

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Monday, July 19, 2021
Place: Department B - Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, **and all parties will need to appear at the hearing unless otherwise ordered.** The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

11:30 AM

1. [21-11542](#)-B-11 **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**
[WJH-4](#)

MOTION TO DISMISS CASE
7-9-2021 [\[52\]](#)

COMMUNITY REGIONAL ANESTHESIA
MEDICAL GROUP, INC./MV
RILEY WALTER/ATTY. FOR DBT.
OST 7/9

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below unless the court otherwise orders at the hearing.

Debtor-in-possession Community Regional Anesthesia Medical Group, Inc. ("CRAMG") moves to voluntarily dismiss this case under 11 U.S.C. § 1112(b).¹ Doc. #52.

Though not required, Community Medical Center ("CMC") responded in support of dismissal on July 12, 2021. Doc. #57.

On July 13, 2021, Oji Oji, M.D., President of Community Anesthesia Providers Medical Corporation, and Silvester Kagunye, M.D., President of Regional Certified Nurse Anesthetist Partners (collectively the "Medical Providers"), filed statements in support of the motion to dismiss. Docs. ##60-61.

This motion was filed with an *ex parte* application for an order shortening time ("OST") under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Docs. #47; #51. Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing

¹ The court notes that Lisa A. Holder was appointed as Subchapter V trustee on June 17, 2021. Doc. #21. CRAMG filed an amended voluntary petition withdrawing its Subchapter V election on June 18, 2021. Doc. #24. Ms. Holder subsequently resigned as Subchapter V trustee on June 28, 2021, causing CRAMG to become debtor-in-possession. Doc. #37.

schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court determined that good cause exists for granting the application. Doc. #51. A hearing on the motion to dismiss was permitted to take place on July 19, 2021 at 11:30 a.m., provided that CRAMG give notice to all creditors, the Debtor, and the U.S. Trustee's office by email and first-class mail no later than July 9, 2021. *Id.*

CRAMG served the motion, notice, OST, and declaration on July 9, 2021. Docs. #50; ##55-56. All parties were notified either by mail, email, or through their attorneys.² But certain parties were only notified by email: (1) Fresno First Bank; (2) Sante Health Systems; (3) Webb Law Group, APC; and (4) Rhonda Hardy-Joel through her state court attorney at Webb Law Group.³ Doc. #52.

The OST required "notice to all creditors, the Debtor, and the U.S. Trustee's Office by email **and** mail by close of business on July 9, 2021." Doc. #51 (emphasis added). Understandably, CRAMG may not have email addresses for all creditors, but it should have at least notified all creditors by mail. Known or readily available email addresses should have been notified by email. Though there is not strict compliance with the OST, this deficiency is *de minimis* since all parties were notified.

CRAMG filed chapter 11 bankruptcy on June 15, 2021. Doc. #1. Though CRAMG does not provide medical services, it administers contracts by which the Medical Providers perform anesthesia services. Doc. #58. When CRAMG filed for bankruptcy, its intent was to ensure the continuity of patient care to the community pending the lapse of its Anesthesia Contract with CMC. Doc. #54. Carolyn Larsen, CRAMG's Executive Director, declares her belief and understanding that some Medical Providers may discontinue services due to the bankruptcy, which adversely impacts surgical procedures for patients. *Id.* After consulting with CMC and the Medical Providers, CRAMG seeks to dismiss the chapter 11 case as being in the best interests of CRAMG and its creditors, as well as prospective patients. Continuity of quality care and provision of patient services is the basis for this request, which CRAMG maintains is in the best interests of all concerned.

CMC and the Medical providers responded in support of dismissal. Docs. #57; ##60-61. CMC is CRAMG's largest creditor with a claim of approximately \$8,837,737. Doc. #58. Even as CRAMG's largest creditor, CMC supports dismissal as being in the best interests of the estate, creditors, and the community at large. *Id.*

² Uline was not notified but withdrew Proof of Claim No. 1 on July 2, 2021.

³ Creditor Rhonda Hardy-Joel was not notified individually, but her attorney, Webb Law Group, was notified by email. Docs. #29; #52. The court notes that Jennifer Chi and Ms. Hardy-Joel filed a motion for relief from the automatic stay and for abstention on July 16, 2021, which is set to be heard on August 17, 2021. FW-1. The creditors retained Fear Waddell, PC as bankruptcy counsel, but Webb Law Group is retained as state court counsel.

CMC operates three hospitals: Community Regional Medical Center, Clovis Community Medical Center, and Fresno Heart & Surgery Hospital. Thomas Utecht, M.D., CMC's Chief Medical Officer, declares that CMC sees approximately 26,924 surgeries and 8,689 births each year. *Id.* CMC is the only Level I trauma center between Sacramento and Los Angeles. *Id.* California requires all Level I trauma centers to have anesthesiology services and surgeons immediately available to operate on trauma patients. *Id.* citing 22 Cal. Code Regs. ("CCR") §§ 100259-100260.

To comply with CCR §§ 100259-100260, CMC and CRAMG executed an exclusive agreement for anesthesia services ("Anesthesia Contract") on August 14, 2018, whereby CRAMG would provide all anesthesia services at CMC facilities. Doc. #58. The Anesthesia Contract expires on August 13, 2021. *Id.* Meanwhile, CRAMG contracts with Medical Providers to provide CMC with approximately 42 anesthesiologists and 38 certified registered nurse anesthetists.

Dr. Utecht declares that some Medical Providers may discontinue services to CMC due to complications associated with CRAMG's recent chapter 11 bankruptcy filing. *Id.* This statement and that of Ms. Larsen reflect their "understanding" from other sources and are hearsay. Nevertheless, both of their concerns are sufficient for them to both seek and support dismissal.

Should the Medical Providers no longer perform services due to this bankruptcy, CMC is not able to replace an anesthesia group of that size quickly. So, if the Medical Providers discontinue services, then CMC would not be able to provide surgical care to Central Valley residents at its three facilities and could lose its Level I trauma center status. *Id.* Dr. Utecht describes this effect on surgical care for residents throughout the Central Valley as "adverse, if not catastrophic[.]" *Ibid.*

CRAMG, CMC, and the Medical Providers support dismissal for cause under 11 U.S.C. § 1112(b)(1). Docs. #52; #57. Absent "unusual circumstances," § 1112(b)(1) provides that the court shall convert or dismiss a case under this chapter for "cause," whichever is in the best interests of creditors and the estate. Section 1112(b)(4) includes a non-exhaustive list of "causes," but the court should "consider other factors as they arise and use its equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd* 264 F.3d 803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

CRAMG contends that "cause" exists because continuity of quality care and provision of patient services will be adversely affected if

this request for dismissal is not granted. Doc. #52. CMC agrees that "cause" exists and asserts that dismissal is in the best interests of creditors and the estate because (a) it will allow CRAMG to continue to honor its obligations under the Anesthesia Contract and avoid the "catastrophic adverse impact on surgical care to Central Valley residents at CMC's healthcare facilities due to the loss of anesthesiology services;" and (b) the risk that the Central Valley will lose its only Level I trauma center between Los Angeles and Sacramento will be avoided. Doc. #57.

Dismissal appears to be in the best interests of creditors and the estate, as well as all Central Valley residents. If the case is not dismissed, Central Valley residents may lose access to quality, local surgical care. Both Ms. Larsen, on behalf of the debtor-in-possession, and Dr. Utecht, on behalf of CRAMG's largest creditor, CMC, declare that dismissal is in the best interests of creditors and the estate. Docs. #54; #58. Drs. Oji and Kagunye, on behalf of the Medical Providers, agree and support dismissal. Docs. ##60-61. Though these circumstances are certainly unusual, they do not establish that dismissal or conversion is not in the best interests of creditors and the estate. Rather, these circumstances establish the opposite on this record: dismissal is in the best interests of creditors, the estate, and the local community.

This matter will be called as scheduled to inquire whether any creditors, the U.S. Trustee, or any other parties in interest oppose dismissal. In the absence of opposition, the court will GRANT this motion and the chapter 11 case will be dismissed without prejudice for cause under 11 U.S.C. § 1112(b)(1).