

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
In re : Chapter 11
:
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, :
: Case No. 99-40663
Debtor. :
-----X

**MOTION OF YOUNGSTOWN OSTEOPATHIC
HOSPITAL ASSOCIATION TO COMPROMISE AND SETTLE
CONTROVERSY WITH CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS HEALTH AND WELFARE AND PENSION FUNDS**

Youngstown Osteopathic Hospital Association (the "Debtor"), debtor and debtor in possession, respectfully moves (the "Motion"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing the Debtor to compromise and settle a controversy (the "Compromise") with the Central States Southeast and Southwest Areas Health and Welfare and Pension Funds (the "Pension Fund"), and further in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought herein are sections 105, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9019.

BACKGROUND

2. On March 11, 1999 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). For a

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period of time following the Petition Date, the Debtor, pursuant to sections 1107 and 1108 of the Bankruptcy Code, continued to operate its business and manage its property and assets as a debtor in possession. The Debtor ceased operations on March 25, 2000.

3. Prior to the Petition Date, the Debtor entered into a collective bargaining agreement (the "CBA") with the International Brotherhood of Teamsters, Teamsters Local Union No. 377 which, among other things, required the Debtor to make contributions to the Pension Fund.

4. On February 10, 2000, pursuant to authorization by the Court, the Debtor rejected the CBA, and subsequently, ceased making its regular contributions to the Pension Fund and shortly thereafter ceased operation of its business.

5. On or about January 16, 2001, the Pension Fund filed the Application (i) asserting a withdrawal liability claim in the amount of \$648,494.67; (ii) alleging that the entire amount of the withdrawal liability claim was entitled to administrative expense priority; (iii) alleging, in the alternative, that at least a portion of its withdrawal liability claim, the sum of \$50,547.22, was entitled to administrative expense status; and (iv) demanding immediate payment of its allowed administrative expense claim (the "Application"). On or about January 29, 2001, the Debtor filed an objection to the Application. On or about February 5, 2001, the Official Committee of Unsecured Creditors (the "Committee") filed an objection to the Application.

PROPOSED COMPROMISE

6. After arms length negotiation, the parties have agreed, subject to the approval of this Court, to settle this controversy under the following terms:

- a. The Pension Fund will receive an allowed administrative expense claim in the amount of Twenty-five Thousand Dollars (\$25,000.00), as defined and treated by sections 503 and 507 of the Bankruptcy Code. This claim will not be paid in advance of other allowed administrative expense claims.
- b. The remainder of the Pension Fund's asserted claims against the estate shall only be classified as a general unsecured claim, the amount of which will be subject to further order of the Bankruptcy Court.

7. The Debtor believes the Compromise is in the best interest of the estate and the Debtor's creditors because of the risks of litigation and the possibility that continued litigation over this contested matter would delay the further administration of the Debtor's estate and would cause the unnecessary incurrence of additional fees and expenses.

RELIEF REQUESTED

8. Compromises and settlements are favored and encouraged in bankruptcy court proceedings.¹ The Court, in its sound discretion, may approve a settlement and compromise under Bankruptcy Rule 9019 if the settlement is reasonable and is in the best interests of the estate.² In making its determination, the court:

need not conduct its own investigation concerning the reasonableness of the settlement and may credit and consider the opinion of the Trustee and counsel that the settlement is fair and equitable. [citations omitted]. Similarly, the court need not conduct a "mini-trial" to determine the merits of the underlying litigation. Rather, the court's responsibility is 'to canvas the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.'³

¹ *Nellis v. Shugrue*, 165 B.R. 115 (S.D.N.Y. 1995); *In re Sassalos*, 160 B.R. 646 (D. Or. 1993).

² *See, Shugrue*, 165 B.R. at 115; *Treinish v. Topco Assoc., Inc.* (In Re AWF Liquidation Corp.), 208 B.R. 399 (Bankr. N.D. Ohio 1997); *In Re Parkview Hospital-Osteopathic Medical Center*, 211 B.R. 603 (Bankr. N.D. Ohio 1997).

³ *In re Purofied Down Products Corp.*, 150 B.R. 519 (S.D.N.Y. 1993). *See, Shugrue*, 165 B.R. at 122 (a bankruptcy court may consider the opinions of the trustee or debtor that the settlement is fair and equitable).

In addition, the Court “may also consider the competency and experience of counsel supporting the settlement.”⁴ In assessing the fairness and reasonableness of the proposed settlement, the Court should also consider the cost of not approving the settlement in terms of the delay, inconvenience and risk of litigation which may arise and its resulting impact on creditors.⁵

THE COMPROMISE MEETS THE “FAIR AND REASONABLE” STANDARD

9. The proposed Compromise rises well above the “lowest point in the range of reasonableness.”⁶ The Compromise provides the Debtor, its post-petition lender and other creditors in this case with financial certainty by limiting, to a specified amount, the Pension Fund’s administrative expense claim while providing an opportunity for the parties to the Compromise to determine, or have determined by the Court, the extent of the Pension Fund’s remaining general unsecured claim.

REQUEST FOR LIMITED NOTICE

10. Notice of this Motion has been given to counsels for the Pension Fund, the United States Trustee for this Region, counsel for PNC Bank, N.A., counsel for the Official Committee of Unsecured Creditors (the “Committee”), and all other creditors requesting notice pursuant to Bankruptcy Rule 2002. Because of the administrative nature of the subject compromise, and the consents of counsels for the Committee and PNC Bank N.A. to the terms of the compromise, the

⁴ *Shugrue*, 165 B.R. at 122.

⁵ *See, generally, Shugrue.*

⁶ *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 424 U.S. 822 (1983); *In re Pennsylvania Truck Lines, Inc.*, 150 B.R. 595 (E.D. Pa. 1992), *aff’d*, 8 F.3d 812 (3d Cir. 1994) (“range of reasonableness” applied in the compromise of a pre-petition claim).

Debtor hereby requests that the Court, pursuant to section 102 of the Bankruptcy Code, consider this Motion and enter an Order authorizing the Debtor to enter into this compromise without the need for further notice and a hearing.

WHEREFORE, the Debtor respectfully requests that it be authorized to compromise and settle the controversy with the Pension Fund on the terms contained in paragraph 7 hereof.

Dated: April 17, 2001
Cleveland, Ohio

Respectfully submitted:




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(216) 363-4500

**Attorneys for Youngstown Osteopathic
Hospital, Debtor and Debtor in
Possession.**

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2001, a true and correct copy of the foregoing *Motion of Youngstown Osteopathic Hospital Association to Compromise and Settle Controversy with Central States, Southeast and Southwest Areas Health and Welfare Pension Funds* was served via regular U.S. mail, postage pre-paid upon the parties on the attached Service List.



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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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In re : CHAPTER 11
:
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, :
: CASE NO. 99-40663
Debtor . :
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**NOTICE OF FILING OF (i) MOTION OF YOUNGSTOWN OSTEOPATHIC
HOSPITAL ASSOCIATION TO COMPROMISE AND SETTLE
CONTROVERSY WITH THE TEAMSTERS LOCAL NO. 377 HEALTH AND
WELFARE FUND AND (ii) MOTION OF YOUNGSTOWN OSTEOPATHIC
HOSPITAL ASSOCIATION TO COMPROMISE AND SETTLE
CONTROVERSY WITH CENTRAL STATES, SOUTHEAST AND SOUTHWEST
AREAS HEALTH AND WELFARE PENSION FUNDS**

PLEASE TAKE NOTICE that Youngstown Osteopathic Hospital Association (the "Debtor"), debtor and debtor in possession, has filed (i) a motion to compromise and settle controversy with the Teamsters Local No. 377 Health and Welfare Fund (the "Teamsters Motion") and (ii) a motion to compromise and settle controversy with the Central States, Southeast and Southwest Areas Health and Welfare Pension Funds (the "Central States Motion");

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy Rule 9013-1, any objection or other response to either the Teamsters Motion or the Central States Motion must be filed with the Clerk of the Court at the United States Bankruptcy Court, 125 Market Street, United States Courthouse, Youngstown, Ohio 44503 and simultaneously served on Michael D. Zaverton, Benesch, Friedlander, Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2378, so as to be filed and received no later than twenty (20) days after the date hereof;

PLEASE TAKE FURTHER NOTICE that, if no objection or other response to either the Teamsters Motion or the Central States Motion is timely filed and served, the Court may grant the relief requested in the Teamsters Motion or the Central States Motion without further notice or a hearing thereon; and

PLEASE TAKE FURTHER NOTICE that, if an objection or other response is timely filed and served, the Court may set a hearing to consider the Teamsters Motion or the Central States Motion and the objection(s) thereto, upon notice thereof as shall be determined by the Court;

Dated: Cleveland, Ohio
April 17, 2001

Respectfully submitted,




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(216) 363-4500

**Attorneys for Youngstown Osteopathic
Hospital Association, Debtor and Debtor
in Possession**

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2001, a true and correct copy of the foregoing *Notice of Filing of (i) Motion of Youngstown Osteopathic Hospital Association to Compromise and Settle Controversy with the Teamsters Local No. 377 and (ii) Motion of Youngstown Osteopathic Hospital Association to Compromise and Settle Controversy with the Central States, Southeast and Southwest Areas Health and Welfare Pension Funds* was served via regular U.S. mail, postage prepaid, upon the parties on the attached Service List.



Michael D. Zaverton

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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In re : Chapter 11
:
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, :
: Case No. 99-40663
Debtor. :
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**MOTION OF YOUNGSTOWN OSTEOPATHIC HOSPITAL
ASSOCIATION TO COMPROMISE AND SETTLE CONTROVERSY
WITH THE TEAMSTERS LOCAL NO. 377 HEALTH AND WELFARE FUND**

Youngstown Osteopathic Hospital Association (the "Debtor"), debtor and debtor in possession, respectfully moves (the "Motion"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing the Debtor to compromise and settle a controversy (the "Compromise") with the Teamsters Local No. 377 Health and Welfare Fund (the "Fund"), and further in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought herein are sections 105, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9019.

BACKGROUND

2. On March 11, 1999 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). For a time following the commencement of this chapter 11 case, the Debtor, pursuant to sections 1107

and 1108 of the Bankruptcy Code, continued to operate its business and manage its property and assets as a debtor in possession. The Debtor ceased operation on March 25, 2000.

3. As of the Petition Date, there were 183 physicians on the Debtors' medical staff. The medical staff was supported by approximately 350 full and part-time employees including, (i) 73 registered nurses represented by the Ohio Nurses Association, (ii) licensed practical nurses and certain department personnel represented by the Youngstown Osteopathic Hospital Employees Association, and (iii) housekeeping, maintenance and clerical workers represented by the International Brotherhood of Teamsters Local Union No. 377 (the "Teamsters").

4. On December 15, 1996, prior to the Petition Date, the Debtor and the Teamsters entered into a collective bargaining agreement (the "Agreement"), effective from December 15, 1996 through December 14, 1999, setting forth the terms and conditions under which the Debtor would employ those employees represented by the Teamsters. Under the Agreement, the Debtor was obligated to make weekly contributions to the Fund as premium payments for health and life insurance coverage to be provided by the Fund for the Debtor's 100 bargaining unit employees. As of the Petition Date, the Debtor was delinquent in the contributions to the Fund for the months of October, November and December 1998 and January and February 1999. The total amount of the Debtor's prepetition indebtedness to the Fund was \$319,056.00.

5. On or about May 14, 1999, the Fund filed a motion (the "Fund Motion") for entry of an order directing the Debtor to pay the outstanding prepetition payment of health and welfare contributions due under the collective bargaining agreement. On June 3, 1999, the Debtor filed an objection to the Fund Motion. Subsequently, the Fund and the Debtor filed their respective briefs with the Court. On February 24, 2000, this Court ordered that the Debtor pay to the Fund all the prepetition payments due under the collective bargaining agreement. This decision was

then appealed to the District Court, which affirmed the ruling on August 21, 2000. This matter is currently on appeal to the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”).

PROPOSED COMPROMISE

6. After arms length negotiation, the parties have agreed, subject to the approval of this Court, to settle this controversy under the following terms:

- a. The Fund will receive an allowed administrative expense claim in the amount of Fifty Thousand Dollars (\$50,000.00), as defined and treated by sections 503 and 507 of the Bankruptcy Code. This claim will not be paid in advance of other allowed administrative expense claims.
- b. The remainder of the Fund’s claim, Two Hundred Sixty-nine Thousand Fifty-six Dollars (\$269,056.00), will be allowed as a general unsecured claim, as defined and treated by section 507 of the Bankruptcy Code.
- c. The Fund relinquishes all pending and accrued claims against the Debtor. The Debtor will file a motion for limited remand to this Court so that the Court has jurisdiction to consider and rule upon a motion to compromise this controversy. After the settlement has been approved by this Court, the Fund and the Debtor will file a joint-stipulation, dismissing the Sixth Circuit appeal, with prejudice.
- d. All obligations of both parties are contingent upon, approval of the proposed Compromise by this Court.

7. The Debtor believes the Compromise is in the best interest of the estate and the Debtor’s creditors because of the litigation risks to the estate, the continued costs of the appeal, and the possibility that further litigation would delay the further administration of the Debtor’s estate.

RELIEF REQUESTED

8. Compromises and settlements are favored and encouraged in bankruptcy court proceedings.¹ The Court, in its sound discretion, may approve a settlement and compromise under Bankruptcy Rule 9019 if the settlement is reasonable and is in the best interests of the estate.² In making its determination, the court:

need not conduct its own investigation concerning the reasonableness of the settlement and may credit and consider the opinion of the Trustee and counsel that the settlement is fair and equitable. [citations omitted]. Similarly, the court need not conduct a “mini-trial” to determine the merits of the underlying litigation. Rather, the court’s responsibility is ‘to canvas the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.’³

In addition, the Court “may also consider the competency and experience of counsel supporting the settlement.”⁴ In assessing the fairness and reasonableness of the proposed settlement, the Court should also consider the cost of not approving the settlement in terms of the delay, inconvenience and risk of litigation which may arise and its resulting impact on creditors.⁵

¹ *Nellis v. Shugrue*, 165 B.R. 115 (S.D.N.Y. 1995); *In re Sassalos*, 160 B.R. 646 (D. Or. 1993).

² *See, Shugrue*, 165 B.R. at 115; *Treinish v. Topco Assoc., Inc.* (In Re AWF Liquidation Corp.), 208 B.R. 399 (Bankr. N.D. Ohio 1997); *In Re Parkview Hospital-Osteopathic Medical Center*, 211 B.R. 603 (Bankr. N.D. Ohio 1997).

³ *In re Purofied Down Products Corp.*, 150 B.R. 519 (S.D.N.Y. 1993). *See, Shugrue*, 165 B.R. at 122 (a bankruptcy court may consider the opinions of the trustee or debtor that the settlement is fair and equitable).

⁴ *Shugrue*, 165 B.R. at 122.

⁵ *See, generally, Shugrue.*

THE COMPROMISE MEETS THE “FAIR AND REASONABLE” STANDARD

9. The proposed Compromise rises well above the “lowest point in the range of reasonableness.”⁶ The Compromise provides the Debtor, its post-petition lender and other creditors in this case with financial certainty by limiting, to a specified amount, the Fund’s administrative expense claim and further resolves pending litigation — the ongoing, associated costs of which are burdensome to the Debtor’s estate.

REQUEST FOR LIMITED NOTICE


10. Notice of this Motion has been given to the Fund, counsel for the Fund, the United States Trustee for this Region, counsel for PNC Bank, N.A., counsel for the Official Committee of Unsecured Creditors (the “Committee”), and all other creditors requesting notice pursuant to Bankruptcy Rule 2002. Due to the administrative nature of the subject compromise, and the consents of counsels for the Committee and PNC Bank N.A. to the terms of the compromise, the Debtor hereby requests that the Court, pursuant to section 102 of the Bankruptcy Code, consider this Motion and enter an Order authorizing the Debtor to enter into this compromise without the need for further notice and a hearing.

⁶ *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 424 U.S. 822 (1983); *In re Pennsylvania Truck Lines, Inc.*, 150 B.R. 595 (E.D. Pa. 1992), *aff’d*, 8 F.3d 812 (3d Cir. 1994) (“range of reasonableness” applied in the compromise of a pre-petition claim).

WHEREFORE, the Debtor respectfully requests that it be authorized to compromise and settle the controversy with the Fund on the terms contained in paragraph 7 hereof.

Dated: April 17, 2001
Cleveland, Ohio

Respectfully submitted:

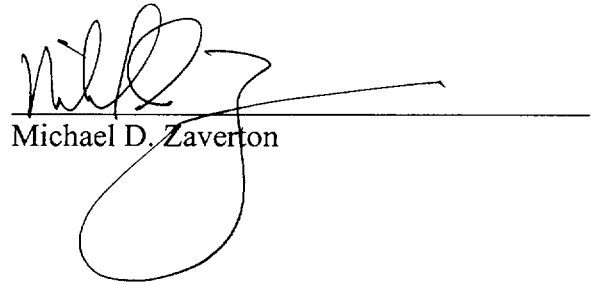
A handwritten signature in black ink, appearing to read 'Michael D. Zaverton', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2001, a true and correct copy of the foregoing *Motion of Youngstown Osteopathic Hospital Association to Compromise and Settle Controversy with the Teamsters Local No. 377 Health and Welfare Fund* was served via regular U.S. mail, postage pre-paid, upon the parties on the attached Service List.


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