

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL I. RUBENSTEIN, ESQ.
(MIR-8637)
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Authority

In re:

HUDSON HEALTHCARE, INC.,

Debtor.

Chapter 11

Case No. 11-33014 (DHS)

Hearing Date: September 13, 2011

Hearing Time: 10:00 a.m.

Oral Argument Requested

**OPPOSITION OF NORTH HUDSON SEWERAGE AUTHORITY TO
JOINT MOTION OF DEBTOR AND HOBOKEN MUNICIPAL HOSPITAL
AUTHORITY et al. FOR AN ORDER APPROVING SETTLEMENT AND
COMPROMISE PURSUANT TO FED. R. BANKR. P. 9019**

Michael I. Rubenstein, Esq., an Attorney at Law of the State of New Jersey, pursuant to 28 U.S.C. Section 1746, does hereby affirm as follows:

1. I am of counsel to the North Hudson Sewerage Authority (“NHTSA”). In or about 1989, through the joint efforts of the municipalities of Hoboken, Union City and Weehawken and as specifically authorized by the Sewerage Authority Law (N.J.S.A. 40:14A-1 et seq.) NHTSA was created to handle the conveyance, treatment and disposal of raw sewage and wastewater emanating from within those municipalities. In accordance with N.J.S.A. 40:14A-7, NHTSA is separate public body corporate and politic constituting a political subdivision of the State and

which provides for essential governmental functions that ensure the public health and welfare.

2. In accordance with N.J.S.A. 40:14A-8(a), in order to cover the cost of operations, NHSA is statutorily authorized to collect service charges for the connection of any property and resultant use of its sewerage and wastewater conveyance and treatment system. The statutory provision provides: “such service charges may be charged to and collected from any person contracting for such connection or use or services or from the owner or occupant, or both of them, of any real property which directly or indirectly is or has been connected with the system or from or on which originates or has originated sewage or other wastes which directly or indirectly have entered or may enter the sewerage system, and the owner of any such real property shall be liable for and shall pay such service charges to the sewerage authority at the time when and the place where such service charges are due and payable. [underline added]”

3. N.J.S.A. 40:14-A-21 (f) grants NHSA the right to commence a civil collection action for the amount of the outstanding charges or in an action in equity to foreclose the sewer lien.

4. Upon information and belief, (and review of the records of the Hudson County Register), the Hoboken Municipal Hospital Authority (“HMHA”) owns the property to which NHSA provided sewerage services. In addition, the NHSA has only billed the HMHA since the HMHA acquired the property. Consequently, HMHA is the entity liable for payment of the sewerage charges. HMHA is not a debtor in the within bankruptcy case subject to and protected by the automatic stay provisions of 11 U.S.C Section 362. As of this date, there are outstanding sewerage services charges due and owing resulting from the connection of the hospital property to NHSA’s conveyance and treatment system. As the owner of this property, HMHA is liable to

NHSA for any and all outstanding sewerage service charges. Given that same have not been paid as when due, there is no reason that NHSA should not be able to initiate such collection efforts including state or federal court collection litigation to collect any and all outstanding pre- or post petition sewerage service charges due by HMHA as property owner and clear statutory obligor of this debt.

5. However, if pursuant to the terms of the parties' proposed Global Settlement, NHSA is deemed a "Covered Party" or its claim for outstanding sewerage service charges, a "Covered Claim", the terms of the settlement agreement would wrongfully enjoin NHSA from proceeding with its statutory right to seek collection of outstanding sewerage charges against HMHA as property owner. Just as the Hoboken University Medical Center ("hospital") benefits the community by continuing to operate, the services rendered by NHSA are equally essential to the continued health and welfare of the entire community. In order to continue to provide such necessary services, NHSA must be free to collect its sewerage charges to ensure that funds are available to satisfy its costs of operation.

6. State law recognizes the right of a sewerage authority to collect those service fees necessary to provide an essential public service. Regardless of the HMHA's apparent immediate need to divest itself of the hospital facility, that effort can not allow it to trample the rights of priority statutory lien creditors like NHSA. HMHA is not a debtor and cannot extend the cloak of debtor's bankruptcy to sidestep its clear responsibility for the prompt and immediate payment of the sewerage services charges as they become due. NHSA should be able to collect its charges from HMHA via collection suit or via attachment of its sewer lien to the proceeds of the hospital asset sale.

7. Consequently, NHSA, as a creditor with specifically enumerated rights of collection under state law objects to entry of any Order that limits its rights of collection by a non-debtor and which fails to preserve its statutory lien against and right of payment out of real property sale proceeds.

I hereby declare that the factual statements contained in the foregoing Affirmation are true and correct to the best of my knowledge, information and belief.

Date: September 12, 2011

/s/ Michael I. Rubenstein
MICHAEL I. RUBENSTEIN, ESQ.
Of Counsel to North Hudson
Sewerage Authority