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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SAINT VINCENTS CATHOLIC MEDICAL
CENTERS OF NEW YORK d/b/a SAINT
VINCENT CATHOLIC MEDICAL CENTERS, *et al.*,

Case No. 05-14945 (PCB)

Debtors.
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STATEMENT OF SUPPORT AND JOINDER IN MOTION

The Committee of Interns and Residents/Service Employees International Union (“CIR”) by its attorneys Weiss & Zarett, P.C., hereby submits this statement in support of and joinder in the motion brought by Michael E. Katzenstein in his capacity as the MedMal Trust Monitor, seeking to hold Saint Vincent Catholic Medical Centers (“SVMCMC”) in contempt and for related relief (the “Motion”) and respectfully sets forth as follows:

BACKGROUND

1. CIR is the collective bargaining representative for Interns, Residents and Fellows (hereinafter “House Staff Officers”) employed by the debtor at St. Vincent’s Hospital, Manhattan (“SVM”) and formerly employed in the Brooklyn and Queens Region, consisting of St. John’s Queens Hospital, St. Joseph’s, Mary Immaculate, and St. Mary’s Hospital(collectively referred to hereinafter as “SVMCMC-BQ”).

2. CIR represents approximately 375 members in the SVM collective bargaining unit and, prior to the sale of Mary Immaculate Hospital and St. John’s Hospital (the “Queens Hospitals”),

represented 186 members in the SVCMC-BQ collective bargaining unit. Because residency programs are limited in duration, CIR has represented several hundred more House Staff Officers who worked in SVCMC hospitals during the past ten years.

3. As teaching hospitals, SVCMC's various medical centers required accreditation for their programs through the Accreditation Council for Graduate Medical Education ("ACGME"). ACGME is a private, non-profit council, which evaluates and accredits medical residency programs in the United States. It was established in 1981 from a consensus in the academic medical community as an independent accrediting organization. Its mission is to improve the quality of healthcare in the United States by improving the quality of graduate medical education for physicians in training. During the academic year 2008-09, there were 8,734 ACGME-accredited Residency Programs in 130 specialties and subspecialties, covering 109,482 active full-time and part-time residents for the academic year.¹

4. Pursuant to ACGME regulations, in order to obtain accreditation, a hospital must ensure that residents in the accredited program are provided with professional liability coverage for the duration of the program. Such coverage must also provide for legal defense and protection against awards from claims reported or filed after the completion of the ACGME accredited program, if the alleged acts or omissions of the residents were within the scope of the ACGME accredited program. Current residents in ACGME accredited programs must be provided with the details of the institution's professional liability coverage for residents.

5. The House Staff Officers are the backbone of most teaching hospitals. Working long hours, on a limited pay scale, the House Staff Officers are normally the first physicians to see patients at the hospital. They are involved in every phase of the Hospital physician-patient care, and

¹Information on ACGME obtained from its website at www.acgme.org.

are essential to the hospital's operation.

6. Under both the SVCMC-BQ collective bargaining agreement (“CBA”), which was assumed by the purchaser of the Queens Hospitals, Caritas Health Care, Inc. (“Caritas”), which filed its own Chapter 11 petition in February 2009 and has closed both of the Queens Hospitals, and the SVM CBA, the debtor is required to indemnify, save and hold House Staff Officers harmless against any and all liabilities, loss, damage, costs and expenses of whatever kind of nature, including counsel and attorneys fees, which they may sustain or incur by reason of acts or omissions committed or performed within the scope of their duties and during the course of employment, studies, administrative or committee functions, or responsibilities. Thus, by ACGME standards, and pursuant to the terms of the CBAs, the House Staff Officers represented by CIR are required to be covered by adequate medical malpractice insurance and must be defended and indemnified from claims of malpractice.

7. In the course of the Chapter 11 case, and prior to the confirmation of the Debtors’ Plan of Reorganization (the “Plan”), it was revealed that SVCMC had no medical malpractice liability coverage for the Queens Hospitals and had inadequate coverage for SVM.

8. Therefore, there was a significant risk to House Staff Officers of uncovered professional liability claims being asserted against them and a resultant number of indemnification claims in favor of the House Staff Officers against SVCMC (arising from its operation of both the Queens Hospitals and SVM) both under the CBAs and under ACGME standards.

9. During the course of negotiations on the Plan with the Debtor and with the Official Committee of Tort Claimants (“Tort Committee”), CIR reluctantly agreed to accept the Plan with the provisions under Section 11.6 that provided for some protection for House Staff Officers from medical malpractice claims (“MedMal Claims”), but not a direct injunction. Section 11.6(c) provides that the holders of MedMal Claims, including those MedMal Claims asserted against in a

Covered Person (which includes House Staff Officers) would be paid from the appropriate MedMal Trust established under the Plan. In Section 11.6(d), the injunction that was provided for under the Plan would not preclude a Covered Person from asserting an indemnification claim against SVCMC post-confirmation, however such an indemnification claim was limited to recovery from the appropriate MedMal Trust. Therefore, in order to obtain the indemnification that SVCMC is legally bound to provide House Staff Officers, they can only seek recovery from the appropriate MedMal Trust.

10. It is important to note that the Debtor's Disclosure Statement had estimated that there would be a 100% distribution for all MedMal Claims. Therefore, based on the Debtor's assertions there would be minimal exposure, if any, to House Staff Officers under the Plan.

11. A complicating issue arose as a result of the decision rendered post-confirmation in an adversary proceeding commenced by the Debtor against Jordana Goodman et. al. In the appeal decided by Judge Victor Marrero in *In re: Saint Vincent's Catholic Medical Centers of NY*, 417 B.R.688 (S.D.N.Y. 2009), it was determined that claimants who had not filed a timely medical malpractice claim against the Debtor, could nonetheless commence actions against Covered Persons, thereby circumventing the intent of the Plan and putting House Staff Officers and other Covered Persons at risk. Again, it cannot be repeated enough that such Covered Persons only have the right to seek indemnification from the appropriate MedMal Trust. Therefore, any failure to properly and fully fund a MedMal Trust will expose those House Staff Officers to uncompensated liability and will leave them with no remedy.

THE INSTANT MOTION

12. As was related previously, the Queens Hospitals were sold to Caritas which itself filed a petition under Chapter 11, closed both hospitals and is in the process of liquidating. As was the case during SVCMC's ownership of the Queens Hospitals, Caritas had no malpractice insurance

coverage for House Staff Officers. Therefore, the House Staff Officers were without any protection at any time during the term of their tenure at either of the Queens Hospitals, notwithstanding the provisions of the CBA that required such protection. The present precarious financial position of SVCMC and its failure to fund the MedMal Trusts as required, has exacerbated the exposure to those House Staff Officers.

13. Assuming their factual correctness, the statements made in the Motion and the supporting documents evidence the intentional disregard of the obligations of SVCMC under the confirmed Plan and the intentional exposure, thereby, of the House Staff Officers to malpractice claims for which they have no recourse. The fact that SVCMC has continued to operate without any justification for its failure to properly fund the MedMal Trust or to notify CIR or the House Staff Officers of their failure to do so, shows the highest level of contempt for the order of this Court confirming the Plan.

14. The problem remains, that neither the House Staff Officers nor CIR know the extent of the exposure to uncovered malpractice claims. Neither the House Staff Officers nor CIR has been given any accounting for the settlement of any MedMal Claims, nor how much is presently within the MedMal Trust nor what MedMal Claims remain to be liquidated. Only upon being provided with adequate information will CIR and the House Staff Officers be able to determine the extent of the exposure and assess any remedies which may be available.

15. While CIR joins in the relief requested by the MedMal Trust Monitor, CIR also asks that SVCMC provide to CIR the same accounting requested by the MedMal Trust Monitor and that SVCMC provide a full accounting of (i) all settlements made of MedMal Claims, (ii) all payments made out of the MedMal Trust and (iii) of the remaining claims that could be asserted against the MedMal Trust, including any potential claims in which House Staff Officers might be named as a defendant party.

WHEREFORE, it is respectfully requested that the Court grant the Motion and for such other and further relief as the Court may deem just, proper and equitable.

Dated: New Hyde Park, New York
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