

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLUMBIA**

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In re	:	
	:	Chapter 11
GREATER SOUTHEAST COMMUNITY	:	
HOSPITAL CORPORATION I, <u>et al.</u>,	:	
	:	Case No. 02-2250 (SMT)
	:	
Debtors.	:	(Jointly Administered)
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**OBJECTION OF THE REORGANIZED DEBTORS TO HUMANA'S
MOTION TO DIRECT DEBOR TO PAY CURE AMOUNTS**

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

Envision Hospital Corporation f/k/a Doctors Community Healthcare Corporation (“DCHC”), Greater Southeast Community Hospital Corporation I (“Greater Southeast”), Michael Reese Medical Center Corporation (“Michael Reese”), Pacifica of the Valley Corporation (“Pacifica”) and Pacin Healthcare-Hadley Memorial Hospital Corporation (“Hadley”), the Reorganized Debtors under the Second Amended Joint Chapter 11 Plan of Reorganization (the “Plan”) confirmed in the above-captioned cases, hereby submit their objection to the Motion of Humana Health Plan, Inc. and Humana Insurance Co. (collectively, “Humana”) to Compel Reorganized Debtors to Comply with Court Order (docket number 3516). The Reorganized Debtors respectfully represent as follows:

Preliminary Statement

1. Humana seeks entry of an order requiring the Reorganized Debtors to pay amounts due under a settlement agreement between the Reorganized Debtors and Humana whereby Michael Reese (and not the other Reorganized Debtors) agreed to assume its executory contracts with Humana and Michael Reese (and not the other Reorganized Debtors) agreed to

pay agreed upon cure amounts to Humana in monthly installments. Michael Reese ceased making installment payments under the settlement agreement because of its financial difficulties, which have resulted in closure of the hospital it operates and the commencement of a new chapter 11 bankruptcy case (the "New Michael Reese Case") in the United States Bankruptcy Court for the Northern District of Illinois. Humana's remedy is to assert its claim against Michael Reese in the New Michael Reese Case and not against the other Reorganized Debtors, who did not assume any executory contracts with Humana and have no payment obligations under the Settlement Agreement.

Background

2. On November 20, 2002 (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to an order of this Court, the Debtors' cases are being jointly administered for procedural purposes only.

3. On April 2, 2004, this Court entered an Order (the "Confirmation Order"), confirming the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization (as approved and modified by the Confirmation Order, the "Plan"). The Plan became effective according to its terms on April 5, 2004 (the "Effective Date"). The transactions contemplated by the Plan have been carried out, and the Plan has been substantially consummated.

4. The Plan, as amended by the Confirmation Order, contains procedures governing the Debtors' assumption and rejection of executory contracts and unexpired leases. Pursuant to those procedures, executory contracts and unexpired leases not specifically designated by the Reorganized Debtors as being assumed or rejected are deemed assumed. On May 11, 2004, the Reorganized Debtors served their Notice of Assumption or Rejection of Executory Contracts and Unexpired Leases (the "Notice"), thereby specifically designating

certain executory contracts for either assumption or rejection. Neither of the contracts between Michael Reese and Humana was listed in the Notice as being either assumed or rejected so that pursuant to the Plan and Confirmation Order the contracts with Humana were deemed assumed as of the Effective Date, subject to Michael Reese's right to reject them if the cure amount was fixed in an unacceptably high amount.

5. On or about August 10, 2004, Humana filed claims (the "Cure Claims") in the Debtors' cases reflecting amounts it asserted were required to be paid to cure the defaults under the contracts, specifically, Claim no. 624, reflecting a default of \$1,519,791.42 under the Participation Contract, and Claim no. 628 reflecting a default of \$176,801.25 under the Subscriber Contract (amending Claim no. 625 in the amount of \$114,110.83). Michael Reese disputed the amounts asserted in the Cure Claims.

6. After protracted negotiations, the Reorganized Debtors entered into a Settlement Agreement with Humana, dated February 13, 2007, to resolve the Cure Claims, any other claims filed in these cases by Humana and the status of the contracts in accordance with the terms and Settlement Agreement. The Settlement Agreement provides for, among other things, (i) *Michael Reese* (defined in the Settlement Agreement as the "Hospital") to pay \$300,000 to Humana in 24 equal monthly installments; Settlement Agreement, ¶ 3; (ii) for Michael Reese to file a motion for authority to assume the contracts, *id.*, ¶ 1; and (iii) for Humana to withdraw the Cure Claims and any other claims it has filed in the Debtors' cases, *id.*, ¶ 4.

7. The Reorganized Debtors and Humana subsequently entered into a stipulation which was "so-ordered" by the Court on April 1, 2007 (docket entry # 3090) upon motion of the Reorganized Debtors. Pursuant to the so-ordered stipulation (the "Approval Stipulation"), the Settlement Agreement was approved by the Court and "Michael Reese is

deemed to have assumed the Contracts on the terms and conditions stated in the Settlement Agreement”.

8. On September 28, 2008, Michael Reese commenced the New Michael Reese Case in the United States Bankruptcy Court for the Northern District of Illinois (the “Illinois Bankruptcy Court”), Case No. 08-25811. A copy of the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines issued by the Illinois Bankruptcy Court in the New Michael Reese Case is annexed hereto as Exhibit “A”.

9. In November 2008, counsel for Humana contacted representatives of the Reorganized Debtors regarding amounts due under the Settlement Agreement. Contrary to paragraph 13 of the Motion, which suggests that Humana received no response to its inquiries, the Reorganized Debtors responded through counsel that collection efforts against Michael Reese were stayed on account of the automatic stay in effect in the New Michael Reese Case and that none of the other Reorganized Debtors were responsible for the obligations undertaken by Michael Reese under the Settlement Agreement.

ARGUMENT

Humana Cannot Proceed Against Michael Reese in this Court

10. Pursuant to Section 362(a) of the Bankruptcy Code, the filing of the New Michael Reese case resulted in the imposition of an automatic stay against all acts and proceedings to recover debts from Michael Reese. For this reason, Humana's motion is stayed and/or void *ab initio* to the extent Humana is proceeding against Michael Reese.

The Relief Sought by Michael Reese Must be Brought via an Adversary Proceeding

11. To the extent that Humana seeks relief from the other Reorganized Debtors, Humana must seek such relief by way of an adversary proceeding rather than by motion. Under Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), proceedings "to recover money or property" are adversary proceedings governed by the rules set forth in Part VII of the Bankruptcy Rules. As the gravamen of the relief requested by Humana is an order "[d]irecting the Reorganized Debtors to pay \$100,000 . . .", its motion is a proceeding to recover money that must be commenced by the filing and service of a summons and complaint. See *In re Stone*, No. 92-01383, 97-0034, 1998 WL 1819081 * 3 (Bankr. D.D.C., Nov. 4, 1998) (Rule 7001 "generally requires an adversary proceeding to be commenced if the proceeding is one to recover money or property . . .").

Michael Reese is the only Reorganized Debtor with Payment Obligations under the Settlement Agreement

12. DCHC, Hadley, Greater Southeast and Pacifica are not liable for any amounts owed under the Settlement Agreement because, under the plain language of the Settlement Agreement, the only party with payment obligations is Michael Reese, the Debtor that assumed the contracts with Humana. See *Mittal Steel USA ISG, Inc. v. Bodman*, 435 F.

Supp.2d 106, 109-110 (D.D.C. 2006) (explaining that under law of the District of Columbia,¹ plain meaning of a contract is determined by language used in written agreement; if language is unambiguous, court should interpret the contract solely on the basis of that language).

13. Paragraph 3 of the Settlement Agreement provides: “The Hospital agrees to pay Humana the Settlement Amount in 24 equal monthly payments of \$12,500 . . .” The term “Hospital” is defined in the preamble of the Settlement Agreement which reads as follows:

Humana Health Plan, Inc. and Humana Insurance Company (together, "Humana") and the Reorganized Debtors, including Reorganized Michael Reese Medical Center Corp. (the "Hospital"), having determined to resolve the issues between them and to preserve their long-standing relationship, stipulate and agree as follows:

The parenthetical defining the term “Humana” indicates by inclusion of the word “together” that it refers to both Humana Health Plan, Inc. and Human Insurance Company, the names that preceded it. In contrast, the parenthetical defining the term the “Hospital” does not include the word “together”, signifying that the parenthetical refers only to the name that immediately preceded it—Reorganized Michael Reese Medical Center—and not to the title “Reorganized Debtors” appearing earlier in the preamble.

14. Defining Hospital to mean only Michael Reese and not the other Reorganized Debtors is consistent with the Approval Stipulation, which identifies Michael Reese as the Debtor that assumed the contracts with Humana. *See* Approval Stipulation, second ordered paragraph (“Michael Reese is deemed to have assumed the Contracts on the terms and conditions stated in the Settlement Agreement”).

¹ The Settlement Agreement does not contain a choice of law provision. The Reorganized Debtors refer to the law of the District of Columbia only because the Court is located within the District of Columbia. The Reorganized Debtors do not believe the cited statement of law regarding contract interpretation would be any different under the law of other jurisdictions, for instance, the State of Illinois.

15. The Settlement Agreement unambiguously identifies Michael Reese, and no other, as the party obligated to make cure payments to Humana. Defining “Hospital” to mean only Michael Reese is consistent with the facts that the contracts being assumed were between Humana and Michael Reese and that only Michael Reese assumed those contracts. It is logical for Humana to look only to Michael Reese for payment since Humana provided its services only to Michael Reese and not to the other Reorganized Debtors. Under these circumstances, there is no basis for determining that DCHC, Hadley, Greater Southeast and Pacifica are liable to Humana under the Settlement Agreement. The naming of the other Reorganized Debtors as parties to the Settlement Agreement is mere surplusage.

The Reorganized Debtors Have not Violated any Orders of the Court

16. Humana’s request for this Court to compel the Reorganized Debtors to comply with the Approval Stipulation must be denied because the Reorganized Debtors have complied with the Approval Stipulation in all respects. The Approval Stipulation provided for approval of the Settlement Agreement by the Court and for the deemed assumption of Michael Reese’s contracts with Humana “on the terms and conditions stated in the Settlement Agreement”. The Approval Stipulation does not order the Reorganized Debtors to make any payments to Humana. Rather, Michael Reese agreed via a settlement agreement to make certain payments and that settlement agreement was approved by the Court. Even if Humana’s interpretation of the Settlement Agreement is correct such that Reorganized Debtors other than Humana are determined to be responsible for the payments provided in the Settlement Agreement, the obligation is solely contractual and not based upon any order of the Court.

The Settlement Agreement does not Provide for Interest or Costs and Fees

17. Finally, Humana's request for "interest on arrearages and reimbursement of its fees and costs of bringing this Motion" must be denied because the Settlement Agreement does not provide those remedies.

WHEREFORE, the Reorganized Debtors respectfully request the Court to deny all relief requested in the Motion and to grant the Reorganized Debtors all other relief to which they are justly entitled.

Dated: December 30, 2008

/s/ John H. Thompson

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