UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	:	
GREATER SOUTHEAST COMMUNITY	:	Chapter 11
HOSPITAL CORPORATION I, et al.,	:	
Reorganized Debtors.	:	Case No. 02-2250 (SMT)
	:	(Jointly Administered)
	:	

HUMANA'S REPLY TO OBJECTION OF REORGANIZED DEBTORS TO MOTION TO COMPLY WITH COURT ORDER

Humana Health Plan, Inc. and Humana Insurance Company (together, "Humana") respectfully replies to the Reorganized Debtors' Objection to its Motion to Compel Reorganized Debtors to Comply with Court Order (the "Objection") as follows:

I. Humana's Motion is Properly Before the Court

The Reorganized Debtors argue that Humana's requests should have been brought by an adversary proceeding. In support of this contention, they cite one case, *In re Stone*, 1998 WL 1919081. *Stone* is an unpublished case, of no precedential value. See Circuit Rule 32.1 of the Court of Appeals for District of Columbia (permitting citation of unpublished decision issued on or after January 1, 2007)

More important, *Stone* is not relevant. The cited language is simply dicta stating that, generally, if a proceeding seeks turnover, it should be brought by adversary complaint. *Stone* has no greater relevance than do the cases that lead to the opposite conclusion. See, for example, *In re Penberthy*, 211 B.R. 391 (Bankr. W.D. Wa. 1997) (creditor's motion to compel payment resolved without discussion on the method of proceeding).

II. The Reorganized Debtors Are Parties to the Settlement

The Reorganized Debtors' merits argument is no stronger than their procedural argument. They attempt to convince the Court that, all evidence to the contrary, Michael Reese is the sole obligor.

In support of this position, the Reorganized Debtors provide only one piece of evidence – that in the preamble to the Settlement Agreement the two Humana entities were defined as (together, "Humana"), but there was no "together" in the definition of the Reorganized Debtors, so the defined term, "Hospital" refers to the closer of the two terms, "Michael Reese", and not the "Reorganized Debtors".

The Reorganized Debtors are grasping at straws. Admittedly, the sentence upon which their argument rests is less than lucid, and if it were standing alone, might make the identity of "Hospital" ambiguous. But it is not standing alone. The Settlement Documents provide an abundance of evidence that liability for

payment was knowingly accepted by the Reorganized Debtors.[1] Consider the following:

- The Stipulation is between the **Reorganized Debtors**, Humana Health Plan, Inc. and Humana Insurance Company.
- The introductory paragraph of the Stipulation states that it is between "**the Reorganized Debtors, on the one hand**, and Humana Health Plan, Inc. and Humana Insurance Company (collectively, **"Humana"), on the other hand**." Michael Reese is not a party to the Stipulation.
- The Stipulation has two signatures, one by "Attorneys for Humana" and the other by "**Attorneys for the Reorganized Debtors**". There is no signature for Michael Reese.
- The Settlement Agreement is between Humana Health Plan, Inc. and Humana Insurance Company and the **Reorganized Debtors, including** Reorganized Michael Reese Medical Center Corp. "Including" requires a group of more than one; Michael Reese is only one of the Reorganized Debtors.
- The Settlement Agreement has three signatures, one for each of the Humana entities and one for all the **Reorganized Debtors**. There is no separate signature for Michael Reese. The Humana entities are treated as distinct; by contrast, the Reorganized Debtors are treated as a unit.
- The Motion requesting Court Approval ("Motion for Approval") is entitled Motion for Court Approval of Stipulation between **Reorganized Debtors, Humana Health Plan, Inc. and Humana Insurance Company**.
- The Motion for Approval was drafted, filed, and presented by the **Reorganized Debtors** and signed by **"Attorneys for the Reorganized Debtors"**. Michael Reese brought no motion.

In light of the many references to the Reorganized Debtors and the lack of any reference to Michael Reese as a party distinct from the other debtors, the

---

[1] Although all the documents are part of the case record, for the sake of convenience Humana attaches the Stipulation, which attaches the Settlement Agreement as an exhibit, and the Motion for Approval as **Exhibits A** and **B** respectively. Collectively, these documents are defined as the "Settlement Documents".

single sentence that the Reorganized Debtors rely on cannot be read to have the meaning they urge on the Court.

The Reorganized Debtors fail to address the most obvious question – Why, if they did not intend to be bound, did they sign the Settlement Agreement, the Stipulation, and the Approval Motion? Why does the caption of each of these Settlement Documents state that the parties to the settlement are Humana Health Plan, Inc., Humana Insurance Company and the Reorganized Debtors? It is basic contract law that "each part of a contract was inserted deliberately and for a purpose consistent with the overall intention of parties". *M.S. Distributing Co. v. WEB Records, Inc.*, 2003 U.S. Dist. LEXIS 13297 (N.D. Il) *10-11. This principle applies as much to the names of the parties as to other contract terms.

The fact is, the Reorganized Debtors' signature on the relevant documents establishes that they did intend to be bound.

> Where two or more parties to a contract promise the same performance to the same promissee, they incur a joint duty. *Restatement (Second) of Contracts* §§ 288, 289 (1981).
>
> The inference [of the joint and several liability of two signing entities] is not defeated by the fact that it appears either in the terms of the contract or from the circumstances of the transaction, that each promisor is to contribute separately to the entire result for which they bargain. 4 *Corbin on Contracts* § 928, at 716 n. 30; 2 *Williston on Contracts* § 316 at 543.

The use of the singular word form does not change this. "A promise in the first person singular, signed by several persons, creates joint and several duties." *Restatement (Second) of Contracts* § 289. It is

obvious, in other words, that a party's signature on a contract will overcome a single drafting inconsistency.

The Reorganized Debtors use the fact that Michael Reese alone assumed the Humana contracts to buttress their argument. This misses the point. Humana has never disputed that its contracts were with Michael Reese, and only Michael Reese. Nor has Humana ever denied that Michael Reese is a corporation distinct from the other Reorganized Debtors. Humana's position is simply that the Reorganized Debtors are a party to the Settlement Agreement and the Stipulation, Michael Reese is included only as one of the Reorganized Debtors, and it is the Reorganized Debtors that are liable under the terms.

III. The Reorganized Debtors Are Estopped From Denying Liability

"The essence of equitable estoppel is one party's reasonable reliance 'on its adversary's conduct in such a manner as to change his position for the worse.'" *K-Com Micrographics, Inc. v. Neighborhood Economic Development Corp. (In re K-Com Micrographics, Inc.)*, 159 B.R. 61, 66 (Bankr. D.C. 1993) (Teel, J.), citing *Heckler v. Community Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 59 (1984).

There are four elements to equitable estoppel – false representation, a purpose to invite action by the person to whom the representation was made, ignorance of the true facts by that party, and reliance. False representation may be inferred from the acts of the party to be estopped. The purpose to invite

action is satisfied if the party to be estopped acted in a way that the aggrieved party could reasonably believe the false statement, whether or not the party to be estopped actually intended this belief. *Id.* at 69, all internal citations omitted.

Even if the Court were to find that the Reorganized Debtors are not parties to the Settlement Agreement and Stipulation, they must, under the rules of equity, be estopped from denying liability to Humana. Humana never received a penny from Michael Reese. Every payment came from Envision Hospital (or its predecessor) on behalf of the Reorganized Debtors. Copies of the checks Humana received are attached as **Exhibit C**. Whether or not the Reorganized Debtors intended to deceive Humana, these checks along with the Reorganized Debtors' numerous signatures on the Settlement Documents (discussed above) allowed Humana to believe that the Reorganized Debtors were making the payments and were liable for all payments remaining.

The declining status of Michael Reese was well known and its bankruptcy filing anticipated long before its September 28, 2008 petition date. Had Humana believed that only the financially troubled Michael Reese was liable on the Settlement, it would have acted more quickly when the payments stopped. Instead, reasonably relying on payment from the Reorganized Debtors and the wording of the Settlement Documents, Humana chose not to expend unnecessary funds on protecting itself at the first sign of trouble. Humana has

been prejudiced by this reliance, and the Reorganized Debtors are accordingly estopped from denying their obligation to pay.

For these reasons, Humana requests that the Court grant the relief requested in its Motion to Compel Reorganized Debtors to Comply with Court Order.

Humana Insurance Company, Humana Health Plan, Inc., Humana HealthChicago Insurance Company, Humana HealthChicago, Inc.

/s/ Frank S. Swain
One of their Attorneys

Jessica Tovrov
Tovrov Law Offices LLC
105 West Madison Street
Suite 400
Chicago IL 60602
Tel: 312.252.7362
Fax: 312.268.2535

Frank Swain (DC Bar 427792)
Baker and Daniels, LLP
1050 K Street N.W.
Suite 400
Washington DC 20001
Tel: 202.312.7440
Fax: 202.312.7441

CERTIFICATE OF SERVICE

I, Frank Swain, Esq. of Baker & Daniels LLP, 1050 K Street NW, Washington, DC, hereby certify that on the 7th day of January 2009, I served a copy of the HUMANA'S REPLY TO OBJECTION OF REORGANIZED DEBTORS TO MOTION TO COMPLY WITH COURT ORDER filed in this proceeding, by facsimile and by first class mail upon:

Andrew M. Troop, Esq.
CADWALADER, WICKERSHAM & TAFT LLP
One World Financial Center
New York, NY 10281

Peter M. Friedman
John H. Thompson
CADWALADER, WICKERSHAM & TAFT LLP
1201 F Street, NW
Washington, D.C. 20004

Sam J. Alberts
Jeffery E. Schmidt
WHITE & CASE, LLP
701 13th Street, NW
Washington, D.C. 20005

Ted A. Berkowitz,
Patrick Collins
FARRELL FRITZ, P.C.
1320 RexCorp. Plaza
Uniondale, NY 11556

Dennis Early
Office of the United States Trustee
115 South Union Street
Suite 210
Alexandria, VA 22314

Date: January 7, 2009

Humana Insurance Company, Humana Health Plan, Inc., Humana HealthChicago Insurance Company, Humana HealthChicago, Inc.

/s/ Frank S. Swain
One of their Attorneys

Frank Swain (DC Bar 427792)
Baker and Daniels, LLP
1050 K Street N.W.
Suite 400
Washington DC 20001
Tel: 312.252.7362
Tel: 202.312.7440
Fax: 202.312.7441