

**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 AMENDMENT OF ORDER CONCERNING IRS W-9 FORMS AND
REDISTRIBUTION OF FUNDS FROM NONRESPONDING CLASS 8 AND 10
CREDITORS TO RESPONDING CLASS 8 AND 10 CREDITORS (DOCKET NO. 3496)**

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

The DCHC Liquidating Trust (the “Trust”), by and through the DCHC Liquidating Trustee (“Trustee”) and his undersigned counsel, files this motion (the “Motion”) to establish procedures to amend an Order of this Court entered on October 27, 2008 [Docket No. 3496], to modify existing procedures, including to clarify the applicability to *all* Claimholders (as defined below) of the authorized procedures and deadlines by which holders of currently or subsequently allowed Class 8 Patient Refund Claims and Class 10 General Unsecured Claims¹ 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 (the “Plan”), the Confirmation Order (as defined below), applicable law and equity. In further support, the Trustee states as follows:

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

BACKGROUND

A. Commencement of the Chapter 11 Cases

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

B. The Plan

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. As set forth in Plan, as modified by the Confirmation Order, distributions shall only be made in amounts of \$25 or greater. *Plan* at § 6.6(m); *Confirmation Order* at § 2(f). Therefore, claimholders with distributable claim amounts of less than \$25 shall not receive distributions.

C. Authorized W-9 Procedures

5. By motion dated September 8, 2008 (the “W-9 Procedures Motion”) [Docket No. 3445], the Trustee sought authority to implement certain procedures concerning tax reporting procedures, including a 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 tax identification number (“TIN”), which in 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 (the “W-9 Procedures”). At the time, although the Trustee understood that the W-9 Forms may only be required of Claimholders holding allowed claims in an amount of at least \$600, out of an abundance of caution, the Trustee sought that the W-9 Procedures apply to all Claimholders regardless of the amount of the allowed claim.

6. On October 3, 2008, a hearing was held on the W-9 Procedures Motion (the “W-9 Procedures Hearing”). At the W-9 Procedures Hearing, the Court expressed concern that the W-9 Procedures apply to Claimholders holding allowed claims of less than \$600 (the “Under \$600 Claimholders”) given the Trustee’s explanation that the Trust should not be penalized if it fails to report accurate TIN’s on account of such Under \$600 Claimholders. Accordingly, at the Court’s request, the Trustee submitted a revised order which made the W-9 Procedures applicable only to holders of allowed claims in the amount of \$600 or more. By order entered October 29, 2008, the Court granted the W-9 Procedures Motion, as modified (the “W-9 Procedures Order”) [Docket No. 3496].

7. The W-9 Procedures included sending the Claimholders a letter (the “W-9 Letter”) requiring Claimholders to complete and return the attached W-9 Form, including their

TIN or claim of exemption, to the Trust within ninety (90) days. The W-9 Letter stated that (i) if a Claimholder does not return a completed W-9 Form to the Trust within ninety (90) days (the “W-9 Submission Deadline”), the Claimholder will not be entitled to receive its share, if any, of distributions from the Trust; (ii) 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 (iii) 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 the W-9 Procedures (the “Redistribution Procedures”). The W-9 Letter was mailed to all Claimholders on November 17, 2008. The corresponding W-9 Submission Deadline was fixed as February 16, 2009. A second W-9 letter was sent to all Claimholders that had not yet returned a completed W-9 Form on January 9, 2009. A third and final W-9 letter was sent to all Claimholders that had not yet returned a completed W-9 Form on February 5, 2009.

8. On January 12, 2009, the Trust mailed W-9 letters to 21 Claimholders with respect to claims that were allowed after the original mailing on November 17, 2008. These Claimholders had until April 13, 2009 to return their executed W-9 forms.

9. With respect to certain Claimholders, service of the W-9 letters was subsequently returned as undeliverable. The Trust researched and located alternative addresses for 469 of such Claimholders. The Trust resent W-9 letters to these Claimholders at their respective alternative addresses on January 26, 2009, and they had until April 27, 2009 to return their executed W-9 forms.

10. All deadlines for Claimholders to return completed W-9 Forms have now expired.

11. To date, the Trust has received completed W-9 Forms from approximately 1965 of the approximately 2980 Class 8 and Class 10 Claimholders that were sent such forms, with

allowed claims totaling roughly \$41 million. With respect to the Under \$600 Claimholders, the 1098 Under \$600 Claimholders were each sent W-9 Letters. 638 of the 1098 Under \$600 Claimholders returned completed W-9 Forms.

D. Interim Distributions

12. To date, the Trust has made distributions to about 1835 Claimholders based on allowed claims in the amount of roughly \$41 million through four interim distributions.

13. On December 3, 2008, the Trust filed its Motion to Fix Claims and Make a First Distribution (the “First Distribution Motion”) [Docket No. 3512] requesting authorization to make a first distribution to the approximately 500 Claimholders that returned completed W-9 Forms by the date of the First Distribution Motion (the “First Distribution”). The Court entered an order approving the First Distribution Motion on December 18, 2008 (the “First Distribution Order”) [Docket No. 3536]. The Trust distributed funds equal to a 30% *pro rata* distribution for the First Distribution, and held back sufficient funds to cover any unexpected contingencies that may subsequently arise with respect to the Class 8 and 10 claim pool, and to satisfy those claims relating to Class 8 and 10 Remaining Claimholders that have not yet completed and returned their W-9 Forms, but may do so before their respective deadline. The First Distribution was made pursuant to the First Distribution Order on December 19, 2008, and included the payment of \$1,782,256.11 based on allowed claims in the amount of \$5,942,436.71.

14. On December 23, 2008, the Trust filed its Motion to Fix Claims and Make a Second Distribution (the “Second Distribution Motion”) [Docket No. 3541] requesting authorization to make a second distribution to the 314 Claimholders that returned completed W-9 Forms by the date of the Second Distribution Motion (the “Second Distribution”). The Court entered an order approving the Second Distribution Motion on January 9, 2009 (the “Second

Distribution Order”) [Docket No. 3554]. As with the First Distribution, the Trust paid the Second Distribution claims at 30%. The Second Distribution was made pursuant to the Second Distribution Order on January 15, 2009, and included the payment of \$2,525,131.12 based on allowed claims in the amount of \$8,417,615.58.

15. On January 16, 2009, the Trust filed its Third Motion to Fix Claims and Make an Interim Distribution (the “Third Distribution Motion”) [Docket No. 3561] requesting authorization to make a distribution to the approximately 183 Claimholders that returned completed W-9 Form after the date of the Second Distribution Motion (the “Third Distribution”). The Court entered the order approving the Third Distribution Motion on February 3, 2009 (the “Third Distribution Order”) [Docket No. 3570]. As with the First Distribution and the Second Distribution, the Trust paid the Third Distribution claims at 30%. The Third Distribution was made pursuant to the Third Distribution Order on February 11, 2009 and included the payment of \$2,940,438.33 based on allowed claims in the amount of \$9,802,293.43.

16. On May 8, 2009, the Trust filed its Fourth Motion to Fix Claims and Make an Interim Distribution (the “Fourth Distribution Motion”) [Docket No. 3599] requesting authorization to make a distribution of \$5,079,188.26 to the approximately 819 Claimholders that returned completed W-9 Form after the date of the Third Distribution Motion (the “Fourth Distribution,” and combined with the First Distribution, the Second Distribution and the Third Distribution, the “Interim Distributions”). The Court entered orders approving the Fourth Distribution Motion on July 14, 2009 and July 20, 2009 (the “Fourth Distribution Orders”) [Docket Nos. 3609 and 3611, respectively]. As with the first three interim distributions, the Trust paid the Fourth Distribution claims at 30%. The Fourth Distribution was made pursuant to

the Fourth Distribution Orders on July 24, 2009 and included the payment of \$5,079,188.61 based on allowed claims in the amount of \$16,933,043.68.

REQUEST FOR RELIEF

17. By this Motion, the Trustee seeks an order from the court amending the W-9 Procedures Order to clarify that the W-9 Procedures apply to all Claimholders, including the Under \$600 Claimholders. Out of an abundance of caution, the Trustee intends to re-notice only the Under \$600 Claimholders that have not returned completed W-9 Forms and give them a 60-day period to submit a completed W-9 Form. *The respective deadlines for Claimholders holding allowed Claims of \$600 or more to submit their W-9 Forms will remain the same, and all such deadlines have expired.*

BASIS FOR RELIEF

18. As stated in the Procedures Motion, it is the experience of Trust representatives that if the W-9 Procedures are not followed by Claimholders, the Trust will be saddled with administrative costs associated with performing backup withholding and subjecting itself to penalties imposed by the IRS. The W-9 Procedures are intended to avoid these problems and enhance recovery to creditors. Since implementation of the W-9 Procedures and consistent therewith, the Trust has sent the W-9 Letter to all Claimholders (including Under \$600 Claimholders) and has made the Interim Distributions. However, the Trust is now concerned that by exempting Under \$600 Claimholders from the W-9 Procedures, it may be exposed to similar administrative costs that the W-9 Procedures were intended to protect it against.

19. Under the Internal Revenue Code, there is a requirement to deduct and withhold for any reportable payment² if “the payee fails to furnish his TIN in the manner 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 W-9 Procedures 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.

20. Although the W-9 Procedures Motion initially sought to implement the W-9 Procedures as to all Claimholders, the Trust sought such relief as to *de minimis* Claimholders holding allowed claims (or allowed claims in the aggregate) of less than \$600 out of an

² 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 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).

abundance of caution and for greater administrative ease. Specifically, it was the Trust's understanding that the Trust would not be required to withhold taxes on distributions of less than \$600 due to a failure to be supplied with an accurate payee TIN, would not be required to file information returns with the IRS regarding such payments of less than \$600, and accordingly would not be penalized for its own failure to report distributions to an individual creditor that aggregated less than \$600. Based on this understanding and the Trust's corresponding representations to the Court at the W-9 Procedures Hearing, the W-9 Procedures Order as entered by the Court modifies the W-9 Procedures to apply only to Claimholders holding allowed claims of \$600 or more. However, through the Interim Distributions process and its reporting to the IRS, the Trust has learned that in filing its own federal income tax return it must also attach a Schedule K-1 reporting the income of the Trust allocable to each beneficiary, which includes *all* Claimholders to whom a distribution is made, not just those to whom a distribution of \$600 or more is made, and that such Schedule K-1 must include the TIN of every such beneficiary.

21. Schedule K-1 for Form 1041 (Trust federal tax return) requires the TIN for each trust beneficiary and the IRS instructions for Schedule K-1 for Form 1041 provide that the each trust beneficiary's TIN must be set forth on the Schedule K-1. Failure to provide the TIN for a trust beneficiary on the Schedule K-1 for the Trust's federal tax return would expose the Trust to a penalty of \$50 for each such occurrence. Significantly, I.R.C. § 6722 and 26 C.F.R. § 301.6722-1(a) provide that a \$50 penalty is imposed for each failure to furnish a correct "payee statement" that includes all of the information required to be shown on such payee statement. For this purpose, 26 C.F.R. § 301.6722-1(d)(2) provides that a "payee statement" includes each

trust beneficiary's copy of the Schedule K-1 required to be attached to the trust's federal income tax return Form 1041.

22. The Trust has served the W-9 Letter to *all* Claimholders (regardless of allowed claim amount), but understands that under the terms of the W-9 Procedures Order, only holders of allowed claims of \$600 or more may be bound by the W-9 Procedures Order, including the penalties for non-return of the W-9 Forms (i.e., forfeiture of distribution). However, the Trust now more fully appreciates that it might incur penalties as a result of non-return of the W-9 Forms by the Under \$600 Claimholders as well.

23. As previously stated, of the 1098 Under \$600 Claimholders that were each sent W-9 Letters, 638 returned completed W-9 Forms and 460 did not. Of the 460 Under \$600 Claimholders that did not return completed W-9 Forms, 368 Under \$600 Claimholders are eligible to receive distributions based on the \$25 distributable claim amount cut-off provided by the Plan and Confirmation Order. *Plan* at § 6.6(m); *Confirmation Order* at § 2(f). A list containing the 368 Under \$600 Claimholders that did not return completed W-9 Forms, but are eligible to receive distributions, are attached hereto on Exhibit A.

24. In view of all of the above, the Trustee proposes that this Court (a) amend the W-9 Procedures Order to remove all references that make the W-9 Procedures applicable only to each holder of an allowed claim (or allowed claims in the aggregate) of \$600 or more; (b) clarify the W-9 Procedures Order to apply the W-9 Procedures to all Claimholders, including the Under \$600 Claimholders; and (c) authorize the Trust to send new W-9 Letters (in substantially the form attached hereto as Exhibit B) to the Under \$600 Claimholders listed on Exhibit A hereto and give them a 60-day period to submit a completed W-9 Form. The W-9 Procedures Order,

including the W-9 Submission Deadline for Claimholders holding allowed claims of at least \$600, will otherwise remain unmodified.

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 3, 2009

Respectfully submitted,

WHITE & CASE LLP

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CERTIFICATE OF SERVICE

I certify that on September 3, 2009, a copy of the foregoing pleading was sent by First Class Mail to the parties listed below.

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