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FILED
OCT 17 2006
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: WATTSHealth Foundation, Inc. dba UHP Healthcare, a California not-for-profit corporation, Debtor.	Case No.: LA05-22627-TD Chapter 11 **JOINDER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS' PARTIAL OPPOSITION TO MOTION FOR ORDER (I) APPROVING CERTAIN PROCEDURES FOR NOTICING AND OBTAINING COURT APPROVAL FOR SETTLEMENTS OF PRE-PETITION CLAIMS AGAINST THE ESTATE; AND (II) AUTHORIZING, BUT NOT DIRECTING, DEBTOR TO MAKE 50% INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED PRE-PETITION GENERAL UNSECURED CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SHELDON LEWENFUS IN SUPPORT THEREOF** Hearing Date: Date: October 18, 2006 Time: 10:30 a.m. Ctrm: 1345

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TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES BANKRUPTCY JUDGE, THE UNITED STATES TRUSTEE, DEBTOR, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THEIR COUNSEL OF RECORD:

Creditors BELLA VISTA MEDICAL GROUP, IPA ("Bella Vista"); EL PROYECTO DEL BARRIO, IPA ("El Proyecto"); HEALTHCARE LA, IPA ("Healthcare LA"); CITIZENS MEDICAL GROUP, IPA ("Citizens"); and GLOBAL CARE MEDICAL GROUP, IPA ("Global Care")(collectively, "Medpoint Creditors") c/o MEDPOINT MANAGEMENT ("Medpoint"), hereby submit the following Joinder To The Official Committee Of Unsecured Creditors' Partial Opposition To Motion For Order (I) Approving Certain Procedures For Noticing And Obtaining Court Approval For Settlements Of Pre-Petition Claims Against The Estate; And (II) Authorizing, But Not Directing, Debtor To Make 50% Interim Distribution To Holders Of Allowed Pre-Petition General Unsecured Claims ("Joinder"). In support thereof, Medpoint Creditors assert as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Medpoint Creditors join in the Partial Opposition of the Official Committee of Unsecured Creditors ("Committee") to the Motion of WATTSHealth Foundation, Inc. dba UHP Healthcare, a California not-for-profit corporation ("Debtor"), for authority, among other things, to make a 50% interim distribution to the

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holders of "allowed" pre-petition claims against the estate.[1/] The Medpoint Creditors assert that (1) the post-petition cure amount of Global Care should be paid before any portion of the pre-petition claims are paid, (2) the Debtor should not be given undue leverage over the holders of disputed claims to negotiate for discounted sums in exchange for early payment and (3) the Debtor has not provided sufficient evidence that monies in the reserve are sufficient to pay all of the disputed claims as much as the current "allowed" claims. In its moving papers, the Debtor cites to certain case law authorizing early payments to certain creditors as long as same percentage of distribution is made to similarly-situated creditors. However, the Debtor does not address the significant issue of time value of money. Indeed, it is inequitable that some creditors may be paid 50% of their allowed claims now, at the sole discretion of the Debtor subject to Court approval, while other creditors are forced to wait months or even years to be paid. Moreover, in the case of Global Care, it is unfair to delay payment of the post-petition cure amount -- which amount the Debtor claimed would be liquidated and paid promptly after the sale of assets to Care 1st Health Plan ("Care 1st") -- when the Debtor is now proposing to pay 50% of certain pre-petition claims. Unless the Debtor presents a mechanism to (1) fully and promptly adjudicate all pre- and post-petition cure amounts and (2) promptly adjudicate substantially all filed pre-petition claims, the Debtor's Motion should be denied.

[1/] The Medpoint Creditors do not oppose the Debtor's proposed procedures for noticing and obtaining court approval for settlements of pre-petition claims against the estate.

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II.

STATEMENT OF FACTS

1. The Debtor filed the Motion For Order (I) Approving Certain Procedures For Noticing And Obtaining Court Approval For Settlements Of Pre-Petition Claims Against The Estate; And (II) Authorizing, But Not Directing, Debtor To Make 50% Interim Distribution To Holders Of Allowed Pre-Petition General Unsecured Claims ("Motion") on September 22, 2006.

2. The Committee filed a Partial Opposition to the Debtor's Motion on October 4, 2006.

3. The Debtor filed a Reply to the Committee's Opposition on October 11, 2006.

4. The Medpoint Creditors filed proofs of claim for the following: (a) Bella Vista filed an unsecured nonpriority claim in the amount of $160,178.95 ("Bella Vista Claim"); (b) El Proyecto filed an unsecured nonpriority claim in the amount of $138,051.62 ("El Proyecto Claim"); (c) Healthcare LA filed an unsecured nonpriority claim in the amount of $154,717.76 ("Healthcare LA Claim"); (d) Citizens filed an unsecured nonpriority claim in the amount of $155,963.84 ("Citizens Claim"); and (e) Global Care filed an unsecured nonpriority claim in the amount of $539,466.44[2/] ("Global Care Claim").

5. On or about September 29, 2006, Global Care and the Debtor entered into a stipulation to resolve the pre-petition cure amount for $451,835.91 ("Stipulation"). In the Stipulation, the

[2/] Though the claim amount on the proof of claim, as reflected in the supporting documentation, is "$539,466.44" the total amount was erroneously written as "$539,466.24" on the face page of the proof of claim.

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parties expressly excluded post-petition cure amounts, which they agreed would be resolved through subsequent stipulation or stipulations. The Stipulation was submitted for Court approval on September 29, 2006.

6. On or about May 15, 2006, Sheldon Lewenfus ("Lewenfus"), the Chief Financial Officer of Medpoint, entered into oral agreements with Michael Rowan ("Rowan"), a former director of the Debtor, regarding the dispositions of the pre-petition claims of Bella Vista, El Proyecto, Healthcare LA and Global Care.[3/]

7. However, before the parties could prepare and execute Stipulations to memorialize the terms of the settlements, the Debtor's executives were replaced.

8. The requests of the Medpoint Creditors to have the current executives of the Debtor memorialize the dispositions of the Claims substantially along the terms previously agreed to by Rowan have to date been largely unanswered.

9. Upon request to exchange documents to resolve the claims, the Debtor's counsel replied that any such adjudication was premature as there may be potential offsets against the claim amounts. However, the Debtor's counsel provided no timetable nor mechanism to adjudicate the claims.

10. To date, the post-petition cure amount of Global Care and the Medpoint Creditors' Claims have not been adjudicated.

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[3/] The Citizens Claim was not resolved through the settlement discussions.

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III.

ARGUMENTS

A. Global Care's Post-Petition Cure Amount Should Be Adjudicated Before Any Portions Of The Pre-Petition Claims Are Paid

Global Care was one of the IPAs included in the exclusive cure list created by the Debtor and Care 1st as part of the sale of the Debtor's assets. Though the sale transaction was consummated on August 31, 2006, only Global Care's pre-petition cure amount has been resolved and the parties have submitted a stipulation memorializing the terms of their settlement. However, the Debtor has provided no timetable to adjudicate the remaining post-petition cure amount. In fact, the Debtor has requested Global Care to wait indefinitely until it gathers sufficient information to ascertain if there are any potential offsets against the amount demanded by Global Care. In the meantime, the Debtor now proposes to make a 50% interim distribution to the holders of certain allowed pre-petition claims. This is neither fair nor equitable as Global Care may be paid after holders of certain pre-petition claims despite the fact that it was part of the cure list in the sale transaction to Care First.

B. The Debtor's Failure To Retain Personnel To Resolve Its Claims Has Caused Unnecessary Delay In Adjudication Of The Bella Vista Claim, The El Proyecto Claim, The Healthcare LA Claim, The Citizens Claim And The Global Care Claim

The Medpoint Creditors previously resolved all of their claims in principle with the Debtor. The terms were entered into between Lewenfus and Rowan and they agreed that the terms should be memorialized through separate stipulations. However, before the

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stipulations could be prepared and executed, there was a change in the management of the Debtor which forced the Medpoint Creditors to renegotiate with new management. To add insult to injury, new management of the Debtor then asserted that no prior agreements between Rowan and Lewenfus were binding and that they lacked insufficient information to fully adjudicate the Bella Vista Claim, the El Proyecto Claim, the Healthcare LA Claim and the Global Care Claim (post-petition cure amount). Despite repeated requests of the Medpoint Creditors to meet and discuss this matter, new management has essentially been nonresponsive.

The Medpoint Creditors have at all times dealt with the Debtor in good faith. However, requiring the Medpoint Creditors to wait until the Debtor is ready to fully adjudicate their claims -- while other creditors receive funds now -- is not a fair resolution. Moreover, bifurcating the Medpoint Creditors' claims in this fashion may further prejudice them in endeavoring to reach a negotiated resolution "down the road." Enough is enough. The Debtor either needs to adjudicate all of the disputed claims now or it should not be permitted to make any early distributions.

C. <u>The Debtor Should Not Be Able To Leverage An Early Payment Option To Force Creditors To Settle Their Disputed Claims At A Discount</u>

It appears that the Debtor may be attempting to attain leverage over the unwitting holders of disputed pre-petition claims to settle at a discount in exchange for early payment. In its support, the Debtor argues that no creditors are prejudiced as a result of early payment as long as similarly situated creditors are ultimately paid a similar amount. However, what the Debtor fails

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to address is the time value of money or present value of money. For example, if one creditor was paid 50% of its claim today and another was paid 50% of its claims one year from now, there would be prejudice to the latter creditor especially if there are insufficient funds to pay interest. Compounding the foregoing problem is the fact that the Debtor would have sole discretion to categorize which claimants should be part of the favored "allowed" claims group. As such, the Debtor could potentially pay certain preferred claimants while dragging its feet in resolving other non-preferred creditors until they submit to discounted claim amounts.

In addition, the Debtor's ability to pick and choose to pay certain creditors early but not others (depending upon its decision to adjudicate the claims) may pit creditors against each other. In other words, the longer any one creditor holds out to resolve its disputed claim, the worse off it will be in comparison to other similarly situated creditors who received early payments. The Debtor should not be able to utilize such a "divide and conquer" scheme to potentially force the hands of the creditors to settle their disputed claims at discounted amounts.

D. <u>The Debtor Has Not Provided Sufficient Evidence That Monies In The Reserve Are Sufficient To Pay All Of The Disputed Claims As Much As The Current "Allowed" Claims</u>

At this juncture, the Medpoint Creditors have insufficient information to determine whether there are sufficient funds in the reserve to pay all similarly situated creditors if and when the claims are resolved. Moreover, contrary to the Debtor's assertion, there is real prejudice to those claimants receiving late distributions due to present value. As such, the Medpoint

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Creditors believe that unless the Debtor can guaranty equal payments to similarly situated creditors, no distribution should be made until a substantial portion of the claims have been adjudicated.

IV.

CONCLUSION

THEREFORE, Medpoint prays that the Court enter its order (1) authorizing the Debtor to use the noticing procedures for obtaining court approval of settlement of claims as presented in the Motion, (2) directing that the Debtor fully adjudicate the post-petition cure amount of Global Care, (3) directing that all disputed claims (including the Bella Vista Claim, the El Proyecto Claim, the Healthcare LA Claim and the Citizens Claim) or a substantial portion thereof be adjudicated before any distribution is made to the holders of certain pre-petition claims, (4) denying the Debtor's request for authorization to make a 50% distribution to holders of certain allowed pre-petition general unsecured claims, and (5) granting such other and further relief as it may deem just and proper.

DATED: October 17, 2006

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
BRAD D. KRASNOFF
SCOTT LEE
Attorneys for Creditors BELLA VISTA MEDICAL GROUP, IPA; EL PROYECTO DEL BARRIO, IPA; HEALTHCARE LA, IPA; CITIZENS MEDICAL GROUP, IPA; and GLOBAL CARE MEDICAL GROUP, IPA c/o MEDPOINT MANAGEMENT

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DECLARATION OF SHELDON LEWENFUS

I, SHELDON LEWENFUS, hereby declare as follows:

1. I am an individual over the age of 18 and am the Chief Financial Officer of Medpoint Management ("Medpoint"). My business address and telephone number are as follows: 6400 Canoga Avenue, Suite 163, Woodland Hills, California 91367, (818) 702-0100 Ex. 215.

2. Medpoint is the management company of Creditors Bella Vista Medical Group, IPA ("Bella Vista"); El Proyecto del Barrio, IPA ("El Proyecto"); Healthcare LA, IPA ("Healthcare LA"); Citizens Medical Group, IPA ("Citizens"); and Global Care Medical Group, IPA ("Global Care")(collectively, "Medpoint Creditors").

3. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

4. I caused to be filed proofs of claim for the following: (a) Bella Vista filed an unsecured nonpriority claim in the amount of $160,178.95 ("Bella Vista Claim"); (b) El Proyecto filed an unsecured nonpriority claim in the amount of $138,051.62 ("El Proyecto Claim"); (c) Healthcare LA filed an unsecured nonpriority claim in the amount of $154,717.76 ("Healthcare LA Claim"); (d) Citizens filed an unsecured nonpriority claim in the amount of $155,963.84 ("Citizens Claim"); and (e) Global Care filed an unsecured nonpriority claim in the amount of $539,466.44[4/] ("Global Care Claim").

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5. On or about May 15, 2006, I entered into oral agreements with Michael Rowan ("Rowan"), a former director of WATTSHealth Foundation, Inc. dba UHP Healthcare, a California not-for-profit corporation ("Debtor"), regarding the dispositions of the pre-petition claims of Bella Vista, El Proyecto, Healthcare LA and Global Care.[5/]

6. However, before we could prepare and execute Stipulations to memorialize the terms of the settlements, the Debtor's executives were replaced.

7. The requests of the Medpoint Creditors to have the current executives of the Debtor memorialize the dispositions of the Claims substantially along the terms previously agreed to by Rowan have to date been largely unanswered.

8. Upon request to exchange documents to resolve the claims, the Debtor's counsel replied that any such adjudication was premature as there may be potential offsets against the claim amounts. However, the Debtor's counsel provided no timetable nor mechanism to adjudicate the claims.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this __ day of October 2006, at Woodland Hills, California.

SHELDON LEWENFUS

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

On October 17, 2006, I served the following document described as **JOINDER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS' PARTIAL OPPOSITION TO MOTION FOR ORDER (I) APPROVING CERTAIN PROCEDURES FOR NOTICING AND OBTAINING COURT APPROVAL FOR SETTLEMENTS OF PRE-PETITION CLAIMS AGAINST THE ESTATE; AND (II) AUTHORIZING, BUT NOT DIRECTING, DEBTOR TO MAKE 50% INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED PRE-PETITION GENERAL UNSECURED CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SHELDON LEWENFUS IN SUPPORT THEREOF** on all interested parties in this action by placing [X] a true copy [ ] the original thereof as follows:

[X] (BY FACSIMILE) The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

[X] (BY MAIL, 1013a, 2015.5 C.C.P. - See Service List)

[ ] I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] (FEDERAL) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 17, 2006, at Los Angeles, California.

Ruth Vergara

RUTH VERGARA

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