SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 7, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

OPUS MANAGEMENT GROUP JACKSON LLC, ET AL.,	**CASE NO. 16-00297-NPO JOINTLY ADMINISTERED**
DEBTORS.	**CHAPTER 11**

ORDER GRANTING MOTION *IN LIMINE* WITH RESPECT TO MOTION OF THE DEBTORS PURSUANT TO §§ 105 AND 363 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 FOR AN ORDER APPROVING SETTLEMENT AMONG CERTAIN DEBTORS, M. CHAD BARRETT, AND JOHN ADAMS, D.O.

This matter came before the Court for hearing on June 2, 2016 (the "Hearing"), on the Motion of the Debtors Pursuant to §§ 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 for an Order Approving Settlement Among Certain Debtors, M. Chad Barrett, and John Adams, D.O. (the "Settlement Motion") (Dkt. 372) filed by Opus Management Group Jackson LLC, *et al.* (the "Debtors") and the Creditor World Health Industries, Inc.'s Objection to Motion for an Order Approving Settlement Among Certain Debtors, M. Chad Barrett and John Adams, D.O. (the "WHI Objection") (Dkt. 399) filed by World Health Industries, Inc. ("WHI") in the above-referenced bankruptcy case (the "Bankruptcy Case"). Certain individuals claiming to be former shareholders of WHI (the "Former Shareholders") joined in the WHI Objection by adding their names to its signature page.

(WHI Obj. at 14). These Former Shareholders are Robert A. Durham ("Durham"); James Bennett ("Bennett"); Christopher Merriwether ("Merriwether"); Nicole Hotard ("Hotard"); and Jason Rutland ("Rutland"). In addition, Charles Stone ("Stone") filed identical documents entitled Opposition to Motion of the Debtors Pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 for an Order Approving [Settlement] Among Certain Debtors, M. Chad Barrett, and John Adams, D.O. (the "Stone Objection") in both the chapter 11 bankruptcy case of Rx Pro of Mississippi, Inc. d/b/a McDaniel Pharmacy ("McDaniel Pharmacy") (Case No. 16-00288-NPO) (Dkt. 162)[1] and in the adversary proceeding, *Adams v. Nova Medical Solutions, LLC, et al.* (Adv. Proc. 16-00012-NPO) (Dkt. 43) (the "Adams Litigation"), in which Stone is named as a defendant.

At the beginning of the Hearing, John Adams, D.O. ("Dr. Adams") presented an oral motion *in limine* (the "Motion *in Limine*") to preclude the Former Shareholders and Stone from participating in the Hearing on the ground they lacked standing. The Debtors joined in Dr. Adams' Motion *in Limine*. Dr. Adams initially raised the standing issue in his Objection to Joint Emergency Motion to Quash and for Protective Order [Dkt. #317] (Dkt. 342 at 9-12) filed on April 25, 2016. Thus, it was not a surprise to the Former Shareholders or Stone that the standing issue was raised again in connection with the Settlement Motion. After hearing the arguments of counsel for Dr. Adams, the Debtors, WHI, Durham, and Stone—and after affording all other counsel for the remaining Former Shareholders an opportunity to be heard, which they declined—the Court granted the Motion *in Limine* from the bench. This Order memorializes and supplements that bench ruling. Also, at the end of the Hearing, the Court granted the Settlement

[1] The chapter 11 case of McDaniel Pharmacy, as well as the chapter 11 cases of several other affiliated debtors, were consolidated for joint administration into the lead Bankruptcy Case of Opus Management Group Jackson LLC. (Dkt. 114).

Motion from the bench, but that ruling is set forth in a separate order. This Order relates only to the standing issue raised by Dr. Adams and the Debtors in the Motion *in Limine*. At the Hearing, Kristina M. Johnson and Robert T. Higginbotham, Jr. represented Dr. Adams; Christopher R. Maddux and Thomas M. Hewitt represented the Debtors; Clarence Webster, III and John D. Moore represented M. Chad Barrett ("Barrett"), David W. Houston, IV and Bradley B. Vance represented WHI and Durham; Jamie D. Travis, Melissa R. Heidelberg, and Angela D. Williams represented Bennett and Merriwether; William M. Vines represented Hotard; John Rocray represented Rutland; Michael J. Wolf represented Stone; and Ronald H. McAlpin and Christopher J. Steiskal represented Henry G. Hobbs Jr., Acting U.S. Trustee for Region 5.

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334(b). This matter is a core proceeding arising under 28 U.S.C. § 157(b)(2)(A) and (O). The Motion *in Limine* was presented orally on the day of the Hearing, and as an evidentiary motion, was heard at the Hearing without separate notice.

Facts

The Debtors are independent pharmacies and related companies that commenced separate chapter 11 bankruptcy cases on February 2, 2016.[2] On May 6, 2016, the Debtors filed the Settlement Motion, asking the Court to approve a proposed Settlement Agreement (the "Settlement Agreement") (Dkt. 372-1) reached by and among McDaniel Pharmacy and Rx Pro Pharmacy & Compounding Inc., d/b/a OpusRx, a Florida Corporation ("Hallandale Pharmacy"),

[2] *In re McDaniel Pharmacy*, Case No. 16-00288-NPO; *In re OpusRx, LLC*, Case No. 16-00291-NPO; *In re Estonna Management LLC*, Case No. 16-00292-NPO; *In re Hallandale Pharmacy*, Case No. 16-00294-NPO; *In re Care Rx Pharmacy Group, L.L.C.*, Case No. 16-00295-NPO; *In re World Health Jets LLC*, Case No. 16-00296-NPO; *In re Opus Management Group Jackson LLC*, Case No. 16-00297-NPO.

which are two (2) of the Debtors in this consolidated action, and Barrett and Dr. Adams. On May 31, 2016, WHI filed the WHI Objection, asserting, *inter alia*, that the Court should not approve the Settlement Agreement because: (1) it would require Barrett to breach the Barrett-WHI Master Settlement Agreement ("MSA") and (2) it would allow Dr. Adams to collaterally attack the validity of the MSA when the authority of the Debtors—McDaniel Pharmacy and Hallandale Pharmacy—to commence the Bankruptcy Case is contingent and premised on its enforceability. The Former Shareholders joined in the WHI Objection. Stone filed the Stone Objection, alleging that the proposed Settlement Agreement is "little more than a side deal designed to move substantial assets which, if [Dr.] Adams is to be believed, [Barrett] wrongfully obtained [from the Debtors, McDaniel Pharmacy and Hallandale Pharmacy], and are now being used to pay the unsecured, unliquidated claims of [Dr.] Adams, ahead of any other creditor." (Stone Obj. at 3). Dr. Adams and the Debtors raised the standing issue with respect to the Former Shareholders and Stone only, and not as to WHI, which they admitted had proper standing because of the *prima facie* validity of the Proof of Claim (Cl. 5-1) filed by WHI contemporaneously with the WHI Objection. WHI's status as a purported creditor of two (2) or more of the Debtors in the Bankruptcy Case established its standing to object to the Settlement Motion.[3]

Discussion

The sole issue raised in the Motion *in Limine* is whether the Former Shareholders and Stone have standing to object or otherwise be heard on the pending Settlement Motion. Because it is the Former Shareholders and Stone who seek to be heard, they bear the burden of establishing that they have standing to do so. *Time Warner Cable, Inc. v. Hudson*, 667 F.3d 630,

[3] Dr. Adams and the Debtors reserved their rights to object to WHI's POC.

635 (5th Cir. 2012). In considering the standing issue, the Court is "free to weigh the evidence and resolve factual disputes." *Montez v. Dep't of Navy*, 392 F.3d 147, 149 (5th Cir. 2004).

Article III of the U.S. Constitution grants jurisdiction to the federal courts only over claims that constitute "cases" or "controversies." U.S. CONST. art. III, § 2, cl. 1. "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)). The constitutional minimum standards for Article III standing are: (1) an injury-in-fact, (2) causation, and (3) redressability. *Id.* First, there must be "an injury-in-fact caused by a defendant's challenged conduct that is redressable by a court." *K.P. v. LeBlanc*, 627 F.3d 115, 122 (5th Cir. 2010) (citing *Lujan*, 505 U.S. at 560-61). Second, there must be "a causal connection between the injury and the conduct complained of" such that the injury is traceable to the challenged conduct. *Lujan*, 504 U.S. at 560. Third, "it must be likely, as opposed to merely speculative, that a favorable decision will redress the plaintiff's injury." *S. Christian Leadership Conference v. Supreme Court of the State of La.*, 252 F.3d 781, 788 (5th Cir. 2001). "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury." *LeBlanc*, 627 F.3d at 123 (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)). "Standing is not an ingenious academic exercise in the conceivable." *Lujan*, 505 U.S. at 565 (quotation & citation omitted). These constitutional requirements of standing apply to contested matters in bankruptcy cases. *City of Farmers Branch v. Pointer* (*In re Pointer)*, 952 F.2d 82, 85 (5th Cir. 1992).

There are two steps to the standing inquiry: "constitutional limits, based on the case-and-controversy clause in Article III of the Constitution; and prudential limits, crafted by the courts."

Johnson v. Deutsche Bank Nat'l Trust Co., No. 3:12-CV-3542-L, 2013 WL 3810715, at *5 (N.D. Tex. July 23, 2013). "Prudential standing relates to whether: (1) a plaintiff's grievance falls within the zone of interests protected by the statute invoked, (2) the complaint raises a generalized grievance more properly addressed by the legislature, and (3) the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties" *Id*. at n.3; *see also In re Howard*, 533 B.R. 532, 542-44 (Bankr. S.D. Miss. 2015). "Bankruptcy standing is a form of prudential standing that is more narrow and exacting than constitutional standing under Article III." *Howard*, 533 B.R. at 543.

Section 1109(b) grants any "party-in-interest" the right to be heard on any issue in a case under chapter 11. 11 U.S.C. § 1109(b). The term "party-in-interest" is not defined in 11 U.S.C. § 101, but the examples in 11 U.S.C. § 1109(b) include "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee."[4] 11 U.S.C. § 1109. Consistent with the principles of Article III standing, courts generally have interpreted party-in-interest to include any person whose pecuniary interest is directly affected by the matter at hand. *Yates v. Forker (In re Patriot Co.)*, 303 B.R. 811, 815 (B.A.P. 8th Cir. 2004); *Yadkin Valley Bank & Trust Co. v. McGee* (*In re Hutchinson)*, 5 F.3d 750, 756 (4th Cir. 1993). The Court separately applies these standing requirements to the Former Shareholders and Stone.

A. Former Shareholders

The Former Shareholders contend they are signatories to the MSA and have an interest in protecting the validity of the MSA against certain provisions of the proposed Settlement Agreement. Thus, they allege that they have met the standing requirement because they are

[4] The term "equity security holder" means the holder of an equity security of the debtor, which the Former Shareholders and Stone do not claim to be. 11 U.S.C. § 101(17).

parties-in-interest. The Former Shareholders are not listed as creditors in the Debtors' bankruptcy schedules and have not filed proofs of claim. *See* 11 U.S.C. § 101(10). Moreover, the Former Shareholders have no direct relationship with the Debtors and no direct pecuniary interest in any property of the bankruptcy estate. The Former Shareholders assert standing based on their prior ownership interests in WHI.

As previously noted, the Former Shareholders are not creditors and would not receive any distribution from the bankruptcy estate. These facts alone have been held sufficient by another bankruptcy court in this same district to preclude standing. "In determining whether a party has standing to be heard, . . . party in interest standing may depend on whether there is an interest in the distribution from the estate." *In re Delta Underground Storage Co.*, 165 B.R. 596, 598 (Bankr. S.D. Miss. 1994).

In another instructive case, *Krys v. Official Committee of Unsecured Creditors of Refco Inc. (In re Refco Inc.)*, 505 F.3d 109 (2d Cir. 2007), a group of investors in Sphinx Managed Futures Fund SPC ("Sphinx"), objected to a proposed settlement between Sphinx and the debtor, Refco Inc. ("Refco"). *Id*. at 113. The settlement, if approved, would resolve an adversary proceeding initiated by the Official Committee of Unsecured Creditors of Refco Inc. (the "Committee") to recover as a preferential transfer approximately $300 million that Sphinx had withdrawn from Refco's accounts shortly before Refco declared bankruptcy. *Id*. at 112. As part of a settlement reached between Sphinx and the Committee, Sphinx agreed to return $263 million to Refco's bankruptcy estate. *Id*. The investors of Sphinx opposed the settlement, claiming that Sphinx had colluded with Refco in negotiating the settlement and had "simply threw the fight in order to protect its own insiders, and others, from scrutiny and legal exposure." *Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors of Refco Inc. (In re*

Refco Inc.), No. 05-60006, 2006 WL 3409088, slip op at 1 (S.D.N.Y. Nov. 16, 2006), *aff'd sub nom. Krys v. Official Comm. of Unsecured Creditors (In re Refco Inc.)*, 505 F.3d 109 (2d Cir. 2007). The investors argued they were parties-in-interest under 11 U.S.C. § 1109(b) and had standing to challenge the settlement on the bases of fraud and breach of fiduciary duty. *Refco*, 505 F.3d at 119.

The Second Circuit Court of Appeals in *Refco* affirmed the district court's dismissal of the investors' objection. *Id*. The Second Circuit held that the investors did not have party-in-interest standing because the settlement affected them only indirectly. *Id*. at 120. The investors were seeking to enforce rights that belonged to Sphinx as a creditor of Refco, and party-in-interest standing does not arise when a party seeks to assert a right that is derivative of another party's rights. *Id*. at 117. Because Sphinx was a single legal entity, distinct from its investors, the Second Circuit concluded that only Sphinx could negotiate the settlement. *Refco*, 505 F.3d at 117 n.10.

Here, the Former Shareholders are even further removed from the Debtors and property of the estate than the investors of Sphinx. Whereas the Sphinx investors were creditors of a creditor of the debtor, the Former Shareholders have no such relationship traceable to the Debtors. *In re Lehman Bros. Holdings Inc.*, No. 11 Civ. 3760, 2012 WL 1057952 (S.D.N.Y. Mar. 26, 2012) (holding that a creditor of a creditor of the debtor lacked standing although the debtor's ability to pay its creditor could affect the creditor's ability to pay its creditor). "[I]t is important that a bankruptcy court is not too facile in granting applications for standing. Overly lenient standards may potentially over-burden the reorganization process by allowing numerous parties to interject themselves into the case on every issue, thereby thwarting the goal of a speedy

and efficient reorganization." *Refco*, 505 F.3d at 118 (quoting *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 850-51 (Bankr. S.D.N.Y. 1989)).

Other courts have found that adversary defendants in a bankruptcy case who are otherwise not interested parties in the administration of the bankruptcy case itself are not parties-in-interest on matters of case administration. *See, e.g.*, *In re E.S. Bankest, L.C.*, 321 B.R. 590, 597 (Bankr. S.D. Fla. 2005) (defendant in postpetition adversary proceeding lacked party-in-interest standing to prosecute a motion to convert the bankruptcy case from chapter 11 to chapter 7 or for the appointment of a trustee or examiner); *In re Sweeney*, 275 B.R. 730, 733 (Bankr. W.D. Pa. 2002) (holding that defendants in a state court action that constituted an asset of the bankruptcy estate lacked standing to object to the reopening of the bankruptcy case); *In re JMP-Newcor Int'l, Inc.*, 225 B.R. 462, 464-65 (Bankr. N.D. Ill. 1998) (holding that a non-creditor defendant in an adversary proceeding lacked standing to challenge the closing of the bankruptcy case); *In re FBN Food Servs., Inc.*, No. 93 C 6347, 1995 WL 230958, at *2 (N.D. Ill. Apr. 17, 1995) (holding that non-creditor defendant in adversary proceeding lacked standing to object to claims against bankruptcy estate); *Still v. Fundsnet, Inc. (In re Southwest Equip. Rental)*, 152 B.R. 207, 209 (Bankr. E.D. Tenn. 1992) (holding that defendants in adversary proceeding lacked standing to move to dismiss underlying bankruptcy case on the ground that the board of directors did not properly authorize it; defendants sought dismissal only to protect the payments they received before the bankruptcy from preference action).

Based on the foregoing law, the Court finds that the Former Shareholders have failed to meet their burden of establishing standing to be heard on the Settlement Motion. There is simply nothing in the record to suggest that the Former Shareholders have any pecuniary interest that could be directly affected by the approval or disapproval of the proposed Settlement Agreement.

B. Stone

Like the Former Shareholders, Stone is not a creditor of the Debtors. *See* 11 U.S.C. § 101(10). Also like the Former Shareholders, Stone has no direct relationship with the Debtors and has no direct pecuniary interest in any estate property. Stone's interest in the Settlement Agreement arises solely as a result of his status as a defendant in the Adams Litigation.

Stone's opposition to the Settlement Agreement differs somewhat from the Former Shareholders'. Relying on Dr. Adams' initial allegations in the Adams Litigation that Barrett improperly obtained assets of the Debtors, Stone contends that the Settlement Agreement moves these assets from Barrett to Dr. Adams, in effect placing Dr. Adams ahead of any other creditor. Stone admitted at the Hearing that he lacks "traditional standing" to oppose the Settlement Agreement but insisted that the Court should exercise its discretion to allow him to be heard in the interests of fairness.

Other courts have rejected standing to object to a compromise on similar facts. *See, e.g.*, *Stark v. Moran (In re Moran)*, 385 B.R. 799 (B.A.P. 6th Cir. 2008) (holding that the debtor's brother-in-law, who was not a creditor of the estate, lacked standing to object to settlement in which the bankruptcy trustee agreed to sell property of the estate to the debtor, and not to the brother-in-law, even though the brother-in-law had offered a higher price); *Andrews Davis Law Firm v. Loyd (In re S. Med. Arts Cos.)*, 343 B.R. 258, 263 (10th Cir. B.A.P. 2006) (holding that law firm did not have standing to object to settlement agreement given that the law firm's claim against the estate had been disallowed); *In re Huggins*, 460 B.R. 714, 719-20 (Bankr. E.D. Tenn. 2011) (holding that buyer of cause of action from the estate who was not a creditor of the bankruptcy estate lacked standing to object to settlement although there was a possibility that the value of the cause of action that he acquired might be negatively affected by the settlement); *In*

re Malone Props., Inc., No. 8607364SGR, 1992 WL 611459 (Bankr. S.D. Miss. June 17, 1992) (holding that insurer of debtor lacked standing to object to order lifting stay).

The Court finds that Stone's interest in the outcome of the Adams Litigation is insufficient to establish standing to oppose the Settlement Motion. The Court's conclusion that Stone lacks standing, however, is not to say that Stone's allegations against Barrett are not serious or that they lack merit. Nothing in the Settlement Agreement disturbs Stone's right to raise any defense or claim in the Adams Litigation. The Stone Objection simply is not the appropriate vehicle for addressing these allegations against Barrett.

Conclusion

The tangential interest of the Former Shareholders and Stone in the approval or disapproval of the Settlement Motion does not give rise to standing to interject themselves into this matter. Allowing them to participate in the Hearing when they have no legal interest in the distribution of the Debtors' estates and only a remote interest in the settlement, would complicate and unduly delay the Bankruptcy Case. *See Refco,* 505 F.3d at 118 (granting peripheral parties status as parties-in-interest thwarts the traditional purpose of bankruptcy laws, which is to provide reasonably expeditious rehabilitation of financially stressed debtors). Accordingly, the Court finds that the Motion *in Limine* should be granted.

IT IS, THEREFORE, ORDERED that the Motion *in Limine* is hereby granted.

IT IS FURTHER ORDERED that the joinders of the Former Shareholders in the WHI Objection and the Stone Objection are hereby overruled on the ground that the Former Shareholders and Stone lack standing.

##END OF ORDER##