Joel R. Glucksman (JG 6443)
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Appearing *pro se*

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re: HUDSON HEALTHCARE, INC., Debtor.	Case No. 11-33014-DHS Chapter 11 Return Date: Sept. 13, 2011, 11 am Oral Argument: Requested

DECLARATION OF DONALD SCARINCI IN RESPONSE TO APPLICATION BY DEBTOR HUDSON HEALTHCARE, INC. TO COMPEL COMPLIANCE BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS WITH THE STAY IMPOSED BY D.N.J. LBR 2004-1(D), etc.

DONALD SCARINCI, of full age, hereby affirms and declares as follows:

1. I am an attorney at law of the State of New Jersey and a partner at Scarinci & Hollenbeck, LLC ("Scarinci Hollenbeck"). My firm was pre-bankruptcy counsel to the debtor Hudson Healthcare, Inc. ("HHI"). I was the attorney primarily responsible for HHI's representation. I have personal knowledge of the facts herein, except for those alleged upon information and belief, and as to those I believe them to be true.

2. I submit this declaration in response to the application by HHI's counsel at docket entry #158, seeking: (i) to compel the Official Committee of Unsecured Creditors (the "Committee") to comply with the stay imposed by D.N.J. LBR 2004-1(d), (ii) to prohibit the Committee's counsel Sills, Cummis & Gross, P.C. ("Sills") from using any of HHI's allegedly privileged information, and

(iii) to bar Sills from communicating with my firm.

INTRODUCTION

3. HHI's inflammatory application to this Court is unsupported by the facts and contains statements that are untrue. My September 3, 2011 email to HHI's counsel acknowledged their direction not to disclose privileged information and clearly requested that they and Committee counsel establish a mechanism for the protection of privileged communications that would include judicial review of any items in dispute.

4. Moreover, the September 6, 2011 email circulated to me, counsel for HHI, and counsel for the Committee did in fact agree upon a mechanism to review Scarinci Hollenbeck's production of documents, in an appropriate manner under the short timeframe permitted for discovery, in order to preserve and protect HHI's attorney-client privilege. Copies of both emails are annexed hereto as Exhibit A.[1/]

5. Please let me also assure the Court that – due to the motion to quash – I have no intention of going forward with my deposition unless and until it is ordered by this Court and is further preceded by agreed upon guidelines for resolving disputes about the attorney-client privilege. The one and only communication about my proposed deposition has already been included in HHI's pleadings and is clearly a simple exchange of courtesies about scheduling should the parties agree or the Court order that my deposition go forward.

6. Finally – as a practicing attorney for more than twenty-five years -- I am fully aware of the contours of the attorney-client privilege. I have not at any time, nor to my knowledge has any

1 HHI's counsel takes pains to attach as an exhibit to his application my earlier email stating that I believed privilege to have been waived. However, counsel neglects to advise the court of either of these later emails. I consider this omission to be – at the least -- improper and inappropriate.

attorney at my firm, disclosed to Committee counsel any matters covered by HHI's attorney-client privilege.

7. Furthermore, even if Scarinci Hollenbeck had released privileged information – which we have not – such release would be permissible within the context of a setting where Scarinci Hollenbeck is represented by the Creditors Committee as a creditor of HHI. See RPC 1.6(d)(2), which states in relevant part, "A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: . . . (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, ..."

8. What is perhaps most disturbing about the dishonesty of the HHI's counsel's motion is the implication that we and Committee counsel acted behind their backs. In fact, most if not all email communications between Committee counsel and Scarinci Hollenbeck were copied to HHI's counsel -- as the headers on those emails reflect.

9. We have of course responded to Committee counsel's legitimate questions by providing non-privileged, and public, information in order to assist Committee counsel in fulfilling their legal responsibilities to this Court and to their clients. In this case, these responsibilities have added weight. As this Court is aware, HHI seeks Your Honor's approval for third party releases which will strip the Committee's constituency of the right to pursue their claims against various non-debtor, third parties. Such extraordinary relief demands the strictest scrutiny by this Court and by the parties to this case.[2]

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2 As In re Continental Airlines, Inc., 203 F.3d 203, 212 (3d Cir. 2000), holds, nonconsensual releases by non-debtors of other non-debtors, in derogation of Bankruptcy Code §524(e), can be granted only in "extraordinary cases."

RESPONSE

10. In or about September 2009, Scarinci Hollenbeck was retained to represent Hudson Healthcare Inc., a private non-profit New Jersey corporation formed for the specific purpose of operating the Hoboken University Medical Center hospital (the "Hospital") on behalf of the Hoboken Municipal Hospital Authority ("HMHA"). HMHA is a public agency and body politic of the City of Hoboken. The scope of the retention was for general counsel and litigation purposes.

11. HMHA was formed by an act of the New Jersey legislature, N.J.S.A. 30:9-2B. The statute in relevant part requires the HMHA to operate through the auspices of a separate, private, non-profit manager which is designed to own nothing, have no assets, and have no right to receive income from the Hospital. This relationship is further memorialized in a written contract between HHI and the HMHA, known as the Master Manager and Operator Agreement, which became effective on February 1, 2007. It is worthy to note that no other hospital in this State is operated pursuant to this statute.

12. There was therefore a critical relationship between HMHA and HHI with respect to the contractual and statutory obligations that HMHA has toward HHI concerning the payment of bills, collection of revenues, as well as HMHA's obligations to fund HHI in all respects. This is evidenced by the fact that – at the end of our tenure as HHI's counsel -- the HMHA advised us that they were reviewing our legal bills to HHI and had some questions.

13. During the period of retention, which ended on July 15, 2011, I was a first hand witness to a pattern of conduct by HMHA members to intimidate, threaten, control, abuse, and attempt to force the CEO of HHI and members of the HHI Board to take actions adverse to its charter and otherwise to violate the laws of the State of New Jersey.

14. As Your Honor is aware, this bankruptcy proceeding is on a fast track, purportedly to assist HMHA in completing its sale of the Hospital -- at the expense of the creditors and employees who made it possible for the Hospital to remain open for many years and to continue to service many low and moderate income people who avail themselves of the Hospital's services. Committee counsel had little time to learn the true nature of things, and they agreed to attend a meeting at our offices to gather background information regarding non-privileged items.

15. In such a rushed atmosphere, it would be easy for a newcomer to the matter to overlook the serious Constitutional implications in granting approval to such a bankruptcy. HHI was established as a zero income, zero asset shell entity designed solely to run the day to day workings of the hospital. All income generated by HHI went directly to the Authority, not to HHI. From the day it opened for business, by bankruptcy standards, it was insolvent and undercapitalized. The only source of income was the Authority. Could the New Jersey Legislature have intended to create a scheme whereby an Authority, a body politic and political subdivision of the State of New Jersey, finding itself awash in debt, and being denied the right to file Chapter 9 bankruptcy, effectively bifurcate itself, and cause only the operating managing entity to file bankruptcy? Framed this way, the Court can appreciate the great damage such an action would have on any private party's future dealings with any New Jersey State agency.

16. All attendees at the one and only meeting that we had with Committee counsel were cognizant of the attorney-client privilege, and no privileged information was exchanged.

17. We have never at any time divulged any information covered by HHI's attorney-client privilege.[3] The statements to the contrary (actually only "suggestions") by Debtor's counsel are misleading, unsubstantiated, and offensive.

18. Of the five emails attached as exhibits to Debtor's application, the Court will note that only one was sent only to Mr. Sherman. Debtor's counsel was in fact a party to all other communications. None of these five emails, nor the others which Debtor's counsel omitted, contain privileged information.

19. I would particularly like to address several instances where Debtor's counsel appears to have conveniently left out salient facts surrounding this matter:

A. Allegation of Several Meetings.

20. I and the attorneys at my firm had only one meeting with Committee counsel. Yet Debtor's counsel suggests to the Court that there were several, and they allege that these are ongoing. This is not true, and debtor's counsel provides no information in support of their reckless allegation.

B. Allegation of Privileged Information

21. Despite the harsh rhetoric by Debtor's counsel, the Committee's counsel has never at any time sought privileged information from us. The ground rules for our one meeting with them were clearly established: We would provide only general, non-privileged information, all of which was a matter of public record. Nothing else happened.

C. Notice of the Subpoena

22. Debtor's counsel didn't just "happen" to find out about the subpoena. I told them about it.

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3 We did jointly provide to counsel for the Committee and for the Debtor 174 document pages of materials. This was done pursuant to the mechanism worked out between them. Debtor's counsel has asserted that 2 of the pages are subject to the privilege. We take no part in this dispute.

D. No Objection to the Motion to Quash

23. Committee counsel apparently never filed a formal objection to the motion by Debtor's counsel to quash the subpoena because they properly believed an amicable resolution had been reached. See the mail exchange annexed hereto as Exhibit A. Scheduling a deposition, where an agreement among counsel has been made in good faith, should not be construed as a violation of a motion counsel believed was being withdrawn.

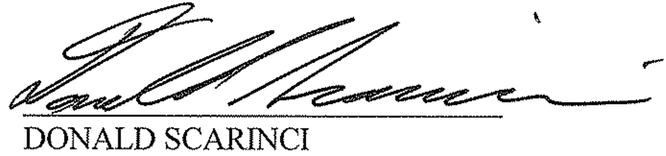
24. My attitude towards the subpoena, and my obligation to cooperate with counsel, is more clearly set forth in my email to Debtor's counsel Mr. DiPasquale dated September 3, 2011, which Debtor's counsel conveniently left out while casting aspersions on my character and conduct. See Exhibit A hereto.

25. As to the attempt by Debtor's counsel to clothe themselves in the robes of savior of the Hospital, and their implication that saving the Hospital requires the third party releases demanded before this Court, I take great offense. The choice for HMHA was never either to sell the Hospital or to close it. It is public information that there were other potential buyers for the Hospital and other solutions for the HMHA to consider. However, in a process shrouded in secrecy, the choice for HMHA, for whatever nefarious reason, ultimately became either to sell the Hospital to the Holdco principals or to close it.

26. Simply put, this entire motion is nothing but an attempt to distract the Court from the real facts of this case, which I am certain Committee counsel is more than capable of presenting in a coherent manner without my "coaching." It is indeed horribly insulting to Mr. Sherman that Debtor's counsel believes that he needs my "coaching." Mr. Sherman has obviously done too good of a job as Committee counsel, and he has thereby made himself a target of Debtor's wrath.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 12, 2011



DONALD SCARINCI

EXHIBIT -A-

Joel R. Glucksman

From: Andrew Sherman [ASHERMAN@sillscummis.com]

Sent: Tuesday, September 06, 2011 9:59 AM

To: Donald Scarinci; 'JDiPasquale@trenklawfirm.com'; 'TWalsh@trenklawfirm.com'

Cc: Joel R. Glucksman; Mark K. Follender

Subject: Re: Hudson Healthcare, Inc., Case No. 11-33014

This confirms our conversation in which we agreed for the production of documents by the Scarcini firm. The firm will produce documents relating to third party communications directly to my firm and Joe's firm. For any non-third party communications, those documents will be sent to Joe's firm for review. To the extent that such documents contain privileged communications those documents won't be produced, however all non-privileged documents will be sent to my firm after the privilege review.

From: Donald Scarinci [mailto:DScarinci@scarincihollenbeck.com]
Sent: Saturday, September 03, 2011 03:11 PM
To: Joseph J. DiPasquale <JDiPasquale@trenklawfirm.com>; Andrew Sherman; Thomas M. Walsh <TWalsh@trenklawfirm.com>
Cc: Joel R. Glucksman <JGlucksman@scarincihollenbeck.com>; Mark K. Follender <MFollender@scarincihollenbeck.com>
Subject: FW: Hudson Healthcare, Inc., Case No. 11-33014

Since I was the one who first made contact with Andy Aaronson advising him that I was served with a subpoena, I had assumed that he would contact you and that your office would be offering helpful advise and assistance. I am surprised to read your threatening letter and cursory restatement of the law on the attorney client privilege.

I have made it very clear that I will not participate in the fraud that I believe your team of lawyers is attempting to perpetuate in the bankruptcy court. As everyone knows, I resigned from HHI precisely because I could not and would not be a part of any of this. I am not concerned about my legal fees because they will eventually be paid in full by the City of Hoboken, the ultimate indemnitor of HHI's debts. However, I am concerned that the court knows that my law firm had no part in this insult to its intelligence and integrity. I am also deeply concerned that I am doing the right thing under the rules of attorney ethics and remain consistent with my own conscience. As I wrongly assumed you knew, since we are not strangers to each other, I am unaffected by threats, intimidation or promises of employment. Your "Hoboken Revolt" clients never figured that out and I've lived through over a year of this nonsense.

Perhaps by Tuesday, after you have had some time to yourself, your can conduct yourself in a more collegial manner and we can try this again. I am not your adversary. My suggestion is that you work out a mechanism to assert your claims of privilege to any document that my office provides and that if you and Mr.. Sherman do not agree then your procedure can involve in-camera review by the court or the court's designee. I will consult with attorneys in my office once they review the scope of the subpoena and someone from here will be in touch with Mr.. Sherman with a production schedule.

Donald

From: Jennifer Onka [mailto:JOnka@trenklawfirm.com]
Sent: Friday, September 02, 2011 5:10 PM
To: Donald Scarinci

Cc: Joseph J. DiPasquale
Subject: Hudson Healthcare, Inc., Case No. 11-33014

Mr. Scarinci:

Please see the attached correspondence from Joseph J. DiPasquale, Esq. regarding the above-referenced matter.

Thank you,

Jennifer Onka
Legal Assistant to Joseph J. DiPasquale, Esq. and Shoshana Schiff, Esq.
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