UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:	Case No.: 12-12906 (MS)
CHRIST HOSPITAL, a New Jersey not-for-profit corporation, Debtor.	Chapter 11 Honorable Morris Stern, U.S.B.J.

PURCHASER'S OBJECTION TO DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE FOR JOINT PLAN OF ORDERLY LIQUIDATION

Hudson Hospital Propco, LLC and Hudson Hospital Opco, LLC (collectively, the "Purchaser"), by and through its counsel, McElroy, Deutsch, Mulvaney & Carpenter, LLP, hereby objects (the "Objection") to the *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Joint Plan of Orderly Liquidation* (Docket No. 1110) (the "Disclosure Statement"), and states as follows:

BACKGROUND

1. On February 6, 2012, Christ Hospital (the "Debtor") filed with the Bankruptcy Court a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. By Order dated March 27, 2012, the Court approved the Sale Motion (the "Sale Order"), which, inter alia, approved the Asset Purchase Agreement ("Purchase Agreement")

between Debtor and Purchaser. The Sale Order approved the sale of substantially all of the Debtor's assets to Purchaser.

3. Pursuant to Paragraph 22 of the Sale Order: "Nothing contained in any plan of reorganization (or liquidation) confirmed in this bankruptcy case or the order of confirmation confirming any such plan of reorganization (or liquidation) shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order."

4. Pursuant to the Sale Order and Order Extending Purchaser's Designation Period (Docket No. 703), Purchaser, inter alia, had until December 31, 2012 to exercise its designation rights by filing with the Court notice(s) of which Designated Contracts Purchaser intends to have the Debtor assume or not to assume, and if Purchaser designates at least fifty (50) percent of the Designated Contracts by December 1, 2012, Purchaser shall have until one year from the Closing Date to designate the remaining contracts.

5. Purchaser designated at least fifty (50) percent of the Designated Contracts by December 1, 2012 for assumption or rejection, and pursuant to the Sale Order and Order Extending Purchaser's Designation Period, Purchaser shall have until July 13, 2013 to designate the remaining contracts.

6. By order dated August 15, 2012, the Court approved the *Stipulation And Consent Order Approving Purchase Of Professional Liability Tail Policy* (Docket No. 680) (the "Tail Policy Stipulated Order") wherein, *inter alia*, Purchaser became an additional insured under the Debtor's Tail Policy.

7. On March 15, 2013, the Debtor and Committee filed the Disclosure Statement and as an attachment to the Disclosure Statement, the Joint Plan of Orderly Liquidation (the "Plan").

OBJECTION

8. Portions of the Plan conflict with the Sale Order, Purchase Agreement and other orders entered by this Bankruptcy Court, which makes the Plan not confirmable on its face and therefore the Disclosure Statement cannot be approved. In addition, the Plan is not confirmable as a matter of law as further discussed below. Courts have held that where a proposed plan is not confirmable on its face, it will not approve a disclosure statement with respect to the plan because to do so would be futile. *See, e.g., In re Washington Associates*, 141 B.R. 275 (Bankr. S.D.N.Y. 1992); *In re McCall*, 44 B.R. 242, 243 (Bankr. E.D. Pa 1984).

9. Purchaser reached out to Debtor and the Committee prior to filing this Objection to address the deficiencies that were apparent with the Disclosure Statement and Plan. Although, the parties were able to resolve some of the issues[1], there was no agreement to the following necessary changes that would make clear that the Plan does not conflict with the Sale Order or Purchase Agreement or other orders entered in this Bankruptcy Case.

10. With regard to Section VIII.G. of the Disclosure Statement and its corresponding Sections 8.2 (f) and (g) of the Plan, propose that "rights in and proceeds of the Insurance Policies will revest in the Debtor." This is contrary to the Tail Policy Stipulated Order (as, *inter alia*, Purchaser must remain an additional insured under the Insurance Policy). Accordingly, Purchaser suggests the following language to be added to these Sections:

> Notwithstanding any of the forgoing, all of Purchaser's and any other parties' rights under any Insurance Policies, including but not limited to being named an additional insured under any Insurance Policy (and covered under said Policy) and receipt of any proceeds, will remain the same and not be affected in any way by the revesting of the Insurance Policies in the Debtor.

11. Contrary to the Sale Order and Purchase Agreement (and bankruptcy law),

[1] Purchaser reserves all rights to raise these issues that Purchaser believes have been agreed to based on prior discussions in the event that these agreed upon changes are not presented to the Court prior to or at the hearing.

Section 7.3 of the Plan proposes to penalize counterparties to Designated Contracts for entering into agreements with the Purchaser that might continue the business relationship but leave no recourse to the counterparty if their executory contract or unexpired lease is ultimately rejected. The Committee, through its counsel, has contended that Section 5.14(f)[2] of the Purchase Agreement authorizes a portion (but not all) of this Plan provision, but Section 5.14(f) applies only to the reduction of Cure amounts (i.e. the assumption of an Executory Contract or unexpired lease), not the outright rejection of a contract. Purchaser's ability to negotiate during the Designation Period could be severely hampered by this Plan provision. As Section 7.3 is contrary to Purchaser's rights pursuant to the Sale Order, Purchase Agreement and Designation Order, it would be futile to approve the Disclosure Statement without removing this Section. Moreover, it takes away an important of right of the counterparties without any basis in law.

12. Section 12.7 of the Plan does not correspond with the rights and obligations of all parties affected by the Sale Order and Purchase Agreement. Purchaser suggests the following revision:

> As of the Effective Date, the Sale Order and APA are ratified, reaffirmed and shall remain in full force and effect and binding on all Creditors, the Debtor Representative, the Liquidating Trustee (to the same extent they are binding on the Debtor) and on the PEDCC (to the same extent it is binding on the Committee). Nothing contained in this Plan or in any amendment to or modification of this Plan shall be deemed to have the effect of amending, modifying, impairing or extending any of the rights or obligations of the parties to the Sale Order or APA. To the extent the terms and conditions of the Sale Order or APA vary from or conflict with the terms and conditions of this Plan or the Liquidating Trust Agreement, the terms of the Sale Order or APA, as applicable, shall

[2] Section 5.14(f) states in pertinent part: "The amount of any such Cure Payment may be reduced by agreement between Purchaser and any counterparty to an Assumed or Designated Contract, it being acknowledged and agreed that the treatment of the amounts of any such reduction shall be subject to the mutual consent of the Debtor and the Committee, unless such reduced remainder is waived as a claim against the estate, and if there is no such agreement, subject to determination by the Court."

control.[3]

To the extent that the Court does not accept Purchaser's proposed language above, Purchaser suggests adding "the Protected Parties (as defined in the Sale Order)" to the revised Section 12.7 to conform with the Sale Order as follows:

> Nothing in this Plan shall be construed to limit, alter, modify, augment or impair any rights or obligations of the Purchaser, the Debtor, its estate, the Protected Parties (as defined in the Sale Order) or any of their respective successors or assigns, under the Sale Order or the APA.[4]

13. Finally, as with the above revision, Purchaser would add the following language that was likewise agreed to in the *In re Hudson Healthcare, Inc*. case:

> 12.8 Effect of Plan on Released Claims and Liens
>
> Nothing contained in this Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to the Sale Order or APA or otherwise.

RESERVATION OF RIGHTS

14. Purchaser reserves the right to object to any further amendments to the Disclosure Statement, to confirmation of the Plan or any other plan, on any grounds whatsoever, regardless of whether those grounds are addressed herein.

[3] This provision is nearly identical to an already agreed to plan provision entered in another recent New Jersey case, *In re Hudson Healthcare, Inc*., Case No. 11-33014, which involved the same counsel for the Committee and the same counsel for the Purchaser.

[4] Purchaser is basing its change on a draft revised Plan given to Purchaser prior to filing this Objection. Purchaser reserves its rights to make further objections to the extent that Disclosure Statement and/or Plan is changed further prior to the hearing.

WHEREFORE, for the reasons stated above, the Purchaser respectfully requests that the Court deny approval of the Disclosure Statement and prays for such other and further relief as is just.

Respectfully submitted,

McElroy, Deutsch, Mulvaney & Carpenter, LLC
Attorneys for Purchaser

By: /s/ Louis A. Modugno
Louis A. Modugno

Dated: April 19, 2013