

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA**

In re:	:	Chapter 11
	:	
GREATER SOUTHEAST COMMUNITY	:	Jointly Administered
HOSPITAL CORP., I, <i>et al.</i> ,	:	Case No. 02-2250
	:	Judge S. Martin Teel, Jr.
Debtors.	:	
	:	

**THE DCHC LIQUIDATING TRUST'S REPLY TO THE RESPONSE OF HCA, INC. TO  
THE EIGHTEENTH OMNIBUS OBJECTION TO POST-PETITION CLAIMS  
PURSUANT TO 11 U.S.C. § 502 AND FED. R. BANKR. P. 3007**

The DCHC Liquidating Trust (the "Trust"), by and through its undersigned counsel, hereby files this Reply to the Response of HCA, Inc. (the "Response") to the Trust's Eighteenth Omnibus Objection to Post-Petition Claims Pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007 (the "Eighteenth Omnibus Objection"), and in support, states as follows:

**INTRODUCTION**

1. Based on the new documentation and explanation provided in the Response, the Trust acknowledges that HCA's Claim (as defined below) is prepetition in nature. However, the new information in the Response also reveals that HCA's Claim is based on the rejection of the Lease (as defined below), and therefore, HCA's Claim must have been filed by February 17, 2003, in accordance with the Court-ordered 60-day bar date for any claims arising from the rejection of the Lease. HCA was served with a copy of both the rejection motion and the order setting the February 17, 2003 bar date (the "Bar Date"). HCA's Claim was filed after the Bar Date and HCA did not seek leave to file HCA's Claim out of time. Therefore, HCA's Claim should be disallowed.

## **BACKGROUND**

2. On July 14, 2008, the Trust filed its Eighteenth Omnibus Objection seeking to disallow, in whole or in part, 12 claims totaling \$1,556,712.53 because they are based on goods and services that were provided post-petition and the claims did not provide any basis showing that they constitute prepetition claims.

3. One of the 12 claims was HCA, Inc.'s ("HCA") claim against Michael Reese Medical Center Corporation in the amount of \$377,122.66 filed on May 29, 2003 ("HCA's Claim"). HCA's Claim was included in the Eighteenth Omnibus Objection because it does not provide a basis to treat it as a prepetition claim. Specifically, HCA's Claim does not contain any explanation regarding its basis and does not state that it is based on the rejection of a lease under 11 U.S.C. § 365(g)(1) and reimbursement under 11 U.S.C. § 502(e)(2).

4. Rather, HCA's Claim attaches (i) a Guaranty dated February 1, 1999 by and between Columbia/HCA Healthcare Corporation and LaSalle National Bank that guarantees Michael Reese Medical Center Corporation's obligations, as assignee of a Lease dated May 6, 1988, as amended by that certain First Amendment to Office Lease dated June 30, 1989, for space in the Annex Office Section of the building at 900 N. Michigan Avenue, Chicago, Illinois (the "Lease"), (ii) a letter from Ben A. Burns to Michael J. McKeever dated April 21, 2003 stating that "[t]his payment represents payment in full of all amounts owing under the lease through March 31, 2003" and attaching a check by HCA, Inc. made payable to "JMB/URBAN 900 DVLPMNT PRTNR LTD" dated April 17, 2003 in the amount of \$377,122.66 (the "Check"), and (iii) pages 1, 18, 19, 20 of the Lease.

5. On its face, HCA's Claim does not provide an explanation or evidence that it was based on a prepetition debt. On the contrary, the documentation provided indicates that HCA's

Claim was a post-petition claim (e.g., the Check is dated April 17, 2003 and “represents payment in full of all amounts owing under the lease through March 31, 2003”). For this reason, HCA’s Claim was included in the Eighteenth Omnibus Objection.

6. In its Response, HCA provided additional documentation and explained that the HCA Claim “is for reimbursement relative to a rejected lease” and therefore should be treated as a general unsecured prepetition claim under 11 U.S.C. §§ 365(g) and 502(e)(2). *Response* at 1-2. Specifically, HCA refers to the Debtor’s Motion to Reject the Lease (the “Rejection Motion”) (D.E. 138) (attached as Exhibit A) and Order Approving the Rejection of the Lease (the “Rejection Order”) (D.E. 154) (attached as Exhibit B) and two letters dated December 31, 2002 and March 21, 2003, respectively, detailing the amount of rejection damages. Based on this new evidence and explanation, the Trust does not dispute HCA’s Claim is prepetition in nature; however, for the reasons stated herein, HCA’s Claim should still be disallowed *in toto*.

### **LEGAL STANDARD**

7. Under Rule 3002(c)(4) of the Federal Rules of Bankruptcy Procedure, “[a] claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.” Moreover, pursuant to Bankruptcy Code section 502(b)(9), aside from certain exceptions not applicable here, the Court shall not allow any claim with respect to which “proof of such claim is not timely filed . . . .”

### **REPLY**

8. Because the new documentation and explanation in the Response show that HCA’s Claim is based on the rejection of the Lease, HCA’s Claim should be disallowed as untimely in accordance with the Bar Date set forth in the Rejection Order. The Rejection Order, dated December 19, 2002, states “that any proof of claim for damages *arising from the rejection*

of any of the Leases must be filed on or before sixty (60) days after the date of this Order, and any claims resulting from the rejection of the Leases<sup>[1]</sup> not so filed shall be forever barred from participating in the Debtors' chapter 11 cases and receiving any dividend or distribution thereon." *Rejection Order* at 2 (emphasis added). HCA was served with a copy of the Rejection Motion by the Debtors and the Rejection Order by the Court. *See Rejection Motion* at 6 ("The Debtors have served notice of this Motion on . . . the guarantor of the Master Lease."); *Rejection Order* at 4.

9. Courts have consistently held that bar dates are deadlines to which creditors must strictly adhere. *See, e.g., Trump Taj Mahal Assocs. v. Alibraham (In re Trump Taj Mahal Assocs.)*, 156 B.R. 928, 936 (Bankr. D.N.J. 1993) ("The well-established law of th[e Third] Circuit is that bar dates for filing Proofs of Claim are strictly construed."). A bar date is critical to the administration of a successful chapter 11 case and the reorganization process because it

serves the important purpose of enabling parties to a bankruptcy case to identify with reasonable promptness the identity of those making claims against the bankruptcy estate and the general amount of the claims, a necessary step in achieving the goal of a successful reorganization. . . . *Thus a bar order does not "function merely as a procedural gauntlet," . . . but as an integral part of the reorganization process.*

*In re Keene Corp.*, 188 B.R. 903, 907 (Bankr. S.D.N.Y. 1995) (emphasis added) (quoting *First Fid. Bank, N.A. v. Hooker Invs., Inc. (In re Hooker Invs., Inc.)*, 937 F.2d 833, 840 (2d Cir. 1991)). "The bar date is akin to a statute of limitations, and must be strictly observed." *Id.*; *In re The Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997) ("In short, the claims bar date operates as a federally created statute of limitations, after which the claimant loses all of her

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<sup>1</sup> The Rejection Order refers to "Leases," which includes the Lease and various Subleases entered into by Michael Reese Medical Center Corp. with respect to the Lease. Only one of the subtenants, Dr. David Ross, filed a proof of claim arising from the rejection of the Lease, and his claim was filed on January 22, 2003, within the Bar Date of February 17, 2003.

rights to bring an action against the debtor.”). Indeed, a party’s failure to assert a prepetition claim by the bar date, absent a showing of excusable neglect, renders such late claim “legally dead.” *Berger v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc.)*, 96 F.3d 687, 690 (3d Cir. 1996) (noting that bar date means “a ‘drop-dead date’ that bars all prepetition claimants who received the required notice”).

10. HCA’s Claim is subject to the Bar Date because it is based on the rejection of the Lease and the Bar Date applies to any claims “arising from the rejection” of the Lease. *See Rejection Order* at 2. Indeed, HCA acknowledged and advocated as such in its Response. *See Response* at 1-2 (“HCA’s claim is for reimbursement relative to a rejected lease.”). Moreover, as argued by HCA, it does not matter that HCA’s Claim became fixed postpetition because it was still premised upon the Lease rejection. *See Response* at 4 (“HCA’s post-petition payment to the Landlord under the pre-petition Guaranty does not change the claim’s status.”).

11. The Bar Date also applies to HCA’s Claim because the Bar Date was established after the Landlord’s rejection claim was resolved by Stipulation, indicating that the Bar Date is intended for all other claims “arising from the rejection” of the Lease and is not limited to the Landlord’s claim. As set forth in the Stipulation dated December 13, 2002 (the “Stipulation”) between the Debtors and the Urban Retail Properties Co. (the “Landlord”) (attached as Exhibit B to the Rejection Motion), the Landlord’s claims with respect to the rejection of the Lease were resolved by the Landlord agreeing to limit its claim to an administrative expense claim for the period from the Petition Date to the date of the Rejection Order and “not to assert any other claim against Michael Reese in connection with the Lease.” The Stipulation also specifically preserves the Landlord’s claims against HCA. *See Stipulation* at 3 (“nothing in this Stipulation is intended to, nor shall it be construed to be, the waiver by the Landlord of any claims it may

have against an entity or person other than the Debtors in connection with the Lease . . . including any guarantor of the Lease”).

12. In sum, pursuant to the Rejection Order, HCA’s Claim was required to be filed by the Bar Date of February 17, 2003. HCA’s Claim was filed on May 29, 2003 and therefore should “be forever barred from . . . receiving any dividend or distribution thereon.”<sup>2</sup> *Rejection Order* at 2.

WHEREFORE, the Trust respectfully requests that the Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: August 20, 2008

Respectfully submitted,

**WHITE & CASE LLP**

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<sup>2</sup> Moreover, the Trust is unaware of any facts indicating that HCA’s late filing was due to “excusable neglect” because HCA was served with a copy of the Rejection Motion and Rejection Order. *See Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 382-84, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).

**CERTIFICATE OF SERVICE**

I certify that on August 20, 2008, a copy of the foregoing pleading was sent by First Class Mail to the parties listed below.

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