



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
RIVERSIDE DIVISION



In re:

INLAND GLOBAL MEDICAL GROUP,  
INC.,

Debtor.

RICHARD K. DIAMOND,  
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

DISNEY, LEDERHAUS &  
RODRIGUEZ,

Defendant.

Case No. RS 02-26263 PC

Chapter 7

Adv. No. RS 04-02235 PC

**MEMORANDUM DECISION**

Date: March 21, 2006

Time: 9:00 a.m.

Place: U.S. Bankruptcy Court  
Courtroom 303  
3420 Twelfth Street  
Riverside, CA 92501

Plaintiff, Richard K. Diamond, Chapter 7 Trustee ("Diamond") seeks to avoid certain alleged preferential transfers totaling \$68,377.37 pursuant to 11 U.S.C. § 547(b). Defendant, Disney, Lederhaus & Rodriguez ("Disney") asserts affirmative defenses to Diamond's preference claims under 11 U.S.C. §§ 547(c)(2) and (4). The court conducted a trial in this adversary proceeding on March 21, 2006, at which Sandor T. Boxer appeared for Diamond and Stephen R. Wade appeared for Disney. At the conclusion of trial, the matter was taken under submission. Having considered the pleadings, evidentiary record,<sup>1</sup> trial briefs and arguments of counsel, the court makes

<sup>1</sup> Having considered the Supplemental Declaration of Anna Perez in Lieu of Direct Testimony at Trial and Plaintiff's Supplemental Statement in Response To Supplemental Declaration of Anna Perez in Lieu of Direct Testimony at Trial, the court overrules Diamond's objection to Anna Perez's testimony concerning "various insurance companies or government aid programs" and Diamond's objections to Disney's Exhibits A-1 through A-23, B-1 and B-2. The court sustains Diamond's objection to Disney's Exhibit C. Exhibits A-1 through A-23, B-1 and B-2 are admitted into evidence, and Exhibit C is excluded.

1 the following findings of fact and conclusions of law<sup>2</sup> pursuant to Fed. R. Civ. P. 52, as  
2 incorporated into Fed. R. Bankr. P. 7052.

3 I. STATEMENT OF FACTS

4 On October 4, 2002, an involuntary chapter 7 petition was filed against Inland  
5 Global Medical Group, Inc. ("Inland Global"), in Case No. RS 02-26263 PC in the United  
6 States Bankruptcy Court, Central District of California, Riverside Division. An order for  
7 relief under chapter 7 was entered in the case on December 27, 2002. Diamond is the  
8 duly elected chapter 7 trustee of the bankruptcy estate of Inland Global, and has  
9 standing to pursue the causes of action alleged in the complaint filed in this adversary  
10 proceeding on behalf of such estate. At all relevant times, Disney was a medical  
11 association doing business in the state of California.

12 On or about July 8, 2002, Inland Global wrote Check # 70202 in the amount of  
13 \$11,559.84, payable to Disney dated July 8, 2002. The check was paid or honored on  
14 July 25, 2002. On or about August 8, 2002, Inland Global wrote Check # 70838 in the  
15 amount of \$17,992.52, payable to Disney dated August 8, 2002. The check was paid or  
16 honored on August 21, 2002. On or about August 21, 2002, Inland Global wrote Check  
17 # 71170 in the amount of \$38,825.01, payable to Disney dated August 21, 2002. The  
18 check was paid or honored on August 23, 2002.

19 Neither Diamond nor Disney dispute that each check was a "transfer" of funds  
20 belonging to Inland Global within the meaning of the Bankruptcy Code and other  
21 applicable laws. Nor do the parties dispute that (a) the subject transfers were made for  
22 or on account of antecedent debts owed by Inland Global to Disney before such  
23 transfers were made; (b) the subject transfers were made within 90 days before October  
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25 <sup>2</sup> To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such.  
26 To the extent that any conclusion of law is construed to be a finding of fact, it is hereby adopted as such.  
27 The court reserves the right to make additional findings and conclusions as necessary or as may be  
requested by any party.

1 4, 2002 - the date the involuntary petition was filed against Inland Global, and (c) the  
2 subject transfers enabled Disney to receive more than it would have received if the case  
3 were a case under chapter 7, the subject transfers had not been made, and Disney had  
4 received payment of such debts to the extent provided by the provisions of the  
5 Bankruptcy Code.

## 6 II. DISCUSSION

7 The court finds that it has jurisdiction over this adversary proceeding pursuant to  
8 28 U.S.C. §§ 157(b) and 1334(b), and venue is appropriate in this court under 28 U.S.C.  
9 § 1409(a). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (F) and  
10 (O).

### 11 A. Contentions of the Parties.

12 The parties do not dispute that the subject transfers constitute preferential  
13 transfers by Inland Global to Disney totaling \$68,377.37 pursuant to § 547(b). Plaintiff  
14 claims that he is entitled to recover the sum of \$68,377.37 from Disney pursuant to §  
15 547(b), together with prejudgment interest and costs of court. Disney claims that it  
16 provided services on behalf of Inland Global after the subject transfers which constituted  
17 “new value” under § 547(c)(4) in the amount of \$27,968.84, and that such new value  
18 provides a partial defense to Diamond’s preference claims. Additionally, Disney claims  
19 an affirmative defense under § 547(c)(2), arguing that the transfers were in payment of  
20 debts incurred by the debtor in the ordinary course of business, made in the ordinary  
21 course of business, and according to ordinary business terms.

### 22 B. New Value.

23 Section 547(c)(4) states that the trustee may not avoid under § 547 a transfer to  
24 or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave  
25 new value to or for the benefit of the debtor –

26 (A) not secured by an otherwise unavoidable security interest; and  
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1 (B) on account of which new value the debtor did not make an otherwise  
2 unavoidable transfer to or for the benefit of such creditor.  
3 11 U.S.C. § 547(c)(4). To prevail with the new value defense, Disney must show (a)  
4 that it gave unsecured new value to or for the benefit of the debtor; (b) after the  
5 preferential transfer; and (c) the debtor did not repay the new value by an otherwise  
6 unavoidable transfer. Mosier v. Ever-Fresh Food Co. (In re IRFM, Inc.), 52 F.3d 228,  
7 231 (9<sup>th</sup> Cir. 1995). “The ‘new value’ defense is grounded in the principle that the  
8 transfer of new value to the debtor will offset the payments, and the debtor’s estate will  
9 not be depleted to the detriment of other creditors.” Rodgers v. Schneider (In re Laguna  
10 Beach Motors, Inc.), 148 B.R. 322, 324 (9<sup>th</sup> Cir. BAP 1992), quoting In re Auto-Train  
11 Corp., 49 B.R. 605, 612 (D.D.C. 1985), aff’d sub nom., Drabkin v. A.I. Credit Corp., 800  
12 F.2d 1153 (D.C. Cir. 1986).

13 The defendant in a preferential transfer proceeding has the burden of proving  
14 any exceptions to avoidance under § 547(c). 11 U.S.C. § 547(g). See Marshack v.  
15 Orange Commercial Credit (In re Nat’l Lumber & Supply, Inc.), 184 B.R. 74, 75 (9<sup>th</sup> Cir.  
16 BAP 1995). With respect to § 547(c)(4), creditors have the burden of establishing with  
17 specificity the measure of new value given to the debtor in the exchange. See, e.g.,  
18 Official Unsecured Creditors’ Comm. v. Airport Aviation Servs., Inc. (In re Arrow Air,  
19 Inc.), 940 F.2d 1463, 1466 (11<sup>th</sup> Cir. 1991); Creditors’ Comm. v. Spada (In re Spada),  
20 903 F.2d 971, 976 (3<sup>rd</sup> Cir. 1990); Jet Florida, Inc. v. Am. Airlines, Inc. (In re Jet Florida  
21 Sys., Inc.), 861 F.2d 1555, 1559 (11<sup>th</sup> Cir. 1988). Creditors relying on § 547(c)(4) must  
22 also prove that the new value has not been repaid by an otherwise unavoidable  
23 transfer. See IRFM, 52 F.3d at 231; Nat’l Lumber, 184 B.R. at 81.

24 In support of its “new value” defense under § 547(c)(4), Disney did not offer into  
25 evidence a copy of its contract with Inland Global nor copies of any invoices itemizing  
26 the services ostensibly rendered on behalf of Inland Global. Disney’s office manager,  
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1 Anna Perez ("Perez"), who is responsible for Disney's billing and accounts receivable,  
2 testified that she was unable to locate a copy of Disney's contract with Inland Global  
3 despite due diligence. Perez did testify, however, that Disney rendered medical  
4 services to Inland Global patients on a "fee for service" basis through 2002 pursuant to  
5 a written agreement entered into between the parties in 2001. Perez further testified  
6 that invoices could not be produced because Disney periodically deletes invoices from  
7 its computer system and in lieu thereof, retains a record summary describing "among  
8 other things, the date of service, the charge for that service, and the nature of that  
9 service."<sup>3</sup>

10 Exhibits B-1 and B-2 are a summary prepared by Perez of Disney's charges for  
11 medical services rendered for the benefit of Inland Global between July 11, 2002 and  
12 August 31, 2002. Exhibits B-1 and B-2 were prepared by Perez from the record  
13 summary maintained electronically on Disney's computer system, and shows the (a)  
14 account number; (b) patient name; (c) date of service; (d) amount billed for the service;  
15 (e) amount of co-pay, if any, received by Disney, and (f) balance due for the service.  
16 Exhibits B-1 and B-2 do not state the nature of service performed nor whether the  
17 treatment was authorized by Inland Global. However, Perez testified that all of the  
18 services were performed under the contract with Inland Global. Perez further testified  
19 that Disney ceased performing services for Inland Global patients after August 20,  
20 2002.

21 According to the evidence, Inland Global delivered Check # 70202 in the amount  
22 of \$11,559.84 to Disney on or about July 8, 2002.<sup>4</sup> Between July 8, 2002 and August 8,

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24 <sup>3</sup> Perez also testified that "[a] similar summary is created and maintained in the ordinary course of  
25 business on an annual basis to track the monthly amounts owed by insurance companies and  
governmental aid programs."

26 <sup>4</sup> The "date of delivery" rule applies to check payments for purposes of § 547(c). Barnhill v. Johnson, 503  
27 U.S. 393, 402 n.9 (1992); Hall-Mark Elec. Corp. v. Sims (In re Lee), 108 F.3d 239, 241 (9<sup>th</sup> Cir. 1997).

2002, Disney continued to perform medical services for the benefit of Inland Global clients at a cost of \$67,893.44. On or about August 8, 2002, Inland Global delivered Check # 70838 to Disney in the amount of \$17,992.52. After delivery of Check # 70838, Disney continued to render medical services to Inland Global patients until August 20, 2002, at a cost of \$15,754. After terminating its services to Inland Global patients on August 20, 2002, Inland Global delivered Check # 71170 to Disney in the amount of \$38,825.01 on August 21, 2002.

Disney has established by a preponderance of the evidence and with a sufficient degree of specificity that it gave new value to Inland Global in the amount of \$27,313.84 between July 8, 2002 and August 20, 2002. Perez testified that Disney did not receive compensation for such services from Inland Global or any other person, and there is no evidence that such new value was not repaid by an otherwise unavoidable transfer. Accordingly, Disney is entitled to a new value defense in the amount of \$27,313.84 to Diamond's preference claims.

**C. Ordinary Course of Business.**

Under § 547(c)(2), a trustee may not avoid an otherwise preferential transfer to or for the benefit of a creditor to the extent that such transfer was –

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee, and

(C) made according to ordinary business terms.

11 U.S.C. § 547(c)(2). Section 547(c)(2) is comprised of a subjective test and an objective test. See Cocolat, Inc. v. Fisher Dev., Inc. (In re Cocolat, Inc.), 176 B.R. 540, 549 (Bankr. N.D. Cal. 1995). The transferee has the burden of proving the defense and must prove each of the three elements by a preponderance of the evidence. Arrow

1 Elec., Inc. v. Justus (In re Kaypro), 230 B.R. 400, 404 (9<sup>th</sup> Cir. BAP 1999), aff'd in part,  
2 rev'd in part, 218 F.3d 1070 (9<sup>th</sup> Cir. 2000).

3 Sections 547(c)(2)(A) & (B), which together form the subjective test, require a  
4 creditor to demonstrate that the debt and its payment are ordinary in relation to past  
5 practices or a prior course of dealing between the debtor and the creditor. See, e.g.,  
6 Sulmeyer v. Suzuki (In re Grand Chevrolet, Inc.), 25 F.3d 728, 732 (9<sup>th</sup> Cir. 1994); Bell  
7 Flavors & Fragrances, Inc. v. Andrew (In re Loretto Winery, Ltd.), 107 B.R. 707, 709 (9<sup>th</sup>  
8 Cir. BAP 1989); Cocolat, 176 B.R. at 549.

9 Section 547(c)(2)(A) focuses on whether the incurrence of debt was ordinary,  
10 *i.e.*, whether the debt was incurred by the debtor in the ordinary course of business.  
11 See Cocolat, 176 B.R. at 549. Section 547(c)(2)(B) requires the court to examine the  
12 following factors to determine if payment of the debt was ordinary in light of past  
13 practices between debtor and creditor: (1) the length of time the parties were engaged  
14 in the transactions at issue; (2) whether the amount or form of tender differed from past  
15 practices; (3) whether the debtor or creditor engaged in any unusual collection or  
16 payment activity; and (4) whether the creditor took advantage of the debtor's  
17 deteriorating financial condition. See Grand Chevrolet, 25 F.3d at 732; Cocolat, Inc.,  
18 176 B.R. at 549.

19 Section 547(c)(2)(C)'s objective test requires a creditor to prove that the  
20 payment was ordinary in relation to prevailing business standards. See, e.g., Bank of  
21 the West v. Anderson (In re Jan Weilert RV, Inc.), 315 F.3d 1192, 1197 (9<sup>th</sup> Cir. 2003);  
22 In re Food Catering & Housing, Inc., 971 F.2d 396, 398 (9<sup>th</sup> Cir. 1992). In other words, §  
23 547(c)(2)(C)'s objective standard requires proof of "practices common to businesses  
24 similarly situated to the debtor and the transferee." Loretto Winery, 107 B.R. at 709. It  
25 is not enough to prove what past practices were between the particular creditor and the  
26 debtor. Id. The focus of the inquiry is whether the payment practice at issue comports  
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1 with industry standards. See Jan Weilert, 315 F.3d at 1197. According to the Ninth  
2 Circuit:

3 [T]he creditor must show that the payment he received was made in accordance  
4 with the ordinary business terms in the industry. But this does not mean that the  
5 creditor must establish the existence of some single, uniform set of business  
6 terms . . . . We conclude that “ordinary business terms” refers to the range of  
7 terms that encompasses the practices in which firms similar in some general way  
8 to the creditor in question engage, and that only dealings so idiosyncratic as to  
9 fall outside that broad range should be deemed extraordinary and therefore  
10 outside the scope of [the ordinary course of business].

11 Id., quoting In re Tolona Pizza Prods. Corp., 3 F.3d 1029, 1033 (7<sup>th</sup> Cir. 1993). Section  
12 547(c)(2)(C)’s objective test requires consideration of both the creditor’s and the  
13 debtor’s industries, i.e., “the broad range of terms that encompasses the practices  
14 employed by those debtors and creditors, including terms that are ordinary for those  
15 under financial distress.” Jan Weilert, 315 F.3d at 1198 (citations omitted).

16 In this case, Disney’s ordinary course defense is based primarily upon the  
17 following testimony from Perez:

18 Although payment was due to [Disney] by Inland Global within forty-five  
19 (45) days of the rendering of services, Inland Global was habitually late on  
20 payments to [Disney]. Attached hereto, marked as Exhibits “A-1 through A-23”  
21 and incorporated herein by reference are true and correct summary of [Disney’s]  
22 Accounts Receivable (Hereinafter “A/R Summary”) in 2002. The A/R Summary  
23 was obtained through a readout from the computer system detailing the monthly  
24 amounts owed by various insurance companies and governmental aid programs  
25 in 2002. The 120 day accounts receivable figure is typically the lowest figure in  
26 the monthly 2002 summaries. This is due primarily to the fact that Inland Global  
27 ordinarily paid for services 120 days after they were rendered. This practice of  
late payment was not unique to Inland Global. During the periods of 2001 and  
2002, several other entities were regularly late in their payments to [Disney] for  
services rendered. In addition to evidencing the fact that Inland Global had a  
practice of delaying payment by 120 days, the A/R Summary shows that several  
other insurers and governmental aid programs did not ordinarily keep their  
accounts current and that late payments on services rendered was common  
practice not only with [Disney], but in the medical provider business in California  
as a whole.

28 Viewing the evidence in a light most favorable to Disney, the court finds that Disney  
29 failed to sustain its burden to establish that the transfer was made in the ordinary course  
30 of business and made according to ordinary business terms.



1 First, Disney's A/R Summary shows that Inland Global was current in April 2002.  
2 Even assuming payment by Inland Global "ordinarily" was made 120 days after services  
3 were rendered, the fact that Disney obtained a \$38,825 check from Inland Global 13  
4 days after receiving payment in August 2002 and one day after terminating all services  
5 to Inland Global patients belies the notion that Disney did not engage in any unusual  
6 collection or payment activity or take action to minimize its losses.

7 Secondly, Disney's A/R Summary does not establish that Inland Global's  
8 payments to Disney comported with industry standards for purposes of § 547(c)(2)(C).  
9 Disney's A/R Summary is incomplete in that it does not include all of Disney's accounts  
10 receivable for 2002, but appears to include only one page of the monthly accounts  
11 receivable summary for each month in 2002 - the page that identifies Inland Global's  
12 account. Disney's A/R Summary also indicates there may have been as many insurers  
13 with account balances less than 30 days old as those with balances upwards of 120  
14 days old. Furthermore, Perez did not identify the "several other insurers and  
15 governmental aid programs" nor describe the specific payment practices of such entities  
16 which formed the basis for her opinion that "late payments on services rendered was  
17 common practice . . . in the medical provider business in California as a whole."

18 Finally, Disney did not offer any expert testimony concerning the credit  
19 arrangements between other similarly situated debtors and creditors in the industry nor  
20 any expert opinion as to whether Inland Global's payment practices were consistent  
21 with what takes place in the industry. See In re Hessco Indus., Inc., 295 B.R. 372, 376  
22 (9<sup>th</sup> Cir. BAP 2003) (stating that Jan Weilert's considerable relaxation of the burden on  
23 preference defendants in proving their affirmative defenses under § 547(c)(2)(C) . . .  
24 [does] not relieve them of the requirement to proffer some evidence to sustain that  
25 burden"). Based on the foregoing, the court finds that Disney is not entitled to an  
26 ordinary course defense against Diamond's preference claims.

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CONCLUSION

For the foregoing reasons, the court will enter judgment awarding the sum of \$41,063.53 to Diamond pursuant to § 547(b), together with prejudgment interest from December 21, 2004, to entry of judgment, and costs of court. A separate judgment will be entered consistent with this opinion.

DATED: APR 05 2006

/s/  
PETER H. CARROLL  
United States Bankruptcy Judge

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In re INLAND GLOBAL MEDICAL GROUP, INC.,	CHAPTER <u>7</u>
Debtor.	CASE NUMBER RS 04-02235 PC

**NOTICE OF ENTRY OF JUDGMENT OR ORDER  
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(a)(1)(E), that a judgment or order entitled (specify): MEMORANDUM DECISION

**APR 06 2006**

was entered on (specify date):

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date):

**APR 06 2006**

Dated: **APR 06 2006**

**JON D. CERETTO**  
Clerk of the Bankruptcy Court

By:

  
Deputy Clerk

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