

**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.	:	
	:	

**MOTION OF THE DCHC LIQUIDATING TRUST SEEKING AN ORDER  
ESTABLISHING PROCEDURES AND DEADLINES CONCERNING IRS W-9 FORMS  
AND REDISTRIBUTION OF FUNDS FROM NONRESPONDING CREDITORS**

**TO THE HONORABLE S. MARTIN TEEL, JR.  
UNITED STATES BANKRUPTCY JUDGE:**

The DCHC Liquidating Trust (the “Trust”), by and through the Liquidating Trustee (“Trustee”) and undersigned counsel, files this Motion (the “Motion”) for entry of an order in aid of distribution by establishing procedures and deadlines by which holders of currently or subsequently allowed Class 8 Patient Refund Claims and Class 10 General Unsecured Claims<sup>1</sup> entitled to a distribution, are required to complete and return an Internal Revenue Service (“IRS”) Form W-9 (“W-9 Form”) or have amounts associated with such distributions withheld and redistributed by the Trustee to unsecured creditors who have completed and returned a valid W-9 Form. The relief sought herein is consistent with the terms of the Debtors’ Second Amended Joint Chapter 11 Plan of Reorganization (“Plan”), the Confirmation Order (as defined below), applicable law and equity. In further support, the Trustee states as follows:

**BACKGROUND**

1. On November 20, 2002, Doctors Community Healthcare Corporation (“DCHC”), Greater Southeast Hospital Corp. I (“GSE”), Michael Reese Medical Center Corporation

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning assigned to them in the Debtors’ Second Amended Joint Chapter 11 Plan of Reorganization.

(“Michael Reese”), Pacifica of the Valley Corporation (“Pacifica”), Pacin Healthcare-Hadley Memorial Hospital Corporation (“Hadley,” collectively referred to along with DCHC, GSE, Michael Reese and Pacifica as the “Reorganized Debtors”) and Pine Grove Hospital Corporation of Canoga Park, California (“Pine Grove,” collectively referred to along with the Reorganized Debtors as the “Debtors”) filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. On April 2, 2004, the Court entered an order (the “Confirmation Order”) approving the Plan.

3. On April 5, 2004 (the “Effective Date”), the Plan went into effect. Pursuant to the terms of the Plan, on the Effective Date several events occurred, including the reorganization of the Debtors (with the exception of Pine Grove) and formation of the Trust and Trustee. Under the Plan, certain claims were transferred to the Trust for resolution, and other claims were retained by the Reorganized Debtors.

4. The Plan and Confirmation Order provide priority tiers and procedures for distributions, including from what source distributions would be made and limitations thereon. For example, the Plan provides for payment in full to creditors holding secured claims and administrative expenses. In addition, after accounting for prepetition secured claims, certain administrative fees and post-confirmation Trust expenses, net proceeds held by the Trustee are to be divided among the Class 9 NCFE Claim (62.5%) and Class 8 Patient Refund Claims and Class 10 General Unsecured Claims (*pro rata* for the remaining 37.5%). As set forth in Plan § 6.6(m), as modified by Confirmation Order § 2(f), distributions shall only be made in amounts of \$25 or greater.

5. Since the Effective Date, the Trust has worked diligently to assess thousands of filed and scheduled claims in these cases. The amount of the filed and scheduled claims total more than \$1.2 billion (collectively, the “Claims”). To date, the Trust has filed twenty omnibus objections and numerous individual claim objections. The Trust also has otherwise resolved myriad secured claims, administrative nonordinary course professional fee expenses, and unsecured claims totaling millions of dollars. As result of this claims resolution process, the Trust expects the total amount of allowed claims will be a fraction of the filed and scheduled claim amount. By way of example, Class 8 and 10 Patient Refunds and General Unsecured Claims, projected by the Debtors in its disclosure statement to the Plan to exceed \$87 million, now total less than \$55 million, collectively.

6. Since the Effective Date, the Trust has also worked diligently to collect and monetize the assets transferred to it under the Plan. The assets assigned to it included cash, two promissory notes from the Reorganized Debtors and causes of action held by the estates. To date, the Trust has received and distributed more than \$28 million to allowed secured claims and the Class 9 NCFE Claim. In addition, the Trust has placed funds into a reserve account for the benefit of Class 8 and Class 10 creditors, which amount, with interest, now exceeds \$17 million.<sup>2</sup>

### **REQUEST FOR RELIEF**

7. By this Motion, the Trustee seeks an order from this Court authorizing certain procedures concerning tax reporting procedures, including a 90-day deadline for holders of allowed claims anticipated to be entitled to distribution (“Claimholders”) to complete and return to the Trust an IRS W-9 Form (including their taxpayer identification number (“TIN”), which in

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<sup>2</sup> In addition to this amount, the Trust maintains a main account from which it pays secured and administrative claims and post-confirmation expenses. Unused funds now held or in the future received from that account will be distributed to the Class 9 (NCFE) Claim and Class 8 and Class 10 Claims according to the 62.5%/37.5% split.

the case of an individual is his or her Social Security Number, or claim of exemption), and if that deadline is not met, to allow the Trustee to redistribute the remaining funds not associated with a valid W-9 Form ratably to the complying Claimholders.

### **BASIS FOR RELIEF**

8. The Trust has monetized and collected most of its assets and resolved most claims, including Class 8 and Class 10 Claims. It desires to make an initial distribution to holders of allowed Class 8 and Class 10 Claims and to be in a position to close these cases as soon as a final distribution is available to be made. To achieve these objectives, the Trustee seeks authority to implement certain procedures, including establishment of a 90-day deadline for each creditor with allowed claims anticipated to be entitled to distribution to complete and return a W-9 Form. If the deadline is not met with respect to a claimholder, the Trust proposes to withhold any amounts due to that claimholder and redistribute such funds among the Claimholders who have complied with the procedures.

9. The Trust seeks this deadline and procedure in order to effectuate distributions to Claimholders as quickly and efficiently as possible. It is the experience of Trust representatives that when there is no time limit placed on the return of completed W-9 Forms, distributions are significantly delayed because many claimants fail to respond promptly. Such delay not only affects each Claimholder's own distributions, but subsequent distributions to claimholders who have completed and returned W-9 Forms, and in turn case closure. Furthermore, it is also the experience of Trust representatives that if the penalty for failing to timely return a completed W-9 Form is not forfeiture, the Trust will be saddled with numerous administrative costs associated with performing backup withholding and subjecting itself to penalties imposed by the

IRS. The procedures proposed are intended to avoid these problems and enhance recovery to creditors.

10. The Trust's Motion seeks relief consistent with law and the Plan. Plan Article VI ("Means for Implementation and Execution of the Plan") includes Section 6.6 ("The Liquidating Trust"), which, among other things, sets forth the Trust's role in implementing the Plan. Plan Subsection 6.6(n)(ii) ("Tax Reporting") provides that "[t]he Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 6.6(m)." Plan § 6.6(n)(ii)(A). This section further provides that the Liquidating Trust shall "... send to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns."<sup>3</sup> Plan § 6.6(n)(ii)(A). Although this provision suggests that the Liquidating Trustee is responsible only to instruct beneficial holders to self report, Plan Subsection 6.6(n)(ii)(C) provides that "[t]he Liquidating Trustee shall be responsible for payments, out of the Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets." Plan § 6.6(n)(ii)(C).

11. Moreover, under the Internal Revenue Code, there is a requirement to deduct and withhold for any reportable payment<sup>4</sup> if "the payee fails to furnish his TIN in the manner

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<sup>3</sup> Until 2008, Class 8 and Class 10 Claims had not been closely examined, and thus the Trust was not in a position to determine who held a beneficial interest, and thus did not have a reasonable basis to report such amounts to potential beneficiaries.

<sup>4</sup> The Trust's distributions to Claimholders constitute "reportable payments" under the Internal Revenue Code. Pursuant to I.R.C. § 3406(b)(1), a "reportable payment" means "(A) any reportable interest or dividend payment, and (B) any other reportable payment." I.R.C. § 3406(b)(1). The term "any other reportable payment" includes "any payment of a kind, and to a payee, required to be shown on a return

required.” I.R.C. § 3406(a)(1)(A); *see also* 26 C.F.R. § 31.3406(a)-1(b)(i) (“A payor of a reportable payment must deduct and withhold under section 3406 if— (i) [t]he payee of the reportable payment does not furnish the payee’s taxpayer identification number to the payor.”). As for the “manner required” set forth in section 3406 above, the Code of Federal Regulations states that “[f]or accounts, contracts, or relationships subject to information reporting under section 6041 . . . , the payee must furnish the payee’s taxpayer identification number to the payor either orally or in writing.” 26 C.F.R. § 31.3406(d)-1(d). Despite permitting payees to provide their TIN orally, fully completed and executed W-9 Forms are necessary to protect the Trust against any potential liability for a tax imposed under section 3406. *See* 26 C.F.R. § 31.3406(h)-3(e) (providing that payor cannot be held liable for a tax imposed under section 3406 if it reasonably relies on a W-9 Form provided by payee). For payees exempt from withholding, the W-9 Form is used to transmit to the payor the payee’s claim of exempt status. Thus, the proposed procedure will help ensure that the Trust is not subject to any penalties or taxes for beneficiaries, and that the amounts that would otherwise be reserved to pay such penalties would be redistributed to the Claimholders.

12. Applicable bankruptcy law also supports approval of the requested procedures. Bankruptcy Code section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Code section 1142(b) states that “[t]he court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to

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required under (A) section 6041 (related to certain information at the source) . . . .” I.R.C. § 3406(b)(3)(A). In turn, section 6041 states that “[a]ll persons engaged in a trade or business and making payment in the course of such trade or business to another person, of . . . determinable gains, profits, and income . . . of \$600 or more in any taxable year . . . shall render a true and accurate return to the Secretary . . . setting forth the amount of such gains, profits, and income . . . .” I.R.C. § 6401(a).

perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.” 11 U.S.C. § 1142(b).

13. The Trust will serve a W-9 Form request up to three times, if necessary, to ensure that each Claimholder has received sufficient notice of the procedure and the requirement to timely submit a completed W-9 Form. The Plan provides that claim distributions that are returned as undeliverable become unclaimed property and not entitled to other or further distribution on account of such claim(s) after ninety (90) days. *See* Plan § 5.3(f). Similarly, the Plan provides that claim distributions that are not negotiated within sixty (60) days also become unclaimed property and not entitled to other or further distribution on account of such claim(s) after ninety (90) days. *Id.*

14. The proposed procedure establishes a parallel track for the W-9 Form request. In the event that any W-9 Form request is returned due to an invalid address (and without a forwarding address), or if a W-9 Form is not completed and returned within ninety (90) days, the Trust requests that it may consider the corresponding claims to constitute unclaimed property. Although the Plan only requires the Trust to send distributions to the Claimholders’ then-current addresses, the Trust intends to investigate any W-9 Form request returned as undeliverable, by searching for a better address through an internet search or by calling the phone number provided on the proofs of claim, in efforts to provide the best notice of the W-9 Form request. Furthermore, even if a W-9 Form request is not returned as undeliverable with respect to a Claimholder, during the 90-day return period, the Trust will monitor its receipt of completed W-9 Forms and will send reminder letters to Claimholders who have not returned the forms, so that the Trust will have provided notice on *up to two additional occasions*, if necessary, to each unresponsive Claimholder.

15. In view of all of the above, the Trustee proposes that this Court authorize the Trust to take the following course of action with respect to the Claimholders:

- a. Within thirty (30) days of entry of an order approving these procedures, a letter in substantially the form attached hereto as Exhibit A and a W-9 Form will be mailed to each Claimholder with an Allowed Claim who is expected to receive a distribution.
- b. Any Claimholder whose Claim is currently subject to objection or has not otherwise been determined to be Allowed, but which is subsequently Allowed, and/or becomes expected to receive a distribution will be sent a copy of a letter in substantially the form attached hereto as Exhibit A and a W-9 Form within thirty (30) days of the determination of allowance and/or entitlement to distribution
- c. The letter sent to the Claimholders in accordance with (a) and (b) above, will require Claimholders to complete and return the W-9 Form, including their TIN or claim of exemption, to the Trust within ninety (90) days. The letter will state that if a Claimholder does not return a completed W-9 Form to the Trust within ninety (90) days, the Claimholder will not be entitled to receive his or her share, if any, of distributions from the Trust; failure to return a completed W-9 Form by the deadline will be deemed a waiver of the Claimholder's interests, if any, in the Trust; and if a Claimholder's interest is waived, proceeds that would have been distributed to that Claimholder will be distributed ratably to the other Claimholders who returned a completed W-9 Form pursuant to these procedures.
- d. During the 90-day return period, the Trust will monitor its receipt of completed W-9 Forms and will send reminder letters to Claimholders who have not returned



the forms, so that the Trust will have provided notice on *up to two additional occasions*, if necessary, to each unresponsive Claimholder.

- e. In the event that any letter is returned due to an invalid address (and without a forwarding address), the claim(s) will be disallowed consistent with the Plan provision concerning unclaimed funds. *See* Plan § 5.3(f).
- f. In the event that the Trust does not receive a W-9 Form or any other response from a Claimholder in the 90-day period, such Claimholder will be presumed to have supplied an invalid address, and the claim(s) will be disallowed consistent with the Plan provision concerning unclaimed funds. *See* Plan § 5.3(f).
- g. Failure to complete and return a W-9 Form within ninety (90) days will justify the Trust to expunge such Claimholder's claim(s) from the claims registry and redistribute the unclaimed funds to the complying Claimholders.

16. Similar procedures to those proposed herein have been implemented in other chapter 11 cases where liquidating trusts were appointed and tasked with making distributions. In the District of Delaware, without corresponding procedures authorized by the bankruptcy court, one liquidating trust sent a letter to creditors requesting that they return of a W-9 Form within sixty (60) days, or else the creditor would "not be entitled to receive" any distribution and would be deemed to have waived all interests in the trust. *See In re DVI, Inc., et al.*, Case No. 03-12656 (MFW) (Bankr. D. Del. Oct. 19, 2007). In the Southern District of New York, the bankruptcy court granted the liquidating trust's motion to expunge claims for failure to provide a W-9 Form. *See In re U.S. Wireless Data, Inc.*, Case No. 04-12075 (RDD) (Bankr. S.D.N.Y. Jan. 6, 2006). Unlike in *DVI* and *U.S. Wireless Data*, the Trust is requesting authority from this Court in advance, to provide sufficient notice to the Court and all affected creditors of the

proposed procedures and the penalty for non-compliance. Furthermore, the Trust is requesting an extended deadline than that requested in *DVI* – ninety days rather than sixty – to mirror the timeline set forth in the Plan for treatment of unclaimed funds.

17. The Trust does not believe the requested relief constitutes a modification of the Plan, but to the extent it does, the Trust submits that such modification is permissible given that the Plan has not been substantially consummated.

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: September 8, 2008

Respectfully submitted,

**WHITE & CASE<sub>LLP</sub>**

By: /s/ Sam J. Alberts  
 Sam J. Alberts (D.C. Bar No. 443260)  
 Jeffrey E. Schmitt (D.C. Bar No. 490013)  
 Malka S. Resnicoff (D.C. Admission Pending)  
 701 Thirteenth St., N.W.  
 Washington, D.C. 20005  
 tel.: (202) 626-3600  
 fax: (202) 639-9355

*Counsel to Sam J. Alberts,  
Trustee for The DCHC Liquidating Trust*

**CERTIFICATE OF SERVICE**

I certify that on September 8, 2008, a copy of the foregoing pleading was sent by First Class Mail to the parties listed below.

Dennis Early, Esq.  
Office of the U.S. Trustee  
115 S. Union Street  
Alexandria VA 22314

Andrew Troop, Esq.  
Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, NY 10281

Ted Berkowitz, Esq.  
Patrick Collins, Esq.  
Farrell Fritz, P.C.  
EAB Plaza  
Uniondale, NY 11556-0120

*Counsel to the Reorganized Debtors*

/s/ Malka S. Resnicoff  
Malka S. Resnicoff