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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, Department of Insurance, Securities and Banking, Petitioner, v. D.C. CHARTERED HEALTH PLAN, INC., Respondent.	Civil Action No.: 2012 CA 008227 2 Judge: Wright Calendar No.: 15 Next Event: Status – 6/20/2013

MOTION OF WASHINGTON HOSPITAL CENTER CORPORATION AND MEDSTAR GEORGETOWN MEDICAL CENTER TO INTERVENE AS INTERESTED PARTIES

Washington Hospital Center Corporation (d/b/a MedStar Washington Hospital Center) and MedStar Georgetown Medical Center, Inc. (d/b/a MedStar Georgetown University Hospital) (collectively "MedStar") hereby move this Court to intervene as interested parties in this case. In support thereof, MedStar states as follows:

1. D.C. Chartered Health Plan ("Chartered"), the Respondent herein, is an entity in rehabilitation under the District of Columbia Insurance Rehabilitation and Liquidation Act, D.C. Code §§ 31-1310 et seq. (the "Act").

2. MedStar is a "creditor" of Chartered within the meaning of the Act. § 31-1301 (defining a creditor as "a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.") As set forth and supported in the accompanying Motion for More Definite Statement, MedStar has unpaid claims against Chartered in amounts exceeding $37 million.

3. Pursuant to § 31-1312(e) of the Act, "any approved plan shall be in the judgment of the Court fair and equitable to all parties concerned."

4. This Court approved a Plan of Reorganization for Chartered by Order entered March 1, 2013, which provides for the payment of Chartered's liabilities (the "Plan").

5. MedStar is a party affected by the Plan. The Rehabilitator acknowledged in his Sur-Reply to D.C. Health System Inc.'s ("DCHSI") Motion to Stay that providers like MedStar are "interested parties" in connection with the administration of the estate. Rehabilitator's Verified Sur-Reply in Response to the New Matters Raised in the Party-In-Interest D.C. Healthcare System, Inc.'s Reply, dated March 28, 2012, at 12, ¶ 23.

6. DCHSI has been permitted to file its objections, motions and various other pleadings in this case despite the fact that it is neither a named party, nor has it filed a motion to intervene. DCHSI has asserted that it is the parent corporation that is the 100% shareholder of Chartered, and is also its landlord. As such, DCHSI, like MedStar, is a creditor and holder of claims against Chartered under the Plan, no more and no less.

7. The Rehabilitator initially raised the non-party status of DCHSI in its "Response to DCHSI's Motion in Opposition to the Specially Deputy's Second Status Report, Request for Expedited Status Conference and Petition for Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters," dated February 25, 2013, at p. 1. Nevertheless, without requiring DCHSI to formally intervene, this Court has treated DCHSI as a party to this proceeding, allowing DCHSI to appear in open court, sit at counsel table, and present arguments to the Court on the question of approval of the sale of certain of Chartered's assets to AmeriHealth Mercy and the Plan, which this Court approved. More recently, this Court also accepted and denied DCHSI's Motion for Stay. *See* Order, dated April 2, 2013.

8. By contrast, the undersigned Counsel for Medstar attempted to file a Notice of Appearance on March 1, 2013, but that Notice was rejected by the Clerk's office. In addition, at the March 1, 2013, Status Conference, the undersigned Counsel stood up from the gallery and attempted to be heard, but this Court declined to hear counsel. That attempt is partially reflected in the Transcript of the Status Conference. *See* Transcript, filed March 15, 2013, at p. 53.

9. D.C. Superior Court Rule of Civil Procedure 24(a) provides:

> Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

10. The Court of Appeals has recognized that the intervention rule establishes a four-factor test "'that a trial court must consider in determining whether to grant or deny a motion to intervene' as of right: 'timeliness, interest, impairment of interest, and adequacy of representation.'" *HSBC Bank USA, NA v. Mendoza*, 11 A.3d 229 (D.C. 2010) (citing *Jones v. Fondufe*, 908 A.2d 1161, 1162-63) (D.C. 2006)). In *Jones*, the Court of Appeals noted that the "shall be permitted" language of the rule is mandatory, and therefore the trial court must grant intervention if the four factors are met. *See* 908 A.2d at 1163.

11. In *Mendoza*, the court summarized prior Court of Appeals holdings as follows:

> [O]ur cases have reiterated that Rule 24 (a)(2) "should be liberally interpreted." In other words, "[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action."

11 A.3d at 233 (citations omitted).

12. Here, the four factors are met. MedStar's motion is timely, as there has been no undue delay in attempting to bring its interests before the Court. It is also clear that MedStar has

an interest to protect, as conceded by the Rehabilitator when he agreed that providers like MedStar are interested parties. MedStar's interest may be impaired if intervention is not permitted, for reasons set forth in the accompanying Motion for More Definite Statement, filed herewith. Finally, MedStar's interest is not adequately represented by any existing party. While ostensibly the Rehabilitator has a general interest in paying Chartered's creditors, as detailed in MedStar's Motion for More Definite Statement, there is cause for concern that the Plan that the Rehabilitator proposed and this Court approved may not be being carried out appropriately.

13. Accordingly, MedStar has a right to intervene in this proceeding, and should be granted equal access to this Court as has DCHSI, as a creditor, interested party, and party affected by the Plan.

WHEREFORE, MedStar respectfully requests that its Motion to Intervene be granted and that this Court enter the proposed Order, filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

Movant refers this Court to the following authorities that support its position that it be permitted to intervene as a party in interest in this case:

1. D.C. Insurance Rehabilitation and Liquidation Act, D.C. Code §§ 31-1301, 1312(e).
2. Superior Court Rule of Civil Procedure 12-I.
3. Superior Court Rule of Civil Procedure 24(c).
4. *HSBC Bank USA, NA v. Mendoza*, 11 A.3d 229 (D.C. 2010) .
5. *Jones v. Fondufe*, 908 A.2d 1161 (D.C. 2006).

Respectfully submitted,

Dated: April 4, 2013

//s//

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Attorneys for Washington Hospital Center Corporation and MedStar Georgetown Medical Center, Inc.

RULE 12-I CERTIFICATE

I hereby certify that despite diligent efforts, the undersigned counsel was unable to secure consent to this Motion to Intervene.

Dated: April 4, 2013

//s//

Joseph D. Edmondson, Jr. (D.C. Bar 433885)

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Washington Hospital Center Corporation and MedStar Georgetown Medical Center, Inc. to Intervene as an Interested Party, together with proposed Order, was served by CaseFileXpress to all counsel of record this 4th day of April, 2013.

//s//
Joseph D. Edmondson, Jr.