

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

**HEALTH DIAGNOSTIC LABORATORY,
INC., et al.,**

Debtors.¹¹

**RICHARD ARROWSMITH AS
LIQUIDATING TRUSTEE OF THE HDL
LIQUIDATING TRUST,**

Plaintiff,

v.

**SAS INSTITUTE, INC.
SERVE:
JAMES H GOODNIGHT, PRESIDENT/CEO
SAS CAMPUS DRIVE
CARY, NORTH CAROLINA 27513**

Defendant.

Chapter 11

Case No.: 15-32919-KRH

Jointly Administered

Adversary Proceeding No. 16-_____

COMPLAINT TO COMPEL TURNOVER OF PROPERTY TO THE ESTATE

Richard Arrowsmith, in his capacity as Liquidating Trustee of the HDL Liquidating Trust

¹¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434).

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*Counsel to Richard Arrowsmith,
Liquidating Trustee of the HDL Liquidating Trust*

(the “**Plaintiff**” or the “**Liquidating Trustee**”), appointed pursuant to the confirmed Modified Second Amended Plan of Liquidation (the “**Plan**”) of Health Diagnostic Laboratory, Inc., et al. (the “**Debtors**”), by and through his undersigned counsel, for his Complaint to Compel Turnover of Property to the Estate (the “**Complaint**”) against SAS Institute, Inc. (“**SAS**” or the “**Defendant**”) respectfully allege as follows:

JURISDICTION AND VENUE

1. On June 7, 2015 (the “**Petition Date**”), each of the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “**Bankruptcy Court**”), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the above-captioned Chapter 11 Cases (the “**Chapter 11 Cases**”). On June 9, 2015, the Bankruptcy Court entered an order authorizing the joint administration of these Chapter 11 Cases [Docket No. 42].

2. The Debtors continue to manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 16, 2015, the United States Trustee for the Eastern District of Virginia (the “**U.S. Trustee**”) appointed the statutory committee of unsecured creditors. No trustee or examiner has been appointed.

4. This Bankruptcy Court has subject matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

5. This Adversary Proceeding constitutes a core proceeding by virtue of 28 U.S.C. § 157(b)(2)(A), (E), and (O).

6. The predicates for the relief requested herein are sections 105(a) and 542(b) of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

7. The Liquidating Trustee consents to entry of final orders and judgment by the Bankruptcy Court in this Adversary Proceeding.

8. Venue is proper in this Bankruptcy Court as to the Debtors and the Liquidating Trustee under 28 U.S.C. §§ 1408 and 1409.

9. Venue is proper in this Bankruptcy Court as to SAS because a substantial part of the events or omissions giving rise to the claims asserted herein against SAS occurred in this judicial district.

PARTIES

10. Health Diagnostic Laboratory, Inc. (“**HDL**”) is a privately held company and was incorporated in the Commonwealth of Virginia.

11. Upon information and belief, SAS is a North Carolina corporation.

PROCEDURAL AND FACTUAL BACKGROUND

12. The Liquidating Trustee’s review of the Debtors’ books and records indicates that SAS is holding an advance payment from the Debtors in the total amount of \$5,999.64, representing check number 96915 dated July 2, 2015 (the “**Advance Payment**”). The Advance Payment represents monies paid by the Debtors in advance for services provided by the Defendant but which services the Debtors ceased using. The Advance Payment has been amortized as appropriate to account for any use of the services provided by the Defendant.

13. Despite demand from the Debtors and the Liquidating Trustee, SAS has refused to turn over the Advance Payment to the Debtors and/or the Liquidating Trustee.

COUNT I

Turnover of Property of the Estate Pursuant to Section 542(a) of the Bankruptcy Code

14. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 13 above as if fully set forth herein.

15. Section 542(a) of the Bankruptcy Code provides in pertinent part “an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under 363 of this title, or that the debtor may exempt under 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property” 11 U.S.C. § 542(a).

16. The Advance Payment is property of the Debtors’ bankruptcy estate(s) pursuant to section 541 of the Bankruptcy Code.

17. Accordingly, pursuant to section 542 of the Bankruptcy Code, the Defendant must turn over to the Liquidating Trustee and/or the Debtors’ bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT II
Breach of Contract

18. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 18 above as if fully set forth herein.

19. Upon information and belief, to the extent HDL has a contractual right to the return of the Advance Payment, the Defendant has breached the applicable contract(s) by failing to return the Advance Payment, thereby damaging the Debtors and/or the Debtors’ bankruptcy estate(s).

20. Accordingly, the Defendant must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT III
Conversion

21. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 20 above as if fully set forth herein.

22. The Advance Payment is property of the Debtors' bankruptcy estate(s) pursuant to section 541 of the Bankruptcy Code.

23. Upon information and belief, the Defendant has exercised dominion and control over the Advance Payment due to the Defendant's failure to turn over to the Debtors and/or the Debtors' bankruptcy estate(s) the Advance Payment.

24. Upon information and belief, the Defendant's exercise of dominion and control over the Advance Payment has deprived the Debtors and/or the Debtors' bankruptcy estate(s) of the Advance Payment.

25. Such interference has caused damage to the Debtors and/or the Debtors' bankruptcy estate(s).

26. Accordingly, the Defendant must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estate(s) the Advance Payment, plus any and all related fees, costs, and/or damages that may be proven at trial.

27. The Liquidating Trustee hereby reserves his right to supplement and/or amend this Complaint to include additional facts, theories, and/or transfers as such may be discovered during the course of this Adversary Proceeding and preserve all other claims and defenses relating to SAS.

WHEREFORE, the Liquidating Trustee respectfully requests that the Bankruptcy Court enter an Order and Judgment:

- (a) finding SAS to be in possession, custody, or control of an advance payment from the Debtors in the total amount of \$5,999.64, representing check number 96915 dated July 2, 2015;
- (b) finding such advance payment from the Debtors in the amount of \$5,999.64 to be property of the Debtors and/or property of the Debtors' bankruptcy estate(s);
- (c) finding SAS to be in breach of any applicable contract(s);
- (d) finding SAS to have converted such advance payment;
- (e) awarding the Liquidating Trustee his costs and expenses incurred in connection with this Adversary Proceeding, including reasonable attorneys' fees; and
- (f) entering judgment in favor of the Liquidating Trustee and against SAS in an amount not less than \$5,999.64, with interest accruing from the date of this Complaint at the judgment rate of interest (the "**Judgment**");
- (g) awarding post-judgment interest at the maximum legal rate running from the date of the Judgment until the date the Judgment is paid in full, plus costs;
- (h) requiring SAS to pay forthwith the amount of the Judgment; and
- (i) granting the Liquidating Trustee such other and further relief as the Bankruptcy Court deems just and proper.

Dated: June 22, 2016

Respectfully submitted,

/s/ Robert S. Westermann
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*Counsel for Richard Arrowsmith, Liquidating
Trustee of the HDL Liquidating Trust*

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS		DEFENDANTS
ATTORNEYS (Firm Name, Address, and Telephone No.)		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR		BANKRUPTCY CASE NO.
DISTRICT IN WHICH CASE IS PENDING		DIVISION OFFICE NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISION OFFICE NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE		PRINT NAME OF ATTORNEY (OR PLAINTIFF)

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, *unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

*Per LBR 7003-1, in the EDVA, a properly completed Adversary Proceeding Cover Sheet is required.