

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

CROUSE HEALTH HOSPITAL INC.

Debtor

Cases No. 01-60785-60790  
Chapter 11 Jointly Administered

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IN RE:

CROUSE HEALTH, INC.

Debtor

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IN RE:

CROUSE HEALTH PROPERTIES, INC.

Debtor

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IN RE:

CROUSE HEALTH ENTERPRISES, INC.

Debtor

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IN RE:

CIMH MANAGEMENT SERVICES  
CORP., INC.

Debtor

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IN RE:

ALLIANCE INFORMATION  
TECHNOLOGIES, INC.

Debtor

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APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

**MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

Presently before the Court is the motion filed on March 18, 2004 by Shadayvia M. Wallace, Norman Galloway, Derrick Galloway, Timothy Murphy, Sherry Murphy, and Joan Reeves (collectively, the “Claimants”) seeking to enlarge the period in which to file proofs of claim pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (“Fed.R.Bankr.P.”). An objection to the motion was filed on April 29, 2004 by Crouse Health Hospital, Inc. and its debtor affiliates (“Crouse” or the “Debtors”).

Oral argument on the motion was initially held on May 5, 2004 during the Court’s regular motion term in Syracuse, New York. The Court requested the parties to focus their arguments on the standard of excusable neglect set forth by the U.S. Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993), and adjourned argument on the motion to June 1, 2004. On the adjourned date, following further argument, the matter was submitted for decision.

## JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334(a), 157(a), (b)(1), (b)(2)(A), (B), and (O).

## FACTS

The Claimants' proofs of claim represent three distinct prepetition medical malpractice causes of action filed against Crouse in state court. Affidavit of Joseph S. Cote, Esq., filed Mar. 18, 2004 ("Cote Aff."), ¶ 1. On June 27, 2001, the Court signed an Order establishing December 31, 2001 as the bar date for filing proofs of claims (the "Initial Bar Date"). The Claimants failed to file proofs of claim before the passing of the Initial Bar Date.

In order to provide previously unknown medical malpractice claimants an additional opportunity to file proofs of claim, on September 10, 2003, the Court set a second bar date of December 31, 2003, specifically for such prepetition medical malpractice claims (the "Subsequent Bar Date"). *In re Crouse Health Hospital, Inc.*, No. 01-60785, Doc. No. 1117. Crouse's plan of reorganization was confirmed on September 11, 2003. *Crouse Health Hospital*, Doc. No. 1122. Crouse's plan established a special trust for prepetition medical malpractice claims. *Id.* at 8. According to the Debtors, the administration of those claims are in the early stages of liquidation. Debtors' Mem. of Law, filed May 27, 2004, at 4. On March 18, 2004, the Claimants moved for an extension of time to file their medical malpractice claims.

The Debtors mailed notice of the Subsequent Bar Date to the Claimants on September 18,

2003, and, during the months of September through November 2003, published a short form of the notice in the Syracuse Post-Standard, the Cortland Standard and the Utica Observer-Dispatch. Debtors' Response, filed Apr. 29, 2004, ¶ 11. Claimants' counsel received the Subsequent Bar Date notice on September 22, 2003. Cote Aff. ¶ 5.

In late September 2003, Cote, the attorney assigned to the Claimants' matter, was informed by an adoption agency that his and his wife's application was approved and that they would need to retrieve their adopted child from China. Cote Aff. ¶ 7. Cote alleges that he was in China from early to late November 2003. *Id.* When Cote returned, approximately one month before the expiration of the Subsequent Bar Date, he contends that he was conducting a trial in Cayuga County and was consequently unable to perform administrative tasks at his office. *Id.* ¶ 8.

Also in September, according to Cote, his sole partner, Theodore Limpert, was activated for reserve duty in Iraq. *Id.* ¶ 9. Limpert did not return home until late December 2003. *Id.* Cote further alleges that, in late December 2003, his firm's secretary, Jennifer Daily, prematurely went into labor and did not return to the office until February 2004. *Id.* ¶ 10. Throughout this period, Cote claims Daily never entered the Subsequent Bar Date in the firm's calendar system, though she had approximately ninety days in which to do so. *Id.* ¶ 11. Cote allegedly discovered the Subsequent Bar Date notice during Daily's absence, but only after the Subsequent Bar Date had expired. *Id.* ¶ 12.

## DISCUSSION

### A. The *Pioneer* test

The question presently before the Court is whether the Claimants should be permitted to file their proofs of claim after the Subsequent Bar Date because their neglect to timely do so was excusable under Fed.R.Bankr.P. 9006(b)(1). The resolution of this issue is governed by the four-part test crafted by the United States Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). The *Pioneer* test is an equitable one, requiring courts to consider “all relevant circumstances surrounding the party’s omission, including [1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.” *Id.* at 395; *see also In re Agway, Inc.*, No. 02-65872 (Bankr. N.D.N.Y Dec. 31, 2003 & Apr. 19, 2004) (both decisions available at [www.nynb.uscourts.gov](http://www.nynb.uscourts.gov)).

### B. Prejudice

The first prong of the *Pioneer* test asks whether the Claimants’ late filings prejudice the Debtors. One court recently characterized the concept of prejudice as follows: “[t]o say that an error is prejudicial means not that if the error is corrected someone will lose, which is almost always true, but that the error itself imposed a cost, as by misleading someone.” *Expeditors Int’l of Wash., Inc. v. Kmart Corp.*, No. 03 C 4608, 2004 WL 868390, at \*2 (N.D. Ill. Apr. 19, 2004) (quoting *In re Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993)).

In addition, the court in *In re Keene Corp.*, 188 B.R. 903 (Bankr. S.D.N.Y. 1995), explained that analyses of prejudice should also consider “the size of the late claim in relation to the estate, whether a disclosure statement or plan has been filed or confirmed with knowledge of the existence of the claim, and the disruptive effect that the late filing would have on a plan close to completion or upon the economic model upon which the plan was formulated and negotiated.” *Id.* at 310.

Here, any prejudice or harm that may have been cast against the Debtors would in all likelihood have been financial in nature. The object of such harm against the Debtors would be the pool of funds to be paid out to the Claimants and other similarly situated parties. The pool of funds available for distribution to the Claimants and other similarly situated parties was set forth in the Debtor’s plan. Thus, upon confirmation, the Debtors, by their own admission in their memorandum of law, were completely insulated from any adversity stemming from the medical malpractice claims process. However, the Claimants’ claims may be sizable in relation to the trust and would have an impact on the extent of the distribution. Accordingly, the Court finds that the Claimants’ tardy filings are moderately prejudicial as a result of the potential impact they might have on the distribution of the trust.

### **C. Length of delay and its impact on the proceedings**

The length of delay as to the Subsequent Bar Date in this case—78 days—is moderate. However, the length of the Claimants’ delay alone is not significant; rather, the import of this factor is illustrated by the impact this lapse will have on the proceedings. The prepetition medical malpractice claims in this case are to be paid from a trust established by the Debtors’ plan. The

trust is solvent and its claims administration process is still ongoing. However, granting the Claimants' motion would open the door to similarly tardy filers, which would negatively impact the distribution process. Accordingly, the Claimants' lapse appears to pose an adverse affect on the proceedings in the case and on the administration of the medical malpractice claims.

**D. Reason for delay**

The Claimants' reason for delay involves the interplay of failed office procedures and a spate of unusual events. All three employees of Claimants' counsel's office—Cote, Limpert, and Daily—left the office for extended periods during the time between entry of the Order establishing the Subsequent Bar Date and the date itself. However, it appears that the notice of the Subsequent Bar Date was in Daily's custody from late September 2003, and that she failed to enter it into the firm's calendar system. Thus, while Cote claimed to have no way of monitoring the approach of the Subsequent Bar Date, the document noticing that date lay neglected somewhere in his office. By the time he learned of the Subsequent Bar Date, it was too late to timely file proofs of claim.

The Court has faced the issue of delinquent office procedures in previous excusable neglect cases. See *In re O.W. Hubbell & Sons, Inc.*, 180 B.R. 31 (N.D.N.Y. 1995); *In re Agway, Inc.*, No. 02-65872 (Bankr. N.D.N.Y. Dec. 31, 2003). In *Agway*, the claimant's controller received notice of the bar date and failed to forward it to an attorney. The controller claimed he did not understand the legal impact that failing to file a proof of claim would have on his company's third-party contribution action against the debtors. The Court rejected this argument and denied the claimant's extension of time in which to file a proof of claim.

*Pioneer* was applied in *O.W. Hubbell* in the context of a claimant's failure to timely object to the debtor's motion to expunge its claim. The claimant contended that it was not aware of the motion because it—albeit months before the debtor's motion was filed—underwent a personnel restructuring, pursuant to which it terminated the employee responsible for monitoring the matter. The Court found this reason unavailing, adding that the claimant had “an obligation to insure that proper office procedures were in place to ensure that pleadings were brought to the attention of counsel once received by the company.” *O.W. Hubbell*, 108 B.R. at 35.

In this case, it is plain that the procedures in Claimants' counsel office for this matter were administered with less than the most attentive care. Though the circumstances surrounding this failure may appear more extenuating than those attending the claimants in *Agway* and *O.W. Hubbell*, the Court will set forth its analysis of this factor against those circumstances below.

#### **E. Good faith**

The Court has not been presented with any indication that the Claimants did not act in good faith; thus, it will not presume otherwise.

#### **F. Conclusion**

Although the Claimants have filed in good faith, the Court must decide in light of the circumstances whether the Claimants' reason for delay, the prejudicial effect of their tardy filings, and the impact of their delay on the proceedings are grounds for rejecting their untimely filings.

Like the claimants in *O.W. Hubbell* and *Agway*, poor office procedures, not unanticipated absences from the office, are at the heart of this matter. The Claimants' faulty calendaring



procedure—and that procedure alone—caused the Claimants to miss two bar dates in this case—the Initial Bar Date and Subsequent Bar Date. Courts have held that the failure to calendar a deadline “does not amount to a unique or extraordinary circumstance” warranting a finding of excusable neglect. *Envisionet Computer Servs. v. ECS Funding LLC*, 288 B.R. 163, 166 (D. Me. 2002). The series of unanticipated events—war, premature childbirth, a call to retrieve a child located halfway across the world—occurred independent of Ms. Daily’s lapse. Had the Subsequent Bar Date been calendared, certainly Cote would have been aware of it and had sufficient time to timely file the Claimants’ simple proofs of claim. This office procedure was clearly within the control of Claimants’ counsel. Furthermore, excusing such an omission would open the door to other tardy filers presenting similar reasons for delay, which would adversely impact the proceedings. Therefore, the Court finds that the Claimants’ neglect was inexcusable.

Accordingly, for the foregoing reasons, it is

ORDERED that the Claimants’ motion to extend the time in which to file proofs of claim under Fed.R.Bankr.P. 9006(b)(1) is denied.

Dated at Utica, New York

this 30th day of July 2004

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge