

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Pd
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THE NATIONAL BENEVOLENT §
ASSOCIATION OF THE CHRISTIAN §
CHURCH (DISCIPLES OF CHRIST), *et al* §
§
Reorganized Debtors §

CASE NO. 04-50948-RBK

Chapter 11

THE NATIONAL BENEVOLENT §
ASSOCIATION OF THE CHRISTIAN §
CHURCH (DISCIPLES OF CHRIST), *et al* §

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Plaintiffs,

ADV. NO _____

v.

WEIL, GOTSHAL & MANGES, LLP

Defendant.

JURY DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs, The National Benevolent Association of the Christian Church, (Disciples of Christ) ("Plaintiffs, and certain of its affiliated entities; as Reorganized Debtors" or collectively "NBA") and file this suit against Weil, Gotshal & Manges, LLP ("Defendant" or "Weil"), and for cause of action would show as follows:

PARTIES

1. The National Benevolent Association of the Christian Church (Disciples of Christ) is a Missouri nonprofit corporation with its principal place of business at 149

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U.S. BANKRUPTCY COURT
SAN ANTONIO, TEXAS
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Weldon Parkway, St. Louis, Missouri. NBA, along with twenty-five affiliated entities, is the debtor in a Chapter 11 bankruptcy proceeding commenced on February 16, 2004 and pending in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, Case No. 04-50948 (RBK). NBA's affiliated debtor entities are: (1) Barton W. Stone Christian Home; (2) California Christian Home; (3) CHANCE, Inc.; (4) Christian Retirement Center of Longview, Texas, Inc.; (5) Christian Services for Children in Alabama, Inc.; (6) Colorado Christian Home; (7) Cypress Village, Inc.; (8) Emily E. Flinn Community, Inc.; (9) Florida Christian Center, Inc.; (10) Foxwood Springs Living Center; (11) Gateway Homes, Inc.; (12) Greater Indianapolis Disciples Housing Inc.; (13) Kansas Christian Home, Inc.; (14) Kennedy Memorial Christian Home, Inc.; (15) Lenoir, Inc.; (16) National Benevolent Foundation; (17) Oklahoma Christian Home, Inc.; (18) Patriot Heights, Inc.; (19) Ramsey Home; (20) Serra Residential Center, Inc.; (21) Southern Christian Home, Inc.; (22) St. Louis Christian Home; (23) The Olive Branch; (24) Village at Skyline; and (25) Woodhaven Learning Center (the "Debtors"). The Debtors' First Amended Joint Plan of Reorganization was confirmed on March 2, 2005 with an effective date of April 15, 2005.

2. Weil, Gotshal & Manges, LLP is a New York limited liability partnership having its principal offices at 767 Fifth Avenue, New York, New York 10153. Weil has offices in Austin, Dallas and Houston, Texas. Process may be served on its agent, Glenn D. West, at 200 Crescent Court, Suite 1300, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1334(b) as a proceeding related to NBA's Chapter 11 case referenced above. Jurisdiction is also

proper in the U.S. District Court pursuant to 28 U.S.C. §1332(a) in that the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper in this court pursuant to 28 U.S.C. §1409(a) because this is a proceeding related to NBA's Chapter 11 bankruptcy case. Venue is also proper in this case in accordance with 28 U.S.C. §1391(a) in that a substantial part of the events and omissions giving rise to NBA's claim occurred in this district.

JURY DEMAND

5. NBA demands a trial by jury as to all issues presented herein.

FACTUAL BACKGROUND

6. The NBA, a 119 year-old charitable organization is the social and health services arm of the Christian Church (Disciples of Christ). It was formed in St. Louis, Missouri in 1887 by six women in a prayer circle who wanted to help widows and orphans. It established its first home, the St. Louis Christian Home (which is still in existence as the NBA ECHO/Emergency Children's Home) in 1889. From its very modest beginnings, it ultimately grew to a large organization providing high-quality and cost-efficient care and housing to nearly 20,000 people through more than ninety facilities in more than twenty states. Its stated mission was established at its founding and has remained the same for 119 years: "Establish programs, services, or facilities for the physical, moral, intellectual and spiritual wants of those persons who may seek or need its protection or aid...."

7. The NBA has fulfilled its mission primarily by providing living accommodations and specialized care to the elderly, children, and developmentally

disabled persons. As of December 2003, it owned 11 residential facilities providing senior care, 3 residential facilities for individuals with developmental disabilities, and 4 facilities providing specialized services for children and youth. In addition, the NBA managed more than 70 adult low income residential housing projects financed by the U.S. Department of Housing and Urban Development (“HUD”). As of December 2003, it employed more than 2,500 persons.

8. The NBA is one of 11 General Administrative Units of the General Assembly of the Christian Church (Disciples of Christ) (the “Church”) serving as its division of social and health services. The Church was established in the nineteenth century and has over 800,000 members in the United States and Canada. The Church has historically supported the NBA and its mission, and members of the Church have contributed generously to the NBA. For the five years ended December 31, 2003, the NBA received an average of over \$12 million per year in contributions.

9. The NBA’s revenues were comprised of revenues from operation and management of its facilities, contributions and income from investments. Between 1999 and 2003, the NBA’s revenues ranged from \$123 million to \$145 million. In 2000, as a result of a number of factors including reduced government funding for social and health services, rapidly rising insurance costs and a weak economy, the NBA began to suffer losses. At year-end 2003, however, the NBA had assets in excess of \$365 million and a net worth of more than \$70 million.

10. Over the years, as the NBA grew, it financed new facilities with bond debt. In 2003, it had variable rate bonds outstanding in the approximate amount of \$65 million

and fixed rate bonds in the approximate amount of \$150 million. In addition, it maintained a revolving line of credit with First Bank in St. Louis.

11. In conjunction with each issue of variable rate bonds, KBC Bank N.V. had issued a letter of credit to support the payment of principal, interest and redemption premium on those bonds. The obligation of the NBA to KBC Bank and its other participant banks with respect to each letter of credit was reflected in a reimbursement agreement between the NBA and KBC Bank.

12. Almost all of the NBA debt was unsecured. However, all but one of the Debtors were members of an Obligated Group created pursuant to the terms of a Master Trust Indenture and all of the Members of the Obligated Group were jointly and severally responsible for the repayment of the NBA's bond and bank debt pursuant to the terms of Master Trust Notes issued pursuant to the Master Trust Indenture. UMB Bank served as the Master Trustee under the Master Trust Indenture. (KBC Bank, UMB Bank and First Bank are hereinafter referred to as the "Banks.>"). Under the terms of the Master Trust Indenture and the other documents evidencing the NBA's bond or bank debt, all of the bond and bank debt was cross defaulted. Thus a default with respect to any of the NBA's bond and bank debt could result in a default under all of the NBA's bond and bank debt.

13. The NBA grew rapidly in the 1990's, and its endowment and investment accounts were earning large returns from investments. These earnings helped offset losses from operations, and the NBA enjoyed a period of strong financial health. Beginning in 2000, however, the U. S. stock market suffered a prolonged and substantial decline. The NBA's invested funds were significantly affected. At the same time, various factors were causing larger than normal losses in operations. As a result, the

NBA fell into technical default of certain covenants contained in its agreements with the Banks, but the NBA did not fail to meet its payment obligations.

14. The KBC letters of credit were due to expire on September 15, 2003. If the letters were not renewed or alternate letters of credit obtained before the end of August 2003, the variable rate bonds were subject to mandatory purchase funded with draws on the letters of credit issued by KBC Bank. Upon such a mandatory purchase, the NBA would, pursuant to the terms of its reimbursement agreements with KBC Bank, then be obligated to repay to KBC Bank the entire amount drawn on the letters of credit (approximately \$65 million).

15. The NBA sought professional help to overcome its financial difficulties and assist in negotiating with the NBA's lenders. In May 2003, the NBA retained the investment-banking firm of Cain Brothers, which specialized in financing and valuation of senior living centers. Cain recommended that the NBA also retain Weil and Huron Consulting Group, Inc. Both firms were also retained in May 2003. Deryck Palmer ("Palmer") became lead counsel for the NBA, acting as partner of Weil. The NBA itself formed a Restructure Committee, comprised of certain members of its Board, to work with the professional consultants.

16. The Banks commissioned their own study of the NBA facilities and their operations. The Banks believed that the NBA's problems were caused by improper marketing and by its price structure, and could be solved with professional management assistance. Indeed, the NBA's finances were steadily improving. Even with a more than \$8.5 million increase in professional fees, losses had been reduced from \$33.4 million in 2002 to \$24.9 million in 2003. Ironically, the very professionals retained to solve the

NBA's financial problems were now exacerbating them: professional fees for 2003 were \$12 million (an increase from the NBA's historical average of around \$3.5 million), even though the professionals had not been retained until mid-year. In all likelihood, the NBA could have returned to financial health with certain changes in operations, substantially less in payments to the professionals and an agreement with the Banks to allow the changes to take effect.

17. Although the Banks were concerned about the NBA's financial condition, they had long-standing relationships with the NBA and were anxious to find a solution that would allow the financing to remain in place. Between May 2003 and February 2004, a number of meetings took place between the NBA's representatives and the Banks. From the outset, Palmer took control of all negotiations on behalf of the NBA. He immediately adopted an uncompromising attitude. Although a renewal of the KBC letters of credit and relief from defaults were essential to the NBA, Palmer took unreasonable negotiating positions and made unreasonable demands on the lenders. As a result no agreement could be reached before the KBC letters of credit expired.

18. In September 2003, following a draw on the letters of credit to fund the mandatory purchase of the variable rate bonds, KBC sought repayment from the NBA. The terms of the reimbursement agreements allowed the NBA to repay KBC in eight equal quarterly installments. However, on December 1, 2003, upon Palmer's advice and despite the fact that the NBA had almost \$60 million available in unrestricted cash and investments, the NBA defaulted on debt payments to the Banks and bondholders. Immediately following this payment default, the Banks accelerated all of the NBA's outstanding bank and bond debt and filed suit.

19. Although the Banks and the NBA representatives, led by Palmer, continued negotiations to resolve the NBA's defaults, no agreement was reached. Palmer insisted, as he had throughout negotiations, that the Banks agree to reduce the NBA's debt by as much as 40%. The NBA was a solvent organization with a substantial net worth and millions in available cash and securities. Palmer also advised that filing Chapter 11 bankruptcy was always available in the event the Banks would not meet his terms. The plan was to seek court approved debtor-in-possession ("DIP") financing to fund its operations. At the same time, Palmer proposed to seek court protection of the contributions, including unrestricted gifts. Finally, Palmer advised that obtaining debt reduction of over \$80 million was a realizable goal.

20. Palmer and Weil did not properly and fully disclose to the NBA that the plan to seek DIP financing would likely fail. The NBA had \$60 million in cash and securities, much of which was unrestricted. The DIP financing was very expensive, carrying front-end fees and other expenses that would cost the NBA as much as \$2 million in the first year.

21. Weil and Palmer also failed to fully and accurately advise the NBA that bankruptcy would be extremely expensive considering the large number of professional firms already engaged by the NBA and the professionals that would be engaged by its creditors, all at the NBA's expense. By the time the NBA decided to file bankruptcy, it had spent more than \$9 million in professional fees related to the restructuring process. Weil estimated that professional fees incurred in the bankruptcy process would be \$18 million, including those for all professionals retained by the creditors and other participants in the bankruptcy.

22. Based upon presentations made by Palmer and Weil to the NBA Board and management in January 2004, the NBA elected to file a Chapter 11 bankruptcy proceeding in San Antonio, Texas. The petition was filed on February 16, 2004.

23. The bankruptcy was a disaster for the NBA. None of its objectives were met. The Court summarily rejected the request for DIP financing, ruling that the NBA had more than adequate funds in investment accounts containing unrestricted contributions. Furthermore, the NBA had no legitimate argument to obtain a debt reduction since it was solvent at the time it entered bankruptcy and throughout the bankruptcy process. Weil never even filed a motion asking the Court to declare the charitable contributions held by the NBA as exempt from creditors' claims.

24. In June 2004, exactly four months after entering bankruptcy, and essentially out of options, the NBA reached agreement with its creditors to sell all 11 of its senior living facilities, and such other properties as necessary to pay all creditors in full, including post-petition interest. A single buyer for all 11 senior living facilities was found and the transaction closed at a price of \$210 million. In addition, the NBA sold the property of Colorado Christian Home, its central office headquarters in St. Louis and various other real estate interests. Finally, it turned over a substantial portion of its cash and investment accounts.

25. The NBA that emerged from bankruptcy in March 2005 operates only three facilities for children and two for the developmentally disabled. It has shrunk from over 2500 employees at the time it entered bankruptcy to approximately 365 at the time it emerged from bankruptcy. Its ability to carry out its mission has been all but destroyed. It holds funds restricted to the support of facilities it no longer has. It has suffered a

massive loss of donations. Indeed, as part of the confirmed bankruptcy plan, at the behest of the Texas Attorney General, the NBA has been ordered not to accept any donations from Texas residents or conduct any operations or business in Texas. The NBA was forced to give up its management of all of its HUD financed residential housing facilities and to agree that it would not be involved in the ongoing management of any HUD project.

26. These disastrous results were achieved at enormous monetary cost. The various professionals in the bankruptcy are seeking fees totaling approximately \$34 million. This includes approximately \$6.75 million to Weil (which had already received pre-petition payments from the NBA of \$3.5 million); \$3.5 million to Cain (pre-petition payments-\$1 million) and \$4.5 million to Huron (pre-petition payments-\$3.8 million). The creditors' professionals have requested payments totaling \$14 million.

FIRST CAUSE OF ACTION: NEGLIGENCE

27. Weil and Palmer failed to act as reasonably prudent attorneys in the same or similar circumstances in their representation of the NBA in at least the following particulars:

- Making unreasonable demands in negotiations with KBC Bank such that the NBA was unable to reach an agreement with KBC Bank to resolve any defaults and to renew the letters of credit, or provide alternate letters of credit;
- Making unreasonable demands in negotiations with UMB Bank such that the NBA was unable to reach an agreement with UMB to resolve any defaults under the pertinent debt instruments;

- Making unreasonable demands in negotiations with First Bank such that the NBA was unable to reach an agreement with First Bank to resolve any defaults under the line of credit debt instruments;
- Leading the NBA to believe that filing bankruptcy was a superior alternative to the terms required by the Banks to reach an agreement that would resolve the defaults and continue the bond debt and line of credit debt;
- Failing to advise the NBA that filing bankruptcy created significant risk that the NBA would have to sell most or all of its facilities.
- Leading the NBA to believe that the bankruptcy process was likely to result in a substantial reduction in the bond and bank debt;
- Advising the NBA that the Court was likely to approve DIP financing that would allow the NBA to fund operations while it reorganized;
- Advising the NBA that the bankruptcy process would protect the NBA's contributed funds from claims of creditors;
- Advising the NBA in May 2003 that the NBA could reasonably expect to obtain a restructure, in or out of court, for total fees of \$4 million to \$8 million;
- Advising the NBA in January 2004 that total professional fees for reorganization in bankruptcy would be approximately \$18 million;
- Handling the negotiations, and the bankruptcy, in such a manner as to cost the NBA extreme and outrageous fees.

28. As a direct and proximate result of these acts of negligence, or any of them, the NBA has suffered damages in the amount of unnecessary professional fees of at least \$40 million. In addition, the NBA has suffered, and will continue to suffer, a loss of

donations of several million dollars per year. The NBA has suffered other damages, including diminution of the value of the organization, all in excess of the minimum jurisdictional limits of the Court.

SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

29. Weil had fiduciary duties to the NBA. These duties include the duty of utmost honesty, good faith and full disclosure. They also include the duty to place the interests of the NBA ahead of those of Weil. Weil breached these duties in at least the following particulars:

- Charging excessive fees;
- Advising the NBA to pursue a course of action that was unfavorable to the NBA but was designed to generate excessive fees to Weil;
- Creating and continuing a fee-generating opportunity for itself and other professionals employed by the NBA, including Cain and Huron, at the expense of the NBA;
- Preventing an early resolution with the Banks in order to continue to collect fees, even though such a resolution was achievable on terms far more favorable than any outcome that could reasonably be expected from the bankruptcy process;
- Subjecting the NBA to unreasonable risk without full disclosure of those risks.

30. As a direct and proximate result of these breaches of fiduciary duties, the NBA has suffered damages in the amount of unnecessary professional fees of at least \$40 million. In addition, the NBA has suffered, and will continue to suffer, a loss of donations of several million dollars per year. The NBA has suffered other damages, including


diminution of the value of the organization, all in excess of the minimum jurisdictional limits of the Court. The conduct of Weil was done with malice, and the NBA is entitled to punitive damages as determined by the court. NBA also seeks a forfeiture of all fees paid to it by the NBA.

PRAYER

WHEREFORE, Plaintiffs request entry of judgment in its favor against Defendant for all actual damages, punitive damages, for fee forfeiture, pre-judgment and post-judgment interest as allowed by law, costs of court and for such other relief to which it may be justly entitled.

Respectfully submitted,

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