

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
CLAYTON GENERAL, INC., f/k/a Southern)	Jointly Administered Under
Regional Health System, Inc., d/b/a/ Southern)	CASE NO. 15-64266-wlh
Regional Medical Center, et al.,)	
)	
Debtors.)	
)	

NOTICE OF PLEADING, DEADLINE TO OBJECT AND FOR HEARING

GGG Partners, LLC, in its capacity as the liquidating trustee (the “Trustee”) for the Clayton General Liquidating Trust, has filed a *Final Report of Substantial Consummation, Request for Final Decree, and Motion to Determine Fees Payable to the United States Trustee Program* (the “Motion”) on January 31, 2020. Pursuant to General Order 24-2018, the Court may consider this matter without further notice or a hearing if no party in interest files a response or objection within twenty-one (21) days from the date of service of this notice. **If you object to the relief requested in the Motion, you must timely file your objection with the Bankruptcy Clerk** at Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, and serve a copy upon the Trustee’s counsel, Matthew W. Levin, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327, by the objection deadline. The response or objection must explain your position and actually be received by the Bankruptcy Clerk within the required time.

A hearing on the Motion has been scheduled for *February 27, 2020 at 1:30 p.m.* in Courtroom 1403, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia. If an objection or response is timely filed and served, the hearing will proceed as scheduled. **If you do not file a response or objection within the time permitted, the Court may grant the relief requested without further notice or a hearing** provided that an order approving the relief requested is entered at least one business day prior to the scheduled hearing. If no objection is timely filed, but no order is entered granting the relief requested at least one business day prior to the hearing, the hearing will be held at the time and place as scheduled.

Your rights may be affected. You should read these papers carefully and discuss with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.



NOTICE IS HEREBY GIVEN this 31st day of January, 2020.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

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**FINAL REPORT OF SUBSTANTIAL CONSUMMATION,
REQUEST FOR FINAL DECREE, AND MOTION TO DETERMINE
FEES PAYABLE TO THE UNITED STATES TRUSTEE PROGRAM**

COMES NOW GGG Partners, LLC, in its capacity as the liquidating trustee of the Clayton General Liquidating Trust (the “**Liquidating Trustee**”), by and through its undersigned counsel, in the above-styled jointly administered case (the “**Case**”), and hereby submits this Final Report of substantial consummation (the “**Final Report**”), and respectfully requests entry of a Final Decree closing the above-captioned cases,¹ and further requests that the Court determine the amount of fees payable to the United States Trustee Program (the “**U.S. Trustee**”).

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

¹ The Debtors respectfully request that the Court close the following cases: Clayton General, Inc. f/k/a Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center (Case No. 15-64266), Clayton General Group, Inc. f/k/a Southern Crescent Physicians’ Group, Inc. (Case No. 15-64278), Clayton General Real Estate, Inc. f/k/a Southern Crescent Real Estate, Inc. (Case No. 15-64279), Clayton General ASC, Inc. f/k/a Southern Regional Ambulatory Surgery, Inc. (Case No. 15-64280), Southlake ASC, LLLP f/k/a Southlake Ambulatory Surgery Center, L.L.L.P. d/b/a Mount Zion Surgery Center a/k/a Spivey Station Surgery Center (Case No. 15-64281), and Clayton General Services, Inc. f/k/a Southern Regional Medical Services, Inc. (Case No. 15-64277).

2.

Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

3.

Each of the above-captioned debtors (the “**Debtors**”) filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “**Bankruptcy Code**”) on July 30, 2015 (the “**Petition Date**”). Until the Effective Date (as such term is defined below), the Debtors continued to operate as debtors and debtors-in-possession. No Chapter 11 trustee has been appointed.

4.

Subsequent to the Petition Date, the Debtors sought and obtained authority to sell their assets (the “**Sale**”) to Prime Healthcare Foundation – Southern Regional, LLC (“**Prime**”). The Sale closed on February 1, 2016. After February 1, 2016, the Debtors engaged in no further operations or business.

5.

On June 7, 2018, the Debtors and the Official Committee of Unsecured Creditors filed the *First Amended Joint Plan of Liquidation* [Dkt. No. 934] (the “**Plan**”).²

6.

On July 26, 2018, the Court entered an order confirming the Plan [Dkt. No. 974] (the “**Confirmation Order**”). Pursuant to the Confirmation Order, the Plan became effective on September 1, 2018 (the “**Effective Date**”).

² All capitalized terms not otherwise defined herein shall have the meanings ascribed as set forth in the Plan.

7.

The Clayton General Liquidating Trust (the “**Liquidating Trust**”) was established under the Plan, and the Confirmation Order confirmed the appointment of the Liquidating Trustee to serve as the trustee of the Liquidating Trust.

8.

Pursuant to the Plan and the Confirmation Order, the Liquidating Trustee was granted the authority to, among other things, analyze all claims filed in the Debtors’ bankruptcy cases (and not already allowed by prior order of the Court) and resolve and settle any disputes relating thereto.

9.

On January 5, 2018, the Court entered the *Order Granting Motion (A) to Establish a Bar Date for Filing Proofs of Claim; (B) for Approval of Bar Date Notice and Proof of Claim Form; and (C) for Approval of Other Procedures* [Dkt. No. 859] (the “**General Bar Date Order**”). The Bar Date Order established March 12, 2018, as the deadline for all creditors, including governmental units, to file proofs of claim against any of the Debtors for general unsecured claims that arose prior to the Petition Date (the “**General Bar Date**”).

10.

Since the Effective Date, the Liquidating Trustee has pursued and resolved various avoidance actions, liquidated the remaining assets of the Liquidating Trust, analyzed all claims filed in the Case, objected to and resolved numerous disputed claims, paid all administrative claims and priority unsecured claims in full, made a 3.34% distribution to the Class 3 Claims under the Plan, and a 3% distribution to the Class 4 Claims under the Plan. Virtually all of the funds in the Liquidating Trust have now been distributed, save for certain reserves for administrative expenses.

It is possible, depending on certain events occurring, that an additional, very small distribution could be made to Class 3 Claims, but that is uncertain at this point.

11.

With regard to fees payable to the U.S. Trustee, the following chart shows the amounts Clayton General, Inc.³ and/or the Liquidating Trustee paid on account of fees accrued during 2018 and 2019, along with a calculation of those fees pursuant to 28 U.S.C. § 1930(a)(6)(A) (the “**Old Schedule**”) and a calculation of those fees pursuant to 28 U.S.C. § 1930(a)(6)(B) (the “**New Schedule**”):

Quarter	Disbursements	Calculation Under Old Schedule	Calculation under New Schedule	Amount Paid
Q1 2018	\$ 389,103.49	\$ 4,875.00	\$ 4,875.00	\$ 4,875.00
Q2 2018	\$ 107,599.39	\$ 975.00	\$ 975.00	\$ 975.00
Q3 2018	\$1,351,046.28	\$ 6,500.00	\$13,510.00	\$13,532.23 ⁴
Q4 2018	\$ 691,961.66	\$ 4,875.00	\$ 4,875.00	\$ 4,875.00
Q1 2019	\$ 187,341.71	\$ 1,625.00	\$ 1,625.00	\$ 1,625.00
Q2 2019	\$ 103,170.00	\$ 975.00	\$ 975.00	\$ 975.00
Q3 2019	\$ 72,702.73	\$ 650.00	\$ 650.00	\$ 0.00
Q4 2019	\$4,047,128.40	\$10,400.00	\$40,471.00	\$ 4,040.00
	Totals	\$30,875.00	\$67,956.00	\$30,897.23

³ The chart does not show payments made on account of the other Debtors in the Case prior to the Effective Date, as the New Schedule does not implicate such Debtors.

⁴ This number includes \$22.23 in interest charged by the U.S. Trustee, given that the U.S. Trustee contended the amount owed for Q3 of 2018 was initially underpaid by \$3,760.00. However, if the Old Schedule applies, the Debtors actually *overpaid* the fees due the U.S. Trustee by \$3,250.00 as of that point, due to a mistake the Debtors made in the U.S. Trustee’s favor with regard to the calculation of the Q3 fee under the Old Schedule.

RELIEF REQUESTED

12.

Pursuant to Section 350 of the Bankruptcy Code and Fed. R. Bankr. P. 3022, the Liquidating Trustee now requests that the Court enter a Final Decree closing the all of the cases comprising the jointly administered Case.⁵ Further, the Liquidating Trustee respectfully requests that the Court determine the amount of fees owed to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6).

BASIS FOR RELIEF

13.

The liquidation of the Debtors and distribution of their assets pursuant to the confirmed Plan has been substantially consummated within the meaning of Section 1101(2) of the Bankruptcy Code, and further administration by this Court is not required. Accordingly, entry of a Final Decree closing the Case at this time is appropriate.

14.

The Liquidating Trustee has filed all operating reports through and including the fourth quarter of 2019.

15.

Pursuant to 28 U.S.C. § 1930(a)(6), a Chapter 11 debtor is required to remit certain fees to the U.S. Trustee's office based upon the amount of disbursements such debtor makes in a calendar

⁵ As noted above, the Debtors respectfully request that the Court close the following cases: Clayton General, Inc. f/k/a Southern Regional Health System, Inc. d/b/a Southern Regional Medical Center (Case No. 15-64266), Clayton General Group, Inc. f/k/a Southern Crescent Physicians' Group, Inc. (Case No. 15-64278), Clayton General Real Estate, Inc. f/k/a Southern Crescent Real Estate, Inc. (Case No. 15-64279), Clayton General ASC, Inc. f/k/a Southern Regional Ambulatory Surgery, Inc. (Case No. 15-64280), Southlake ASC, LLLP f/k/a Southlake Ambulatory Surgery Center, L.L.L.P. d/b/a Mount Zion Surgery Center a/k/a Spivey Station Surgery Center (Case No. 15-64281), and Clayton General Services, Inc. f/k/a Southern Regional Medical Services, Inc. (Case No. 15-64277).

quarter. Prior to 2018, the schedule for the calculation of those quarterly fees was based on set fees ranging from a minimum of \$325.00 to a maximum of \$30,000.00, depending on the amount of disbursements. In 2018, the U.S. Trustee implemented the New Schedule, such that Chapter 11 debtors are now required to remit fees equal to 1% of total disbursements whenever the disbursements in a calendar quarter exceed \$1,000,000.00. Otherwise, when disbursements in a calendar quarter are less than \$1,000,000.00, the Old Schedule still applies.

16.

As the Court is likely aware, several challenges to the constitutionality of the New Schedule have been litigated in bankruptcy courts across the country, with courts split on the constitutionality of the New Schedule. *See In re Life Partners Holdings, Inc.*, 606 B.R. 277 (Bankr. N.D. Tex. 2019) (application of New Schedule to pending cases was unconstitutionally non-uniform prior to October 1, 2018, and a retroactive application of the New Schedule to cases filed prior to 2018 violates Due Process Clause); *In re Buffets, LLC*, 597 B.R. 588 (Bankr. W.D. Tex. 2019) (same); *In re Circuit City Stores, Inc.*, 606 B.R. 260 (Bankr. E.D. Va. 2019) (application of New Schedule to cases filed prior to October 1, 2018 is unconstitutionally non-uniform, but the retroactive application of the New Schedule to cases filed prior to 2018 does not violate Due Process Clause). *But see In re Exide Techs.*, 2020 WL 211400, 2020 LEXIS 58 (Bankr. D. Del. Jan. 9, 2020) (holding that the New Schedule is constitutional as to all debtors, no matter when case filed); *In re Clinton Nurseries, Inc.*, 608 B.R. 96 (Bankr. D. Conn. 2019) (same).

17.

The Court in *Life Partners* held that the New Schedule could not apply to cases that were pending as of the date the statute became effective (October 26, 2017), because “the 2017 Amendment contains no such express language making the increased fees payable regardless of

when a case is filed and regardless of when a plan is confirmed. Given the 833% increase in maximum quarterly fees under the 2017 Amendment to this same statute, the Court would expect Congress to have made its intent explicit – as it did in September 1996 – had it intended the increased fees to apply to pending cases.” *Life Partners*, 606 B.R. at 285. *See also Buffets*, 597 B.R. at 596 (“Absent clear congressional intent, the court is not to read ‘a statute substantially increasing the monetary liability of a private party to apply to conduct occurring before the statute’s enactment.’”), quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 284 (1994). *But see Exide*, 2020 LEXIS 58 at *15 (“Consequently, the Court concludes that the 2017 Amendment is not a retroactive statute because it applies only to post-enactment date disbursements of debtors in cases pending on or after the enactment date.”)

18.

The Court in *Life Partners* also held that the New Schedule is unconstitutionally non-uniform, whether the quarterly fees are viewed as a tax or as a user fee, as in the former case, the New Schedule would violate the Uniformity Clause found in Article I, § 8, Clause 1 of the U.S. Constitution, and in the latter case, it would violate the Bankruptcy Clause found in Article I, § 8, Clause 4 of the U.S. Constitution. *See Life Partners*, 606 B.R. at 286-88. This is due to the fact that the New Schedule results in Chapter 11 debtors in U.S. Trustee districts paying the higher quarterly fees regardless of when their cases were filed, whereas Chapter 11 debtors in Bankruptcy Administrator districts only pay the higher quarterly fees if their bankruptcy cases were filed on or after October 1, 2018. *Id.* *See also Buffets*, 597 B.R. at 594-95; *Circuit City*, 606 B.R. at 269-270 (if the U.S. Trustee fees are a tax, then the New Schedule violates the Uniformity Clause, and if the fees are a user fee, then the New Schedule violates the Bankruptcy Clause). *But see Exide*,

2020 LEXIS 58 at *24 (finding that the New Schedule violates neither the Uniformity Clause nor the Bankruptcy Clause).

19.

Applied in this case, if the Court adopts the reasoning in the *Life Partners*, *Buffets*, and *Circuit City* line of cases, either (a) because the New Schedule is unconstitutional due to the Uniformity Clause or the Bankruptcy Clause, or (b) because the New Schedule cannot be applied retroactively to cases filed before its enactment, then the U.S. Trustee fees in the Case have been paid in full (indeed, such fees have been overpaid by \$22.23 for interest that should never have been charged). If the Court adopts the *Exide* and *Clinton Nurseries* line of cases, then the Liquidating Trust owes the U.S. Trustee an additional \$37,081.00 for the fourth quarter of 2019. The Liquidating Trust is currently holding sufficient assets to satisfy such amount, should the Court so rule.

20.

Both the *Life Partners* and *Exide* line of cases make cogent, well-reasoned arguments that lead to their respective conclusions in those cases. However, it does seem incongruous that a Chapter 11 debtor filing in Alabama or North Carolina on July 30, 2015 (the same date the Debtors filed in this District), would not be subject to the New Schedule, whereas the Debtors would be under the *Exide* decision. To be sure, constitutional scholars can debate at length the meaning of the word “uniform” that appears in Clauses 1 and 4 of Article 1, Section 8, but from a practical, plain reading of the word, it does appear as though the New Schedule is not being applied consistently across the United States. Further, to say, as the *Exide* court does, that Congress can make a non-uniform bankruptcy law to address a “geographically isolated” problem that only occurs, in this instance, in U.S. Trustee districts, is to stretch the term “isolated” beyond all

meaning. *See Exide*, 2020 LEXIS 58 at *34. It would seem, therefore, that at the very least, application of the New Schedule to Chapter 11 cases filed prior to January 1, 2018, including this Case, is problematic from a constitutional standpoint.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court:

- 1) enter an order determining the Liquidating Trustee has paid all fees due and owing to the U.S. Trustee under 28 U.S.C. § 1930, and owes no additional amounts to the U.S. Trustee under such statute;
- 2) enter a Final Decree closing all of the cases comprising the jointly administered Case; and
- 3) grant such other and further relief as may be deemed just and proper.

This 31st day of January, 2020.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

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Counsel to the Liquidating Trustee

CERTIFICATE OF SERVICE

This is to certify that I have on this date electronically filed the foregoing *Final Report of Substantial Consummation, Request for Final Decree, and Motion to Determine Fees Payable to the United States Trustee Program* and the *Notice of Pleading, Deadline to Object and for Hearing* regarding same, using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of these documents and an accompanying link to these documents to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

Eric W. Anderson	Amy Leitch
Thomas V. Askounis	John Griff Lucas
Michael Baird	Jimmy C. Luke
Virginia B. Bogue	Brian J. Malcom
Bruce J Borrus	Mark M. Maloney
Matthew R. Brooks	Erica V. Mason
James C. Cifelli	David J. Mayo
Leia Ashlin Clement Shermohammed	John A. Medina
Kevin G. Collins	Daniel J. Merrett
Joshua G. Davis	Victor W. Newmark
Jeffrey R. Dutson	Office of the United States Trustee
Thomas Wayne Dworschak	Lisa M. Peters
Will B. Geer	Stephen S. Roach
Mark A. Gilbert	William L. Rothschild
James W. Hays	William A. Rountree
Brooke E. Heinz	Andres H. Sandoval
Leon S. Jones	Daniel Robert Schimizzi
Thomas F. Jones	Henry F. Sewell
Sharon K. Kacmarcik	Shayna M. Steinfeld
Benjamin Keck	Graham H. Stieglitz
G. Marshall Kent	Marion B. Stokes
Thomas V. Keough	Tami Wells Thomas
Benjamin S. Klehr	William E. Turnipseed
David S. Klein	Thomas R. Walker
Darryl S. Laddin	Latonia C. Williams
J. Michael Lamberth	A. Christian Wilson
Francis J. Lawall	Jeffrey C. Wisler
William J. Layng	Samuel C. Wisotzkey

This 31st day of January, 2020.

SCROGGINS & WILLIAMSON, P.C.

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