

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE:	*	Case No. 10-08844 (MCF)
HOSPITAL DAMAS, INC.,	*	Chapter 11
Debtor in possession.	*	
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**SETTLEMENT AGREEMENT BY AND BETWEEN DEBTOR
AND CREDITOR PUERTO RICO HOSPITAL SUPPLY, INC.**

TO THE HONORABLE COURT,

Now come Debtor and creditor, Puerto Rico Hospital Supply, Inc. ("PRHS"), represented by their respective undersigned counsel and respectfully state and request:

1. On November 19, 2010, PRHS filed proof of claim number 55 in Debtor's Chapter 11 proceedings.
2. On February 3, 2011, Debtor filed an Objection to Proof of Claim Number 55. In essence, Debtor objected to the total amount claimed by PRHS and classified PRHS' claim as unsecured. (Docket No. 318).
3. On February 24, 2011, PRHS responded to Debtor's objection to PRHS's proof of claim, affirming the amount of its claim and asserting that it arose from at least five (5) executory contracts previously executed between the parties and from the sale and delivery of general merchandise to Debtor. Accordingly, PRHS asserted that its claim was bifurcated between an executory contract claim and a general unsecured claim.
4. Representatives from PRHS and Debtor met on various occasions to settle the contested matter arising from PRHS' proof of claim and Debtor's objection thereto. They have reviewed the underlying executory contracts, purchase orders, invoices, evidence of payment and their respective general ledgers relating to their pre-petition commercial transactions and reconciled their respective accounts.

5. After due deliberation, Debtor and PRHS have agreed to settle and compromise the aforementioned contested matter under the following terms and conditions:

- a. Debtor and PRHS concur that the total amount owing by Debtor to PRHS for the pre-petition purchase of services and supplies totals \$673,437.29. They also agree that this amount is subdivided as follows: (i) \$536,545.29 for services and products delivered under the five (5) executory contracts identified in subparagraph 5(b) hereinbelow; and (ii) \$136,892.00 for the purchase of miscellaneous supplies outside the scope of the five executory contracts.
- b. Debtor desires to assume and/or renew the following executory contracts with PRHS:
 - (i) the X-ray and related products and services contract executed on April 10, 2010 and valid through April 9, 2013;
 - (ii) the "atados" Customed Packs contract executed on May 1, 2009 and valid through April 30, 2012; and
 - (iii) the Ethicon Sut/ethicon and ethicon endo contract executed on June 1, 2008 and valid through May 31, 2011, which is renewed pursuant to its terms;
 - (iv) the case cart cardiovascular surgery, materials and services contract originally executed on September 1, 2007 and valid through August 31, 2010, but which the parties by their conduct and dealings have effectively extended;
 - (v) the 3M contract for medical surgical supplies and services, executed on July 8, 2008 and valid through June 30, 2009, but which the parties by their conduct and dealings have effectively extended from year to year.
- c. Debtor agrees to pay PRHS the amount of \$356,000.00 to cure all pre-petition amounts owing to PRHS under the five afore-referenced executory contracts (instead

of the total amount of \$536,545.29 which they both recognize as being owed under these contracts as of the Chapter 11 petition date). This amount will be paid in 36 equal monthly payments, commencing on the eleventh day after the entry of an Order by this Court approving the terms of this Settlement Agreement.

- d. The difference between the pre-petition debt (i. e., the amount of \$673,435.65, as previously informed to the Court) and the agreed amount of \$356,000.00 for pre petition executory contract claims will be considered a discount offered by PRHS to Debtor to assist it in its reorganization and in consideration of the assumption of the afore-referenced contracts. PRHS waives its right to claim a dividend payment for this difference, even as a general unsecured claim.

6. Debtor and PRHS respectfully submit that the foregoing settlement terms are just and reasonable in light of Debtor's current financial circumstances. In the exercise of its best business judgment, Debtor understands that the terms and conditions of the five executory contracts identified hereinabove are favorable and therefore they ought to be assumed and/or renewed pursuant to their terms. In sum, Debtor's assumption and renewal of the aforementioned executory contracts with PRHS is beneficial to Debtor's estate, to Debtor's ongoing operations, and to the formulation and advancement of Debtor's proposed Chapter 11 Plan and will put an end to litigation. *In re Mailman Steam Carpet Cleaning Corp.* 212F.3d.632(1st Cir.), *cert denied*, 531 U.S.960(2000). *In re Martin*, 91F.3d.389(3d.Cir.1996). Accord *in re Heathrow Int'l. Inc.*, 136 F.3d.45(1st Cir.1988).

WHEREFORE, Debtor and PRHS respectfully request for the Court to take note of the foregoing and, to enter an Order, after notice and an opportunity for a hearing, approving the terms and conditions of the Settlement Agreement set forth above with respect to PRHS Proof of Claim Number 55 and Debtor's objection thereto.

Notice to all Creditors and parties in interest

Within ten (10) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this

Agreement has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this Agreement with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the Agreement will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

CERTIFICATE OF SERVICE: We hereby certify that on this same date we electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the Office of the United States Trustee and to all CM/ECF participants. We also certify that on this date we have sent by regular U.S. mail a copy of the foregoing Settlement Agreement to all creditors and parties in interest.

San Juan, Puerto Rico, this 26th day of May, 2011.

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