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‘You are the people who are stealing from you.’ The circular blame game between Steward Health and its insurer.

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Jessica Bartlett

Steward Health Care’s in-house malpractice insurer, TRACO, is asking a bankruptcy judge to force the failed hospital company to fork over tens of millions of dollars in unpaid premiums and to pay back a huge “investment” in a Utah hospital it sold.

What may be most remarkable, though, is what the recent court filings don’t say: The TRACO bosses now looking to recoup the missing millions are the same Steward executives responsible for the captive insurer’s cash squeeze.

It’s a circular blame game. At stake are tens of millions of dollars for former patients and people who were injured or wronged by the company. Hundreds of doctors who rely on TRACO for malpractice coverage could also be affected.

TRACO’s newly aggressive approach is on its face perfectly rational for an entity trying to figure out how it’s going to pay off millions of dollars in pending claims.

But the filings fail to mention that the three members of TRACO’s board — Dr. Ralph de la Torre, Dr. Michael Callum, and Rubén José King-Shaw Jr. — were also, until recently, top Steward executives.

King-Shaw is TRACO’s president and chairman.

> “You have the president and chairman of TRACO declaring that Steward Health Care owes his company $72 million on one transaction alone. But is the irony lost on everybody that Ruben King-Shaw also in the C-suite and a member of the board of Steward?” said Ken McKenna, a Florida-based

malpractice attorney who has a claim against a TRACO-insured Steward hospital. “You are the people who are stealing from you. He’s pointing at himself.”

The first of the new filings was posted to the Texas-based bankruptcy court docket just hours after the Globe Spotlight Team published in November an investigation showing how Steward had emptied TRACO’s coffers by withholding premium payments and by replacing various assets with IOUs that may now, given Steward’s financial cratering, have little or no value. The story also noted that TRACO had apparently not received anything from Steward’s 2023 sale of Davis Hospital and Medical Center in Utah, in which TRACO claimed to hold a $132 million investment.

The new memos and a lawsuit within the bankruptcy were filed by Timothy Walsh, a New York-based lawyer who first appeared in court on TRACO’s behalf in September. He did not return messages from the Globe.

Doug Rubin, a spokesman for de la Torre, sent the Globe a statement on behalf of TRACO. The statement said Callum had recommended that the insurer hire its own attorneys, which it had not previously done.

As Steward prepared to enter bankruptcy in December 2023, a new governance committee was established that had control over the company’s finances. The statement partly blamed the new committee for the insurer’s current money problems.

King-Shaw continues to draw a salary from TRACO, according to Rubin, who didn’t respond to questions about the amount. De la Torre does not receive a salary from TRACO, Rubin said.

James C. Moon, a Florida bankruptcy attorney, said it is rare to have a dispute between a health system and its “captive” insurance provider play out in bankruptcy court. A captive is essentially an in-house insurer that is typically funded by premiums collected by the company it serves. Many hospital companies use them to manage malpractice claims.

“I’ve never seen it,” said Moon, who is representing several Steward

> patients with pending malpractice claims. “This is causing a lot of issues with respect to how we navigate this in bankruptcy.”

In the new filings, TRACO flagged the 2023 sale of Davis Hospital as problematic. According to its financial statements, TRACO reported investing $132 million into the facility in 2019.

But when Steward sold the hospital in 2023, TRACO received none of the proceeds. Steward was by then struggling to pay vendors and dealing with compounding financial woes.

The recent filings say TRACO is still waiting for its cut, whose value the company estimated at $72 million. It’s not clear why the purported worth of TRACO’s stake fell so precipitously, although Steward has often paid above-market prices for hospitals.

The filings describe Steward’s failure to turn over the money from the sale “improper,” adding: “The Debtors’ failure to remit the proceeds to TRACO constitutes a breach of this fiduciary duty.”

The Globe’s recent investigation found that as Steward grew into the largest private for-profit health care company in the nation, it treated TRACO like a piggy bank. Steward used the insurer’s assets to cover its own investments, withholding premiums and replacing them with IOUs that may be uncollectible.

Those moves were orchestrated by de la Torre, King-Shaw, and Callum, according to two people with knowledge of the transactions.

As of August, TRACO faced 517 malpractice claims and listed just $3.5 million in cash. At the close of 2023, the insurer’s books showed it was owed more than $275 million, with most of the debt attributable to Steward.

In the new filings, TRACO is not demanding that Steward settle all of those debts immediately. Rather, the insurer is asking Steward to turn over $35.5 million in premium payments that should have been set aside since the beginning of the year to defend doctors from malpractice claims and pay judgments when necessary.

It is also demanding that the $72 million allegedly owed from the sale of the Davis transaction be returned to the insurer. And it is seeking an additional $1.3 million that was authorized by the courts for defense costs but has not yet been paid.

TRACO estimates it will need between $80 million and $100 million to cover its obligations to lawyers and claimants, though the amount may be far higher. Steward's attorneys have estimated that the outstanding medical malpractice claims will cost approximately $200 million.

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