the Court finds that Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants should be DENIED. It is therefore ORDERED that Plaintiff's Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants is DENIED in its entirety.

SO ORDERED on this ____ day of _____, 2023.

CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE