IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HMP SERVICES HOLDING SUB III, LLC, *et al.*,[1]	)	Case No. 10-13618 (BLS)
Debtors.	)	Jointly Administered Objection Deadline: October 12, 2011 at 4:00 p.m. (ET) Hearing Date: October 19, 2011 at 2:00 p.m. (ET)

LITIGATION TRUSTEE'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CLAIMS PURSUANT TO 11 U.S.C. §§ 501(A) AND 502(B), AND FED. R. BANKR. P. 3003 (C)(2) AND 3007 TO CERTAIN MISCLASSIFIED CLAIMS MISCLASSIFIED/ REDUCE CLAIMS, NO LIABILITY CLAIMS, AND CONTINGENT/NO LIABILITY CLAIMS

TO THOSE HOLDERS OF CLAIMS ON EXHIBITS A THROUGH D ON THE PROPOSED ORDER ANNEXED TO THE OBJECTION AS EXHIBIT 1:

- **YOUR SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND BY ANY FURTHER OBJECTION THAT MAY BE FILED BY THE DEBTORS**
- **YOU ARE DIRECTED TO LOCATE YOUR CLAIM ON THE EXHIBITS TO THE PROPOSED ORDER**
- **THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE DEBTORS' RIGHTS TO PURSUE FURTHER SUBSTANTIVE OR NON-SUBSTANTIVE OBJECTIONS AGAINST THE CLAIMS ADDRESSED HEREIN**

Ronald Glass, the Trustee (the "Trustee") of the Litigation Trust (the "Trust") created pursuant to the Debtors' First Modified Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code ("Plan") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through his undersigned counsel, hereby objects (the

[1] The Debtors and the last four digits of their respective tax identification numbers are: (i) HMP Services Holding Sub III, LLC f/k/a Charrette LLC (3196) and (ii) HMP Services Holding, Inc. f/k/a Harold M. Pittman Company (0980). HMP Services Holding Sub III, LLC is a Delaware limited liability company.

"Objection"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to certain of the following types of claims: (a) claims that improperly assert a priority, secured or administrative claim (the "Misclassified Claims"); (b) claims that have been both misclassified and overstated, (the "Misclassified/Reduce Claims); (c) claims for which the Trustee has determined the Debtors and their estates are not liable (the "No Liability Claims") and (d) claims that seek a contingent right of payment that has not occurred and for which the Debtors and their estates are not otherwise liable (the "Contingent/No Liability Claims" and together with the Misclassified Claims, the Misclassified/Reduce Claims, and the No Liability Claims, the "Disputed Claims") listed on Exhibit A through Exhibit D annexed to the proposed order attached hereto as Exhibit 1 (the "Proposed Order"). For the reasons set forth herein, the Trustee seeks entry of the Proposed Order disallowing and/or modifying the Disputed Claims. In support of this Objection, the Debtors submit the Declaration of Michael Shenk (the "Shenk Declaration"), Managing Director of GlassRatner Advisory Group, LLC, (a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference), and respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief requested herein is section 502 of the Bankruptcy Code.

BACKGROUND

A. The Chapter 11 Filing

3. On November 8, 2010 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

4. On November 29, 2010, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") pursuant to section 1102(a)(1) of the Bankruptcy Code.

5. On March 10, 2011, the Bankruptcy Court confirmed the Plan, which was titled the Debtors' First Modified Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code dated as of January 18, 2011.

6. The Plan provided for the establishment of a litigation trust. Pursuant to the Litigation Trust Agreement dated as of March 30, 2011 that was approved by the Bankruptcy Court on March 31, 2011, Ronald L. Glass was appointed the Trustee.

7. The Plan became effective as of April 1, 2011.

8. Pursuant to Article 13.1 of the Plan, the Trustee has been conferred with the exclusive authority to object to Claims on behalf of the Debtors, their estates, and the Trust.

B. Bar Date and Proofs of Claim

9. On December 16, 2010, the Court entered the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (Docket No. 108) (the "Bar Date Order"), which, among other things, established February 11, 2011 (the "General Bar Date") as the deadline for certain creditors (the "Claimants") holding a "Claim" (as such term is defined in section 101(5) of the Bankruptcy Code) against one or more of the Debtors, to

file and serve a written proof of claim ("Proof of Claim") for payment of any such Claim. The General Bar Date applies to all purported Claims held by non-governmental units against the Debtors arising before the Petition Date.[2] Notice of the applicable Bar Dates was provided by mail in accordance with the procedures outlined in the Bar Date Order.

10. In the ordinary course of business, the Debtors maintained books and records (the "Books and Records") that reflect, among other things, the Debtors' liabilities and the amounts owed to their creditors. After the consummation of the Plan, the Trustee now has access to the Books and Records. The Trustee and his advisors have commenced a review of the Proofs of Claim filed in these cases, including any supporting documentation filed together therewith the Proofs of Claim themselves and a comparison of the Proofs of Claims with the Debtors' Books and Records to determine the validity of the Proofs of Claims. For the reasons set forth in more detail below, and based on this review, the Trustee has determined that the Disputed Claims filed in these cases are objectionable on substantive grounds.

RELIEF REQUESTED

11. Section 502(a) of the Bankruptcy Code provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). The burden of proof for determining the validity of claims rests on different parties at different stages of the objection process. As explained by the United States Court of Appeals for the Third Circuit:

> The burden of proof for claims brought in bankruptcy court under 11 U.S.C. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is '*prima facie*' valid. [citations omitted]. In other words, a claim that alleges facts sufficient to support legal liability to the claimant satisfies the claimants'

[2] The Bar Date Order establishes May 9, 2011 as the Bar Date for governmental units (as defined in section 101(27)).

> initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim . . . In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.

In re Allegheny Int'l Inc., 954 F.2d 167, 173-74 (3d. Cir. 1992) (citation omitted). Once the prima facie validity of a claim is rebutted, "it is for the claimant to prove his claim, not for the objector to disprove it." *In re Kahn,* 114 B.R. 40, 44 (Bankr. S.D.N.Y. 1990)(citations omitted).

12. A chapter 11 debtor has the duty to object to the allowance of any Claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1) and 1107(a); *see also Int' l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.),* 922 F.2d 659, 661-62 (11th Cir. 1991).

13. By this Objection, the Trustee requests that this Court enter an order, pursuant to sections 105(a) and 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, disallowing or modifying the Disputed Claims identified on Exhibit A through Exhibit B to the Proposed Order for the reasons set forth below and in the manner indicated thereon.[3]

A. Misclassified Claims

14. As a result of the above referenced review, the Trustee has identified certain Proofs of Claim that can be classified as "Misclassified Claims" — Claims that that erroneously assert administrative, priority or secured status that is not reflected in the Books and Records. The Trustee objects to the classification of each such Misclassified Claim on the basis that neither the Books and Records, nor the type and basis of the Claim asserted, suggest that the

[3] This Objection is expressly without prejudice to any and all rights of the Trustee to bring future and/or additional objections to any of the Disputed Claims on any basis.

Claim should be granted the status asserted. Accordingly, and subject to further objection and the express reservation of rights set forth below, the Trustee requests that each Misclassified Claim be reclassified to accurately reflect the classification in the Books and Records.

15. Set forth on Exhibit A to the Proposed Order are the Misclassified Claims that the Trustee has identified to date. In a manner substantially consistent with Local Bankruptcy Rule 3007-1(e)(iii), the Misclassified Claims appear in the row(s) labeled: (1) Name of the Claimant; (2) Address; (3) Claim Number; (4) Claim Amount; (5); Claim Classification Status; (6) Modified Classification Status; and (7) Reason for Reclassification. The Trustee object to the Misclassified Claims and request entry of an order modifying the classification of such Misclassified Claims as reflected on Exhibit A to the proposed order.

B. Misclassified/Reduce Claims

16. As a result of the above referenced review, the Trustee has identified certain Proofs of Claim that can be classified as "Misclassified/Reduce Claims" — Claims which are both overstated in amount and which improperly assert either a secured, priority or administrative classification for the sums claimed when in fact the amount asserted in the Claim is not entitled to such a classification (the "Misclassified/Reduce Claims"). The bases for determining the Reduced & Reclassified Claims include, but are not limited to, the following: (a) the asserted Claim misstates or exaggerates the basis of the Claim or the extent of the Debtors' potential liability, (b) the asserted Claim does not account for amounts that may have been paid or already credited against such Claim, and/or (c) the asserted Claim seeks to recover either an administrative, secured, or priority status Claim to which the Claimant is not entitled. Accordingly, the Misclassified/Reduce Claims are currently unenforceable as asserted and

should be modified to reflect the proper amounts and secured, priority, administrative, or unsecured status as set forth on Exhibit B.

17. The Misclassified/Reduce Claims listed on Exhibit B are the Claims that the Trustee believes should be reduced and reclassified. In a manner consistent with Local Rule 3001-1(e)(iii)(E), for each Claimant, the Misclassified/Reduce Claim(s) appear in Row(s) with the following labels: (1) Name of Claimant; (2) Address; (3) Claim Number; (4) Claim Amount; (5) Claim Classification Status; (6) Modified Claim Amount; (7) Modified Classification Status; and (8) Reason for Reclassification.

18. Specifically, the Trustee objects to each of the Misclassified/Reduced Claims listed on Exhibit B for the following reasons:

19. Olson, David, Proof of Claim 87: the Books and Records and the documentation supplied with the Proof of Claim do not support any liability for interest as asserted. Furthermore, the is no basis reflected in the Books and Records or in the Proof of Claim that would support the asserted §503(b)(9) priority status for the invoice dated May 18, 2010, with a petition date of November 29, 2010.

20. The Trustee therefore objects to the Misclassified/Reduce Claims as set forth above and ask the Court to modify each of the Claims in a manner consistent with the Modified Claim column of Exhibit B to the proposed order.

C. No Liability Claims

21. As a result of their Books and Records review, the Trustee has identified certain Proofs of Claim that can be characterized as "No Liability Claims" — *i.e.*, Claims that erroneously assert a liability that is not reflected in the Books and Records. The Trustee has reviewed each No Liability Claim and all supporting information and documentation provided

therewith, made reasonable efforts to research each No Liability Claim and determined that the Debtors or their estates are not liable for such No Liability Claims and has therefore objected to such No Liability Claims. Accordingly, and subject to further objection and the express reservation of rights set forth below, the Trustee requests that each No Liability Claim be disallowed and expunged.

22. The Disputed Claims listed on **Exhibit C** to the Proposed Order are the No Liability Claims that the Trustee has identified to date. In a manner substantially consistent with Local Rule 3007-1(e)(iii), each No Liability Claim appears in a row with the following labels: (a) Name of Claimant; (b) Address of Claimant; (c) Claim Number; (d) Claim Amount; and (e) Reason for Disallowance.

D. Contingent/No Liability Claims

23. As a result of the above referenced review, the Trustee has identified certain Proofs of Claim that can be classified as "Contingent/No Liability Claims" — Claims that are based upon the occurrence of a contingency that has not occurred and otherwise do not reflect a valid liability of the Debtors and their estates. After reviewing each Contingent/No Liability Claim and all supporting information and documentation provided therewith, the Trustee made reasonable efforts to research each Contingent/No Liability Claim and determined that the Debtors or their estates are not liable for such Contingent/No Liability Claims. Tthe Trustee has determined that no valid liability exists and thus has objected to such Contingent/No Liability Claims. Accordingly, and subject to further objection and the express reservation of rights set forth below, the Trustee requests that each Contingent/No Liability Claim be disallowed and expunged.

24. The Disputed Claims listed on **Exhibit D** to the Proposed Order are the

Contingent/No Liability Claims that the Trustee has identified to date. In a manner substantially consistent with Local Rule 3007-1(e)(iii), each Contingent/No Liability Claim appears in a row with the following labels: (a) Name of Claimant; (b) Address of Claimant; (c) Claim Number; (d) Claim Amount; and (e) Reason for Disallowance.

SEPARATE CONTESTED MATTERS

25. Each of the above objections to the Proofs of Claim constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. The Trustee requests that any order entered by this Court with respect to an objection asserted in this Objection shall be deemed a separate order with respect to each Claim.

RESERVATION OF RIGHTS

26. The Trustee expressly reserves the right to amend, modify or supplement this Objection and to file additional objections to the Proofs of Claim or any other Claims (filed or not) which may be asserted against the Trust. Should one or more of the grounds of objection stated in this Objection be dismissed, the Trustee reserves their right to object on other stated grounds or on any other grounds that the Trustee discovers during the pendency of these cases. In addition, the Trustee reserves the right to seek further reduction of any Claims for any reason including to the extent such Claims have been paid.

27. The Trustee reserves the right to raise further objections, including, without limitation, objections under section 502(d) of the Bankruptcy Code, and the filing of the Objection is without prejudice to the rights of any party in interest who may seek to prosecute avoidance actions against each Claimant listed in the Objection.

NOTICE

28. The Trustee has provided notice of this Objection via first class mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) all the Claimants on Exhibit

A through Exhibit D; and (c) any persons who have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee respectfully submits that no further notice is necessary.

STATEMENT OF COMPLIANCE WITH LOCAL RULE 3007-1(e)(i)(E)

29. The undersigned representative of Klehr Harrison Harvey Branzburg, LLP ("Klehr Harrison") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Objection substantially complies with that Local Rule. To the extent that the Objection does not comply in all respects with the requirements of Local Rule 3007-1, Klehr Harrison asserts that such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE, the Trustee respectfully requests that this Court (i) enter the Proposed Order attached hereto as Exhibit 1 disallowing the Disputed Claims, and (ii) grant such other and further relief as is just and proper.

Dated: September 14, 2011

KLEHR HARRISON HARVEY BRANZBURG LLP

/s/ Michael W. Yurkewicz

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