

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11 (Subchapter V)

Case No. 21-11001 (JTD)

Re: D.I. 144

**STATUS REPORT OF SUBCHAPTER V TRUSTEE CONCERNING
COURT ORDER ENTERED AT D.I. 144**

I, Holly S. Miller, Subchapter V Trustee, and in accordance with this Court’s Order dated August 12, 2021 and entered at D.I. 144, states as follows:

BACKGROUND

1. On July 8, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On July 22, 2021, the U.S. Trustee filed the *United States Trustee’s Motion to Remove The Debtor In Possession Pursuant To 11 U.S.C. § 1185, Or Alternatively, Motion To Authorize The Subchapter V Trustee To Investigate The Debtor’s Financial Affairs Pursuant To 11 U.S.C. § 1183* at D.I. 68 (“U.S. Trustee Motion”).

3. Thereafter, the following joinders and responses were filed to the U.S. Trustee Motion: (i) *AlieraCare Plaintiffs’ Joinder in United States Trustee’s Motion To Remove The Debtor In Possession Or Alternatively To Authorize The Subchapter V Trustee To Investigate The Debtor’s Affairs* at D.I. 85; (ii) *Joinder To The United States Trustee’s Motion To Remove*

¹ The last four digits of the Debtor’s federal tax identification number is 0344. The Debtor’s mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

The Debtor In Possession Pursuant To 11 U.S.C. § 1185, Or Alternatively, Motion To Authorize The Subchapter V Trustee To Investigate The Debtor's Financial Affairs Pursuant To 11 U.S.C. § 1183 at D.I. 93; and (iii) Debtor's Response In Opposition To The United States Trustee's Motion To Remove The Debtor In Possession Pursuant To 11 U.S.C. § 1185, Or Alternatively, Motion To Authorize The Subchapter V Trustee To Investigate The Debtor's Financial Affairs Pursuant To 11 U.S.C. § 1183 at D.I. 84.

4. On August 5 and August 9, 2021, the Court held a hearing to consider, among other things, the U.S. Trustee Motion and the responses thereto.

5. Consistent with the Court's ruling at the hearing, the U.S. Trustee submitted a proposed order concerning the Court's ruling on the U.S. Trustee Motion.

6. On August 12, 2021, the Court entered an Order whereby the Court held in abeyance the U.S. Trustee's Motion with respect to the request to remove the Debtor in Possession pursuant to 11 U.S.C. § 1185 and, with respect to the U.S. Trustee's Motion to Authorize the Subchapter V Trustee to Investigate the Debtor's Financial Affairs pursuant to 11 U.S.C. § 1183, ordered that Subchapter V Trustee shall:

- (i) be kept fully informed by the Debtor, the Chief Restructuring Officer, and SOLIC on all data migration and data management issues;
- (ii) investigate whether the Debtor is eligible to be a Subchapter V debtor;
- (iii) investigate whether the Debtor's employees, as of the Petition Date, are necessary for the purposes of this bankruptcy case; and
- (iv) investigate and provide guidance to this Court as to SOLIC's continued services in this bankruptcy case and an approximate timeframe for SOLIC's termination and discharge.

7. The August 12, 2021 Order also ordered the U.S. Trustee to appoint an Official Committee of Members (the “Committee”) pursuant to 11 U.S.C. §§ 1181(b) and 1102(a)(2). Accordingly, the Committee was appointed on August 20, 2021.

STATUS REPORT

8. The Subchapter V Trustee provides the following status report as follows:

Data Migration and Management Issues

9. Since the August 9, 2021 hearing, the Subchapter V Trustee has consulted with Mr. Neil Luria almost daily so as to be kept fully informed on all data migration and management issues.

10. The Subchapter V Trustee has been advised that there are various sub-systems from which the Debtor is extracting data it receives from Alieria Companies, Inc. (“Alieria”) in order to formulate a working form from which member share request figures and status may be ascertained. The sub-systems are as follows:

- HRP – this database contains share request data from February 2020 forward;
- Healthscope – this database contains share request data pre-dating February 2020;
- E123 – this database contains address and contact information of the members;
- Healthedge – this database contains accumulator and Member Share Responsibility Amount (MSRA, aka deductible) data.

11. In addition to the foregoing data, a repricing process was being outsourced to Medwatch, LLC and Centivo T Holdings, LLC. These contracts are subject to amendments that are currently under review in consultation with the Committee.

12. As of the date of this report, a majority of the foregoing data has been imported

into a master spreadsheet, subject to the following issues which the Debtor is working to address:

- Duplication – in an attempt to pare down the member list for notice purposes, the database is being reviewed for duplicate dates of birth and email addresses. This process is solely for notice purposes and will have no effect on share request adjudication. To date, the deduping process has resulted in a reduction from 98,000 entries to 90,000 entries. The Debtor estimates that since June 2018 it has had an aggregate of 60,000 members and, as such, anticipates that further deduping may be required.
- MSRA data – in order to confirm eligible share request amounts, the data needs to be reviewed for limits and deductibles paid by the respective members. The cost of retrieving this data is being reviewed and will be addressed with the Committee.
- Repricing – the Debtor, in consultation with the Committee, will determine whether repricing at this juncture is necessary or whether the claim amounts on their face will be allowed for purposes of claim reconciliation.
- The Debtor needs to confirm that all data received to date pertains only to Sharity products and not any other non-Sharity Alera products.
- The lead data contact at Alera left Alera early this week. While a majority of the data has already been produced, to the extent there exists any holes in the data, this development may create an additional challenge.
- Boxes of hard documents and mail from Alera's P.O. Box contain share request data from post July 2021, and that is currently being reviewed by the Debtor.
- It appears that \$52 million in outstanding share requests is on the books;

however, that figure will not be confirmed until the Sharity plan data is isolated and MSRA figures are determined.

13. Once the Sharity plan data is isolated, it is anticipated that the Share Request data/claims will fall into one of four categories, all of which will be ascertainable through separate data fields:

- Requests that have been submitted but not yet adjudicated as eligible;
- Requests that have been adjudicated as eligible but have not been paid;
- Requests that have been declined and appealed and/or otherwise disputed;
- Contribution ACH withdrawals that were withdrawn from members' accounts after July 1, 2021.

14. In addition to the data turned over by Alera, all data believed to have been in possession of former employees William Thead and Joyce Briggs is now in the possession of the Debtor. The Debtor also received a thumb drive from former Board President Joseph Guarino. It is believed that more documentation exists on Mr. Guarino's personal computer and in his personal emails. That information has been requested and is expected to be forthcoming.

15. On August 18, 2021, the parties conducted a zoom call whereby the Subchapter V Trustee was able to view the data spreadsheets that have been created with the data received. In an effort to ensure that the figures extracted were accurate, the parties compared data received from the Subchapter V Trustee from individual members to the data contained in the spreadsheet. The numbers were substantially the same. This was true for both share request figures before and after February 2020. While only a small sample was tested (3 members), the results generated confidence in the process the Debtor is undertaking to collect and extract this data.

Debtor's Eligibility to be a Subchapter V Debtor

16. Pursuant to Section 1182, the term “debtor” ... means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate *noncontingent liquidated secured and unsecured debts* as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000.00 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor[.] 11 U.S.C. § 1182 (emphasis added).

17. A debt is contingent where “the debtor ‘will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.’” *In re Weiss*, 251 B.R. 453, 465 (Bankr. E.D. Pa. 2000)(quoting *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987)). A noncontingent debt is one where “all events giving rise to the liability for the debt occurred prior to the debtor’s filing for bankruptcy.” *Id.* (quoting *In re Mazzeo*, 131 F.3d 295, 303 (2d Cir.1997)). A debt is liquidated if “the value of the claim is easily ascertainable.” *In re Saunders*, 440 B.R. 336, 341 (Bankr. E.D. Pa. 2006).

18. In reviewing the Debtor’s Share Plan documents, which are distributed to members and prospective members, the following provisions were noted:

- Members’ monthly contributions are used to voluntarily share medical bills within the ministry;
- Members’ sharing requests are reviewed for eligibility for sharing;
- Eligible amounts are then submitted to the membership for sharing;
- Sharity does not guarantee that the members’ monthly contributions available

will meet all eligible sharing medical requests in the community;

- Sharity created guidelines to define what medical bills are eligible for sharing;
- A determination that a sharing request is eligible for sharing is not a promise or guarantee that the sharing request will be paid by the ministry;
- Eligibility simply means that the sharing request will be submitted to the membership for sharing;
- Members pay each other's eligible medical expenses, if there are sufficient contributions, not Sharity;
- A share request is not eligible for sharing until the total bill exceeds the individual's MSRA;
- Health care sharing is an arrangement where members share medical expenses through voluntary contributions, not because of legal obligation; no transfer of risk occurs;
- Because Sharity does not assume the member's risk, the member remains responsible for payment of his/her medical bills;
- Sharity does not guarantee that medical expenses will be shared by other members.

19. Pursuant to the Debtor's plan documents, the following must occur before a member is entitled to receive funds:

- The expense for which the sharing request is submitted must qualify as an eligible expense;
- The member must satisfy his/her MSRA obligations;
- Once the request is rendered eligible, it must be submitted to the membership;

- Members have three days to respond if they would like to opt out for that month.

In other words, a member may choose whether his/her contribution is used to cover another member's sharing request;

- There must be sufficient contributions available to cover the eligible expense.

20. Under the Debtor's plan documents, in order for a share request to be noncontingent in nature, the foregoing events would all have to have occurred with respect to that share request prior to the Petition Date. Similarly, to be considered liquidated, the value of the eligible share request would have to have been ascertainable on the Petition Date. Furthermore, regardless of the nature of the claims, per the Debtor's documents, it is the members' voluntary contributions that fund the share requests; no liability or risk ever transfers to the Debtor.

21. Notwithstanding the foregoing, as of the Petition Date, a number of lawsuits were pending against the Debtor and other parties wherein various classes of plaintiffs asserted claims for, *inter alia*, unjust enrichment, breach of contract and breach of covenant of good faith and fair dealing, conversion, breach of fiduciary duty/confidential relationship, intentional or negligent misrepresentation, violation of various state law business practices and/or deceptive trade practices acts. *See, e.g., LeCann v. Alieria Cos.*, 2021 U.S. Dist. LEXIS 115827 (N.D. Ga. 2021). As a result, courts in various states have found that the Debtor's purported Health Care Share Ministry Plans are insurance under applicable state law. *See, e.g., id.* In addition to Georgia, these states include but may not be limited to Colorado, Connecticut, New Hampshire and Washington. *See id.*

22. Furthermore, a number of states issued cease and desist orders and/or statement of charges against the Debtor for, *inter alia*, providing products or benefits to consumers which

are misleading or misrepresent the benefit of such products. These states include but are not limited to California, Iowa and Texas. *See, e.g., U.S. Trustee Motion*, Exhibits A, B and C.

23. Upon information and belief, a number of these proceedings and others resulted in various fines, penalties and/or restitution orders against the Debtor in the aggregate amount of approximately \$400,000.00.

24. Notwithstanding the findings and orders entered in the actions pending against the Debtor as of the Petition Date, and without prejudice to any new or existing claims of members that may have arisen as a result of these findings, the Subchapter V Trustee is not aware of individual claims that have been fully adjudicated and/or reduced to judgment as it pertains to individual members and their share request claims.²

Debtor's Employees as of the Petition Date

25. As of the Petition Date, the Debtor had three full-time employees: (a) Joe Guarino, President, who received a salary of \$13,000.00 per month (b) William Thead and (c) Joyce Briggs. Ms. Briggs did not have a title but handled member issues and received a salary of approximately \$5,000-6,000 per month. Additionally, Kathy Hawkins serves as the Controller of the Debtor. Ms. Hawkins is an independent contractor and, as of the Petition Date, received compensation in the amount of \$21,000.00 per month.

26. Mr. Thead resigned shortly after the Petition Date.

27. Mr. Guarino resigned on August 9, 2021.

28. Joyce Briggs was terminated in mid-August.

29. As of September 1, 2021, Kathy Hawkins will transition from full time to part-

² For the avoidance of doubt, nothing herein shall be construed as a proposed finding, opinion or otherwise prejudice the merits of any claims or causes of action Sharity members and/or state and regulatory authorities may have against the Debtor. It is intended solely as a remark as to the status of the adjudication and/or liquidation of such claims for purposes of calculating the Debtor's debt threshold under Section 1182 as of the Petition Date.

time and will receive a reduced compensation of \$7,000.00 per month. The Debtor submits retaining Ms. Hawkins is beneficial to the estate due to her historical knowledge of Debtor's operations and issues concerning Alera.

SOLIC's Termination and Discharge

30. It is anticipated that SOLIC's duties will terminate as part of the plan confirmation process. The parties, in consultation with the Committee, will continue to discuss the transition process from SOLIC to, most likely, a post-confirmation Liquidating Trustee.

Respectfully Submitted,

Dated: August 28, 2021
Wilmington, Delaware

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Subchapter V Trustee