

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | : | |
| | : | Chapter 11 |
| SAINT VINCENTS CATHOLIC MEDICAL | : | Case No. 05-14945 (ASH) |
| CENTERS OF NEW YORK d/b/a SAINT VINCENT | : | |
| CATHOLIC MEDICAL CENTERS, <i>et al.</i> , | : | (Jointly Administered) |
| | : | |
| Debtors. | : | |
| ----- | X | |

**STIPULATION AND ORDER
ALLOWING CLAIMS OF PATSY MEROLA
AND GREAT AMERICAN INSURANCE COMPANY**

IT IS HEREBY STIPULATED AND AGREED by and between Great American Insurance Company (“GAIC”), Patsy Merola (“Merola”), and Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers as debtor and debtor in possession in the above-captioned chapter 11 case (“SVC MC”), by and through their undersigned counsel, as follows:

A. Background Recitals

1. Chapter 11: SVC MC and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on July 5, 2005 (the “Petition Date”). A proposed plan of reorganization (as to SVC MC) and liquidation (as to the other Debtors) (the “Plan”) and associated disclosure statement (the “Disclosure Statement”) have been filed by the Debtors with this Bankruptcy Court.

2. GAIC’s Proof of Claim: GAIC timely filed a proof of claim (the “GAIC POC”),

alleging *inter alia* that SVCMC is obligated under certain agreements of indemnity (described therein) to reimburse GAIC for all loss, cost and expense, including attorney fees and disbursements, incurred by GAIC, as surety, in relation to two surety bonds issued by GAIC as follows:

- (a) Undertaking On Appeal bearing Bond No. FS 6338498 dated November 7, 2003, issued by GAIC, as surety, on behalf of the SVCMC, as principal, relating to a judgment entered in favor of Patsy Merola (the “Merola Bond”); and
- (b) Undertaking On Appeal bearing Bond No. FS 6818788 dated February 25, 2005, issued by GAIC, as surety, at the request of SVCMC on behalf of Dr. Henry Lamaute, as principal, relating to a judgment entered in favor of Sondra Lowery (“Lowery”) (the “Lowery Bond” and, collectively with the Merola Bond, the “GAIC Bonds”).

The GAIC POC also asserted, among other things, that in connection with obtaining the Merola Bond, SVCMC represented to GAIC that certain funds had been set aside in a restricted use account. The GAIC POC further asserted, among other things, that the General Indemnity Agreement annexed thereto as Exhibit “1” states in part as follows:

The undersigned will, on request of Surety, procure the discharge of Surety from any Bond(s) and all liability by reason thereof. If such discharge is unattainable, the Undersigned will, if requested by Surety, immediately either deposit collateral with Surety, acceptable to Surety, sufficient to cover all exposure under such Bond(s), or immediately make provision acceptable to Surety for the funding of the bonded obligations(s).

3. Merola’s Proof of Claim: Merola timely filed a proof of claim (the “Merola POC”), alleging *inter alia* that on September 9, 2003, in the action entitled *Patsy Merola, as Administrator of the Estate of Wanda Merola v. Catholic Medical Center of Brooklyn & Queens, Inc. d/b/a St. John’s Hospital, et al.* (Index No. 13511/96) (the “Merola Malpractice Action”),

the Supreme Court of the State of New York, Queens County, awarded a structured judgment to Merola as plaintiff in the nominal sum of \$2,652,538.77, plus interest thereon (the “Merola Judgment”). The Merola Judgment was affirmed on appeal by decision of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department dated December 19, 2005, subject, however, to reduction by stipulation as described in such decision, which stipulation was filed in the state court on or about January 6, 2006, following which a Judgment as Amended was entered in the state court on or about May 18, 2006, reducing the amount of such judgment to the sum of \$2,371,622.54 (including costs assessed at \$1,020), as further described therein and subject to certain present value assumptions and requirements relating to the payment of structured future payments as adjusted for interest and inflation, and the payment of certain plaintiffs’ attorney fees, disbursements and interest (the “Merola Judgment as Amended”). The Merola POC further asserted that Merola’s claims are secured by a judgment lien against certain of SVCMC’s assets (the “Merola Lien”).

4. Lowery’s Proof of Claim: On or about October 11, 2006, this Bankruptcy Court “so ordered” a stipulation and order (Docket #2283) deeming timely filed a proof of claim filed by Lowery (the “Lowery POC”) alleging, *inter alia*, that in the action entitled *Sondra Lowery v. Henry Lamaute, M.D.* in the Supreme Court of the State of New York, County of Queens, under Index No. 7496/01 (the “Lowery Malpractice Action”), a judgment was entered in favor of SVCMC dismissing the complaint of Lowery against SVCMC, but granting recovery in favor of Lowery against Dr. Henry Lamaute in the sum of \$4,205,257.20 (the “Lowery Judgment”), which judgment was appealed by both Dr. Lamaute and Lowery. On May 15, 2007, the Supreme Court of the State of New York Appellate Division, Second Department, entered a decision and order reversing the judgment in favor of Lowery, and dismissing the cross-appeal

by Lowery. GAIC has asserted that if the Lowery Judgment is reinstated in the state court system and if GAIC is required to pay Lowery under the Lowery Bond, GAIC will succeed to the rights of Lowery, Dr. Lamaute and/or SVCMC to certain insurance proceeds and to make claim against the MedMal-BQ Trust under the Plan and against Dr. Lamaute under the Lowery Judgment.

B. Resolution of the GAIC and Merola Claims

5. GAIC's Objections to the Disclosure Statement: GAIC has informed the Debtors that it has potential objections regarding whether the Disclosure Statement contains "adequate information" as defined in section 1125 of the Bankruptcy Code, and/or whether the Plan properly treats the claims of GAIC, Merola and Lowery. The Debtors have informed GAIC that they disagree with these potential objections. This Stipulation, subject to its approval by this Bankruptcy Court, resolves the potential objections of GAIC by clarifying the treatment of the GAIC and Merola claims under the Plan.

6. Allowance of Merola POC: SVCMC and GAIC are in agreement that they believe the correct amount to be paid under the Merola Judgment as Amended is \$2,585,068.57 including interest as of May 18, 2007, plus per diem interest at the rate of \$584.7836 per day for the period from May 18, 2007 until the date of payment. Merola does not agree or disagree with SVCMC and GAIC as to the correct amount to be paid under the Judgment as Amended. Merola, through counsel, has demanded payment pursuant to the Judgment as Amended. Merola's counsel has further indicated that a further order of the Surrogate's Court, Queens County, may be required in order for Merola to give acquittance for such payment and/or a full release of the judgment. SVCMC, GAIC and Merola shall cooperate to obtain the entry of an

order by the Surrogate's Court, Queens County, authorizing the liquidation and payment of the Merola Judgment as Amended, and setting the amounts payable thereunder to each payee entitled to recovery thereunder. Upon entry of a final order setting the amounts payable thereunder to each payee entitled to recovery under the Judgment as Amended, or in the event agreement is reached between SVCMC and the persons entitled to payment under the Merola Judgment as Amended setting the amounts payable thereunder to each payee entitled to recovery thereunder (the "Merola Finalized Amounts"), the Merola POC shall be an Allowed MedMal-BQ Claim in the amount of the Merola Finalized Amounts (upon which payment shall be made pursuant to the Plan, with interest thereon until the date of payment by the MedMal-BQ Trust, subject to the terms of the Plan). In the event GAIC pays Merola under the GAIC Merola Bond, the Merola Finalized Amounts shall be the sums paid by GAIC up to (i) the amount provided for in such final order (if any), or (ii) if no such order is entered, such sum of \$2,585,068.57 (plus per diem interest at the rate of \$584.7836 after May 18, 2007), or (iii) such further sum as SVCMC shall agree with GAIC is the appropriate amount to be paid under the Judgment as Amended (and GAIC shall be subrogated to Merola's rights for collection thereof from the MedMal-BQ Trust, plus interest thereon, as provided in the Plan and in this Stipulation).

7. Payment of Merola POC: Promptly following the later to occur of the Effective Date of the Plan (as defined in the Plan) and the allowance of the Merola POC as set forth in the preceding paragraph, the Merola POC as Allowed shall be paid as provided in the Plan by the MedMal-BQ Trust, directly to Merola's counsel as attorney for the respective parties entitled to recovery thereunder or as otherwise directed by an order of a court of competent jurisdiction (except to the extent to which GAIC shall hereafter have made payment under the Merola Bond for all or part thereof, in which event GAIC shall be subrogated to the extent of its payment, plus

interest, and shall be entitled to the Plan distribution(s) for the Merola POC; in the event the MedMal-BQ Trust makes distribution to Merola instead of to GAIC under those circumstances, such funds or checks shall be held in trust for GAIC by the recipient(s) thereof). For the avoidance of doubt, in the event that at the time the Merola POC becomes Allowed there are insufficient funds in the MedMal-BQ Trust to pay the amount due, SVC MC shall pay to the MedMal-BQ Trust the amount needed to make the payment on account of the Merola POC as a Shortfall Payment as defined in the Plan, and the MedMal-BQ Trust shall thereafter make the payment on account of the Merola POC as provided in the Plan.

8. Allowance of GAIC's Claims:

(a) As of the Effective Date GAIC shall have an allowed general unsecured claim in the amount of \$215,000.00 (in addition to such other rights as GAIC may have under this Stipulation), representing expenses (including attorney fees) recoverable under its General Indemnity Agreements, incurred by GAIC prior to the date of this Stipulation (the "GAIC Expense Claim").

(b) Any other reimbursable expenses (including attorney fees) claimed by GAIC pursuant to its General Indemnity Agreements incurred from and after the date of this Stipulation shall be presumed to be MedMal-BQ Claims and shall be payable to GAIC from the MedMal-BQ Trust (and in the event such presumption is rebutted, such expenses shall be paid as a general unsecured claim, and GAIC shall be entitled to apply any proceeds it shall have received toward its general unsecured claim to such items of expense, and to seek to establish that portions of the expenses it heretofore incurred should be treated as MedMal-BQ Claims) in accordance with the procedure set forth in this sub-section.

i. Within 90 (ninety) days after the Merola POC becomes Allowed,

GAIC may submit to SVCMC and to the MedMal-BQ Trustee a statement of its further claims for reimbursable expenses under its General Indemnity Agreements arising from or related to the Merola POC, with appropriate supporting documentation (the “GAIC Merola Reimbursement Claim”). SVCMC (and the MedMal-BQ Trustee if the Plan has become effective) shall review the GAIC Merola Reimbursement Claim and notify GAIC in writing within 30 (thirty) days of receipt of any dispute. In the event the parties have no disputes with the GAIC Merola Reimbursement Claim, or any such disputes are resolved by agreement of the parties, the GAIC Merola Reimbursement Claim shall be an Allowed MedMal-BQ Claim to be paid by the MedMal-BQ Trust in accordance with the Plan.

ii. Within 90 (ninety) days after the Lowery POC becomes Allowed or is disallowed by Final Order (as defined in the Plan), GAIC may submit to SVCMC and to the MedMal-BQ Trustee a statement of its further claims for reimbursable expenses under its General Indemnity Agreements arising from or related to the Lowery POC, with appropriate supporting documentation (the “GAIC Lowery Reimbursement Claim” and, collectively with the GAIC Merola Reimbursement Claim, the “GAIC Reimbursement Claims”). SVCMC (and the MedMal-BQ Trustee if the Plan has become effective) shall review the GAIC Lowery Reimbursement Claim and notify GAIC in writing within 30 (thirty) days of receipt of any dispute. In the event the parties have no disputes with the GAIC Lowery Reimbursement Claim, or any such disputes are resolved by agreement of the parties, the GAIC Lowery Reimbursement Claim shall be an Allowed MedMal-BQ Claim to be paid by the MedMal-BQ Trust in accordance with the Plan.

(c) To the extent that GAIC pays under the Merola Bond or under the Lowery Bond, the GAIC POC is allowed as a MedMal-BQ Claim to the extent of GAIC's rights of indemnity and subrogation relating to and arising from payment of the applicable GAIC Bond and as further described in the aforesaid General Indemnity Agreements. Notwithstanding the allowance of the GAIC POC, GAIC shall only be entitled to a single satisfaction for its claims arising from each of the Merola Bond and the Lowery Bond, and to the extent this sub-section 8(c) and another section of this Stipulation could both provide for the satisfaction of a claim or claims of GAIC, GAIC may be required to make an election as to which section shall be applied, within 14 (fourteen) days after written request to its counsel from SVCMC or the MedMal-BQ Trust.

(d) Any disputes regarding the GAIC POC, the GAIC Expense Claim, or the GAIC Reimbursement Claims (collectively, the "GAIC Claims") that are not resolved by agreement of the parties shall be resolved by the Bankruptcy Court under the appropriate court procedures; provided, however, that pending the resolution of any such dispute the undisputed portion of any GAIC Claims shall be paid in accordance with the Plan and this Stipulation.

9. Payment to Merola by GAIC: GAIC shall promptly make payment under its Merola Bond of the amount of the Merola Judgment as Amended, to the appropriate Merola payees designated by the Surrogate's Court (or such other court of competent jurisdiction as shall have issued the order, if any, designating the payees thereunder), or to Merola's counsel, within the time required under the insurance regulations of the State of New York (*i.e., inter alia*, within the latter of 15 business days after notice of such order is served on counsel for GAIC, or 5 business days after GAIC's counsel's receipt in escrow of signed claims payment documentation as described in such regulations) (unless Merola shall theretofore have been paid in full by the

MedMal-BQ Trust), in full settlement and satisfaction of all claims which may or can exist against GAIC under or relating to the said Merola Bond. The parties contemplate that, subject to being authorized to do so by a court of competent jurisdiction, Merola will be asked by GAIC pursuant to such regulations to execute and deliver to GAIC's counsel in escrow (subject to GAIC's payment of the required amounts) the following documents (as to which Merola reserves all potential objections):

(a) a separate assignment in favor of GAIC of the Merola Judgment as Amended, to be drafted by GAIC subject to Merola's counsel's approval, in form suitable for filing, which assignment may be filed by GAIC with the appropriate state recording officer immediately upon delivery of such payment by GAIC, in each county in which the aforesaid Merola Judgment as Amended was filed prior to the Petition Date (but such assignment shall be effective regardless of whether it is so filed);

(b) a separate assignment and/or notice of transfer of the Merola POC in favor of GAIC, to be drafted by GAIC subject to Merola's counsel's approval, in form suitable for filing in the Bankruptcy Court, which assignment may be filed by GAIC with the Bankruptcy Court immediately upon delivery of such payment by GAIC;

(c) IRS form W-9 for each payee receiving payment of the aforesaid monies;
and

(d) a separate release in favor of GAIC of all rights and claims under the Merola Bond, to be drafted by GAIC subject to Merola's counsel's approval, signed by the persons entitled to receive the proceeds of such payment by GAIC, or in the case of Michael Merola by any duly authorized guardian of Michael Merola.

In the event of payment to Merola by GAIC, all rights and remedies of Merola against SVC MC,

in any way arising from or relating to the Merola Malpractice Action and/or the Merola Judgment as Amended, are and shall forever be assigned, absolutely and with full power of substitution, to GAIC (which also shall be subrogated to all rights and remedies to which a surety in such events shall be subrogated), regardless of whether any of the foregoing documentation is or is not executed and/or filed.

10. Reservation of Rights as to Merola: The Merola Lien shall be and remain unimpaired as security for the payment of the Merola Judgment as Amended, to the extent of any security to which the Merola Lien shall have attached, subject to any other secured claims having priority over the Merola Judgment as Amended, and subject to SVCMC's right to challenge the extent, priority or perfection of the Merola Lien. Upon payment to Merola by GAIC (if any), GAIC shall succeed to Merola's rights under the Merola Lien and Merola shall not be required to execute a satisfaction of the Merola Lien until GAIC shall have been paid as successor to Merola as provided in this Stipulation. Upon payment by the MedMal-BQ Trust of the Merola POC as Allowed (either to Merola, or to GAIC, as appropriate and in the appropriate amount as provided in this Stipulation), the Merola Lien shall be released without the necessity of any further action by any party; provided, however, that Merola and GAIC shall each cooperate to provide to SVCMC such evidence of the release of the Merola Lien as SVCMC may reasonably require. Merola and GAIC each reserves all rights to assert that some or all of the Merola POC should be paid as an administrative expense under section 507(b) of the Bankruptcy Code by reason of a failure of adequate protection. SVCMC reserves all rights to object to such assertion.

C. Miscellaneous

11. Lowery Malpractice Action: GAIC asserts that, if the Lowery Malpractice Action

is reinstated by an appropriate state court and/or judgment is entered in Lowery's favor in an appropriate state court, and if GAIC is required to pay Lowery under the Lowery Bond, GAIC will succeed to Lowery's rights to any insurance proceeds to which Lowery is entitled (if any) and to Lowery's rights to make a claim against the MedMal-BQ Trust under the Plan (if any). SVCMC does not dispute GAIC's assertion, but reserves all rights and defenses regarding the Lowery POC and any claims arising therefrom, regardless of by whom such claims are asserted.

12. No Insurers or Insureds Are Released: Nothing contained in this Stipulation or in the Plan or the Disclosure Statement shall be considered or construed to operate as a release or discharge of any insurance carrier or of any person or entity that is insured by any insurance carrier, for any act or omission or other event out of which any medical malpractice claim has arisen in favor of Lowery or GAIC, except to the extent expressly provided herein. SVCMC shall not hereafter release or discharge any such insurance carrier for any such act, omission or event without the express written consent of Lowery or GAIC, as their respective interests may appear, it being further understood that no such consent by Lowery shall be binding to the extent GAIC shall be or become subrogated to any right of Lowery.

13. No Change in GAIC's Liability: Nothing contained in this Stipulation shall be considered or construed to modify, alter, extend, or otherwise change the liability undertaken by GAIC in the Merola Bond or the Lowery Bond.

14. Disclosure Statement and Plan Objections: As of the date this Stipulation was signed by the parties, the deadline for GAIC to object to the approval of the Debtors' Disclosure Statement had not yet expired. GAIC's deadline for objecting to the approval of the Disclosure Statement is hereby extended until this Stipulation is "so ordered" by this Bankruptcy Court, and in the event this Stipulation is not "so ordered", until the earlier of (a) one day after this

Bankruptcy Court notifies counsel for GAIC that the Bankruptcy Court has declined to “so order” this Stipulation, or (b) the close of the hearing to consider approval of the Disclosure Statement. If this Stipulation is “so ordered” by this Bankruptcy Court, GAIC and Merola acknowledge that they have no objections to the confirmation of the Plan; in the event that this Stipulation is not “so ordered,” GAIC and Merola shall be free to raise any and all appropriate objections to the confirmation of the Debtors’ Plan. Nothing contained herein shall or shall be construed as an agreement by any of GAIC or Merola to vote for or otherwise support confirmation of the Plan.

15. Rule 2004 Discovery: By stipulation so-ordered by this Bankruptcy Court on March 24, 2006, counsel for the Debtors and for GAIC agreed to certain discovery pursuant to Rule 2004 regarding certain information sought by GAIC (the “Discovery”). The deadline for completion of the Discovery has been extended by subsequent orders and has not yet expired. The deadline is hereby extended to thirty days after GAIC’s deadline set forth by the preceding paragraph for the filing of objections to the Disclosure Statement.

16. Reservation of GAIC’s Rights: Nothing contained in this Stipulation shall in any way reduce, diminish, affect or constitute a waiver, release, discharge, diminution, impairment, or other impediment of or to any right or claim which GAIC has or may have against anyone other than the Debtors, including but not limited to any claim which GAIC might assert against any insurance carrier under any insurance policy or trust covering either the Merola Judgment or the Lowery Judgment, in whole or in part, including but not limited to any insurance policy issued by National Union Insurance Company, Queensbrook Insurance Limited, Transatlantic Reinsurance Company, and/or the Hospital Association of New York (now known as Hospitals Insurance Company, Inc.), which are alleged to provide coverage for the Lowery Judgment.

Notwithstanding the foregoing, GAIC acknowledges and agrees that the payment of the Merola POC as provided under this Stipulation will render moot any claim that GAIC might have or allege against any present or former employee or representative of SVCMC in connection with the alleged representation that funds have been set aside in a restricted use account in connection with the Merola Bond.

17. No Third-Party Beneficiaries: Nothing contained in this Stipulation shall be deemed to create any right, remedy, claim, cause of action, release or discharge in favor of anyone other than Merola, Lowery, GAIC or SVCMC.

18. Jurisdiction of the Bankruptcy Court: All disputes arising from this Stipulation shall be resolved by this Bankruptcy Court, which when this Stipulation is “so ordered” shall have and retain jurisdiction over any dispute over or arising from its terms or subject matter notwithstanding any other order to the contrary.

IN WITNESS WHEREOF, the undersigned counsel have signed this Stipulation in separate counterparts, all of which taken as a whole shall constitute evidence of the agreement recited herein and which shall be effective in such form as shall be “so ordered” and filed by the Bankruptcy Court.

Dated: June 1, 2007

/s/ Mark S. Gamell
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SO ORDERED on June 5, 2007.

/s/ Adlai S. Hardin, Jr.
THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE