

**REBECCA J. PRICE**

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UNITED STATE BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
**Newark Vicinage**

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In Re: )  
 ) No.: 11-33014-DHS  
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 HUDSON HEALTHCARE, INC. ) Chapter 11  
 )  
 ) Judge: Honorable Donald H. Steckroth

**OLYMPUS AMERICA INC.’s LIMITED OBJECTION TO THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT AND COMPROMISE**

Olympus America Inc. (“Olympus”) hereby objects to the *Debtor’s Motion for Entry of an Order Approving Settlement and Compromise* (the “Settlement Motion”), and respectfully sets for and represents as follows:

1. By its Motion, Hudson Healthcare, Inc. (“Debtor”) seeks approval of a Global Settlement, which would settle disputes among Debtor, the Hoboken Municipal Hospital Authority (the “Authority”) and the City of Hoboken, New Jersey (the “City”), for itself and on behalf of the Hoboken Parking Authority (the “Parking Authority”, collectively the “Parties”), enable the Parties to sell the assets of the Hoboken University Medical Center (the “Hospital”) and provide injunctive relief prohibiting Debtor’s creditors from asserting any/all claims against the Parties (among others) if such claims arose out of or are connected with the Debtor and/or the Debtor’s rights, agreements or the operation of Debtor’s business (including Debtor’s operation of the Hospital), as well as provide for a full release of the Authority, the City and the Parking Authority of and from any/all claims against the Parties (among others) arising out of or

connected with the Debtor and/or the Debtor's rights, agreements or the operation of Debtor's business (including Debtor's operation of the Hospital).

2. The Settlement Motion states that injunctive relief, as well as a full release, as outlined in Paragraph 1 herein, is necessary to protect the Parties (among others) from "attempts by the Debtor's creditors to collect... under theories of indemnity, alter ego, substantive consolidation, tort, contract, unjust enrichment or otherwise." Further, Debtor refers to such claims as "meritless attempts by the debtor's creditors to assert... claims against the Authority." See Settlement Motion, ¶¶ 55-56.

3. However, Olympus has a valid, binding claim directly against the Authority, a non-debtor, based upon its contract with the Authority.

4. Olympus did not enter into a contractual relationship with Debtor and does not have direct contractual claim against Debtor; however, Olympus may have an unjust enrichment claim against the Debtor for failing to return the Equipment that is not property of the Estate pursuant to a judgment and unjust enrichment based on the Authority for Debtor's continued use of the Equipment.

5. On or about March 22, 2007, Olympus and the Authority entered into a Cost Per Procedure Agreement (the "Equipment Lease"), whereby the Authority agreed to lease certain medical equipment and related accessories from Olympus for a period of thirty-six (36) months for use at the Hospital. A true and correct copy of the Equipment Lease is attached hereto and Marked as Exhibit "A".

6. The Equipment Lease was freely negotiated between Olympus and the Authority.

7. Debtor is not a signatory to the Equipment Lease.

8. The Authority failed, refused or neglected to return the Equipment to Olympus immediately after the Equipment Lease expired on April 30, 2010.

9. Accordingly, on or about August 10, 2010, Olympus filed a complaint against the Authority in the Court of Common Pleas of Lehigh County, Pennsylvania (the “Pennsylvania Action”) seeking, in addition to monetary damages, immediate return of the Equipment. A true and correct copy of the aforementioned complaint is attached hereto and Marked as Exhibit “B”.

10. On or about April 26, 2011, Olympus obtained judgment against the Authority based on the allegations in the Pennsylvania Action. A true and correct copy of the aforementioned judgment is attached hereto and Marked as Exhibit “C”.

11. Subsequent to the Petition Date, Olympus filed a Motion for Reclamation of Property or, in the Alternative, for Relief from the Automatic Stay (the “Olympus Relief Motion”), filed on August 29, 2011 [Dkt. No. 121]<sup>1</sup>, wherein Olympus certified that it contracted with the Authority, not Debtor, and requested an Order granting it the ability to reclaim the Equipment in accordance with both the Equipment Lease and the judgment obtained against the Authority in Lehigh County, Pennsylvania.

12. As of today’s date, the total amount due Olympus based upon the Equipment Lease and/or the financial perimeters set forth in the Equipment Lease, for the Authority and Debtor’s continued and improper use of the Equipment, is \$273,148.05.<sup>2</sup>

13. Furthermore, Olympus has had to expend considerable attorney’s fees to reclaim possession of the Equipment, which is collectible by Olympus pursuant to the Equipment Lease.

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<sup>1</sup> The Motion for Reclamation of Property or, in the Alternative for Relief from the Automatic Stay, as filed by Olympus be and hereby is incorporated herein as if set forth in its entirety.

<sup>2</sup> As outlined in the Olympus Relief Motion, despite Debtor’s continued possession of the Equipment, Olympus has not been paid since August, 2010.

14. As referenced in the Olympus Relief Motion, the Equipment Lease is a true lease and not a disguised security agreement. Accordingly, there was no fair market value buy out pursuant to the terms of the Equipment Lease, and as of today's date the value of the Equipment is \$300,600.59.

15. Olympus' claim against the Authority is neither meritless, nor an attempt by Olympus to collect under any theory other than a direct contractual relationship with the Authority.

16. Although as previously stated Olympus is a creditor of Debtor related to unjust enrichment for its continued use of the Equipment, its claim against the Authority is separate and distinct from its claim against Debtor and does not arise out of any relationship with Debtor.

17. Because a release or discharge in bankruptcy is an extreme remedy, stripping a creditor of its claims against its will, it is a privilege reserved only for those entities which file petition under the Bankruptcy Code and abide by its rules. See *In re Arrowmill Development Corp.*, 211 B.R. 497, 503 (Bkrcty.D.N.J.,1997)

18. Under the Bankruptcy Code, the discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt. 11 U.S.C. 524(e).

19. To date, the Authority has not filed for protection under the Bankruptcy Code.

20. An injunction and involuntary release of Olympus' claim against the Authority would be in direct violation of Section 524(e) of the Bankruptcy Code.

21. Further, according to the Settlement Motion, Olympus will not receive additional separate consideration from the Authority in exchange for Olympus' nonconsensual release, in violation of general principals of contract law. See *In re Zenith Electronics Corp.*, 241 B.R. 92,

111 (Bank.D.D.Del. 1999), *In re Arrowmill Dev. Corp.*, 211 B.R. 497, 506-507), (Bankr.D.N.J. 1997).

22. The Authority has not provided adequate consideration to Olympus to warrant an injunction and release. As such, the relief requested in the Settlement Motion is impermissible. See *In re Medford Crossings North*, 2011 WL 182815 (Bankr.D.N.J. 2011).

23. Accordingly, there is no valid basis to prohibit Olympus from raising its claim against the Authority and/or to release the Authority of its contractual obligations pursuant to the Equipment Lease.

WHEREFORE, Olympus America Inc. requests this Court deny *Debtor's Motion for Entry of an Order Approving Settlement and Compromise* as it relates to a request for injunctive relief and/or full release of Olympus' contractual claims against the Hoboken Municipal Hospital Authority.

TALLMAN, HUDDERS & SORRENTINO

9/13/2011  
Date

/s/ Rebecca J. Price  
Rebecca J. Price, Esquire