

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D	§	IN THE DISTRICT COURT
Plaintiff	§	
v.	§	413 th JUDICIAL DISTRICT COURT
J P MORGAN CHASE BANK, N.A.,	§	
GLENN MILTON, JAY SANDLIN, LUCY	§	
NORRIS, RN, and NANCY ARGO, RN	§	
Defendants.	§	JOHNSON COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S
MOTION FOR SUMMARY JUDGMENT**

Defendant JPMorgan Chase Bank, N.A. ("**JPMC**") files this its Motion for Summary Judgment pursuant to Texas Rule of Civil Procedure 166a(b) & 166a(i) and in support would respectfully show the Court as follows:

I.

SUMMARY OF THE ARGUMENT

1. The Estate of Johnny Fisher, Dec'd ("**Estate**" or "**Plaintiff**") has sued Glenn Milton, Jay Sandlin, Lucy Norris, RN, and Nancy Argo, RN (collectively the "**Individual Defendants**") and JPMC alleging that it is entitled to damages for breach of fiduciary duty and conspiracy. Plaintiff's sole basis for recovery against JPMC on its claims are based on its alleged, and false, conclusion that it is a beneficiary of a trust and that Defendant failed to properly administer that trust. Summary Judgment should be granted in favor of JPMC as a matter of law because Plaintiff was never a beneficiary of the trust. In the alternative, summary judgment should be granted in favor of JPMC because Plaintiff's claims are barred by the statute of limitations and laches. Specifically, summary judgment should be granted in favor of JPMC for the following reasons:

- Plaintiff¹ was not a beneficiary of the Trust and it, therefore, lacks standing to assert a cause of action against JPMC for breach of fiduciary duty. In Texas a party must be clearly identified as a beneficiary of a trust in order to have standing to assert a cause of action for mismanagement of that trust. The Plaintiff was not clearly identified as a beneficiary in the Trust. The Hospital was the only identified beneficiary of the Trust. Accordingly, it was the only party with standing to sue JPMC for any alleged breach of fiduciary duty.
- Alternatively, if this Court finds that a malpractice claimant would be a beneficiary of the Trust when it obtained a judgment against the Hospital, a contention that JPMC strongly disputes, Plaintiff's claims based on the Agreed Judgment would be barred because the Trust had already been terminated and all assets distributed prior to entry of the Agreed Judgment.
- Finally, Plaintiff's claims are barred by the statute of limitations because all allegedly wrongful conduct occurred more than six years prior to the commencement of this lawsuit and the statute of limitations for breach of fiduciary duty is four years.

II. SUMMARY JUDGMENT EVIDENCE

2. In support of this motion, JPMC relies on the pleadings and other documents on file with the Court and in related lawsuits filed by Plaintiff against JPMC, including the following, which are attached to Defendant's Appendix in Support of Motion for Summary Judgment and hereby incorporated by reference for all purposes:²

A. Fort Worth Osteopathic Hospital, Inc. d/b/a/ Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement (App. at 5 – 19).

B. Petition filed by Mildred Fisher in Cause No. C200100173 titled *Fisher v. John B. Payne, D O, et al.* in the 249th Judicial District Court of Johnson County, Texas (App. at 20 – 30).

¹ Capitalized terms not defined in this section will be defined below.

² The pages of the Appendix have been consecutively numbered. For ease of reference, cites to the Appendix in this Motion will be as follows: (App. at ____).

C. Plea and Petition in Intervention filed by Jackie Fisher, Administratrix of the Estate of Johnny Fisher, Dec'd, *et al.* in Cause No. C200100173 titled *Fisher v. John B. Payne, D O, et al.* in the 249th Judicial District Court of Johnson County, Texas (App. at 31 – 36).

D. May 13, 2005, correspondence from Shawn Brown to Robert Lansford (App. at 37 – 38).

E. Memorandum of Settlement (App. at 39 – 43).

F. Trustee's Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, *et al.* filed in Bankruptcy Case No. 05-41513, titled *In re Fort Worth Osteopathic Hospital, Inc.* in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. at 44 – 49).

G. Order Granting Motion to Approve and Implement Compromise and Settlement of Tort claims by Jackie Fisher, *et al.* entered in Bankruptcy Case No. 05-41513, titled *In re Fort Worth Osteopathic Hospital, Inc.* in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. at 50 – 52).

H. Agreed Judgment entered in Cause No. C200100173, titled *Fisher v. John B. Payne, D O, et al.* in the 413th Judicial District of Johnson County, Texas (App. at 53 – 56).

I. Motion to Intervene filed in Adversary No. 07-04016, titled *Brown v. JPMorgan Chase Bank, N.A.* in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. at 57 – 93).

J. Plaintiff's First Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled *Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al.*, in the 413th Judicial District Court for Johnson County, Texas (App. at 94 – 141).

K. Plaintiff's Second Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled *Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al.*, in the 413th Judicial District Court for Johnson County, Texas (App. at 142 – 168).

L. Section 2162.7.A of the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services Social Security Administration (App. at 169 – 176).

M. Plaintiff's Initial Response to Requests for Disclosure for All Defendants served on all defendants in Case No. C2000800560 titled *Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al.*, in the 413th Judicial District Court for Johnson County, Texas (App. at 177 – 197).

N. Motion to Remand filed by The Estate of Johnny Fisher, Dec'd in Adversary No. 08-4168 titled *Estate of Johnny Fisher, Dec'd v. JPMorgan Chase Bank, N.A., et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (App. at 198 – 329).

O. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Nancy Argo (App. at 330 – 348).

P. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Jay Sandelin (App. at 349 – 369).

III. PROCEDURAL BACKGROUND

3. Fort Worth Osteopathic Hospital, Inc. ("**Hospital**") is a debtor in a chapter 7 case filed under case no. 05-41513-DML-7, pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division ("**Bankruptcy Case**"). Shawn Brown ("**Brown**") was appointed Chapter 7 Trustee for the Hospital in the Bankruptcy Case.

4. On February 9, 2007, Brown, in his capacity as Trustee in the Bankruptcy Case, filed his complaint ("**Brown's Complaint**") initiating an adversary proceeding against JPMC under adversary no. 07-04016 ("**Brown Adversary**"), alleging that JPMC was liable to the Hospital's bankruptcy estate for damages related to JPMC's duties as trustee of a trust ("**Trust**") created by a Self-Insurance Plan Trust Agreement ("**Trust Agreement**") executed on or about September 15, 1987, by the Hospital.³

5. On June 25, 2007, the Estate, along with other parties, filed a Motion to Intervene in the Brown Adversary ("**Motion to Intervene**"), alleging that JPMC was liable for damages to the Plaintiff related to JPMC's duties as trustee of the Trust. An Order Granting Motion to Intervene was entered on October 11, 2007, over JPMC's objection.

6. On May 12, 2008, the Plaintiff voluntarily and without explanation filed its Notice of Dismissal in the Brown Adversary dismissing all claims against JPMC.

7. On October 2, 2008, approximately five months after Plaintiff elected not to pursue its claims before the Bankruptcy Court in the Brown Adversary, Plaintiff filed its Original Petition and Claim of Estate, initiating the instant lawsuit under Cause No. C200800560 in the 413th Judicial District Court of Johnson County, Texas ("**Lawsuit**"), in which it again asserted a cause of action against JPMC for breach of fiduciary duty, as it had in the Motion to Intervene.

8. On October 9, 2008, JPMC removed the Lawsuit to the Bankruptcy Court.

9. On April 15, 2009, the Bankruptcy Court voluntarily abstained from hearing the Lawsuit and it was transferred to the United States District Court for the Northern District of Texas.

³ See Trust Agreement. (App. at 6.)

10. On September 23, 2009, the United States District Court remanded the Lawsuit back to this Court, where it remains pending.

11. On or about June 7, 2011, Plaintiff filed Plaintiff's Second Amended Original Petition and Claim of Estate ("**Second Amended Petition**").

IV. **FACTUAL BACKGROUND**

12. The Trust was established by the Hospital, in part, in lieu of the Hospital having to purchase medical malpractice insurance.⁴ The Trust was to provide benefits to the Hospital including reimbursement for certain expenses, such as expenses of a risk management program and excess malpractice insurance premiums, legal fees incurred in defending malpractice claims, and payment of malpractice settlements and judgments.⁵

13. On September 22, 1999, while the Trust was in place, Johnny Fisher ("**Fisher**") was admitted to the Hospital and died approximately nine days later. On May 8, 2001, Mildred Fisher, Fisher's mother, filed a malpractice lawsuit under cause no. C200100173 in the 249th Judicial District Court of Johnson County, Texas ("**Malpractice Lawsuit**")⁶ against the Hospital and various doctors and nurses based on the treatment that Fisher received while he was a patient at the Hospital.⁷

14. The Plaintiff intervened in the Malpractice Lawsuit to assert causes of action against the Hospital and the other defendants and, therefore, was a party to that proceeding.⁸ However, JPMC was never a party to the Malpractice Lawsuit, was not aware of it, and was not

⁴ See Trust Agreement, Recital (d). (App. at 6 – 7.)

⁵ See Trust Agreement, Art. 5.03(a). (App. at 12 – 13.)

⁶ After the Malpractice Lawsuit was filed Judicial District 413 was added in Johnson County, Texas and the case was transferred to that district.

⁷ See Petition of Mildred Fisher. (App. at 21 – 30.)

⁸ See Intervention of Fishers. (App. at 32 – 36.)

notified of any alleged malpractice claim against the Hospital at any time before the Trust was terminated by Brown shortly after the commencement of the Bankruptcy Case.

15. Neither the Hospital nor any agent or committee of the Hospital ever directed JPMC, either in writing or verbally, to make any disbursement from the Trust to the Plaintiff or to anyone else on behalf of Fisher.

16. On February 11, 2005, while the Malpractice Lawsuit was pending, the Hospital filed a voluntary petition for relief pursuant to chapter 7 of title 11 of the United States Code ("**Bankruptcy Code**"), and Brown was appointed Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc.

17. After being appointed Trustee, on May 13, 2005, Brown demanded that JPMC turnover to him on behalf of the Hospital's bankruptcy estate (not on behalf of any creditor, including any malpractice victim) all assets remaining in the Trust.⁹ JPMC promptly complied with the Trustee's demand and the Trust was terminated when JPMC delivered the balance of the funds held in the Trust account to Brown, effectively revoking and terminating the Trust.

18. As stated above, on February 9, 2007, Brown's Complaint was filed initiating the Brown Adversary against JPMC. Brown's Complaint alleged that JPMC was liable to the Hospital's bankruptcy estate for damages related to JPMC's duties as trustee of the Trust.

19. After Brown's Complaint was filed, the Malpractice Lawsuit against the Hospital was settled. Pursuant to that settlement the total amount of \$144,000 was to be paid jointly to "Jackie Fisher, Houston Fisher, Johnny Fisher, the Estate of Johnny Fisher, and their attorney E.L. Akins."¹⁰

⁹ See Brown's correspondence to JPMC for turnover of the Trust assets. (App. at 38.)

¹⁰ See Memorandum of Settlement. (App. at 40.)

20. On April 24, 2007, Brown filed the Trustee's Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, et al. ("Fisher Settlement Motion").¹¹

21. On May 25, 2007, the Bankruptcy Court caused to be entered an Order Granting Motion to Approve and Implement Compromise and Settlement of Tort Claims by Jackie Fisher, et al. ("Fisher Settlement Order"), approving the Fisher Settlement Motion.¹²

22. Shortly thereafter, on June 7, 2007, an Agreed Judgment, executed by the parties to the Malpractice Lawsuit, was signed by the State Court Judge.¹³ The Agreed Judgment states that the Plaintiff, as well as the other plaintiffs in the lawsuit, may recover **from the Hospital** the amount of \$975,000.00 and that the "judgment may be enforced only in accordance with bankruptcy law, in Cause No. 05-41513-DML-7, styled 'In Re: Fort Worth Osteopathic Hospital, Inc., Debtor', In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division."¹⁴ As indicated above, JPMC was never a party in the Malpractice Lawsuit, was not a party to the Agreed Judgment, did not participate in any way in the negotiation of the settlement, the Fisher Settlement Order or the Agreed Judgment.

23. Also as stated above, on June 25, 2007, the Plaintiff filed its Motion to Intervene in the Brown Adversary.¹⁵ However, on May 12, 2008, the Plaintiff voluntarily dismissed that cause of action. Plaintiff then filed its original petition in State Court commencing the instant Lawsuit alleging, as it had as the intervenor in the Brown Adversary, that JPMC breached an alleged fiduciary duty owed to the Plaintiff because JPMC allegedly mismanaged the Trust.

¹¹ See Fisher Settlement Motion. (App. at 45 – 49.)

¹² See Fisher Settlement Order. (App. at 51 – 52.)

¹³ See Agreed Judgment. (App. at 54 – 56.)

¹⁴ See Agreed Judgment. (App. at 54.)

¹⁵ See Intervention of Fishers. (App. at 58 – 93.)

Specifically, Plaintiff alleges that JPMC allowed the Hospital to make what Plaintiff contends were unauthorized disbursements and that such disbursements depleted the funds of the Trust resulting in there being insufficient funds to pay the Agreed Judgment that the Estate had against the Hospital.

V.
ARGUMENT AND AUTHORITIES

24. Plaintiff's success on the merits of its claims depends upon whether it is a beneficiary of the Trust, and if so, when its claims as beneficiary accrued.¹⁶ Plaintiff's Second Amended Petition should be dismissed and judgment should be granted in favor of JPMC for at least the following reasons: (a) the Plaintiff lacks standing to assert the claims against JPMC because it was not a beneficiary of the Trust; (b) if Plaintiff became a beneficiary of the Trust (a status JPMC denies) when it obtained the Agreed Judgment, the Trust had already been terminated and JPMC could not have owed any duties to Plaintiff; or (c) Plaintiff failed to file the Lawsuit within the applicable statute of limitations.

A. Summary Judgment Standard.

25. To prevail on a motion for summary judgment, the movant must establish that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law.¹⁷ There is no genuine issue of material fact if reasonable people could not differ as to the conclusion to be drawn from the evidence.¹⁸ Although evidence favorable to the non-movant must be taken as true and doubts about evidentiary issues resolved in the non-movant's favor, any inference relied on by the non-movant must be a "fair inference" from the summary

¹⁶ JPMC strongly denies that Plaintiff is a beneficiary of the Trust and nothing contained in this Motion and Brief should be construed as an admission that Plaintiff is in fact a beneficiary.

¹⁷ *Garcia v. Garza*, 311 S.W.3d 28, 35 (Tex. App.—San Antonio 2010, pet. denied).

¹⁸ *City of Keller v. Wilson*, 168 S.W.3d 802, 814 (Tex. 2005).

judgment record itself.¹⁹ Mere suspicion or surmise does not amount to a fair or reasonable inference or otherwise qualify as summary judgment proof.²⁰

26. Summary judgment motions must stand or fall on their own merits.²¹ But once the movant establishes his right to summary judgment as a matter of law, the burden then shifts to the non-movant to present issues which preclude summary judgment.²² To do so, the non-movant must expressly present to the trial court by written answer or response any issues defeating the movant's entitlement to summary judgment.²³

27. By this motion, JPMC requests summary judgment on three issues: (1) Plaintiff lacks standing to assert claims against JPMC; (2) Plaintiff's claims fail because it alleges it became a beneficiary of the Trust when it obtained the Agreed Judgment but the Trust had been terminated by that time and JPMC could not have owed any duties to Plaintiff; and (3) Plaintiff's claims are barred by the statute of limitations.

B. The Plaintiff lacks standing to assert claims against JPMC because it is not a beneficiary of the Trust.

28. Plaintiff lacks standing to sue because it did not suffer an injury that is fairly traceable to JPMC's actions or inactions, or that the injury will be redressed by a favorable decision. Plaintiff argues in its Second Amended Petition that it is entitled to damages because it is a beneficiary of the Trust and JPMC allegedly breached its duties to Plaintiff as beneficiary.

¹⁹ *Centeq Realty v. Siegler*, 899 S.W.2d 195, 199 (Tex. 1995).

²⁰ *Id.* at 199 n. 2.

²¹ *McConnell v. Southside Indep. School Dist.*, 858 S.W.2d 337, 343 (Tex. 1993); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

²² *Romo v. Texas Dept. of Transp.*, 48 S.W.3d 265, 269 (Tex. App.—San Antonio 2001, no pet.) (citing *Clear Creek*, 589 S.W.2d at 678).

²³ *McConnell*, 858 S.W.2d at 343; *Clear Creek*, 589 S.W.2d at 677 (“[B]oth the reasons for the summary judgment and the objections to it must be in writing and before the trial judge at the hearing.”).

In Texas, a party must be a beneficiary of a trust in order to have standing to sue for any mismanagement of the trust property.²⁴

29. More particularly, the Plaintiff argues that it was a beneficiary of the Trust or, in the alternative, a “person” to whom JPMC owed a fiduciary duty giving it standing to bring a claim against JPMC for damages allegedly arising from JPMC’s breaches of the Trust Agreement.²⁵ This argument fails for at least two reasons: (i) the Plaintiff is not clearly identified as a beneficiary of the Trust, as is required under Texas trust law; and (ii) the Hospital is the sole beneficiary of the Trust.

(1) The Plaintiff lacks standing because it is not clearly identified as a beneficiary of the Trust.

30. In Texas no particular words are required to create a trust, but a beneficiary must be identified with certainty.²⁶ Whether a party is a beneficiary of a trust is to be determined from the language in the trust agreement.²⁷ The certainty of the identity of a beneficiary of a trust was at issue in *McNally*,²⁸ where a dispute arose involving a publicly dedicated cemetery, the Wilson Chapel Cemetery, and funds collected or donated for the maintenance of the cemetery.

31. In *McNally* the land first dedicated for use as a cemetery was originally transferred by deed to several individuals as “Trustees of the Wilson Chapel Burial Ground.”²⁹ After the property was deeded to these individuals as trustees, a group of plot owners voted to

²⁴ *Davis v. Davis*, 734 S.W.2d 707, 709 (Tex. App. – Houston [1st Dist.] 1987 writ refused n.r.e.); *Lemke v. Lemke*, 929 S.W.2d 662, 664-65 (Tex. App. – Fort Worth 1996, writ denied).

²⁵ Second Amended Petition at 11. (App. at 153.)

²⁶ *Unthank v. Rippstein*, 368 S.W.2d 134, 136 (Tex. 1964); *Hubbard v. Shankle*, 138 S.W.3d 474, 483-84 (Tex. App. – Ft. Worth 2004, pet. denied); *Tomlinson v. Tomlinson*, 960 S.W.2d 337 (Tex. App. – Corpus Christi 1997, not pet.); *Fred Rizk Construction Co. v. Cousins Mortgage & Equity Investments*, 627 S.W.2d 753, 757 (Tex. App. – Houston [1st Dist.] 1981, no writ).

²⁷ *Myrick v. Moody*, 802 S.W.2d 735, 738 (Tex. App. – Houston [14th Dist.] 1990, writ denied); *Moody v. Pitts*, 708 S.W.2d 930, 935 (Tex. App. – Corpus Christi 1986, n.w.h.).

²⁸ *McNally v. Friends of WCC, Inc.*, 113 S.W.3d 875 (Tex. App. – Dallas 2003, no pet. h.).

²⁹ *Id.* at 878.

form a nonprofit corporation to acquire control and ownership over the cemetery as allowed by the Texas Health & Safety Code.³⁰ Two days after that meeting, Friends of WCC, Inc. (“**Friends**”) was incorporated. One day after incorporating, Friends filed suit claiming it was the lawful governing body of the cemetery. Friends sought a declaratory judgment that it was also entitled to possession of all funds collected or donated for cemetery purposes.³¹ In support of this argument, Friends alleged that an express trust existed.³² The trustees argued there was no express trust governing the money collected or donated for the maintenance of the cemetery.³³

32. The court began by explaining that “[t]here are no particular words required to create a trust if there exists reasonable certainty as to the intended property, object, and beneficiary.”³⁴ However, use of the word “trustee” in a deed is only descriptive and has no legal effect.³⁵ Instead, “[t]o create a trust, the beneficiary must be identified with certainty.”³⁶

33. In making its express trust argument, Friends pointed to the deeds that conveyed the cemetery to the trustees and a will that bequeathed \$25,000 to the Wilson Cemetery Association. According to Friends, these documents set out the trust. However, the court found that none of the documents identified a beneficiary.³⁷ Because there were no identifiable beneficiaries, summary judgment in favor of the trustees was appropriate and Friends was denied any relief pursuant to the Texas Trust Code.³⁸

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 881.

³³ *Id.* at 882.

³⁴ *Id.* at 882 (internal citations omitted).

³⁵ *Id.* (internal citations omitted). See also *Fred Rizk Const. v. Cousins Mortg. & Equity*, 627 S.W.2d 753, 757 (Tex. App. – Houston [1st Dist.] 1982, writ ref’d n.r.e.) (holding that “use of the word ‘trustee’ in a deed, in and of itself, does not create a trust, it is merely a description and of no legal effect”).

³⁶ *McNally*, 113 S.W.3d at 882. (internal citations omitted).

³⁷ *Id.* at 882.

³⁸ *Id.*

34. Similarly, the identity of a beneficiary of a trust was at issue in *Hubbard*³⁹ where the administrator of Craig Curtright's ("Curtright") estate sued Curtright's lover, Suzie Shankle ("Shankle"), to recover or impress a trust on life insurance proceeds. Prior to his death, Curtright had told Shankle that he planned to remove his ex-wife as beneficiary of his life insurance policy and to change the designation to reflect that Shankle was the new beneficiary. He also "told her that he was putting the life insurance in her name because he wanted her to have the money and he wanted her to take care of the college expenses of Caty, his two-year-old daughter."⁴⁰ Shankle filed two no-evidence motions for summary judgment to defeat any claim the estate had to the proceeds and any claims that were asserted on behalf of Caty.⁴¹ The trial court granted both motions.

35. On appeal the administrator of Curtright's estate argued, in part, that Curtright had created an express education trust for Caty.⁴² The court explained that "[t]here are no particular words required to create a trust if there exists reasonable certainty as to the intended property, object, and beneficiary To create a trust, the beneficiary must be identified with certainty...."⁴³ The court went on to clarify that "the beneficiary must be identified with reasonable certainty."⁴⁴ The court then held that, on the facts of this case, there was no express trust.⁴⁵

36. Specifically, the court found, assuming *arguendo* that Curtright's vague statement could be construed to infer that he may have intended a trust in favor of Caty, the trust

³⁹ *Hubbard v. Shankle*, 138 S.W.3d 474 (Tex. App. – Ft. Worth 2004, pet. denied).

⁴⁰ *Id.* at 479.

⁴¹ *Id.*

⁴² *Id.* at 483.

⁴³ *Id.* at 484 (internal citations omitted).

⁴⁴ *Id.* at 484 (internal citations omitted).

⁴⁵ *Id.*

beneficiary could not be reasonably identified from the evidence presented because he stated that he wanted Shankle to (1) have the money for herself, and (2) to provide for Caty's college expenses.⁴⁶ According to the court, these statements showed that Shankle was as likely an intended beneficiary as Caty. In addition, his intent to benefit Shankle directly was further evidenced by the fact that the beneficiary designation listed her individually and not as a trustee for Caty, which he could have done.⁴⁷ Accordingly, there was no express education trust in favor of Caty because the court could not identify with reasonable certainty the identity of the beneficiary.

37. Like the purported beneficiaries in *McNally* and *Hubbard*, Plaintiff was never identified as a beneficiary of the Trust. Under the facts as alleged in the Plaintiff's Second Amended Petition and the express terms of the Trust Agreement, the Plaintiff is not identified anywhere in the trust instrument, much less as a beneficiary of the Trust. The only reference in the Trust Agreement relating to malpractice claimants occurs when it refers to payments from Trust assets being made "for malpractice losses of the Hospital."⁴⁸ It makes no mention of malpractice claimants as beneficiaries. Nor does the Trust mandate that all (or even any) malpractice claims be paid from Trust assets. The Trust assets are for the benefit of the Hospital if it elects to satisfy the Hospital's obligations arising from malpractice claims by applying the assets in the Trust. Because Plaintiff was not clearly identified in the Trust Agreement, it cannot be a beneficiary of the Trust.

38. In fact, Plaintiff's argument that it is a beneficiary of the Trust is based entirely upon the possibility that it **might have** received a distribution from Trust assets (if the Hospital

⁴⁶ *Id.*

⁴⁷ *Id.* at 484-85.

⁴⁸ See Trust Agreement, § 5.03(a). (App. at 12 – 13.)

directed such a distribution, which it never did) based upon its alleged malpractice claim against the Hospital. However, under this logic anyone who could potentially receive a disbursement of Trust assets would be a beneficiary of the Trust. Those parties would include all vendors identified as potential payees in the Trust Agreement including parties who were entitled to payment for legal expenses and actuarial expenses. Plaintiff's argument that it somehow became a beneficiary simply because it might one day have received a distribution of Trust assets is absurd and not supported by Texas trust law. The mere possibility that a party may one day benefit from a trust does not give rise to beneficiary status for that party.⁴⁹ Plaintiff had a malpractice claim against the Hospital but no claim against the Trust. The Hospital could use its discretion to determine the source of funds it wanted to use to satisfy a malpractice claim. It was not obligated to use Trust assets. Accordingly, Plaintiff's argument that it was a beneficiary of the Trust fails.

(2) The Hospital is the sole beneficiary of the Trust.

39. Not only does the Trust Agreement not identify the Plaintiff as a beneficiary, but it also clearly reflects that the Hospital was the sole beneficiary of the Trust. The stated purpose of the Trust Agreement is to provide a framework for the administration of a self-insurance plan fund created by the Hospital, which was to be established in lieu of the Hospital having to purchase medical malpractice insurance.⁵⁰ Section 2162.7.A of the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human

⁴⁹ See *Davis*, 734 S.W.2d at 709 (rejecting an argument by a father who argued he had standing to sue a trustee of a trust because he might ultimately inherit the trust property from his minor sons); and *Hunter v. NCNB Texas National Bank*, No. 14-94-01199-CV, 1996 WL 223584 (Tex. App. – Houston [14th Dist.] May 2, 1996, writ denied) (holding that a potential inheritance of property held in trust did not create an interest in the trust property). See also Scott & Ascher on Trusts, “[j]ust as one who might incidentally profit from the performance of a contract cannot enforce the contract, so also one who might incidentally benefit from the performance of a trust cannot enforce the trust.” 2 AUSTIN WAKEMAN SCOTT ET AL., SCOTT AND ASCHER ON TRUSTS § 12.13 (5th ed. 2006).

⁵⁰ See Trust Agreement, Recitals (d) & (e). (App. at 6 – 7.)

Services Social Security Administration defines a self-insurance plan as being “a means whereby a provider . . . undertakes the risk to **protect itself** against anticipated liabilities by providing funds in an amount equivalent to liquidate those liabilities.”⁵¹ A self insurance fund is thus, by definition, created by a hospital for its own benefit, to “protect itself.” Additionally, the Trust Agreement clearly states that the self-insurance plan implemented thereunder was designed to “provide economical and dependable **protection to the Hospital** against malpractice liability claims,”⁵² **not** to provide economical and dependable protection to malpractice claimants so that they could collect on malpractice liability claims they might have against the Hospital.

40. No provision of the Trust Agreement gave any party, other than the Hospital, any right to compel either the Hospital or JPMC to distribute any Trust asset to anyone. Only the Hospital could select the party to whom a distribution of Trust assets could be made.

41. The Trust was also fully revocable by the Hospital and could be terminated by the Hospital at any time.⁵³ Further, only the Hospital had the right to amend the Trust and it could do so at any time and in any way.⁵⁴ That the Hospital alone had the power to amend or terminate the Trust is particularly significant.

42. Settlers generally evidence an intent to create a trust in favor of their creditors by (a) specifically identifying such creditors in the trust document and (b) making the trust irrevocable.⁵⁵ In our case, neither of these conditions are satisfied. As was shown above the

⁵¹ See Section 2162.7.A (emphasis added). (App. at 174.)

⁵² See Trust Agreement, Recital (c) (emphasis added). (App. at 6.)

⁵³ See Trust Agreement Art. 7.02. (App. at 17.)

⁵⁴ See Trust Agreement Art. 7.01. (App. at 16 – 17.)

⁵⁵ See *Creel v. Birmingham Trust National Bank*, 383 F.Supp. 871 (N.D. Ala. 1974) *aff'd* 510 F.2d 1363 (5th Cir. 1975) (holding that funds placed in trust with instructions to pay two specified judgment creditors over time created a beneficiary interest in the creditors); *Cleveland Trust Co. v. Pomroy*, 177 N.E.2d 410 (C.D. Ohio 1961) (holding that specific creditors were beneficiaries of a trust where the settlor had made the trust irrevocable until the debts to the creditors had been paid); and *Logan v. Consumer Credit Counseling Service of Central Ohio, Inc. (In re Lee)*,

Trust Agreement does not specifically identify any creditors (including Plaintiff or any other malpractice claimant) as beneficiaries of the Trust. In addition, under Texas law a trust will be revocable by the settlor unless the trust agreement expressly states it is irrevocable.⁵⁶ In this case the Trust Agreement provides that the Hospital “reserves the right to terminate the [Trust Agreement] at any time by action of the Board communicated in writing to the Trustee.”⁵⁷ Accordingly, there is no evidence of any intent of the Hospital to create an irrevocable trust in favor of the Plaintiff as a creditor of the Hospital.

43. In summary, under applicable Texas state law the Plaintiff is not a beneficiary of the Trust who would be entitled to assert causes of action against JPMC for its management of the Trust.⁵⁸ Plaintiff was not identified with certainty as a beneficiary (which is understandable because it is not a beneficiary) and the Trust Agreement clearly reflects that the Hospital was the sole beneficiary of the Trust. Because Plaintiff is not a beneficiary of the Trust, it has not shown that any injury it might have suffered because the Agreed Judgment has not been fully satisfied would be favorably redressed by a judgment against JPMC. Accordingly, Plaintiff has failed to show that it can satisfy the standing elements and summary judgment must be granted in favor of JPMC.

C. Plaintiff’s claims fail because it alleges it became a beneficiary of the Trust when it obtained the Agreed Judgment and the Trust had been terminated by that time so JPMC could not have owed any duties to Plaintiff.

126 B.R. 978 (Bankr. S.D. Ohio 1991) (holding that funds paid to a consumer credit agency were held in trust for the benefit of creditors because the trust was irrevocable by the settlors).

⁵⁶ TEX. PROP. CODE ANN. §112.051 (Vernon 2007).

⁵⁷ See Trust Agreement, art. 7.02 at 12. (App. at 17.)

⁵⁸ See *Davis v. Davis*, 734 S.W.2d 707, 709 (Tex. App. – Houston [1st Dist.] 1987 writ refused n.r.e.) (holding that a party must be a beneficiary of a trust in order to have standing to sue for any mismanagement of the trust property); *Lemke v. Lemke*, 929 S.W.2d 662, 664-65 (Tex. App. – Fort Worth 1996, writ denied) (same).

44. JPMC strongly denies that Plaintiff was ever a beneficiary of the Trust. Without waiving this argument, if the Court determines that Plaintiff was in fact a beneficiary of the Trust, then the Plaintiff must show when such beneficiary status arose and that the Trust still existed when it became a beneficiary.⁵⁹ Plaintiff failed to identify in the Second Amended Petition (or any prior petition) when exactly it became an alleged beneficiary of the Trust. However, in Plaintiff's Initial Response to Requests for Disclosure for All Defendants ("Initial Disclosures"), Plaintiff states that "[o]ne who has obtained a judgment against an insured is a third party beneficiary of the insured's liability insurance policy and can bring a direct action in tort against the insurer once the judgment is obtained."⁶⁰ Plaintiff further states in its responses to discovery requests that "...Plaintiff became a beneficiary of the subject trust when it obtained its judgment against Fort Worth Osteopathic Hospital, Inc. in the underlying hospital malpractice lawsuit...."⁶¹ Therefore, Plaintiff's argument is that it became a beneficiary of the Trust when the Agreed Judgment was entered on June 7, 2007.

45. It has already been established that the Trust was revocable and could be terminated at any time. Brown, as trustee of the Hospital's bankruptcy estate exercised the right to terminate the Trust in May 2005, when he demanded that JPMC turnover all assets remaining in the Trust.⁶² The Agreed Judgment was entered on June 7, 2007, but the Trust was terminated by Brown more than two years earlier, in May 2005. Therefore, under Plaintiff's own theory, it did not become a beneficiary of the Trust with a right to sue for breach of fiduciary duty until after the Trust was terminated. Essentially, Plaintiff became the alleged beneficiary of a non-

⁵⁹ See *cf. Moon v. Lesikar*, 230 S.W.3d 800,803 (Tex. App. – Houston [14th Dist.] 2007, no pet. h.) (holding that a contingent beneficiary of revocable trust lacks standing to challenge a settlor's distribution of trust assets prior to the vesting of beneficiary's interest through the death of the settlor).

⁶⁰ See Initial Disclosures at 4. (App. at 181.)

⁶¹ See Plaintiff's Written Response to First Set of Interrogatories From Defendant, Nancy Argo at 5. (App. at 335.)

⁶² See App. at 38.

existent trust. Accordingly, JPMC could not have breached any fiduciary duties it allegedly owed to Plaintiff because no such duties existed when Plaintiff allegedly became a beneficiary of the Trust.

46. Plaintiff has also argued that the Trust was not properly revoked or terminated by Brown because adequate funds were required to be retained in the Trust account to satisfy the Estate's judgment when the Trust was revoked.⁶³ Plaintiff is incorrect. Brown, as Trustee of the Hospital's bankruptcy case had full authority to terminate the Trust.⁶⁴ It is undisputed that the Trust did not have enough funds to satisfy Plaintiff's judgment at the time Brown terminated the Trust. Brown certainly could not have contributed additional funds to the Trust after the commencement of the Bankruptcy. Plaintiff's argument that sufficient funds to satisfy the judgment should have been left by Brown in the trust is specious at best. For Plaintiff to then argue that JPMC should somehow be liable for Brown's failure to contribute funds to the Trust which he did not have and could not have contributed anyway is quite simply preposterous. By the time Plaintiff obtained the Agreed Judgment, there was no trust in existence of which it could have been a beneficiary because the Trust had been terminated by Brown.

D. Plaintiff's claims are barred by the statute of limitations.

47. Even if Plaintiff can establish that JPMC owed a duty to it before it became a beneficiary of the Trust (a contention that JPMC strongly disputes and that is not supported by the law), Plaintiff's claims are barred by the statute of limitations. Plaintiff alleges it is entitled to damages because JPMC breached its fiduciary duties in connection with management of the

⁶³ See Motion to Remand at 46 – 48. (App. at 245 – 247.)

⁶⁴ See *Albion Production Credit Association v. Langley (In re Langley)*, 30 B.R. 595, 600 (Bankr. N.D. Ind. 1983) (noting that debtors-in-possession succeed, as do bankruptcy trustees, to all of the powers and rights held by the debtor at the time a bankruptcy petition is filed, including the authority to direct the trustee of a land trust to sell property and terminate the trust).

Trust by allowing unauthorized or improper disbursements of Trust assets.⁶⁵ Plaintiff has wholly failed to state within the Second Amended Petition when exactly JPMC's breaches occurred. However, in its discovery responses Plaintiff listed the following dates as those on which improper disbursements from the Trust occurred:

- An unidentified date in 1999;
- January 17, 2002;
- August 30, 2002;
- September 3, 2002; and
- October 24, 2002.⁶⁶

48. JPMC does not admit that any of the above disbursements were wrongful. However, to the extent that Plaintiff's allegations are that JPMC breached its fiduciary duty in allowing the above disbursements to take place, those claims are barred by the statute of limitations because the most recent alleged breach of fiduciary duty occurred on October 24, 2002, which is outside the applicable four year statute of limitations.

49. In Texas, the statute of limitations for breach of fiduciary duty is four years.⁶⁷ The original petition was filed on October 2, 2008, and the most recent allegation of breach of duty occurred on October 24, 2002, approximately 6 years earlier. The claims are, therefore, barred by the statute of limitations. Plaintiff was aware of the existence of the Trust as early as September 14, 2001, more than seven years before it filed the Lawsuit.⁶⁸ The only way Plaintiff's claims can survive summary judgment is if the discovery rule applies to toll the running of limitations, and it does not apply.

⁶⁵ See Second Amended Petition at para. 34 at 13 – 14 (App. at 155 – 156) and Plaintiff's Initial Disclosures at 5 – 6 (App. at 182 – 183).

⁶⁶ See Plaintiff's Written Response to First Set of Interrogatories From Defendant, Nancy Argo at 4 (App. at 334); and Plaintiff's Written Response to First Set of Interrogatories From Defendant, Jay Sandelin at 16 (App. at 365).

⁶⁷ TEX. CIV. PRAC. & REM. CODE ANN. § 16.004(a)(4) (Vernon 2002).

⁶⁸ See First Amended Petition, Exhibit 3 (App. at 135 – 137); and Second Amended Petition at 6 (App. at 148).

50. The discovery rule only applies when an injury is inherently undiscoverable and a claimant is unable to know of the injury at the time of actual accrual of a cause of action.⁶⁹ If the injury is inherently undiscoverable, the discovery rule will toll the statute of limitations until the plaintiff either: (1) discovers the injury; or (2) in the exercise of reasonable care and diligence, acquires knowledge of facts that would lead to the discovery of the wrongful act or injury.⁷⁰ The plaintiff need not know of the specific nature of each wrongful act that may have caused the injury, as the cause of action will accrue when the plaintiff knew or should have known of the injury.⁷¹

51. The exercise of reasonable diligence is generally a question of fact, however, if the evidence is such that reasonable minds could not disagree as to its effect, it becomes a question of law.⁷² It is a very limited exception to the statute of limitations and courts generally construe it strictly.⁷³ Further, the discovery rule will not excuse a party from exercising reasonable diligence to protect its own interests.⁷⁴

52. As discussed above, in order for the discovery rule to apply, the party relying on it must prove that the injury: (1) is inherently undiscoverable; and (2) objectively verifiable.⁷⁵ In addition, “[t]he discovery rule expressly mandates the party to exercise reasonable diligence to discover facts of negligence or omission.”⁷⁶ In fact, the tolling of the limitations period will end when the party relying on its benefit “acquires knowledge of facts, conditions, or circumstances

⁶⁹ *Seibert v. General Motors Corp.*, 853 S.W.2d 773, 776 (Tex. App. – Houston[14th Dist.] 1993, no. pet.).

⁷⁰ 50 TEX. JUR. 3d, *Limitation of Actions* § 52 (1995).

⁷¹ *Id.*

⁷² *Conoco, Inc. v. Amarillo Nat. Bank*, 14 S.W.3d 325, 328 (Tex. App. – Amarillo 2000, no pet.).

⁷³ *Id.*, 50 TEX. JUR. 3d, *Limitation of Actions* § 52 (1995) (citing *Bates v. Texas State Technical College*, 983 S.W.2d 821 (Tex. App. – Waco 1998, pet. denied).

⁷⁴ *Conoco, Inc.*, 14 S.W.3d at 328.

⁷⁵ *Conoco, Inc.*, 14 S.W.3d at 328.

⁷⁶ *Stewart Title Guaranty Co. v. Becker*, 930 S.W.2d 748, 756 (Tex. App. – Corpus Christi 1996, writ denied).

which would cause a reasonable person to make an inquiry leading to the discovery of the concealed cause of action.”⁷⁷

53. As explained by the Texas Supreme Court due diligence requires parties to protect their own interests.⁷⁸ Such due diligence may include asking the other party for information needed to verify performance and failing to ask for necessary information is not due diligence.⁷⁹

54. The Plaintiff knew the Trust existed from the initial disclosures made by the Hospital in the Malpractice Lawsuit. Those disclosures specifically stated that “Defendant [the Hospital] maintains a self-insurance trust with limits of \$2,000,000.00 per occurrence, \$4,000,000.00 aggregate.”⁸⁰ A copy of the Trust Agreement was attached to the disclosures.⁸¹ There is no mention in the Trust Agreement of any limits on liability and, in any event, it is not an insurance policy. This alone put Plaintiff on notice that they should have requested additional information concerning the assets in the Trust. Plaintiff never requested information from JPMC during the course of the Malpractice Lawsuit regarding the assets in the Trust. Nor did Plaintiff provide notice to JPMC of their alleged claims to Trust assets until they intervened in the Brown Adversary. Accordingly, Plaintiff failed to act with reasonable diligence to protect its own interests. Under the precedent set forth above, the discovery rule should not toll the statute of limitations with respect to Plaintiff’s claims.

⁷⁷ *Id.*

⁷⁸ *Via Net v. TIG Ins. Co.*, 211 S.W.3d 310, 314 (Tex. 2006).

⁷⁹ *Id.*

⁸⁰ *See* Second Amended Petition at 6. (App. at 148.)

⁸¹ *Id.*

VI.
CONCLUSION

55. The Second Amended Petition should be dismissed pursuant Texas Rules of Civil Procedure 166a(b) and 166a(i) because the Plaintiff lacks standing to assert the claims alleged in the Second Amended Petition, thereby depriving the Court of subject matter jurisdiction over the lawsuit. In the alternative, even if the Court determines that the Plaintiff has standing to sue JPMC for breach of fiduciary duty, a contention JPMC strongly disputes, JPMC is entitled to summary judgment in its favor because Plaintiff's claims either accrued after the Trust was terminated and JPMC owed no duties, or the claims are barred by the statute of limitations.

56. Plaintiff's alleged injury is not fairly traceable to the actions of JPMC and it is not likely that its injury will be redressed by a favorable decision. The Plaintiff was not a beneficiary of the Trust and, therefore, cannot assert causes of action against JPMC for its management of the Trust under Texas law. The Plaintiff is not clearly identified as a beneficiary of the Trust and all benefits of the Trust flowed to the Hospital. In addition, the Trust was terminated long before the Agreed Judgment was entered, thereby extinguishing any right Plaintiff might have had to bring a claim based upon management of the Trust. Finally, judgment should be granted in favor of JPMC because Plaintiff's cause of action is barred by the statute of limitations. All of the alleged breaches of fiduciary duty occurred in 2002 and earlier. The statute of limitations for breach of fiduciary duty is four years and the original petition was not filed until October 2008, more than six years after the alleged breaches occurred and far outside the applicable four year statute of limitations.

WHEREFORE, JPMC respectfully requests that the Court grant judgment in favor of JPMC, and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.
901 Main Street, Suite 6000
Dallas, TX 75202
214/ 953-6000 – Telephone
214/ 953-5822 – Facsimile

By: /s/ Jeffrey G. Hamilton
Albon O. Head, Jr.
State Bar No. 09325000
Jeffrey G. Hamilton
Texas State Bar No. 00793886
Heather M. Forrest
Texas State Bar No. 24040918

ATTORNEYS FOR JPMORGAN CHASE
BANK, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2011, a true and correct copy of the foregoing Defendant JPMorgan Chase Bank N.A.'s Motion for Summary Judgment has been served via First Class United States Mail, postage prepaid upon the following:

E.L. Atkins
Atkins Law Firm
325 South Mesquite Street, Suite A
Arlington, TX 76010

John MacLean
MacLean & Boulware
11 Main Street
Cleburne, TX 76033

William L. Kirkman
Susanna Johnson
Bourland & Kirkman
201 Main Street
Suite 1400
Fort Worth, TX 76102

Susan E. Baird
Cotton Schmidt & Abbott, L.L.P.
500 Bailey Ave.
Suite 600
Fort Worth, TX 76107

/s/ Jeffrey G. Hamilton
Jeffrey G. Hamilton

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 1

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	413 th JUDICIAL DISTRICT COURT
	§	
J P MORGAN CHASE BANK, N.A.,	§	
GLENN MILTON, JAY SANDLIN, LUCY	§	
NORRIS, RN, and NANCY ARGO, RN	§	
	§	
Defendants.	§	JOHNSON COUNTY, TEXAS

APPENDIX OF EVIDENCE IN SUPPORT OF DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

Defendant JPMorgan Chase Bank, N.A. ("JPMC") files this Appendix of Evidence in Support of JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment.

The Appendix consists of the following evidence:

1. Affidavit of Heather M. Forrest (App. 1 – 4).
 - A. Fort Worth Osteopathic Hospital, Inc. d/b/a/ Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement (App. 5 – 19).
 - B. Petition filed by Mildred Fisher in Cause No. C200100173 titled Fisher v. John B. Payne, D O, et al. in the 249th Judicial District Court of Johnson County, Texas. (App. 20 – 30).
 - C. Plea and Petition in Intervention filed by Jackie Fisher, Administratrix of the Estate of Johnny Fisher, Dec'd, et al. in Cause No. C200100173 titled Fisher v. John B. Payne, D O, et al. in the 249th Judicial District Court of Johnson County, Texas. (App. 31 – 36).
 - D. May 13, 2005, correspondence from Shawn Brown to Robert Lansford (App. 37 – 38).
 - E. Memorandum of Settlement. (App. 39 – 43).

F. Trustee's Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, et al. filed in Bankruptcy Case No. 05-41513, titled In re Fort Worth Osteopathic Hospital, Inc. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. 44 – 49).

G. Order Granting Motion to Approve and Implement Compromise and Settlement of Tort claims by Jackie Fisher, et al. entered in Bankruptcy Case No. 05-41513, titled In re Fort Worth Osteopathic Hospital, Inc. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. 50 – 52).

H. Agreed Judgment entered in Cause No. C200100173, titled Fisher v. John B. Payne, D O, et al. in the 413th Judicial District of Johnson County, Texas (App. 53 – 56).

I. Motion to Intervene filed in Adversary No. 07-04016, titled Brown v. JPMorgan Chase Bank, N.A. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (App. 57 – 93).

J. Plaintiff's First Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas (App. 94 – 141).

K. Plaintiff's Second Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas (App. 141 – 168).

L. Section 2162.7.A of the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services Social Security Administration (App. 169 – 176).

M. Plaintiff's Initial Response to Requests for Disclosure for All Defendants served on all defendants in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas (App. 177 – 197).

N. Motion to Remand filed by The Estate of Johnny Fisher, Dec'd in Adversary No. 08-4168 titled Estate of Johnny Fisher, Dec'd v. JPMorgan Chase Bank, N.A., et al., in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (App. 198 – 329).

O. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Nancy Argo (App. 330 – 348).

P. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Jay Sandelin (App. 349 – 369).

Respectfully submitted,

JACKSON WALKER L.L.P.
901 Main Street, Suite 6000
Dallas, TX 75202

By: /s/ Jeffrey G. Hamilton

Albon O. Head, Jr.
State Bar No. 09325000
Jeffrey G. Hamilton
Texas State Bar No. 00793886
Heather M. Forrest
Texas State Bar No. 24040918
214/ 953-6000 -- Telephone
214/ 953-5822 – Facsimile

ATTORNEYS FOR JPMORGAN CHASE
BANK, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2011, a true and correct copy of the foregoing Appendix of Evidence in Support of Defendant JPMorgan Chase Bank N.A.'s Motion for Summary Judgment has been served via First Class United States Mail, postage prepaid upon the following:

E.L. Atkins
Atkins Law Firm
325 South Mesquite Street, Suite A
Arlington, TX 76010

John MacLean
MacLean & Boulware
11 Main Street
Cleburne, TX 76033

William L. Kirkman
Susanna Johnson
Bourland & Kirkman
201 Main Street, Suite 1400
Fort Worth, TX 76102

Susan E. Baird
Cotton Schmidt & Abbott, L.L.P.
500 Bailey Ave., Suite 600
Fort Worth, TX 76107

/s/ Jeffrey G. Hamilton
Jeffrey G. Hamilton

EXHIBIT 1

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	413 th JUDICIAL DISTRICT COURT
	§	
J P MORGAN CHASE BANK, N.A.,	§	
GLENN MILTON, JAY SANDLIN, LUCY	§	
NORRIS, RN, and NANCY ARGO, RN	§	
	§	
Defendants.	§	JOHNSON COUNTY, TEXAS

AFFIDAVIT OF HEATHER M. FORREST IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF TEXAS	§
	§
COUNTY OF DALLAS	§

BEFORE ME, the undersigned authority, personally appeared Heather M. Forrest who, upon her oath, testified as follows:

1. "My name is Heather M. Forrest. I am over twenty-one years of age and in all respects competent to execute this Affidavit. All of the matters stated herein are within my knowledge and are true and correct.

2. "I am an attorney licensed to practice law in the State of Texas by the Supreme Court of Texas and have continuously practiced law in Texas since my licensure. I am an attorney at the law firm of Jackson Walker L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202. In that capacity, I have become familiar with the facts stated herein.

3. "Attached hereto are true and correct copies of the following documents:

A. Fort Worth Osteopathic Hospital, Inc. d/b/a/ Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement.

B. Petition filed by Mildred Fisher in Cause No. C200100173 titled Fisher v. John B. Payne, D O, et al. in the 413th Judicial District Court of Johnson County, Texas.

C. Plea and Petition in Intervention filed by Jackie Fisher, Administratrix of the Estate of Johnny Fisher, Dec'd, et al. in Cause No. C200100173 titled Fisher v. John B. Payne, D O, et al. in the 249th Judicial District Court of Johnson County, Texas.

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F. Trustee's Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, et al. filed in Bankruptcy Case No. 05-41513, titled In re Fort Worth Osteopathic Hospital, Inc. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division.

G. Order Granting Motion to Approve and Implement Compromise and Settlement of Tort claims by Jackie Fisher, et al. entered in Bankruptcy Case No. 05-41513, titled In re Fort Worth Osteopathic Hospital, Inc. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division.

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I. Motion to Intervene filed in Adversary No. 07-04016, titled Brown v. JPMorgan Chase Bank, N.A. in the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division.

J. Plaintiff's First Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas.

K. Plaintiff's Second Amended Original Petition and Claim of Estate filed in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas.

L. Section 2162.7.A of the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services Social Security Administration.

M. Plaintiff's Initial Response to Requests for Disclosure for All Defendants served on all defendants in Case No. C2000800560 titled Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, et al., in the 413th Judicial District Court for Johnson County, Texas.

N. Motion to Remand filed by The Estate of Johnny Fisher, Dec'd in Adversary No. 08-4168 titled Estate of Johnny Fisher, Dec'd v. JPMorgan Chase Bank, N.A., et al., in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

O. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Nancy Argo.

P. Plaintiff's Written Response to First Set of Interrogatories from Defendant, Jay Sandelin."

FURTHER AFFIANT SAYETH NOT.

Heather M. Forrest
Heather M. Forrest

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23rd day of June, 2011.

Terri K. Salter
Notary Public - State of Texas

MY COMMISSION EXPIRES:

8-12-13



EXHIBIT A

FORT WORTH OSTEOPATHIC HOSPITAL, INC. D/B/A
FORT WORTH OSTEOPATHIC MEDICAL CENTER
SELF-INSURANCE PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT, dated the 15th day of September, 1987 by and between FORT WORTH OSTEOPATHIC HOSPITAL, INC., a non-profit corporation organized and existing under the laws of the State of Texas, having its principal place of business in Fort Worth, Tarrant County, Texas ("Hospital") and TEXAS AMERICAN BANK, of Fort Worth, Texas, a national banking corporation organized and existing under the laws of the United States ("Trustee").

WITNESSETH:

This trust agreement is to evidence the agreement between the Hospital and the Trustee with respect to the administration of a self-insurance plan fund created by the Hospital pursuant to the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services, Social Security Administration.

RECITALS

- (a) The Hospital owns and operates a 265 hundred bed Hospital and related facilities in Fort Worth, Tarrant County, Texas.
- (b) Despite the excellent claims and loss history of the Hospital, the annual cost and availability of professional liability insurance has become a matter of increasing uncertainty and concern in recent years.
- (c) Because of this concern, the Hospital caused an extensive study and review to be made of the various alternatives available to provide economical and dependable protection to the Hospital against malpractice liability claims.
- (d) After analysis of all the data arising from such study and review, the Hospital has determined that it is most reasonable and prudent to maintain a total self-insurance program with the establishment of a reserve fund and the self-assumption of the risk loss resulting from malpractice and general patient liability because of the non-availability or exorbitant

cost of commercial insurance, the Hospital concluded that it would be in the best interest of the Hospital and community which it serves to establish a self-funded plan, on an actuarially sound basis, designed to enable the Hospital to "self insure" against the initial levels of malpractice liability incurred at the Hospital and secure, if required, commercial insurance coverage from the liability in excess of self-insured limits.

(e) The Hospital desires that such self-funding plan be implemented through a trust designed in such manner as to enable payments thereto to qualify for Medicare reimbursement, and designed so as to exempt such trust from tax pursuant to the applicable provisions of the Internal Revenue Code.

NOW, THEREFORE, the Hospital and Trustees do mutually covenant and agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

1.01 Actuary - shall mean an actuary, insurance company or broker experienced in the field of medical malpractice and general liability insurance, independent of any direct or indirect financial ownership or control by the Hospital and employed to render service with respect to the plan and the fund.

1.02 Board - shall mean the Board of Directors of the Hospital.

1.03 Committee - shall mean the committee which shall administer the plan as provided in Article 3.

1.04 Contributions - shall mean payments by the Hospital to the Trustees for the fund.

1.05 Fund - shall mean the trust fund created in accordance with the Plan.

1.06 Hospital - shall mean Fort Worth Osteopathic Hospital, Inc. d/b/a Fort Worth Osteopathic Medical Center, Fort Worth, Tarrant County, Texas.

1.07 Medicare Manual - shall mean the Medicare Provider Reimbursement Manual promulgated by the Social Security Administration

of the Department of Health and Human Services.

1.08 Plan - shall mean the Hospital's self-insurance plan with respect to malpractice liability claims.

1.09 Plan Year - shall mean September 15, 1987 through September 30, 1988 as the first Plan Year and beginning October 1, 1988 a Plan Year shall mean a 12-month period thereafter.

1.10 Trust - shall mean this trust agreement between the Hospital and the Trustee and all amendments thereto.

1.11 Trustee - shall mean Texas American Bank Fort Worth, or any substitute or successor Trustee or Trustees.

ARTICLE 2 - CONTRIBUTIONS

The Hospital hereby conveys and delivers to Trustee, in trust, to be held and administered in accordance with the terms of this agreement the sum of money set forth on Exhibit A attached hereto (the receipt of which is acknowledged by the Trustee), which sum of money together with such additional money or property as may from time to time be delivered by the Hospital to the Trustee, including the income and earnings therefrom, shall constitute the trust property. Said sum has been determined by Marsh & McLellan of Chicago, Illinois to be reasonably required as a actuarially adequate or sound fund reserve for such liability losses incurred and accrued against the Hospital for the year commencing September 15, 1987 and expiring September 30, 1988. The Trustee shall have legal title to the trust property and shall be responsible for the proper administration and control thereof as hereinafter set forth.

ARTICLE 3 - ADMINISTRATIVE COMMITTEE

3.01 Appointment and Term of Office - The Committee shall consist of three (3) to five (5) individuals as shall be named by the Board from time to time. The Board shall have the right to remove any member of the Committee at any time. A member may resign at any time by written resignation to the Committee and Board. If a vacancy in the Committee should occur, a successor shall be

appointed by the Board.

The Hospital shall, by written notice, keep the Trustee notified of current membership of the Committee, its officers and agents, and shall furnish the Trustee a certified signature card for the members of the Committee. For all purposes hereunder, the Trustee shall be conclusively entitled to rely upon such certified signatures.

3.02 Organization of Administrative Committee. The Committee shall elect a chairman and secretary from among its members. It may appoint agents it deems necessary for the effective performance of its duties and may delegate to such appointees or to one or more members of the Committee such powers and duties, whether administrative or discretionary, as the Committee may deem expedient and appropriate. The Committee shall act by majority vote. Its members shall serve without compensation.

3.03 Powers of Administrative Committee. The Committee shall be governed by the Board with respect to the control of the administration of the Plan who shall provide it with all powers and instructions necessary to enable it to properly carry out its duties in that respect, and all powers conferred upon it by the Plan. Not in limitation, but in amplification of the foregoing, the Committee shall have the power to construe the Plan, to review periodically the adequacy of funding and of investment performance and communicate its findings to the Hospital and the Trustee, and to take steps it deems necessary to remedy any administrative error and to determine all questions that shall arise under the Plan. Subject to any limitations imposed on the Committee by the Board, it shall decide all questions relating to the determination of payments from the Fund, provided such payment shall be exclusively for the purposes of the Plan as hereinafter provided. All disbursements

by the Trustees shall be made upon and in accordance with the written notice of the Committee or its designated agent. The decision of the Committee upon all matters within the scope of its authority shall be final and binding upon all parties to this instrument. The Committee shall have the power but not the obligation to employ investment counsel on behalf of the Trust. Any such investment counsel shall be empowered to direct the Trustee with respect to permitted investments.

3.04 Records of Administrative Committee. The secretary of the Committee shall record or cause to be recorded all acts and determinations of the Committee and all such records, together with such other documents as may be necessary for the administration of the Plan and shall be preserved in the custody of such secretary.

3.05 Indemnification of Administrative Committee. The Hospital shall indemnify and save each member of the Committee harmless from the effects and consequences of the acts, omissions and conduct of each member in his official capacity, except to the extent that such effects and consequences shall result from the acts or omissions of such member in bad faith.

3.06 Miscellaneous. The Committee shall advise the Trustee and issue to the Trustee such instructions as the Trustee may require to administer the Trust.

The Committee and the Hospital shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by an actuary or by an accountant, physician, or attorney selected or approved by the Hospital or the Committee. The Committee, the Hospital, its officers, and the Trustee shall not be deemed imprudent or subject to liability by reason of taking or refraining from any action in reliance upon the advice or opinion of any such actuary, accountant, physician, or attorney.

ARTICLE 4 - TRUST PLAN

4.01. The Hospital, after making a full and complete investigation

and analysis of its circumstances, organization and operation, has determined that it is reasonable and prudent for it to adopt and implement a plan of self-insurance against malpractice losses. The trust property shall constitute the Fund through which the purposes of the Plan are carried out. The Hospital represents to the Trustee that as part of the Plan it intends to maintain or cause to be maintained an ongoing claims processing and risk management activity to determine whether malpractice liability exists, and the cause and cost thereof, and to minimize the frequency and severity thereof. The Hospital intends that the Plan be established and maintained in accordance with the rules and regulations adopted or implemented from time to time by the United States Department of Health, Education and Welfare, Social Security Administration, or any agent thereof or successor thereto, governing reimbursement to the Hospital for payments made in connection with the Plan. The Hospital assumes full and sole responsibility for compliance with the Medicare regulations. All representations and recitals herein with respect to the Plan shall be deemed to be those of the Hospital.

ARTICLE 5 - TRUST FUND AND TRUSTEE

5.01 Trust Fund. The Trustee shall hold, manage, administer, and after paying all reasonable costs and expenses of the administration of said Trust or reserving a fund for the payment thereof, the Trustee shall invest and reinvest the trust funds in income-producing securities, assets and properties as may be authorized by the statutes and laws of the United States applicable to national banks exercising trust powers and regulations issued thereunder, and any amendments thereto. All requirements respecting investments by fiduciaries now or hereinafter required by the laws of the State of Texas, except that any loans to or investments and obligations, securities or properties of Hospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, rebates, interest, dividends, etc. shall be retained and

held by the Trustee and become a part of the trust fund. Such retained income shall be considered and used for the purposes of determining and establishing adequate fund levels by Hospital's insurance actuary. The Trustee shall be under no duty to determine whether the amount of any contribution to the trust property from time to time made by the Hospital is in accordance with the Plan or the Medicare regulations or to enforce or to collect payment of any contributions.

5.02 Termination for Medicare. Upon termination of the Plan from the Medicare program, the Hospital shall obtain from the actuary a determination of the adequacy of the balance of the Fund as of the date of such termination in order to determine the amount, if any, to be offset against the Hospital's allowable cost to be reimbursed by Medicare if the Fund is excessive, as defined in the Medicare Manual.

5.03 Payment from the Trust Property.

(a) The Trustee from time to time, upon receipt of written direction from the individual or individuals designated by the Committee or Hospital to so act, shall make payment from the income or corpus of the trust property to such persons and in such manner and in such amounts as the Committee or an agent thereof in such writing shall direct. Each such written direction shall certify that the payment is related to the Plan, and is for one or more of the purposes specified below. The Trustee shall make payment solely upon the direction of the Committee and shall not be required to inquire into the purpose or nor be liable for the propriety of any such payment. Payment shall be made from the trust property only for malpractice losses of the Hospital whether such losses occur from incidents or claims arising after September 15, 1987, providing same are not covered under the terms of any previously held commercial liability insurance policy and may be made for the following expenses to the extent that such are related to the self-insurance plan of the Hospital:

- (1) Expenses for administering the claims management program;
- (2) Expenses of establishing this Trust and the Trust Fund;
- (3) Legal expenses;
- (4) Actuarial expenses;
- (5) Costs relating to the acquisition for the Hospital of excess insurance coverage, if purchased by the Trustee;
- (6) Expenses involved with the maintenance of this Trust and the trust property by the Trustee;
- (7) Cost of administering any risk management program of the Hospital, if risk management is performed by the trustee; provided, however, that this subparagraph shall not be construed to impose upon the Trustee any duty or obligation to administer any risk management program of the Hospital.

(b) Payment for any of the foregoing purposes shall be deemed proper payment to be paid from the trust property. It is intended that all payments from the trust property shall be in accordance with the Medicare regulations, but the Trustee shall not be liable in any way for the Hospital's failure to comply therewith.

§.04 Accounts. The Trustee shall keep accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property. Such person or persons as the Hospital shall from time to time designate, including such persons as may be required by the Medicare regulations, shall be allowed to review, inspect and audit the books of account relating to the trust property upon request at any reasonable time during business hours of the Trustee.

Within 60 days after the close of each 12-month period ending on September 30 of each year, the Trustee shall deliver a financial statement and accounting containing such information as the Hospital shall from time to time reasonably request, including but not

limited to, the following information:

- (a) The balance of the trust property at the beginning of that Plan Year;
- (b) Current period contributions;
- (c) The amount and nature of final payments, including a separate accounting for claims management, legal expenses, claims paid, and other similar items; and
- (d) The trust property balance at the end of the Plan Year.

Notwithstanding any obligation to report within 60 days after the close of each 12-month period, Trustee shall render such reports regarding the trust fund and containing such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a Plan Year, or if the Trustee shall resign or be removed, the Trustee shall, within 45 days of such termination, resignation or removal date, submit its final statement and account for the period from the last previous accounting to the date of such termination, resignation or removal.

5.05 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 60 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall render to the Hospital an account of its administration of the Fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the Fund to its successor Trustee.

5.06 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 60 days' written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account and transfer and deliver the assets of the fund to its successor as provided in the case of the Trustee's resignation.

5.07 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the best qualified and readily available financial institution whose

service to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will continue this agreement indefinitely. However, in the event of a vacancy in the trusteeship of this Trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this Trust. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

5.08 Liability. Neither any member of the Committee, the Board, the Hospital, the actuary nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own acts, omissions in bad faith or for which it is grossly negligent.

ARTICLE 6 - POWERS OF TRUSTEE

6.01 Enumerated Powers. The Trustee or any successor Trustee shall have the authority without order of or report to any court or officer to exercise the following powers in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and immunities as provided in the laws of the United States and State of Texas for banks exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To retain, sell, invest or reinvest in any stocks, bonds, securities, options or other property, including common trust funds established by the Trustee, and stock in the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of this discretion, except that of using ordinary care; provided, however, that no loans may be made from the trust property to the Hospital or to any person related to the Hospital within the meaning of the Medicare regulations.

(2) To sell, exchange, or otherwise dispose of any property at any time held or required hereunder at public or private sale, for cash or on terms, without the necessity of court approval

or advertisement.

(3) To register any stock, bond or other security in the name of a nominee, with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing that such property is a trust asset.

(4) To invest in certificates of deposit and accounts issued by Trustee.

(5) to vote in person or by proxy all stocks or other securities, to grant proxies, general or limited, and to agree or take any other action in regard to any reorganization, merger, consolidation, bankruptcy or other procedure or proceedings affecting any property of the Trust.

(6) To serve without making and filing inventory and appraisal, without filing any annual or other return to any court and without giving bond; but the Trustee shall furnish to the Hospital such financial statements as are otherwise required by this agreement.

(7) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that Trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

6.02 Compensation. The Hospital is authorized to pay the Trustee reasonable compensation for its services rendered. Said compensation shall be based on what is reasonably and customarily charged for services of a similar type or nature in the community and shall include an evaluation of the services rendered by the Trustee together with the experience of payments or disbursements under this Trust Agreement.

ARTICLE 7 - AMENDMENT AND TERMINATION

7.01. The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, in whole or in part, any or all of the provisions of the Plan and trust agreement; provided, however,

that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without its consent.

7.02. Termination. The Hospital expects this Plan to be continued indefinitely, but of necessity, it reserves the right to terminate the Plan at any time by action of the Board communicated in writing to the Trustee. If the Hospital revokes this agreement or terminates the Plan, then upon receipt of written notice thereof, the Trustee shall either:

(1) Retain and administer in accordance with this agreement such portion of the trust property as the Hospital shall certify to the Trustee has been determined by an actuary as required by the Medicare regulations as a necessary reserve fund for future payment of the Plan until such time as the Hospital shall certify to the Trustee that an independent actuary has determined that such payment has been met or reserves are no longer necessary, whereupon the Trustee shall deliver the balance of the trust property to the Hospital; or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the Medicare regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 8 - MISCELLANEOUS

8.01. Headings. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

8.02. Construction. This agreement shall be construed in accordance with the laws of the State of Texas. In the construction of this agreement, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

8.03. Severability. Should any provision of this agreement be deemed in violation of any law, such provision shall be deemed void

to the extent required by law and all provisions of this agreement other than that held void shall remain in force and effect.

2.04 Counterparts. This agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers, to be effective on the date first above written.

FORT WORTH OSTEOPATHIC HOSPITAL, INC.
D/B/A FORT WORTH OSTEOPATHIC MEDICAL
CENTER

By: Jay Sandelin
Jay Sandelin
Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAN BANK

By: Robert M. Lambford
Robert M. Lambford
Senior Vice President and Trust Officer

EXECUTED IN MULTIPLE COPIES, EACH COPY OF WHICH SHALL BE DEEMED TO BE AN ORIGINAL.

EXHIBIT A

Contemporaneously with the execution and delivery of the foregoing Trust Agreement, the Hospital conveys and delivers to the Trustee pursuant to Section 2 hereof, the sum of One Million Dollars (\$1,000,000.00).

EXHIBIT B

CAUSE NO. C200100173

MILDRED FISHER

VS.

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS,
N.P. CASH, R.N., SUSAN SAMUEL, R.N.
V. PATE, CRT, and SUZANNE
SHENK, D.O.

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IN THE DISTRICT COURT
BY J. Payne
JOHNSON COUNTY, TEXAS

FILED
FEB 12 2009
JOHNSON COUNTY, TEXAS

24 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now Mildred Fisher, Plaintiff, and files her Original Petition complaining of Defendants John B. Payne, D.O., Osteopathic Medical Center of Texas, N.P. Cash, R.N., Susan Samuel, R.N., V. Pate, CRT, and Suzanne Shenk, D.O., and for cause of action would show the Court and Jury:

I.
DISCOVERY CONTROL PLAN

Plaintiff intends to conduct discovery under Rule 190.4 of the Texas Rules of Civil Procedure (Level 3).

II.
PARTIES

Plaintiff Mildred Fisher is an individual and resident of Johnson County, Texas.
Defendant, John B. Payne, D.O., is an individual and may be served with citation at 313 Westpark Way, Euless, Texas 76040.

Defendant, Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas, is a Texas Corporation authorized to and doing business in the State of Texas.

It may be served with citation through its registered agent, Yolanda Cervantes, 1000 Montgomery Street, Fort Worth, Texas 76107.

Defendant, N.P. Cash, R.N., is an individual and may be served with citation at 1000 Montgomery Street, Fort Worth, Texas 76107.

Defendant, Susan Samuel, R.N., is an individual and a resident of Johnson County, Texas. She may be served with citation at 1000 Montgomery Street, Fort Worth, Texas 76107.

Defendant, V. Pate, CRT, is an individual and may be served with citation at 1000 Montgomery Street, Fort Worth, Texas 76107.

Defendant, Suzanne Shenk, D.O., is an individual and may be served with citation at 3500 Camp Bowie Blvd., Fort Worth, Texas 76107.

III.
WRONGFUL DEATH

This action is maintained as a wrongful death action on behalf of Plaintiff Mildred Fisher who is entitled to recover for the death of Johnny Fisher under the provisions of the Texas Civil Practice and Remedies Code 71.002 and 71.004. Mildred Fisher is the mother of Johnny Fisher, deceased. Plaintiff Mildred Fisher is a necessary and proper party to maintain this wrongful death action and is a surviving legal beneficiary of Johnny Fisher, Decedent provided for in the Wrongful Death Act. Pursuant to 71.004 of the Texas Civil Practice and Remedies Code. Plaintiff hereby joins in the wrongful death action which by operation of law is brought for the benefit of all surviving statutory beneficiaries.

IV.
VENUE

Venue is proper in Johnson County, Texas because at the time the cause of action accrued Defendant Susan Samuel, R.N. was a resident of Johnson County. CPRC §15.002.

V.
FACTS

At all times pertinent to this cause of action, Johnny Fisher, deceased, was a patient of, and under the care of, Defendants John B. Payne, D.O., Fort Worth Osteopathic hospital, Inc. d/b/a Osteopathic Medical Center of Texas, Susan Samuel, R.N., V. Pate, CRT, and Suzanne Shenk, D.O.

Dr. Payne treated Johnny Fisher on or about March 26, 1999, May 11, 1999, and September 22, 1999 through September 30, 1999. On September 22, 1999 Johnny Fisher was admitted to Osteopathic Medical Center of Texas ("OMCT") for cervical discectomy. Dr. Payne and Dr. Shenk performed surgery and were responsible for providing follow-up care. Defendants Susan Samuel, R.N., N.P. Cash, R.N., and V. Pate, CRT, assisted the doctors and provided care and treatment.

Defendants negligently performed the surgery at issue, failed to provide proper follow-up care, and failed to reasonably treat and care for Johnny Fisher. As a proximate result of the Defendants' negligence, Johnny Fisher died on September 30, 1999.

VI.
HEALTH CARE PROVIDERS

Defendants John B. Payne, D.O., Osteopathic Medical Center of Texas, N.P. Cash, R.N., Sue Samuel, R.N., V. Pate, CRT, and Suzanne Shenk, D.O., are health care

providers as the a term "health care providers" is used and defined by section 4590i, Subchapter D, of the Medical Liability Insurance Improvement Act.

In the alternative, if one or more Defendants is not a health care provider, then they are liable under statutory and common law and section 4590i does not apply.

VII.
4590I NOTICE

Plaintiff would show that Defendants have been notified of Plaintiff's claims at least sixty (60) days prior to the filing of this lawsuit and that Plaintiff has given the requisite notice required by Section 4590i, Subchapter D, of the Medical Liability Insurance Improvement Act. Further, Plaintiff complied with all requirements of Section 4590i before filing this lawsuit.

In the alternative, Plaintiff would show that one or more potential Defendants have been notified of Plaintiff's claims at least sixty (60) days prior to the filing of this lawsuit and that Plaintiff has given the requisite notice required by Section 4590i, Subchapter D, of the Medical Liability Insurance Improvement Act. Further, Plaintiff complied with all requirements of Section 4590i before filing this lawsuit.

VIII.
OSTEOPATHIC MEDICAL CENTER OF TEXAS

Defendant OMCT and its agents and employees were negligent and proximately caused Johnny Fisher to suffer injuries and death. At the time medical services and medical care were provided to Johnny Fisher, Defendants and others were acting as employees and agents of Defendant OMCT. At all times pertinent to this cause of action, the employees and agents of Defendant OMCT who were involved with the care and treatment of Johnny Fisher were acting in the course and scope of their duties with

Defendant OMCT. Defendant OMCT is therefore vicariously liable for its employees' and agents' negligent acts and omissions.

Defendant OMCT and its agents and employees were negligent in the following respects:

1. Failing to reasonably care for Johnny Fisher;
2. Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
3. Failing to prescribe a proper course of treatment;
4. Failing to properly diagnose Johnny Fisher's condition;
5. Failing to refer Johnny Fisher to a specialist;
6. Failing to timely treat Johnny Fisher;
7. Failing to order diagnostic testing;
8. Failing to interpret diagnostic testing;
9. Failing to regard diagnostic testing;
10. Performing an unnecessary surgery;
11. Negligently performing surgery;
12. Failing to provide Johnny Fisher adequate facilities;
13. Failing to provide adequate follow-up care;
14. Failing to supervise employees and agents; and
15. Failing to act as a reasonable hospital.

Further, Defendant OMCT is directly liable for its own negligence and for proximately causing Johnny Fisher's injuries and death. Defendant OMCT's negligent acts and omissions include the following:

1. Failing to implement and enforce policies, procedures, and protocols;

2. Negligent hiring;
3. Negligent supervision;
4. Negligent retention; and
5. Negligent credentialing.

IX.
DEFENDANT JOHN B. PAYNE, D.O.

At all times pertinent to this cause of action Defendant John B. Payne, D.O. provided medical care, medical services, treatment, and testing to Johnny Fisher. The dates of treatment include, but are not limited to, March 26, 1999, May 11, 1999 and September 22 through September 30, 1999. Defendant John B. Payne, D.O. was negligent and proximately caused Johnny Fisher's injuries and death. His negligent acts and omissions include:

1. Failing to reasonably care for Johnny Fisher;
2. Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
3. Failing to prescribe a proper course of treatment;
4. Failing to properly diagnose Johnny Fisher's condition;
5. Failing to refer Johnny Fisher to a specialist;
6. Failing to timely treat Johnny Fisher;
7. Failing to order diagnostic testing;
8. Failing to interpret diagnostic testing;
9. Failing to regard diagnostic testing;
10. Performing an unnecessary surgery;
11. Negligently performing surgery;

12. Failing to provide Johnny Fisher adequate facilities;
13. Failing to provide adequate follow-up care; and
14. Failing to supervise employees and agents.

X.

DEFENDANT SUZANNE SHENK, D.O

At all times pertinent to this cause of action Defendant Suzanne Shenk, D.O. provided medical care, medical services, treatment, and testing to Johnny Fisher. The dates of treatment include, but are not limited to, September 22 through September 30, 1999. Defendant Suzanne Shenk, D.O. was negligent and proximately caused Johnny Fisher's injuries and death. His negligent acts and omissions include:

1. Failing to reasonably care for Johnny Fisher;
2. Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
3. Failing to prescribe a proper course of treatment;
4. Failing to properly diagnose Johnny Fisher's condition;
5. Failing to refer Johnny Fisher to a specialist;
6. Failing to timely treat Johnny Fisher;
7. Failing to order diagnostic testing;
8. Failing to interpret diagnostic testing;
9. Failing to regard diagnostic testing;
10. Performing an unnecessary surgery;
11. Negligently performing surgery;
12. Failing to provide Johnny Fisher adequate facilities;
13. Failing to provide adequate follow-up care; and

- 14. Failing to supervise employees and agents.

XI.

DEFENDANTS N.P. CASH, R.N. AND SUSAN SAMUEL, R.N.

At all times pertinent to this cause of action Defendants N.P. Cash, R.N. and Susan Samuel, R.N. were employees or agents of Defendant OMCT acting in the course and scope of their duties with Defendant OMCT. Defendants provided health care, treatment, and services to Johnny Fisher. The dates of treatment include, but are not limited to, September 22 through September 30, 1999. Defendants N.P. Cash, R.N. and Susan Samuel, R.N. were negligent and proximately caused Johnny Fisher's injuries and death. Their negligent acts and omissions include:

- 1. Failing to reasonably care for Johnny Fisher;
- 2. Failing to provide Johnny Fisher health care and treatment that met the reasonable standard of care;
- 3. Failing to timely treat Johnny Fisher;
- 4. Failing to reasonably document Johnny Fisher's condition;
- 5. Failing to provide adequate follow-up care; and
- 6. Failing to provide adequate nursing care.

XII.

DEFENDANT V. PATE, CRT

At all times pertinent to this cause of action Defendant V. Pate, CRT was an employee or agent of Defendant OMCT acting in the course and scope of his or her duties with Defendant OMCT. Defendant provided medical, health care, and ancillary services to Johnny Fisher. The dates of service include, but are not limited to, September 22 through September 30, 1999. Defendant V. Pate, CRT was negligent and proximately caused

Johnny Fisher's injuries and death. His or her negligent acts and omissions include:

1. Failing to reasonably care for Johnny Fisher;
2. Failing to provide Johnny Fisher health care and treatment that met the reasonable standard of care;
3. Failing to timely treat Johnny Fisher;
4. Failing to reasonably document Johnny Fisher's condition; and
5. Failing to provide adequate follow-up care.

**XIII.
DAMAGES**

Defendants, through negligent acts and omissions, proximately caused Johnny Fisher's injuries and death. Plaintiff Mildred Fisher is Johnny Fisher's mother. As a result of Johnny Fisher's death, Mildred Fisher has suffered:

1. Loss of companionship;
2. Loss of society;
3. Loss of financial support;
4. Loss of love and affection; and
5. Loss of services.

**XIV.
GROSS NEGLIGENCE**

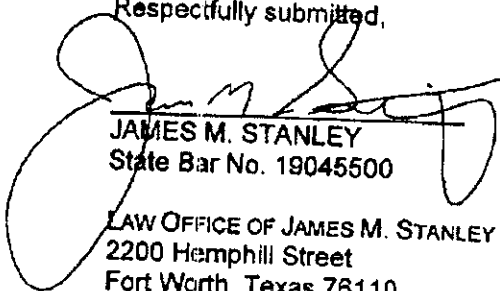
Defendants' above-stated acts and omissions are beyond the scope of ordinary negligence. Their acts and omissions were grossly negligent and constitute malice as that term is defined by law. Plaintiff hereby sues for exemplary damages.

XV.
PRAYER

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial Plaintiff have:

1. Judgment jointly and severally against Defendants for damages in an amount in excess of the minimum jurisdictional limits of the Court;
2. Judgment severally against Defendants for exemplary damages in an amount in excess of the minimum jurisdictional limits of the Court;
3. Prejudgment and postjudgment interest as provided by law;
4. Costs of suit; and
5. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,



JAMES M. STANLEY
State Bar No. 19045500

LAW OFFICE OF JAMES M. STANLEY
2200 Hemphill Street
Fort Worth, Texas 76110
Phone : 817-335-7140
Metro : 817-654-4395
Fax : 817-921-9740

EXHIBIT C

MILDRED FISHER
VS
JOHN B PAYNE, D O, OSTEOPATHIC MEDICAL CENTER OF TEXAS, N P CASH, R N, SUE SAMUEL, R N, V PATE, CRT, and SUZANNE SHENK, D O
Defendants

IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS
249th JUDICIAL DISTRICT

PLEA AND PETITION IN INTERVENTION

TO THE HONORABLE COURT

COMES NOW JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D (a/k/a Johanne Fisher), JACKIE FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make this claim and file this PLEA AND PETITION IN INTERVENTION on behalf of the ESTATE OF JOHNNY FISHER, DEC'D, and on behalf of the named individuals, against JOHN B PAYNE, D O, OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), N P CASH, R N, SUE SAMUEL, R N, V PATE, CRT, and SUZANNE SHENK, D O, and others named herein, and in support of this claim, show unto this Honorable Court as follows

NATURE OF CLAIM

1 This is a claim brought by the Administratrix of the Estate of the Decedent for damages for the recovery of expenses incurred by the Estate, for lost earnings of the Decedent, for Decedent's pain and suffering from the date of injury to the date of death, and for damages allowed by law to the statutory beneficiaries of Johnny Fisher, Deceased. The claims asserted herein are brought pursuant to TEX REV CIV STAT ANN art 4590i (Vernon), and other statutes and at common

Plaintiff's Plea and Petition in Intervention
Fisher\Pleading\Original Petition.jdb

COPY

- b EULESS, Tarrant County, Texas 76040,
b FORT WORTH OSTEOPATHIC HOSPITAL, INC d/b/a OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), a hospital and corporation authorized to transact business in Texas OMCT may be served with citation by serving its registered agent, Yolanda Cervantes, who is located at 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107,
c SUZANNE SHENK, D O, who may be served with citation at 3500 Camp Bowie Blvd, Fort Worth, Tarrant County, Texas 76107;
d N P CASH, R N (Sp7), who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107,
e SUE SAMUEL, R N, a/k/a Susan Hadley Samuel, who may be served with citation at 2501 Nicole Dr, Burleson, Johnson County, Texas 76028,
f V PATE, CRT, who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107.

Plaintiffs request that citation be issued and served upon each named Defendant forthwith and in the manner as required by law

FACTUAL SUMMARY

5 Johnny Fisher (DOB November 27, 1957, DOD, October 1, 1999, SS# 466-23-4693, weight approximately 204 lbs, height approximately 5'9"), was first seen and evaluated by JOHN B PAYNE, D O, a neurosurgeon, on or about March 26, 1999 with the complaint of moderate neck pain and arm pain. He reported an on-the-job injury sometime in January, 1999. DR. PAYNE recommended steroid injection, cervical collar and non-descript physical therapy. Mr. Fisher returned to DR. PAYNE in May, 1999 relating no improvement. EMG/NCV was interpreted as left C5 radiculopathy. Past history revealed prior cervical discectomy of C3-6 and C6-7 in 1991 or 1992. On May 11, 1999, Mr. Fisher underwent a cervical myelogram with CT follow up, as well as AP and lateral cervical spine x-rays. Routine x-rays show bony fusion at C5-6 and C6-7. Other disc spaces are said to be well preserved without other abnormality. The patient's standard cervical

Plaintiff's Plea and Petition in Intervention
Fisher\Pleading\Original Petition.jdb

law. The claims brought herein include all wrongful death claims and survival claims pursuant to TEX CIV PRAC & REM CODE ANN sec 71.002, et seq (Vernon), and TEX CIV PRAC & REM CODE ANN sec 71.021, et seq (Vernon)

JURISDICTION AND VENUE

2 This is a claim by and on behalf of the ESTATE OF JOHNNY FISHER, DEC'D. The administration of the ESTATE OF JOHNNY FISHER, DEC'D is pending in the Probate Court of Johnson County, Texas. JACKIE FISHER has qualified and is the Administratrix of the Estate to whom Letters of Administration have been issued. One of the Defendants, Sue Samuel, RN, a/k/a Susan Hadley Samuel is a resident of Johnson County, Texas, residing at 2501 Nicole Dr, Burleson, Johnson County, Texas 76028. This Court, therefore, has jurisdiction and venue of this case pursuant to TEX CIV PRAC & REM CODE, sec 15.001 et seq, including sec 15.002 and 15.005 (Vernon)

PARTIES

- 3 The Claimants and Plaintiffs in this lawsuit are
a JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D,
b JACKIE FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
c JOHNNY FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
d HOUSTON FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D.

Each and all of the Plaintiffs named herein, as well as Mildred Fisher, are residents of Johnson County, Texas

4 The Defendants in this claim are

- a JOHN B PAYNE, D O, who may be served with citation at 313 Westpark Way,

Plaintiff's Plea and Petition in Intervention
Fisher\Pleading\Original Petition.jdb

myelogram with follow-up radiology using Omnipaque showed no abnormality. The CT scan follow-up describes no abnormality at the C4-5 level other than under the impression section which indicates bilateral uncovertebral joint bony hypertrophy at C3-4 and C4-5 levels. However, there was no reported significant neural foraminal stenosis identified. These were interpreted by DR. PAYNE as revealing significant nerve root compression at C5. DR. PAYNE recommended surgery with plating. A second opinion recommending against surgery at the time was obtained. DR. PAYNE then obtained the opinion of a third neurosurgeon, supporting DR. PAYNE'S decision to operate. Although later records indicate that an MRI scan had been carried out on this patient which showed an abnormality at C4-5, MRI comparison was not made with the myelogram as indicated in the report. None of the outpatient studies, as listed above, indicate any notable abnormality at C4-5. The CT post-myelogram report and any reference to the C4-5 level under "impression" has been deleted and a reprinted report is dated October 7, 1999 one week after Mr. Fisher's death.

6 Johnny Fisher was admitted to OMCT, Fort Worth, Texas, on September 22, 1999 for a cervical C4-5 discectomy and interbody fusion with plating. According to the History and Physical by DR. PAYNE, dated September 22, 1999, Johnny Fisher's stated health was unremarkable with the exception of his complaint of moderate neck pain, arm pain and restrictions in the amount of weight he could lift. Past Medical History included an injury to the stomach due to a shotgun blast and prior cervical fusion, above-referenced. The nursing admission record indicates only that he was using eye drops for glaucoma and had otherwise been well other than for the mentioned remote abdominal gun shot wound in 1977 and the previously described cervical fusion. Specifically, there was no history of hypertension, diabetes, pulmonary disease, liver disease, heart disease, venereal disease, syncope, dizziness, or stroke.

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7. Mr. Fisher was admitted to OPS #6 at 1112 hours on September 22, 1999 and taken to the operative suite at 1342 for an Anterior Cervical Discectomy and Fusion, Bone Bank Bone and Plating. The procedure began at 1415 and ended at 1632. A Philadelphia collar was placed around his neck after the surgical procedure. DR. PAYNE describes his procedure and the perioperative report reflects the patient's condition during surgery.

8. The patient was sent from surgery to the Post Anesthesia Care Unit (PACU) at 1702 and transferred to the pediatric area for his recovery time. PACU nursing records indicate that Mr. Fisher awoke from anesthesia complaining of left arm numbness and neck pain approximately forty-five (45) minutes after the surgery and was medicated according to the order sheet provided by DR. PAYNE shortly following his operation. Complete neurological assessment was not performed. Mr. Fisher was in PACU for approximately one and one-half (1½) hours. Oxygen was administered. During this time, he was given Demerol 12.5mg IVP at 1735 hours for shivering and again at 1750 hours for complaint of soreness and numbness. He was given Phenergan 12mg IVP at 1755 hours for no documented reason. It is later documented that he was alert and oriented X3, tolerating ice chips but that 2 times complained of numbness to his left upper extremities, without change from before surgery. There is documentation of the heart monitor being in NSR without ectopy and breathing being even and unlabored. His blood pressure ranged in the 170/80-90 until 1800 hours when it dropped to 150/60-70 range. His pulse rate ranged in the 50's-60's range until 1730 hours when it rose to the 80's-90's range. The decrease in blood pressure and increase in pulse rate occurred after he received the Demerol and Phenergan. These recorded vital signs were significantly different from pre-surgery readings, documented as, P 61, R 20, BP 102/59. There was no further assessment or documentation. There is no documentation that any of the physicians were made aware of his vital signs at that time (1730).

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pain and was again medicated with Stadol 1mg SIVP per nurses notes as well as Valium 5mg po (ordered IV in physician orders and per med sheet) to support Stadol, per documentation in the nurses notes. At 0745 hours, Mr. Fisher was medicated with Percocet (2) po per med sheet and his scheduled pain med Oxycodone 40mg po was given at 0800, fifteen minutes later. At 1200 hours Percocet tabs 2 were crushed, contra package insert and directives, and given to Mr. Fisher because he complained of pain and was unable to swallow. At 1700 hours, Mr. Fisher was assisted to the bathroom at which time he, again, complained of dizziness. He was then assisted back to bed. There is no documented assessment regarding his complaint of dizziness or of continued state of confusion and disorientation. There is no assessment of the repeated complaints of left arm numbness. A complete neurological assessment was not performed. And, despite his condition, he was not transferred to ICU.

10. Mr. Fisher was transferred to medical floor 4N, Room 410, at 1800 hours on September 24, 1999. On arrival to Room 410 at recorded 1900 hours, he complained of general stiffness and weakness and continuing pain. Again, there is no assessment regarding his complaints. At 1945 hours, he was given Percocet tabs 2 po, again crushed, because of difficulty swallowing per documentation in nurses notes only. One (1) hour and forty-five (45) minutes later, Oxycodone 40 mg was given at 2130 hours as his scheduled pain medication. At 2200 hours, it is documented that he was sleeping for "long intervals." The two sets of vital signs taken on the 24th showed blood pressure to be lower than previously, 120/70 and 100/60, respirations were both 20 and pulse was 76 and 72. It is documented at 0005 hours on September 25, 1999 that "pt was sleeping, arouses when name called," his skin was pale, BRP, voiding without problems, V/S stable. No other assessment was made as to patient being pale. He was found unresponsive six (6) hours later with no assessment or check during this (6) hour period.

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9. Mr. Fisher was transferred from PACU to Pediatrics at 1835 hours on September 22, 1999, arriving on the pediatrics floor at 1850 hours from PACU, per records. There is no record that he was maintained on oxygen while in pediatrics and O₂ sat even ceased being checked, despite the fact that the patient's O₂ sat continued to decrease. Vital signs, recorded twice in pediatrics on the 22nd reflect: T 98.6, P 86, R 20, BP 147/83 and T 98.4, P 80, R 20, BP 138/82. At 2100 hours, Mr. Fisher complained of pain and was medicated with Stadol, 1mg, SIVP. It is documented that he was offered Percocet tabs 2 but refused because his throat was too sore and didn't think he could swallow them. Stadol was documented at 2150 hours on Med Sheet. At 0015 hours on September 23, 1999, he again complained of pain and was medicated with Stadol 1mg SIVP which was documented in the nurses notes, but was not documented on the med sheet. At 0345 hours, it is documented on med sheet he was medicated with Percocet tabs 2 po and Stadol 1mg SIVP, but documented in Nurses Notes that they were given at 0400 hours. At 0500 hours, Mr. Fisher complained of muscle spasms and was medicated with Flexoril 10 mg po which is documented both on the med sheet and in the nurses notes. After returning from x-ray, Mr. Fisher was requesting pain medication and, at 0800 hours, it is documented that he was again medicated for complaint of pain. The medication is not identified, however, Oxycodone 40mg po was ordered as a scheduled med at 0800 hours and was documented as being given at 0800 hours then marked out. Oxycodone is also documented as being given at 1000 hours the morning of September 23, 1999. Mr. Fisher again requested pain medication at 1400 hours and per documentation in nurses notes, was again given Demerol 25mg, which was not on the med sheet and was not ordered. At 1410 hours, it is documented on the med sheet that Stadol 1mg IV was given. At 2000 hours, the scheduled pain medication, Oxycodone 40mg was given; however, Stadol 1mg IV was also given, per med sheet documentation and nurses notes. On September 24, 1999 at 0300, Mr. Fisher again complained of

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11. DR. PAYNE's postoperative daily follow-up indicates that on September 23, 1999 and September 24, 1999 (post-operative day one [1] and post-operative day two [2]), Mr. Fisher was also complaining of dysphagia. His vital signs were normal, except for a temperature of 100 degrees on September 23, 1999, and "slowly improving." The time increased on the September 24, 1999 progress note is 1430 hours. In the early morning hours of September 25, 1999, (time not documented) a house physician was called to the patient's room STAT due to him being found unresponsive by the nursing staff. There is no documentation in the nurses notes, only in DR. PAYNE's discharge summary, that he was found "on the floor." Mr. Fisher was found by the physician to be of poor coloration, had nonpalpable pulses, and was unresponsive to all stimuli. He was placed on a crash cart monitor and a sinus rhythm with premature atrial and premature ventricular contractions was noted. He was given 1 stop of Narcan to rule out analgesic (narcotic) overdose and the patient was responsive almost immediately thereafter, with complaints of confusion, disorientation and severe pain. His blood pressure was documented at 99/76. Oxygen saturation before was 85. In addition, arterial blood gases showed a pH of 7.3, which changes are consistent with metabolic acidosis and respiratory hypoxia, but there is no notation thereof in the records. Follow-up bloodwork at approximately 8:00 a.m. disclosed that the patient had a potassium of 7.4 and a creatinine of 4.7, however, Mr. Fisher was not transferred to the Intensive Care Unit until an hour later at approximately 9:00 a.m. The patient was consulted by numerous specialties and intravenous fluids and metabolic corrections were subsequently undertaken. It was indicated later in the morning of September 25, 1999 that the patient complained of thirst but seemed otherwise appropriate. The general consensus of his evaluation, at that point, was that he had become volume contracted due to inadequate fluid maintenance, as well as having narcotic induced somnolence and hypotension.

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12 Numerous complications followed. Mr Fisher was well documented to go into full blown acute renal failure due to acute tubular necrosis (shock kidney) associated with severe ischemic hepatitis and bilateral pulmonary chest x-ray findings consistent with acute respiratory distress syndrome (ARDS). Nephrology consult was not obtained until September 25, 1999, (post-operative day three (3)). Dialysis was delayed, per records. Initial evaluation suggested the possibility of a pulmonary embolism by echocardiogram and other testing, however, a CT scan of the chest specifically carried out with spiral CT technique and contrast on September 26, 1999 excluded any filling defects in the pulmonary vasculature. The patient's neurological status markedly deteriorated over the next several hours. Documentation indicated that the patient was dizzy, confused and disoriented since shortly after surgery as per the family and documented by nursing notes and an internal medicine consult on September 25, 1999.

13 Despite Mr Fisher's clinical picture following surgery suggestive of vascular insufficiency and vertebral artery ischemia, a CT scan of the brain was not performed until June 26, 1999 (post-op day four (4)) which disclosed an infarction of the right cerebellum and right thalamus. Initial CT scanning showed no notable mass effect, however, over the ensuing several days, mass effect rapidly progressed in the posterior fossa. Per records, no low dosage heparin was ordered or administered at any time following the complaints suggestive of arterial occlusion and ischemia. Mr Fisher developed a right to left shift of the fourth ventricle with compromise of the brain stem and obstructive hydrocephalus. Ventricular catheters were placed to alleviate his coma, without success. He developed progressively increased brain stem signs and brain death. His care was terminated by fulfilling all the criteria of brain death and he was taken off the respirator. Death was pronounced at 2045 on September 30, 1999, per records.

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the source of his pain assessed or diagnosed. No neurological assessment was made post-surgery until Mr Fisher was evaluated by Dr McIntosh on September 26, 1999, despite clear neurological deficits. Rather, he was given excessive narcotics and sedatives, resulting in progressive inadequate fluid intake, sedation, hypoxia, hypoxia and eventually shock. It is evident that Mr Fisher was in a significant amount of pain and confusion during the period September 22, 1999 to September 25, 1999. Not one nurse during this period did any nurse do an appropriate assessment of the patient or question why he was having so much unusual pain or altered behavior. The nurses only continued administering pain medications which administrations were not documented accurately, further preventing or complicating appropriate assessment. The physician (treating or on-call) was not notified that Mr Fisher was complaining of so much pain, per records.

NEGLIGENCE - PHYSICIANS

16 Indisputably, the patient had a stroke of the cerebellum and basal ganglia on the right, which took place intraoperatively.¹ Early and appropriate assessment of the patient's neurological status

STADOL 1MG IV 0013
PERCOCET (2) PO 0045
STADOL 1MG IV 0345
FLEXORIL 10MG PO 0600
7 MED 0600
OXYCONTIN 40MG PO 0800
OXYCONTIN 40MG PO 1000
DEMEROL 25MG 7 1400
STADOL 1MG IV 1410
STADOL 1MG IV 2000
OXYCONTIN 40MG PO 2000

SEPTEMBER 24, 1999

VALIUM 5MG IV 0300
STADOL 1 MG IV 0300
STADOL 1MG IV 0430
PERCOCET (2) PO 0745
OXYCONTIN 40 MG PO 0800
PERCOCET (2) PO (CRUSHED) 1200
PERCOCET (2) PO (CRUSHED) 1245
OXYCONTIN 40MG PO 2130

PER NURSES NOTES
PER MED SHEET & NH
PER MED SHEET & NH
PER MED SHEET & NH
PER NH - PT MEDICATED
PER MED SHEET X-OUT
PER MED SHEET
PER NURSES NOTES
PER MED SHEET
PER MED SHEET & NH
PER MED SHEET

PER MED SHEET & NH
PER NURSES NOTES
PER MED SHEET
PER MED SHEET
PER MED SHEET
PER NURSES NOTES
PER NURSES NOTES
PER MED SHEET

¹ The patient was manifesting pre-infarct symptoms during the first several postoperative days with complaints of nausea, dizziness, weakness, confusion, disorientation, extremely numbness, dysphagia, hypoxia, as well as

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14 Mr Fisher is survived by his wife, JACKIE FISHER, age 54, who is recovering from diagnosed breast cancer and related mastectomy and chemotherapy, two (2) step-daughters, (1) step-son, two (2) natural-born sons, JOHNNY FISHER and HOUSTON FISHER, and his elderly mother, Mildred Fisher. At the time of his death, Mr Fisher was gainfully employed by Trinity Materials, Inc. and earning between \$40,000.00 and \$50,000.00, annually. He had systematically received numerous raises during his many years of employment with Trinity Materials, Inc. and was an employee in good standing at the time of his untimely death.

CLAIMS OF CONDUCT BELOW APPLICABLE STANDARDS OF CARE

15 First, there is little documentation that the patient needed surgery at the C4-5 level as indicated by the lack of significant findings reported on imaging studies. There is a consult report recommending against the surgery, to which DR. PAYNE strongly protested. Second, postoperative status immediately following the surgery is very poorly documented by both physicians and nursing staff other than indicating that he had some postoperative pain, however, he slowly began to demonstrate signs and symptoms not consistent with the usual complaints of the patient following this type surgery. He received considerable sedative and narcotic medication. A summary of the opiates administered, per the records, reveals significant dosages of narcotics contrary to DR. PAYNE's erroneous claims that the patient "did not appear over medicated" (which was dictated after-the-fact).¹ The patient was never appropriately assessed after the surgery nor was

PAIN MEDICATIONS GIVEN 8-23-99 THRU 8-24-99
SEPTEMBER 22, 1999

DRUG NAME	TIME	DOCUMENTATION
DEMEROL 12.5MG IV	1735	PER PACU NOTES
DEMEROL 12.5MG IV	1735	PER PACU NOTES
PHENERGAN 12MG IV	1755	PER PACU NOTES
STADOL 1MG IV	2150	PER MED SHEET

SEPTEMBER 22, 1999

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would have lead to early recognition, timely and appropriate diagnostic testing and treatment of the source of the problem - vertebral artery occlusion.

17 There were also serious errors caused by inadequately following this patient. The record indicates that although the patient was to be discharged on September 25, 1999, DR. PAYNE was no longer available and actually was either unavailable or out of town. Despite a significant clinical picture of unusual post-surgical complications suggestive of vertebral artery injury, appropriate assessment and evaluation of the patient was not carried out in PACU, in Pediatrics or on the medical floor. Contrary to statements in DR. PAYNE's discharge summary, notation is made by covering neurosurgery that they had never been notified of the patient's presence in the hospital or of his condition. This is grossly below standard for a patient experiencing this type surgery. These breaches greatly compromised the patient's safety and management because of patient abandonment and a lack of adequate continuity of care during his postoperative state and during his deteriorating condition which followed. Appropriate neurological assessment postoperatively and proper documentation of the patient's neurological deficits should have been serially performed by DR. PAYNE throughout the entire hospital stay to monitor any adverse effects of the surgery on the patient's brain and spinal cord, much less his general systemic medical condition. Failure to recognize the patient's neurological injuries contributed to his tragic neurological problems, and, in turn, renal failure, his ARDS, other consequences and complications and, ultimately, his death.

¹ Contrary, unresolved neck pain. The presence of marked change on the CT scan of the cerebellum performed on September 28, 1999 is evidence that the stroke was in fact present by at least several days for it to be visualized so well on the CT scan. An acute infarct would not be so visible by standard CT scanning if the stroke had occurred only a few hours or up to 1-2 days before his clinical condition worsened so rapidly. This is further evidence to the caregivers that the patient had a stroke intraoperatively and that his neurological deterioration was most probably due to the progression of the stroke and that much of his actual medical deterioration was solely triggered by the stroke event on his brainstem and compounded by other factors, as recited hereinafter. DR. PAYNE and Dr. Sherk knew, on review of this radiology film and report that the injury probably occurred during the cervical disectomy with plating on September 22, 1999 but did not discuss or disclose this to the family and did not begin appropriate assessment. Rather, the providers commenced to call in numerous specialists to, amongst other things, divert attention from the core reason for the tragedy - injury to the arterial supply to the cerebellum during the surgery followed by narcotic intoxication, multi-organ failure and death.

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18. An autopsy was performed on Mr. Fisher's body on October 1-2, 1999. Medial arterial subintimal dissection of the left vertebral artery is found in the cervical region both above and below the disc removal area. There is no prior history of vertebral artery disease or trauma. The nature of the vertebral artery injury as observed at autopsy reveals that it occurred several days prior to death, consistent with the time of the dissection; and, the condition of the liver at the time of autopsy is further proof of hypotension and shock, following cerebellar infarct several days prior to death. The patient's right cerebellar and right basal ganglia infarction and the vertebral artery lesion were, clearly, a result of surgical injury of the vertebral artery during the patient's operation in which cervical dissection with plating and operative intervention was taking place. This is a protected artery. The probability of this event otherwise occurring in this young, healthy man with no history of vascular disease, or other notable risk factors is virtually non-existent.

19. Further, in reasonable medical probability, timely diagnostic testing, including arteriogram and/or angiography, following the surgery would have revealed vertebral artery occlusion, allowed appropriate treatment and probably prevented the stroke and would certainly have prevented death. Therefore, relieving the developing obstructive hydrocephalus following his cerebellar stroke and shift to the fourth ventricle due to increasing mass effect of the cerebellum on the brain stem and fourth ventricle was not complete and only helped one part of the patient's problem. The patient was clearly dying of mass effect from the cerebellar stroke and a true life saving approach, at that time, would have been consideration of partial resection of the right cerebellar hemisphere to provide decompression of the brainstem as a heroic life saving procedure. This does not appear to have ever been considered at any time during the patient's care.

20. The care provided to Johnny Fisher by OMCT and its personnel during this time frame (September 22, 1999 to September 25, 1999) is grossly below the applicable standards of care which

reasonable, careful and prudent, professional registered nurses and other hospital personnel under similar circumstances are trained and expected to give. Johnny Fisher was sent to a pediatrics ward following this dangerous cervical dissection with plating and placed in the hands of insufficiently trained personnel. Assessments are incomplete and, in some cases, non-existent. Documentation on the medication sheets are inaccurate, all pain medications given are not documented on the medication sheets. It is difficult, if not impossible, for a physician or nurse treating Mr. Fisher to accurately know what medications were given and in what quantities to Mr. Fisher without reviewing all of the nursing notes, medication sheets and other records in his chart, because of incomplete charting.

21. The cerebellar infarct was avoidable. Mr. Fisher suffered a cerebellar infarct sometime in the early morning hours of September 25, 1999, as a result of continuing vascular insufficiency caused by occlusion, aneurysm, pseudo aneurysm, and subintimal dissection of the vertebral artery. The signs and symptoms were clear and the effects of occlusion were slow in developing, allowing opportunity to heal. The occlusion and resulting insufficiency were diagnosable and treatable with low IV doses of heparin for the arterial damages with almost certain improvement and complete vascular recovery, preventing infarct. However, such post-surgical care was not given and the vascular insufficiency continued until infarct was diagnosed on September 26, 1999. Even thereafter, the vascular insufficiency was not addressed by any of the caregivers and it continued to the point of brain death.

22. Mr. Fisher's death was, therefore, the result of negligence, i.e. conduct that was unreasonable and below the standards of care applicable to the above-named health care providers, in performing a surgical procedure that was not, arguably, indicated at the time, in performing the surgery in a manner that was not reasonable and careful, and in the failure to timely and properly assess,

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evaluate, diagnose and treat vertebral artery injury and occlusion, and inflicting narcotic intoxication.

23. The specific acts and/or omissions committed by the named physician(s), to wit JOHN B. PAYNE, D.O., and SUZANNE SHENK, D.O., their agents, servants, employees and representatives, which conduct was unreasonable and fell below applicable Standards of Care and constitutes negligence include the following:

- a. failure to order appropriate non-surgical care for the patient's problems prior to the elective surgery;
- b. advising that the cervical disc surgery at C4-5 was necessary and appropriate at the time, when it was not, considering the diagnostic tests and overall clinical picture of the patient on September 21 - 22, 1999 prior to the surgery;
- c. performing unnecessary cervical disc surgery at C4-5 with plating;
- d. failure to order and obtain appropriate diagnostic tests prior to the surgery performed on September 22, 1999 to determine the location, nature and condition of the vertebral arteries and veins at or near the operative site, by tests such as MRI, MRA, Doppler sonography, or angiography;
- e. performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;
- f. assisting the surgeon performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;
- g. failure to provide timely and proper orders for nursing personnel who would be assigned to provide nursing care to Johnny Fisher following the cervical disc surgery;
- h. failure to order proper facilities for the care of this patient following the cervical disc surgery with plating, including requesting, then demanding, if necessary, that this patient not be placed in a pediatrics ward for post-surgical recovery;
- i. failure to order, require and demand that sufficiently trained and experienced personnel be assigned for the care of this patient following the cervical disc surgery with plating.

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- j. failure to follow and monitor the patient following the surgery in a reasonable and careful manner;
- k. failure to order appropriate diagnostic tests following the surgery performed on September 22, 1999 to determine the nature and condition of the vertebral arteries and veins at or near the operative site, by tests such as MRI, MRA, Doppler sonography, or angiography;
- l. failure to order, perform or authorize timely and reasonable pain assessment or pain management;
- m. failure to order, perform or authorize timely and reasonable neurological assessment and management;
- n. failure to appropriately assess, evaluate, diagnose, manage and treat neurological complaints;
- o. ordering, authorizing, directing and allowing excessive narcotic pain medications to be administered, overdosing this patient on narcotics;
- p. failure to provide timely and reasonable kidney dialysis to the patient;
- r. intent to prevent timely kidney dialysis of this patient; and,
- s. intent to conceal the cause of the patient's cerebellar infarct.

NEGLIGENCE - HOSPITAL AND HOSPITAL PERSONNEL

24. The specific acts and/or omissions committed by OMCT and its administrative, nursing and non-nursing personnel including Defendants, OMCT and individual OMCT personnel, N.P. Cash, R.N., V. Pate, CRT, and Sue Samuel, RN, as well as the OMCT Director of Nursing, OMCT Director of Nursing Services, OMCT House Officer on 4N at 6 A.M. on September 25, 1999, and OMCT Director of Respiratory Therapy Dept., which conduct was unreasonable, fell below applicable Standards of Care and constitutes negligence include the following:

- a. assisting the surgeon performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;

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- b. failure to provide timely and proper administrative orders, directives, policies, procedures and guidelines for hospital nursing personnel who would be assigned to provide nursing care to Johnny Fisher following the surgery;
- c. failure to provide, order and/or authorize appropriate post-surgical recovery facilities for this patient;
- d. failure to follow and monitor the patient, including timely and reasonable nursing collaboration and intervention;
- e. authorizing, allowing or administering improper quantities of narcotic medication, overdosing this patient on narcotics;
- f. failure of hospital nurses to intervene and collaborate with treating physicians to recommend, provide, order and obtain timely diagnostic tests before and after the cervical disc surgery with plating;
- g. ordering, directing, allowing and acquiescing to the transfer of this patient to a Pediatrics ward following cervical disc surgery with plating, where he was placed under the care of nursing personnel not adequately and properly trained for treating post-neurosurgery patients who may develop neurological or post-surgical complications;
- h. providing nursing care to the patient by hospital nursing personnel not sufficiently trained or experienced;
- i. failure to provide appropriately trained and experienced hospital personnel to care for this patient following the cervical disc surgery with plating;
- j. having and maintaining grossly deficient hospital policy and procedure, standards, protocol and guidelines regarding post-neurosurgery recovery care of this patient, control of narcotic administration, pain assessment, neurology assessment, timely nursing collaboration and intervention and monitoring of patient care with relieving, on-call physicians, and others;
- k. failure to appropriately assess and manage neurological complaints;
- l. failure to appropriately assess and manage complaints of pain;
- m. failure to maintain the patient on oxygen as appropriate;
- n. improper documentation of narcotics and other pain medications administered;
- o. failure to provide timely and reasonable kidney dialysis to the patient;
- p. intent to prevent timely kidney dialysis, and,

q. intent to conceal the cause of the patient's cerebellar infarct,

PROXIMATE CAUSE

25 As a direct and foreseeable result of the negligent conduct of the named persons and entities, hereinabove enumerated, Johnny Fisher anguish and suffered a needless, senseless, avoidable and preventable injury to the vertebral artery which was left untreated, leading to cerebellar infarct, multi-system failure and death.

GROSS NEGLIGENCE

26 The conduct as herein detailed of the named persons and entities constitutes more than ordinary negligence. Their acts and omissions constitute malice and gross neglect as defined by law for which punitive damages are and should be assessed.

DAMAGES

27 The elements of damages are those allowed by statutory and common law to the ESTATE OF JOHNNY FISHER, his heirs and the statutory beneficiaries. Plaintiffs are also entitled to and seek punitive damages as provided and allowed by law.

CONDITIONS PRECEDENT

28 All conditions precedent have been met or will be prior to trial on the merits.

DISCOVERY CONTROL PLAN

29 Plaintiffs and Claimants request an Order from the Court placing this case at Level 3, pursuant to TEX. R. CIV P. 196.4

JURY TRIAL

30 Plaintiffs and Claimants request a jury trial and herewith pay jury fee with the filing of this petition.

PREMISES CONSIDERED, Plaintiffs and Claimants pray that citation be issued and served upon the Defendants according to law, that this case be set for trial, and, upon trial, judgment be entered for Plaintiffs and Claimants consistent with these pleadings and including pre-judgment and post-judgment interest as allowed by law.

Respectfully submitted,

LAW OFFICES OF B. L. ATKINS
AND ASSOCIATES
325 South Mesquite Street
Arlington, Texas 76010
(817) 261-3346 (Metro)
(817) 261-3447 (Fax)

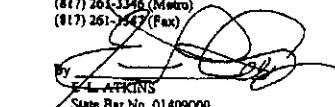
BY 
E.L. ATKINS
State Bar No. 01409000
And
Phillip J. Muschell
Estate Attorney
State Bar No. 00797941

EXHIBIT D



"Shawn Brown"
<sbrown@hswgb.com>
05/13/2005 10:28 AM

To: <bob.lansford@jpmorgan.com>
cc:
Subject: Fort Worth Osteopathic Hospital, Inc 05-41513

Bob: Thanks for your call. As we discussed, I am the chapter 7 trustee in the referenced case. I have attached the notice of commencement of chapter 7 case issued by the bankruptcy clerk that evidences that fact. Please forward the funds in the account we discussed payable to Shawn Brown, Trustee, at the address set out below. Also, please forward the bank statements requested by St. Clair Newbern.

Shawn K. Brown
Hance Scarborough Wright Ginsberg & Brusilow, LLP
1401 Elm St., Suite 4750
Dallas TX 75202
214.651.6508
fax 214.744.2615
cell 817.455.0776



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JPMC 1005

APP. 38

EXHIBIT E

MEMORANDUM OF SETTLEMENT

Re: C-200100173

APP. 40

This is a memorandum of understanding between the undersigned parties in settlement of a pending dispute, which has been voluntarily resolved through a mediation process conducted at The Law Offices of Wade H. McMullen on the date herein below indicated. In accordance with their understanding, the parties agree:

1. The sum of \$180,000 (the "Settlement Payments") shall be paid on behalf of Defendants Osteopathic Medical Center of Texas, Sharon Cox, RN, Karen Cox, RN, Sue Samuel, RN, and John Lawrence (collectively "Defendants") in full and final settlement of all claims and causes of action that have been asserted or that could have been asserted by Plaintiffs in Cause No. 0200109173; in the 413th Judicial District Court of Johnson County, Texas.
2. The Settlement Payments shall be made as follows:
3. (i) Check in the amount of \$36,000 payable jointly to Mildred Fisher and her attorney James M. Stanbury; and (ii) check in the amount of \$144,000 payable jointly to Jackie Fisher, Houston Fisher, Johnny Fisher, the Estate of Johnny Fisher, and their attorney E.L. Atkins.
4. In return for and in consideration of the Settlement Payments, (i) Plaintiffs shall execute and deliver to Defendants a full and final release of all claims and causes of action that were asserted or that could be asserted by Plaintiffs against Defendants in the above referenced action, and (ii) Plaintiffs shall authorize their attorneys to file a motion to dismiss with prejudice all claims and causes of action asserted by Plaintiffs against Defendants.
5. The Settlement Payments shall be ~~immediately~~ funded within two weeks from this date, but Plaintiffs' attorneys agree to hold the Settlement Payments and not reissue the checks until the bankruptcy court approves the settlement recommended by the Chapter 7 Bankruptcy Trustee.
6. All perquisites shall bear their respective costs of court.

E.L. Atkins
James M. Stanbury
Jackie Fisher
Houston Fisher
Johnny Fisher
Estate of Johnny Fisher

E.L. Atkins
James M. Stanbury
Jackie Fisher
Houston Fisher
Johnny Fisher
Estate of Johnny Fisher

The Settlement Payments are additional consideration to the Chapter 7 Bankruptcy Trustee's settlement attached as Exhibit A hereto. The parties further agree that, except as they may hereafter agree in writing, to maintain confidentiality with respect to all verbal and written communications made or used in connection with the dispute resolution process, as provided by the Texas Alternative Dispute Resolution Procedures Act. (Tex. Civ. Prac. & Rem. Code Ann. Sections 154.073 Vernon's Supp. 1991) and that the mediator will never be subpoenaed or called as witness by any party to this dispute. This settlement includes Defendants' agreement not to pursue any pending motions.

E.L. Atkins
James M. Stanbury
Jackie Fisher
Houston Fisher
Johnny Fisher
Estate of Johnny Fisher

MEMORANDUM OF SETTLEMENT

Re:

C-200/00/73

This is a memorandum of understanding between the undersigned parties in settlement of a pending dispute, which has been voluntarily resolved through a mediation process conducted at The Law Offices of Wade H. McMullen on the date herein below indicated. In accordance with their understanding, the parties agree:

1. Shawn K. Brown, Trustee agrees to recommend
full and final compromise and settlement of all
2. claims asserted in the Fisher et al case
against Fort Worth Orthopedic Hospital, Inc.
on the following terms:
3. Final judgment will be entered against
FwoH in the state court lawsuit
in the sum of \$975,000.00
4. The final judgment shall be an allowed
general unsecured claim in the
bankruptcy case
5. The final judgment will be otherwise
stayed from enforcement other than
through the general unsecured
claim in the bankruptcy
court
6. _____
7. _____
8. _____
9. _____

The parties further agree that, except as they may hereafter agree in writing, to maintain confidentiality with respect to all verbal and written communications made or used in connection with the dispute resolution process, as provided by the Texas Alternative Dispute Resolution Procedures Act. (Tex. Civ. Prac. & Rem. Code Ann. Sections 154.073 Vernon's Supp. 1991) and that the mediator will never be subpoenaed or called as witness by any party to this dispute.

Exhibit "A"

It is also agreed: (1) that the attorneys for said parties have prepared and approved this agreement, and that the parties have relied entirely on the legal advice of their respective counsel in effecting this settlement; (2) that the parties enter into this agreement of their own voluntary will and accord; (3) that no attorney-client relationship exists between the Mediator and any signatory hereto; and (4) that this agreement will be considered to have been made pursuant to Rule 11, Texas Rules of Civil Procedure. The parties further agree to execute and deliver such additional agreements and documents as shall be necessary to carry out the purposes of this agreement, and that this agreement may be enforced as any other contract.

Signed this the 3 day of April, 2007 at Ft Worth, Texas

Thomas Fisher
Parties and/or Representative

[Signature]
Counsel

[Signature]
Parties and/or Representative

Counsel

Jackie Fisher
Parties and/or Representative

Counsel

Sharon K Brown, Trustee
Parties and/or Representative

[Signature]
Counsel

It is also agreed: (1) that the attorneys for said parties have prepared and approved this agreement, and that the parties have relied entirely on the legal advice of their respective counsel in effecting this settlement; (2) that the parties enter into this agreement of their own voluntary will and accord; (3) that no attorney-client relationship exists between the Mediator and any signatory hereto; and (4) that this agreement will be considered to have been made pursuant to Rule 11, Texas Rules of Civil Procedure. The parties further agree to execute and deliver such additional agreements and documents as shall be necessary to carry out the purposes of this agreement, and that this agreement may be enforced as any other contract.

Signed this the 3 day of April, 2007 at F. Worth, Texas

Dsteo parties Medial Center of Texas
Parties and/or Representative
Sue Samuel RN, Shann OBR, RN,
Karan Cox, RN, John Lawrence

Wayne Clumms
Counsel

Parties and/or Representative
Jackie Fisher Individually and as
Administratrix of the Estate of Johnny
Fisher, Deed, Houston Fisher, Johnny
Fisher.
Jackie Fisher, Houston Fisher
Parties and/or Representative

Wayne Clumms
Counsel

[Signature]
Counsel

Mildred Fisher
Parties and/or Representative

[Signature]
Counsel

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

§
§
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§
§
§
§
§
§

IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 2

EXHIBIT F

Shawn K. Brown
State Bar No. 03170490
HANCE, SCARBOROUGH, WRIGHT,
GINSBERG & BRUSILOW, LLP
1401 Elm St., Suite 4750
Dallas, TX 75202
(214) 651-6500
(214) 744-2615 fax

ATTORNEYS FOR THE CHAPTER 7 TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

FORT WORTH OSTEOPATHIC
HOSPITAL, INC.
dba OSTEOPATHIC MEDICAL
CENTER OF TEXAS

DEBTOR

§
§
§
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§
§
§
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CASE NO. 05-41513-DML-7

CHAPTER 7

**TRUSTEE'S MOTION TO APPROVE AND IMPLEMENT COMPROMISE
AND SETTLEMENT AGREEMENT OF TORT CLAIMS BY JACKIE FISHER, ET AL.**

TO THE HONORABLE, DENNIS MICHAEL LYNN, U. S. BANKRUPTCY JUDGE:

Shawn K. Brown, Chapter 7 Trustee ("Trustee") in the referenced case files this Motion to Approve and Implement Compromise and Settlement Agreement (the "Motion") and would respectfully show the Court that:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a contested matter concerning the allowance and disallowance of claims against the estate and administration of the Estate and is therefore, a core matter pursuant to 28 U.S.C. § 157(b)(2).
2. On or about February 11, 2005, Debtor filed its Voluntary Petition for relief under Chapter 7 of the United States Bankruptcy Code. Shawn K. Brown was appointed Trustee.
3. Prior to the petition date, Mildred Fisher, Jackie Fisher, individually and as Administratrix of the Estate of Johnny Fisher, Johnny Fisher and Houston Fisher, herein after

collectively referred to as the "Fisher Family", were Plaintiff's in a law suit pending in the 413th Judicial District Court of Johnson County, Texas ("State Court"), Cause No . C200100173, where the Defendants are John B. Payne D.O., Osteopathic Medical Center of Texas, N.P. Cash, R.N., Susan Samuel, R.N., Vic Pate, CRT Gracie Martin, R.N., Sharon Orr, R.N., R. Boswell, CST., Karen Cox, R.N., R. Boyd, and Respiratory Associates of Texas also known as R.K.V. Investments, Inc., (herein after the "Fisher Suit".)

4. The Fisher Suit was filed on May 8, 2001 and alleges claims for wrongful death and negligence against the Defendants arising out of medical care provided to Mr. Fisher at Fort Worth Osteopathic Hospital, Inc., alleging nursing negligence, physician negligence, and negligent and gross negligent credentialing by the Debtor, Fort Worth Osteopathic Hospital, Inc. dba Osteopathic Medical Center of Texas.

5. On October 10, 2006, this Court granted relief from the automatic stay for the Fisher Suit to proceed in the State Court. The Trustee sent notice to the insurance carrier providing the Debtor coverage upon such relief being granted. The insurance policy covering the Debtor in connection with the Fisher Suit is an excess policy, with the Debtor responsible for the first \$2,000,000 of indemnity and defense costs. The insurance company provided a defense to the Debtor. The Plaintiffs have asserted that the claims in the Fisher Suit could easily exceed \$2,000,000.

6. The Trustee participated in a mediation of the Fisher Suit on April 3, 2007. The Fisher Suit was settled at mediation with respect to all remaining Defendants. The defendant nurses are to be non-suited. The insurance company is making a cash payment to certain Plaintiffs in the sum of \$144,000. The Debtor will agree to entry of an agreed judgment in the form attached hereto as Exhibit "A". The Agreed Judgment will become a general unsecured claim in this bankruptcy case in the total sum of \$975,000. All other claims of the Plaintiffs shall be disallowed with respect to the Debtor.

SETTLEMENT FACTORS UNDER F.R.B.P. 9019

7. The Court retains its discretion to determine whether or not to approve compromises of existing controversies. The Court may approve settlements if they are fair and equitable. *In re Matter of AWECO, Inc.*, 725 F.2d 293 (5th Cir. 1984). The factors to be reviewed by the Court in determining whether or not to approve a compromise are (a) the probability of success in litigating the controversies involved, with due consideration for uncertainties in fact and law; (b) the complexity and likely duration of the litigation and related expenses, inconvenience and delay; (c) the difficulties, if any, to be encountered in collecting on any judgment which might be obtained; and (d) the paramount interest of creditors and the estate. *In re Jackson Brewing Company* 674 F.2d 605 (5th Cir. 1980). The Trustee believes and asserts that the overall consideration of the factors support approval of the compromise and settlements reached as set out herein. Each is discussed hereafter.

8. *The probability of success in litigating the controversies involved, with due consideration for uncertainties in fact and law.* The Trustee, with the assistance of defense counsel, has reviewed the claims and concluded that a judgment in excess of the Agreed Judgment is a substantial probability considering the facts, venue, expert reports, and nature of the alleged conduct. However, the Debtors liability should be no more than \$2,000,000 under its insurance agreements. The settlement is approximately 49% of the Debtors total exposure.

9. *The complexity and likely duration of the litigation and related expenses, inconvenience and delay.* The litigation is close to trial ready. The insurance carrier is providing the Debtor a defense to date.

10. *The difficulties, if any, to be encountered in collecting on any judgment which might be obtained.* This is not a factor.

11. *The paramount interests of creditors and the estate.* The settlement allows the estate to liquidate the claim to a sum certain that will avoid the exposure of up to a \$2,000,000 claim in the case. The Trustee believes the settlement is in the best interest of the estate and its creditors.

A HEARING MAY NOT BE CONDUCTED HEREON UNLESS A RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 501 WEST TENTH STREET, ROOM 147, FORT WORTH, TEXAS 76102 BEFORE CLOSE OF BUSINESS WITHIN TWENTY-THREE (23) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE TO (1) THE DEBTOR AND DEBTOR'S ATTORNEY; (2) THE OFFICE OF THE U.S. TRUSTEE; (3) ANY TRUSTEE AND THE TRUSTEE'S ATTORNEY; (4) THE MEMBERS OF ANY OFFICIAL COMMITTEE, OR THE ATTORNEY FOR ANY OFFICIAL COMMITTEE IF AN ATTORNEY HAS BEEN EMPLOYED; OR IF THERE IS NO COMMITTEE, THE TWENTY (20) LARGEST UNSECURED CREDITORS; (5) ANY PARTY REQUESTING NOTICE; (6) ANY PARTY NAMED ON A COURT-APPROVED ALTERNATIVE SERVICE LIST; (7) THE RESPONDING PARTIES; AND (8) ANY OTHER AFFECTED ENTITY.

IF NO HEARING ON SUCH NOTICE OR MOTION INITIATING A CONTESTED MATTER IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

WHEREFORE, PREMISES CONSIDERED, the Trustee prays that the settlement described herein by and between the Trustee and the Plaintiffs in the Fisher Suit be approved by the Court and that the Trustee be authorized to take such steps and actions detailed herein as are necessary to carry out the terms of the agreement, and for general relief.

Respectfully submitted,

HANCE, SCARBOROUGH, WRIGHT, GINSBERG
& BRUSILOW, LLP

/s/ Shawn K. Brown
TX Bar No. 03170490
1401 Elm Street, Suite 4750
Dallas, TX 75202
Telephone: (214) 651-6500
Facsimile: (214) 744-2615

COUNSEL FOR THE TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that this Motion was served on the Debtor's Counsel, U.S. Trustee, the Court approved limited notice short service list including those parties requesting notice, by electronic service or by US first class mail postage prepaid, as applicable, on this 24th day of April, 2007.

/s/ Shawn K. Brown

EXHIBIT G



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 25, 2007

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

FORT WORTH OSTEOPATHIC
HOSPITAL, INC
dba OSTEOPATHIC MEDICAL
CENTER OF TEXAS

DEBTOR

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CASE NO. 05-41513-DML-7

CHAPTER 7

**ORDER GRANTING MOTION TO APPROVE AND IMPLEMENT
COMPROMISE AND SETTLEMENT OF TORT CLAIMS BY JACKIE FISHER, ET AL**

Came on for consideration the Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, et al. (the "Motion") filed by Shawn K. Brown, Chapter 7 Trustee in the referenced bankruptcy case. After considering the Motion and the Trustee's certificate of no objections, the Court is of the opinion that the Compromise and Settlement Agreement is in the best interests of the estate, it is therefore

ORDERED, that the Motion to Approve and Implement Compromise and Settlement Agreement is hereby **GRANTED** and the Trustee is authorized to take such steps and actions detailed in the Motion as are necessary to carry out the terms of the agreement.

End of Order

SUBMITTED BY:

SHAWN K. BROWN
STATE BAR NO. 03170490
HANCE SCARBOROUGH WRIGHT
GINSBERG & BRUSILOW
1401 Elm Street, Suite 4750
Dallas, Texas 75202
(214) 651-6508 (telephone)
(214) 744-2615 (facsimile)
sbrown@hswgb.com

**ATTORNEYS FOR SHAWN K. BROWN,
CHAPTER 7 TRUSTEE**

EXHIBIT H

Cause No. C200100173

MILDRED FISHER

VS.

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS, et al.
Defendants.

A CERTIFIED COPY
DISTRICT CLERK
ATTY: 9-12-07
DAVID R. LLOYD
District Clerk Johnson
County, Texas
IN THE DISTRICT COURT,
By [Signature]

JOHNSON COUNTY, TEXAS

DEPUTY

413th JUDICIAL DISTRICT

FILED
DAVID LLOYD
DISTRICT CLERK
JOHNSON CO. TEXAS
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AGREED JUDGMENT

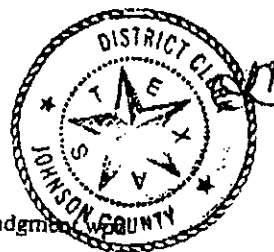
On the 7 day of ^{June} April, 2007, this cause came on to be heard. It was announced to the Court that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie Fisher, Individually and as Administratrix and Representative of the Estate of Johnny Fisher, Deceased, Houston Fisher and Johnny Fisher recover from the Defendant, Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and no/100 Dollars (\$975,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be enforced only in accordance with bankruptcy law, in Cause No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

JUDGMENT

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this 7 day of June, 2007.

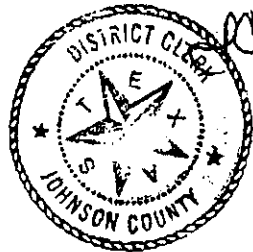
APPROVED:

[Handwritten signature of E.L. Atkins]

E.L. Atkins
State Bar No. 01409000
Atkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

[Handwritten signature of Wayne Clawwater]
JUDGE PRESIDING

Wayne Clawwater
State Bar No. 04328500
Cruse, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Laurence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.,



JUDGMENT

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PAGE 04

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CRUSE SCOTT HENDERSON

PAGE 03/04

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E L ATKINS LAW

PAGE 05

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this _____ day of _____, 2007.

APPROVED:

JUDGE PRESIDING

[Handwritten Signature]
E.L. Atkins
State Bar No. 01409000
Atkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347

Attorney for Intervenor, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

[Handwritten Signature]
Wayne Claywater
State Bar No. 04328500
Cruse, Scott, Henderson & Allan, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Lawrence, Sus Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.,

JUDGMENT

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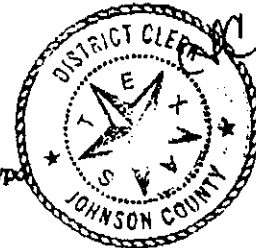


EXHIBIT I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re: #

FORT WORTH OSTEOPATHIC #
HOSPITAL, INC. D/B/A # Case No. 05-41513-DML-7
OSTEOPATHIC MEDICAL CENTER #
OF TEXAS #

Shawn K. Brown, #
Ch. 7 Trustee #
for Fort Worth Osteopathic Hospital, Inc. #
vs # Case No. 07-04016

JP Morgan Chase Bank, N.A. #

MOTION TO INTERVENE

TO THE HONORABLE COURT:

COMES NOW The Estate of Johnny Fisher, Deceased, The Estate of Jackie Fisher, Deceased, Johnny Fisher, adult son of Johnny Fisher, Deceased and Houston Fisher, adult son of Johnny Fisher, Deceased, hereafter, at times, "Movants" or "Intervenors", collectively and individually, make and file this Motion to Intervene in the above-styled Adversary Proceeding, and in support of this motion, show:

This motion to intervene is made pursuant to Fed. R. Civ. P. 24(a)

Movants claim an interest in the property or the transaction which is the subject of this Adversary Proceeding and Movants are so situated that disposition of this Adversary Proceeding

Motion to Intervene

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ORIGINAL

may impair or impede Movants' ability to protect that interest, if they are not allowed to intervene herein.

This basis of Movants' claims and why this intervention is necessary to protect and assert those claims is more fully set forth, below.

Intervenors are judgment creditors of FWOH. Intervenors own and hold a judgment ("The Judgment") against Fort Worth Osteopathic Hospital, Inc. ("FWOH") as a result of a malpractice claim filed against FWOH in 2001 for damages from injuries sustained by Johnny Fisher, resulting in his death on October 1, 1999. The Judgment was signed and entered June 7, 2007 against FWOH, awarding Intervenors damages in the amount of \$975,000.00. A copy of the complaint in state court and The Judgment are attached to and incorporated into this plea, by reference, and marked Exhibit "1" and Exhibit "2", respectively. Intervenors seek, herein, to collect The Judgment from the Defendant in this Adversary Proceeding, JP Morgan Chase Bank, N.A. ("Chase").

Intervenors are the beneficiaries of a trust fund ("The Trust Fund") that was established in 1987 specifically to be used to resolve malpractice claims filed against FWOH pursuant to and in accordance with the terms and provisions of a self-insured trust agreement, ("The Trust Agreement"). The Trust Fund was intended to be maintained in lieu of primary liability insurance and, in part, to satisfy requirements of the Social Security Administration, since FWOH accepted and was receiving medicare and medicaid benefits and elected to not carry primary liability insurance. A copy of The Trust Agreement is attached to and incorporated into

Motion to Intervene

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this pleading, by reference, and marked Exhibit "3". Chase was, at all relevant times, the Trustee of The Trust Fund, under The Trust Agreement.

Intervenors are, therefore, specific beneficiaries of The Trust.

Intervenors have been advised, and Intervenors here allege, however, that the bankrupt estate of FWOH does not have sufficient funds to satisfy The Judgment.

Intervenors' Claims. Intervenors allege, as pleaded in detail in the attached Plea in Intervention and Complaint, that Chase, as Trustee of The Trust Fund, is liable for payment of The Judgment and, further, that Chase breached the terms and provisions of The Trust Agreement, breached its fiduciary duties to Intervenors and committed other improper acts in the management and administration of The Trust Fund, resulting in the depletion and total loss of The Trust Fund assets, for which Chase is directly liable to Intervenors for satisfaction of The Judgment and other damages.

The Plea in Intervention and Complaint, which Movants request be filed with the papers in this cause, is attached to this motion to intervene.

Standing. Intervenors have standing to assert this claim against Chase, as the direct beneficiary of The Trust Agreement, for satisfaction of The Judgment, as well as for the recovery of any other damages, statutory and at common law, as a result of Chase's breach of contract and breach of its duties to Intervenors in connection with the management and administration of The Trust Agreement, as well as for its negligence, gross negligence, fraud, and other improper actions in connection therewith, to which Intervenors are entitled. *Caplin v. Marine Midland*

Motion to Intervene

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Grace Trust Co. of New York, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001)

Intervenors' claims are in addition to and independent of any claim or claims which may be asserted in this proceeding by the Chapter 7 Trustee, Shawn Brown, on behalf of the bankruptcy estate.

At all times material to the claims made by Intervenors in The Lawsuit, FWOH had funds sufficient to fund and maintain The Trust and satisfy Intervenors' claims. *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001)

PREMISES CONSIDERED, Movants pray that this motion, after due consideration, be GRANTED, that the Court ORDER that the accompanying Plea in Intervention and Complaint be filed with the papers in this cause, and for any other relief to which Movants show themselves justly entitled.

Respectfully submitted,

*LAW OFFICES OF E.L. ATKINS AND
ASSOCIATES a/k/a ATKINS LAW FIRM
325 South Mesquite Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346 METRO
(817) 261-3347 FAX*

and

*MACLEAN & BOULWARE
Attorneys at Law*

Motion to Intervene

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11 Main Street
Cleburne, Texas 76033
(817) 645-3700
(817) 645-3788 (FAX)

By: 

E. L. Atkins
TSB #01409000
John MacLean
TXB #12764000

Motion to Intervene

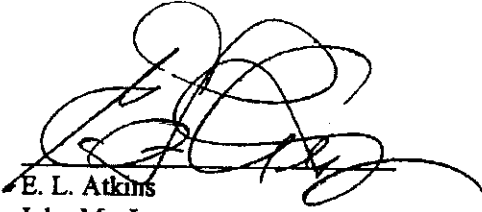
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CERTIFICATE OF SERVICE

This is to certify that on this the 25th day of June, 2007, a true and correct copy of the above and foregoing Motion to Intervene has been served upon the following as required by law:

Gregory H. Bevel
Kerry Ann Miller
Attorneys
Rochelle Hutcheson & McCullough, LLP
Attorneys 325 N. St. Paul St.
Ste. 4500
Dallas, TX 75201
Attorneys for Plaintiff, Shawn K. Brown, Ch. 7 Trustee
for Fort Worth Osteopathic Hospital, Inc., Plaintiff
in Adversary Proceeding No. 07-04016
via CM RRR No. 7007 0710 0002 0661 4362

Matthew M. Julius
Attorney
P.O. Box 655415
Dallas, Texas 75265-5414
Attorney for JP Morgan Chase Bank, N.A., Defendant
in Adversary Proceeding No. 07-04016
via CM RRR No. 7007 0710 0002 0661 4379



E. L. Atkins
John MacLean

Motion to Intervene

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Exhibits

Motion to Intervene

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Page 7

APP. 64

MILDRED FISHER

VS

JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, N. P. CASH, R.N., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNE SHENK, D.O. Defendants

IN THE DISTRICT COURT JOHNSON COUNTY, TEXAS

249th JUDICIAL DISTRICT

PLEA AND PETITION IN INTERVENTION

TO THIS HONORABLE COURT

COMES NOW JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D (a/k/a Johnny Fisher), JACKIE FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make this claim and file this PLEA AND PETITION IN INTERVENTION on behalf of the ESTATE OF JOHNNY FISHER, DEC'D, and on behalf of the named individuals, against JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), N. P. CASH, R.N., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNE SHENK, D.O., and others named herein, and in support of this claim, show unto this Honorable Court as follows

NATURE OF CLAIM

1 This is a claim brought by the Administratrix of the Estate of the Decedent for damages for the recovery of expenses incurred by the Estate, for lost earnings of the Decedent, for Decedent's pain and suffering from the date of injury to the date of death, and for damages allowed by law to the statutory beneficiaries of Johnny Fisher, Decedent. The claims asserted herein are brought pursuant to TEX. REV. CIV. STAT. ANN. art. 4590h (Vernon), and other statutes and at common law.

Plaintiff's Plea and Petition in Intervention Fisher/Plaintiff/Original Petition.pdf

COPY

Ellice, Tarrant County, Texas 76040,

- b FORT WORTH OSTEOPATHIC HOSPITAL, INC d/b/a OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), a hospital and corporation authorized to transact business in Texas. OMCT may be served with citation by serving its registered agent, Yolanda Cervantes, who is located at 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107.
c SUZANNE SHENK, D.O., who may be served with citation at 3500 Camp Bowie Blvd., Fort Worth, Tarrant County, Texas 76107;
d N. P. CASH, R.N. (Spl?), who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107,
e SUE SAMUEL, R.N., a/k/a Susan Hadley Samuel, who may be served with citation at 2501 Nicole Dr., Burleson, Johnson County, Texas 76028,
f V. PATE, CRT, who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107.

Plaintiff requests that citation be issued and served upon each named Defendant forthwith and in the manner as required by law

FACTUAL SUMMARY

5 Johnny Fisher (DOB November 27, 1957, DOD, October 1, 1999, SSN 466-23-4693, weight approximately 204 lbs., height approximately 5'9"), was first seen and evaluated by JOHN B. PAYNE, D.O., a neurosurgeon, on or about March 26, 1999 with the complaint of moderate neck pain and arm pain. He reported an on-the-job injury sometime in January, 1999. DR. PAYNE recommended steroid injection, cervical collar and non-descript physical therapy. Mr. Fisher returned to DR. PAYNE in May, 1999 relating no improvement. EMG/NCV was interpreted as left C5 radiculopathy. Past history revealed prior cervical dissection of C3-6 and C5-7 in 1991 or 1992. On May 11, 1999, Mr. Fisher underwent a cervical myelogram with CT follow up, as well as AP and lateral cervical spine x-rays. Routine x-rays show bony fusion at C3-6 and C5-7. Other disc spaces are said to be well preserved without other abnormality. The patient's standard cervical

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law. The claims brought herein include all wrongful death claims and survival claims pursuant to TEX. CIV. PRAC. & REM. CODE ANN. sec. 71.002, et seq. (Vernon), and TEX. CIV. PRAC. & REM. CODE ANN. sec. 71.021, et seq. (Vernon).

JURISDICTION AND VENUE

2 This is a claim by and on behalf of the ESTATE OF JOHNNY FISHER, DEC'D. The administration of the ESTATE OF JOHNNY FISHER, DEC'D is pending in the Probate Court of Johnson County, Texas. JACKIE FISHER has qualified and is the Administratrix of the Estate to whom Letters of Administration have been issued. One of the Defendants, Sue Samuel, RN, a/k/a Susan Hadley Samuel is a resident of Johnson County, Texas, residing at 2501 Nicole Dr., Burleson, Johnson County, Texas 76028. This Court, therefore, has jurisdiction and venue of this case pursuant to TEX. CIV. PRAC. & REM. CODE, sec. 15.001 et seq., including sec. 15.002 and 15.005 (Vernon).

PARTIES

- 3 The Claimants and Plaintiffs in this lawsuit are
a. JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D,
b. JACKIE FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
c. JOHNNY FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
d. HOUSTON FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D.

Each and all of the Plaintiffs named herein, as well as Mildred Fisher, are residents of Johnson County, Texas.

4 The Defendants in this claim are

- a. JOHN B. PAYNE, D.O., who may be served with citation at 313 Westpark Way,

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myelogram with follow-up radiology using Omnipaque showed no abnormality. The CT scan follow-up describes no abnormality at the C4-5 level other than under the impression section which indicates bilateral uncovertebral joint bony hypertrophy at C3-4 and C4-5 levels. However, there was no reported significant neural foramenal stenosis identified. These were interpreted by DR. PAYNE as revealing significant nerve root compression at C5. DR. PAYNE recommended surgery with plating. A second opinion recommending against surgery at the time was obtained. DR. PAYNE then obtained the opinion of a third neurosurgeon, supporting DR. PAYNE'S decision to operate. Although later records indicate that an MRI scan had been carried out on this patient which showed an abnormality at C4-5, MRI comparison was not made with the myelogram as indicated in this report. None of the outpatient studies, as listed above, indicate any notable abnormality at C4-5. The CT post-myelogram report and any reference to the C4-5 level under "impression" has been deleted and a reprinted report is dated October 7, 1999 one week after Mr. Fisher's death.

6 Johnny Fisher was admitted to OMCT, Fort Worth, Texas, on September 22, 1999 for a cervical C4-5 discectomy and interbody fusion with plating. According to the History and Physical by DR. PAYNE, dated September 22, 1999, Johnny Fisher's stated health was unremarkable with the exception of his complaint of moderate neck pain, arm pain and restrictions in the amount of weight he could lift. Past Medical History included an injury to the stomach due to a shotgun blast and prior cervical fusion, above-referenced. The nursing admission record indicates only that he was using eye drops for glaucoma and had otherwise been well other than for the mentioned remote abdominal gun shot wound in 1977 and the previously described cervical fusion. Specifically, there was no history of hypertension, diabetes, pulmonary disease, liver disease, heart disease, venereal disease, syncope, dizziness, or stroke.

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7. Mr Fisher was admitted to OPS #6 at 1112 hours on September 22, 1999 and taken to the operative suite at 1342 for an Anterior Cervical Discectomy and Fusion, Bone Graft Bone and Plating. The procedure began at 1415 and ended at 1652. A Philadelphia collar was placed around his neck after the surgical procedure. DR. PAYNE describes his procedure and the perioperative report reflects the patient's condition during surgery.

8. The patient was sent from surgery to the Post Anesthesia Care Unit (PACU) at 1702 then transferred to the pediatric area for his recovery unit. PACU nursing records indicate that Mr Fisher awoke from anesthesia complaining of left arm numbness and neck pain approximately forty-five (45) minutes after the surgery and was medicated according to the order sheet provided by DR. PAYNE shortly following his operation. Complete neurological assessment was not performed. Mr. Fisher was in PACU for approximately one and one-half (1 1/2) hours. Oxygen was administered. During this time, he was given Demerol 12.5mg IVP at 1733 hours for shivering and again at 1756 hours for complaint of soreness and numbness. He was given Phenergan 12mg IVP at 1755 hours for no documented reason. It is later documented that he was alert and oriented X 3, tolerating neck clips but that 2 times complained of numbness in his left upper extremities, without change from before surgery. There is documentation of the heart monitor being in NSR without ectopy and breathing being even and unlabored. His blood pressure ranged in the 170/80-90 until 1800 hours when it dropped to 150's/60-70 range. His pulse rate ranged in the 50's-60's range until 1730 hours when it rose to the 80's-90's range. The decrease in blood pressure and increase in pulse rate occurred after he received the Demerol and Phenergan. These recorded vital signs were significantly different from pre-surgery readings, documented as P 61, R 20, BP 102/39. There was no further assessment or documentation. There is no documentation that any of the physicians were made aware of his vital signs at that time (1750).

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9. Mr Fisher was again medicated with Stadol 1mg SIVP per nurses notes as well as Valium 5mg po (ordered IV in physician orders and per med sheet) to support Stadol, per documentation in the nurses notes. At 0745 hours, Mr Fisher was medicated with Percocet (2) po per med sheet and his scheduled pain and Oxycodone 40mg po was given at 0800, fifteen minutes later. At 1200 hours Percocet tabs 2 were crushed, enoxon package insert and dropper, and given to Mr Fisher because he complained of pain and was unable to swallow. At 1700 hours, Mr Fisher was assisted to the bathroom at which time he, again, complained of dizziness. He was then assisted back to bed. There is no documented assessment regarding his complaint of dizziness or of continued state of confusion and disorientation. There is no assessment of the repeated complaints of left arm numbness. A complete neurological assessment was not performed. And, despite his condition, he was not transferred to ICU.

10. Mr Fisher was transferred to medical floor 4N, Room 410, at 1800 hours on September 24, 1999. On arrival to Room 410 at recorded 1900 hours, he complained of general stiffness and weakness and continuing pain. Again, there is no assessment regarding his complaints. At 1945 hours, he was given Percocet tabs 2 po, again crushed, because of difficulty swallowing per documentation in nurses notes only. One (1) hour and forty-five (45) minutes later, Oxycodone 40 mg was given at 2130 hours as his scheduled pain medication. At 2200 hours, it is documented that he was sleeping for "long intervals." The two sets of vital signs taken on the 24th showed blood pressure to be lower than previously, 120/70 and 100/60, respirations were both 20 and pulse was 76 and 72. It is documented at 0005 hours on September 25, 1999 that "pt was sleeping, arouses when name called," his skin was pale, BRP, voiding without problems, V/S stable. No other assessment was made as to patient being pale. He was found unresponsive six (6) hours later with no assessment or check during this (6) hour period.

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9. Mr Fisher was transferred from PACU to Pediatrics at 1835 hours on September 22, 1999, arriving on the pediatric floor at 1850 hours from PACU, per records. There is no record that he was maintained on oxygen while in pediatrics and O₂ sat even ceased being checked, despite the fact that the patient's O₂ sat continued to decrease. Vital signs, recorded twice in pediatrics on the 22nd reflect: T 98.6, P 86, R 20, BP 147/85 and T 98.4, P 80, R 20, BP 138/82. At 2100 hours, Mr Fisher complained of pain and was medicated with Stadol, 1mg, SIVP. It is documented that he was offered Percocet tabs 2 but refused because his throat was too sore and didn't think he could swallow them. Stadol was documented at 2150 hours on Med Sheet. At 0015 hours on September 23, 1999, he again complained of pain and was medicated with Stadol 1mg SIVP which was documented in the nurses notes, but was not documented on the med sheet. At 0345 hours, it is documented on med sheet he was medicated with Percocet tabs 2 po and Stadol 1mg SIVP, but documented in Nurses Notes that they were given at 0400 hours. At 0600 hours, Mr Fisher complained of muscle spasms and was medicated with Flexorol 10 mg po which is documented both on the med sheet and in the nurses notes. After returning from a x-ray, Mr Fisher was requesting pain medication and, at 0800 hours, it is documented that he was again medicated for complaint of pain. The medication is not identified, however, Oxycodone 40mg po was ordered as a scheduled med at 0800 hours and was documented as being given at 0800 hours then marked out. Oxycodone is also documented as being given at 1000 hours the morning of September 23, 1999. Mr Fisher again requested pain medication at 1400 hours and per documentation in nurses notes, was again given Demerol 25mg, which was not on the med sheet and was not ordered. At 1410 hours, it is documented on the med sheet that Stadol 1mg IV was given. At 2000 hours, the scheduled pain medication, Oxycodone 40mg was given; however, Stadol 1mg IV was also given, per med sheet documentation and nurses notes. On September 24, 1999 at 0300, Mr Fisher again complained of

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11. DR. PAYNE's postoperative daily follow-up indicates that on September 23, 1999 and September 24, 1999 (post-operative day one [1] and post-operative day two [2]), Mr Fisher was also complaining of dysphagia. His vital signs were normal, except for a temperature of 100 degrees on September 23, 1999, and "slowly improving." The time indicated on the September 24, 1999 progress note is 1430 hours. In the early morning hours of September 25, 1999, (time not documented) a house physician was called to the patient's room STAT due to him being found unresponsive by the nursing staff. There is no documentation in the nurses notes, only in DR. PAYNE's discharge summary, that he was found "on the floor." Mr Fisher was found by the physician to be of poor coloration, had non-palpable pulses, and was unresponsive to all stimuli. He was placed on a crash cart monitor and a sinus rhythm with premature atrial and premature ventricular contractions was noted. He was given 1 amp of Narcan to rule out analgesic (narcotic) overdose and the patient was responsive almost immediately thereafter, with complaints of confusion, disorientation and severe pain. His blood pressure was documented at 99/70. Oxygen saturation before was 85. In addition, arterial blood gases showed a pH of 7.3, which changes are consistent with metabolic acidosis and respiratory hypoxia, but there is no notation thereof in the records. Follow-up bloodwork at approximately 8:00 a.m. disclosed that the patient had a potassium of 7.4 and a creatinine of 4.7, however, Mr Fisher was not transferred to the Intensive Care Unit until an hour later at approximately 9:00 a.m. The patient was consulted by numerous specialists and intravenous fluids and metabolic corrections were subsequently undertaken. It was indicated later in the morning of September 25, 1999 that the patient complained of thirst but seemed otherwise appropriate. The general consensus of his evaluation, at that point, was that he had become volume contracted due to inadequate fluid maintenance, as well as having narcotic induced somnolence and hypotension.

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12 Numerous complications followed. Mr Fisher was well documented to go into full blown acute renal failure due to acute tubular necrosis (shock kidney) associated with severe ischemic hepatitis and bilateral pulmonary chest x-ray findings consistent with acute respiratory distress syndrome (ARDS). Nephrology consult was not obtained until September 25, 1999, (post-operative day three [3]). Dialysis was delayed, per records. Initial evaluation suggested the possibility of a pulmonary embolism by echocardiogram and other testing, however, a CT scan of the chest specifically carried out with spiral CT technique and contrast on September 26, 1999 excluded any filling defects in the pulmonary vasculature. The patient's neurological status markedly deteriorated over the next several hours. Documentation indicated that the patient was dizzy, confused and disoriented upon shortly after surgery as per the family and documented by nursing notes and an internal medicine consult on September 25, 1999.

13 Despite Mr Fisher's clinical picture following surgery suggestive of vascular insufficiency and vertebral artery ischemia, a CT scan of the brain was not performed until June 26, 1999 (post-op day four [4]) which disclosed an infarction of the right cerebellum and right thalamus. Initial CT scanning showed no notable mass effect, however, over the ensuing several days, mass effect rapidly progressed in the posterior fossa. Per records, no low dosage heparin was ordered or administered at any time following the complaints suggestive of arterial occlusion and ischemia. Mr Fisher developed a right to left shift of the fourth ventricle with compromise of the brain stem and obstructive hydrocephalus. Ventricular catheters were placed to alleviate his coma, without success. He developed progressively increased brain stem signs and brain death. His care was terminated by fulfilling all the criteria of brain death and he was taken off the respirator. Death was pronounced at 2045 on September 30, 1999, per records.

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the source of his pain assessed or diagnosed. No neurological assessment was made post-surgery until Mr Fisher was evaluated by Dr. McLaughlin on September 26, 1999, despite clear neurological deficits. Rather, he was given excessive narcotics and sedatives, resulting in progressive inadequate fluid intake, sedation, hypotension, hyponatremia and eventually shock. It is evident that Mr Fisher was in a significant amount of pain and confusion during the period September 22, 1999 to September 25, 1999. Not one nurse during this period did any nurse do an appropriate assessment of the patient or question why he was having so much unusual pain or altered behavior. The nurses only continued administering pain medications which administrations were not documented accurately, further preventing or complicating appropriate assessment. The physician (treating or on-call) was not notified that Mr Fisher was complaining of so much pain, per records.

NEGLIGENCE - PHYSICIANS

16 Indisputably, the patient had a stroke of the cerebellum and basal ganglia on the right, which took place intraoperatively.¹ Early and appropriate assessment of the patient's neurological status

STADOL 1MG IV	8015	PER NURSES NOTES
PERCOCET (2) PO	8246	PER MED SHEET & NH
STADOL 1MG IV	8246	PER MED SHEET & NH
PLEDOXIL 10MG PO	0800	PER MED SHEET & NH
Z MED	0808	PER NH - PT MEDICATED
OXYCONTIN 40MG PO	0809	PER MED SHEET R-OUT
OXYCONTIN 40MG PO	1820	PER MED SHEET
DEMEROL 25MG 1	1400	PER MED SHEET
STADOL 1MG IV	1410	PER MED SHEET
STADOL 1MG IV	2000	PER MED SHEET & NH
OXYCONTIN 40MG PO	2000	PER MED SHEET
SEPTEMBER 24, 1999		
VALIUM 5MG IV	8308	PER MED SHEET & NH
STADOL 1MG IV	8302	PER NURSES NOTES
STADOL 1MG IV	0430	PER MED SHEET
PERCOCET (2) PO	0745	PER MED SHEET
OXYCONTIN 40 MG PO	0900	PER MED SHEET
PERCOCET (2) PO (CRUSHED)	1200	PER NURSES NOTES
PERCOCET (2) PO (CRUSHED)	1943	PER NURSES NOTES
OXYCONTIN 40MG PO	2130	PER MED SHEET

¹ The patient was experiencing pre-ictal symptoms during the first several postoperative days with complaints of nausea, dizziness, weakness, confusion, disorientation, numerous numbness/paresthesia, hyperventilation as well as

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14 Mr Fisher is survived by his wife, JACKIE FISHER, age 54, who is recovering from diagnosed breast cancer and related mastectomy and chemotherapy, two (2) step-daughters, (1) step-son, two (2) natural-born sons, JOHNNY FISHER and HOUSTON FISHER, and his elderly mother, Mildred Fisher. At the time of his death, Mr Fisher was gainfully employed by Trinity Materials, Inc. and earning between \$40,000.00 and \$30,000.00, annually. He had systematically received numerous raises during his many years of employment with Trinity Materials, Inc. and was an employee in good standing at the time of his untimely death.

**CLAIMS OF CONDUCT BELOW
APPLICABLE STANDARDS OF CARE**

15 First, there is little documentation that the patient needed surgery at the C4-5 level as indicated by the lack of significant findings reported on imaging studies. There is a consult report recommending against the surgery, to which DR. PAYNE strongly protested. Second, postoperative status immediately following the surgery is very poorly documented by both physicians and nursing staff other than indicating that he had some postoperative pain, however, he slowly began to demonstrate signs and symptoms not consistent with the usual complaints of the patient following this type surgery. He received considerable sedatives and narcotic medication. A summary of the opiates administered, per the records, reveals significant dosages of narcotics contrary to DR. PAYNE's erroneous claim that the patient "did not appear over medicated" (which was dictated after-the-fact).¹ The patient was never appropriately assessed after the surgery nor was

PAIN INDICATIONS GIVEN 8:30-6:00
SEPTEMBER 23, 1999

DRUG NAME	TIME	DOCUMENTATION
DIAMORCEL 12.5MG IV	1738	PER PACU NOTES
DIAMORCEL 12.5MG IV	1750	PER PACU NOTES
PHENORGAN 12MG IV	1758	PER PACU NOTES
STADOL 1MG IV	2138	PER MED SHEET

SEPTEMBER 23, 1999

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would have lead to early recognition, timely and appropriate diagnostic testing and treatment of the source of the problem - vertebral artery occlusion.

17 There were also serious errors caused by inadequately following this patient. The record indicates that although the patient was to be discharged on September 23, 1999, DR. PAYNE was as long as available and actually was unobtainable or out of town. Despite a significant clinical picture of unusual post-surgical complications suggestive of vertebral artery injury, appropriate assessment and evaluation of the patient was not carried out in PACU, in Podiatry or on the medical floor. Contrary to statements in DR. PAYNE's discharge summary, noobed is made by covering neurosurgery that they had never been notified of the patient's presence in the hospital or of his condition. This is grossly below standard for a patient experiencing this type surgery. These breaches greatly compromised the patient's safety and management because of patient abandonment and a lack of adequate continuity of care during his postoperative state and during his deteriorating condition which followed. Appropriate neurological assessments postoperatively and proper documentation of the patient's neurological deficits should have been acutely performed by DR. PAYNE throughout the entire hospital stay to monitor any adverse effects of the surgery on the patient's brain and spinal cord, much less his general systemic medical condition. Failure to recognize the patient's neurological injuries contributed to his tragic neurological problems, and, in turn, renal failure, his ARDS, other consequences and complications and, ultimately, his death.

contrary, unrelieved neck pain. The presence of minimal change on the CT scan of the cerebellum performed on September 26, 1999 is evidence that this stroke was in fact progressing by at least several days for it to be visualized so well on the CT scan. An acute infarct would not be as visible by standard CT scanning if the stroke had occurred only a few hours or up to 1-2 days before the clinical condition worsened posturing. This is further evidence to the contrary that the patient had a stroke intraoperatively and that his neurological deterioration was most probably due to the progression of the stroke and that death of his initial medical deterioration was likely triggered by the stroke events on the day of the surgery and that death of his initial medical deterioration was likely triggered by the stroke events on the day of the surgery and that death of his initial medical deterioration was likely triggered by the stroke events on the day of the surgery and that death of his initial medical deterioration was likely triggered by the stroke events on the day of the surgery.

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18. An autopsy was performed on Mr Fisher's body on October 1-2, 1999. Medial arterial subintimal dissection of the left vertebral artery is found in the cervical region both above and below the disc removal area. There is no prior history of vertebral artery disease or trauma. The nature of the vertebral artery injury as observed at autopsy reveals that it occurred several days prior to death, consistent with the nature of the dissection; and, the condition of the liver at the time of autopsy is further proof of hypotension and shock, following cerebellar infarct several days prior to death. The patient's right cerebellar and right basal ganglia infarct and the vertebral artery lesion were, clearly, a result of surgical injury of the vertebral artery during the patient's operation in which cervical dissection with plating and operative intervention was taking place. This is a protected artery. The probability of this event otherwise occurring in this young, healthy man with no history of vascular disease, or other notable risk factors is virtually non-existent.

19. Further, in reasonable medical probability, timely diagnostic testing, including arteriogram and/or angiography, following the surgery would have revealed vertebral artery occlusion, allowed appropriate treatment and probably prevented the stroke and would certainly have prevented death. Therefore, relieving the developing obstructive hydrocephalus following his cerebellar stroke and shift to the fourth ventricle due to increasing mass effect of the cerebellum on the brain stem and fourth ventricle was not complete and only helped one part of the patient's problem. The patient was clearly dying of mass effect from the cerebellar stroke and a true life saving approach, at that time, would have been consideration of partial resection of the right cerebellar hemisphere to provide decompression of the brainstem as a heroic life saving procedure. This does not appear to have ever been considered at any time during the patient's care.

20. The care provided to Johnny Fisher by OMCT and its personnel during this time frame (September 22, 1999 to September 25, 1999) is grossly below the applicable standards of care which

reasonable, careful and prudent, professional registered nurses and other hospital personnel under similar circumstances are trained and expected to give. Johnny Fisher was sent to a pediatric ward following this dangerous cervical dissection with plating and placed in the hands of insufficiently trained personnel. Assessments are incomplete and, in some cases, non-existent. Documentation on the medication sheets are incomplete, all past medications given are not documented on the medication sheets. It is difficult, if not impossible, for a physician or nurse treating Mr Fisher to accurately know what medications were given and in what quantities to Mr Fisher without reviewing all of the nursing notes, medication sheets and other records in his chart, because of incomplete charting.

21. The cerebellar infarct was avoidable. Mr Fisher suffered a cerebellar infarct sometime in the early morning hours of September 25, 1999, as a result of continuing vascular insufficiency caused by occlusion, aneurysm, pseudo aneurysm, and subintimal dissection of the vertebral artery. The signs and symptoms were clear and the effects of occlusion were slow in developing, allowing opportunity to heal. The occlusion and resulting insufficiency were diagnosable and treatable with low IV dosages of heparin for the arterial damage with almost certain improvement and complete vascular recovery, preventing infarct. However, such post-surgical care was not given and the vascular insufficiency continued until infarct was diagnosed on September 26, 1999. Even thereafter, the vascular insufficiency was not addressed by any of the caregivers and it continued to the point of brain death.

22. Mr Fisher's death was, therefore, the result of negligence, i.e. conduct that was unreasonable and below the standards of care applicable to the above-named health care providers, in performing a surgical procedure that was not, arguably, indicated at the time, in performing the surgery in a manner that was not reasonable and careful, and in the failure to timely and properly assess,

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evaluate, diagnose and treat vertebral artery injury and occlusion, and inflicting neurologic incapacitation.

23. The specific acts and/or omissions committed by the named physician(s), to wit JOHN B. PAYNE, D.O. and SUZANNE SHENK, D.O., their agents, servants, employees and representatives, which conduct was unreasonable and fell below applicable Standards of Care and constitutes negligence include the following:

- a. failure to order appropriate non-surgical care for the patient's problems prior to the elective surgery;
- b. advising that the cervical disc surgery at C4-5 was necessary and appropriate at the time, when it was not, considering the diagnostic tests and overall clinical picture of the patient on September 21 - 22, 1999 prior to the surgery;
- c. performing unnecessary cervical disc surgery at C4-5 with plating;
- d. failure to order and obtain appropriate diagnostic tests prior to the surgery performed on September 22, 1999 to determine the location, nature and condition of the vertebral artery and veins at or near the operative site, by tests such as MRI, MRA, Doppler sonography, or angiography;
- e. performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;
- f. assisting the surgeon performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;
- g. failure to provide timely and proper orders for nursing personnel who would be assigned to provide nursing care to Johnny Fisher following the cervical disc surgery;
- h. failure to order proper facilities for the care of this patient following the cervical disc surgery with plating, including requesting, then demanding, if necessary, that this patient not be placed in a pediatric ward for post-surgical recovery;
- i. failure to order, require and demand that sufficiently trained and experienced personnel be assigned for the care of this patient following the cervical disc surgery with plating.

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- j. failure to follow and monitor the patient following the surgery in a reasonable and careful manner;
- k. failure to order appropriate diagnostic tests following the surgery performed on September 22, 1999 to determine the nature and condition of the vertebral artery and veins at or near the operative site, by tests such as MRI, MRA, Doppler sonography, or angiography;
- l. failure to order, perform or authorize timely and reasonable pain assessment or pain management;
- m. failure to order, perform or authorize timely and reasonable neurological assessment and management;
- n. failure to appropriately assess, evaluate, diagnose, manage and treat neurological complaints;
- o. ordering, authorizing, directing and allowing excessive narcotic pain medications to be administered, overdosing this patient on narcotics;
- p. failure to provide timely and reasonable kidney dialysis to the patient;
- q. intent to prevent timely kidney dialysis of this patient; and,
- r. intent to conceal the cause of the patient's cerebellar infarct.

NEGLIGENCE - HOSPITAL AND HOSPITAL PERSONNEL

24. The specific acts and/or omissions committed by OMCT and its administrative, nursing and non-nursing personnel including Defendants, OMCT and individual OMCT personnel, N P. Cash, R.N., V. Pace, CRT, and Sue Samuel, RN, as well as the OMCT Director of Nursing, OMCT Director of Nursing Services, OMCT House Officer on 4N at 6 A.M. on September 25, 1999, and OMCT Director of Respiratory Therapy Dept., which conduct was unreasonable, fell below applicable Standards of Care and constitutes negligence include the following:

- a. assisting the surgeon performing the cervical disc surgery with plating in a careless manner, by damaging and traumatizing the left vertebral artery during the operative procedure;

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- b. failure to provide timely and proper administrative orders, directives, policies, procedures and guidelines for hospital nursing personnel who would be assigned to provide nursing care to Johnny Fisher following the surgery;
- c. failure to provide, order and/or authorize appropriate post-surgical recovery facilities for this patient;
- d. failure to follow and monitor the patient, including timely and reasonable nursing collaboration and intervention;
- e. authorizing, allowing or administering improper quantities of narcotic medication, overdosing this patient on narcotics;
- f. failure of hospital nurses to intervene and collaborate with treating physicians to recommend, provide, order and obtain timely diagnostic tests before and after the cervical disc surgery with plating;
- g. ordering, directing, allowing and acquiescing to the transfer of this patient to a Pediatrics ward following cervical disc surgery with plating, where he was placed under the care of nursing personnel not adequately and properly trained for treating post-neurosurgery patients who may develop neurological or post-surgical complications;
- h. providing ongoing care to the patient by hospital nursing personnel not sufficiently trained or experienced;
- i. failure to provide appropriately trained and experienced hospital personnel to care for this patient following the cervical disc surgery with plating;
- j. having and maintaining grossly deficient hospital policy and procedure, standards, protocol and guidelines regarding post-neurosurgery recovery care of this patient, control of narcotic administration, pain assessment, neurology assessments, timely nursing collaboration and intervention and monitoring of patient care with relieving, on-call physicians, and others;
- k. failure to appropriately assess and manage neurological complaints;
- l. failure to appropriately assess and manage complaints of pain;
- m. failure to maintain the patient on oxygen as appropriate;
- n. improper documentation of narcotics and other pain medications administered;
- o. failure to provide timely and reasonable kidney dialysis to the patient;
- p. intent to prevent timely kidney dialysis, and;

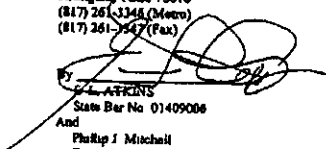
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PREMISES CONSIDERED, Plaintiffs and Claimants pray that citation be issued and served upon the Defendants according to law, that this case be set for trial, and, upon trial, judgment be entered for Plaintiffs and Claimants consistent with these pleadings and including pre-judgment and post-judgment interest as allowed by law

Respectfully submitted,

LAW OFFICES OF E. L. ATKINS
AND ASSOCIATES
325 South Mesquite Street
Arlington, Texas 76010
(817) 261-3344 (Main)
(817) 261-3547 (Fax)


E. L. ATKINS
State Bar No. 01409006
And
Phillip J. Mitchell
Estate Attorney
State Bar No. 80797941

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9. intent to conceal the cause of the patient's cerebellar infarct,

PROXIMATE CAUSE

25. As a direct and foreseeable result of the negligent conduct of the named persons and entities, hereinabove enumerated, Johnny Fisher sustained and suffered a medical, traumatic, avoidable and preventable injury to the vertebral artery which was left untreated, leading to cerebellar infarct, multi-system failure and death.

GROSS NEGLIGENCE

26. The conduct as herein detailed of the named persons and entities constitutes more than ordinary negligence. Their acts and omissions constitute malice and gross neglect as defined by law for which punitive damages are and should be assessed.

DAMAGES

27. The elements of damages are those allowed by statutory and common law to the ESTATE OF JOHNNY FISHER, his heirs and the statutory beneficiaries. Plaintiffs are also entitled to and seek punitive damages as provided and allowed by law.

CONDITIONS PRECEDENT

28. All conditions precedent have been met or will be prior to trial on the merits.

DISCOVERY CONTROL PLAN

29. Plaintiffs and Claimants request an Order from the Court placing this case in Level 3, pursuant to TEX. R. CIV. P. 190.4.

JURY TRIAL

30. Plaintiffs and Claimants request a jury trial and recover per jury fee with the filing of this petition.

Plaintiff's Plea and Petition in Intervention
Fisher/Hendrix/Original Petition.pdf

18

Case No. C200100173

MILDRED FISHER

VS

JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, et al
Defendants

BY THE DISTRICT COURT
JOHNSON COUNTY, TEXAS

413th JUDICIAL DISTRICT

RECEIVED
MAY 15 2007
CLERK OF DISTRICT COURT
JOHNSON COUNTY, TEXAS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are
taxed against the party incurring same

SIGNED this 7 day of June, 2007

AGREED JUDGMENT

On the 2 day of June 2007, this cause came on to be heard. It was understood to the Court
that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the
following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie
Fisher, individually and as Administrator and Representative of the Estate of Johnny Fisher,
Deceased, Houston Fisher and Johnny Fisher recover from the Defendants, Fort Worth Osteopathic
Hospital, Inc., d/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five
Thousand and no/100 Dollars (\$975,000.00)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be
enforced only in accordance with bankruptcy law, in Case No. 05-41513-DML-7, styled "In Re
Fort Worth Osteopathic Hospital, Inc., Debtor", in the United States Bankruptcy Court for the
Northern District of Texas, Fort Worth Division.



ACCEPTED COPY
DISTRICT CLERK
JULIE B. ALLEN
DISTRICT CLERK
JOHNSON COUNTY, TEXAS

JUDGMENT

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APPROVED

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Arkus Law Firm
335 South Meigs Street
P.O. Box 157
Arlington, TX 76010
Telephone 817-261-3346
Telecopier 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administrator and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

E.L. Allen
JUDGE PRESIDING

Wayne Clawson
State Bar No. 04328500
Craw Scott Henderson & Allen, L.L.P.
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2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Lawrence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.

JUDGMENT

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04/12/2007 14:38 7136081739 CRUISE SCOTT MCHEWERS Page: 03/04
04/12/2007 18:48 0179813347 E.L. ARKUS LAW PAGE: 03

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are
taxed against the party incurring same

SIGNED this _____ day of _____, 2007

JUDGE PRESIDING

APPROVED

E.L. Allen
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State Bar No. 01409000
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Attorney for Defendants, John Lawrence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.

JUDGMENT

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 15, 2007

E.L. Allen
United States Bankruptcy Judge



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAYLOR C. HARRIS, CLERK
THIS FILE IS ENTRY IS
ON THE COURT'S RECORD

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE

FORT WORTH OSTEOPATHIC
HOSPITAL, INC
d/b/a OSTEOPATHIC MEDICAL
CENTER OF TEXAS

DEBTOR

CASE NO. 05-41513-DML-7

CHAPTER 7

ORDER GRANTING MOTION TO APPROVE AND IMPLEMENT
COMPROMISE AND SETTLEMENT OF TORT CLAIMS BY JACKIE FISHER, ET AL.

Came on for consideration the Motion to Approve and Implement Compromise and
Settlement Agreement of Tort Claims by Jackie Fisher, et al (the "Motion") filed by Stanee K.
Brown, Chapter 7 Trustee in the referenced bankruptcy case. After considering the Motion and
the Trustee's certificate of no objections, the Court is of the opinion that the Compromise and
Settlement Agreement is in the best interests of the estate, it is therefore

ORDERED, that the Motion to Approve and Implement Compromise and Settlement Agreement is hereby **GRANTED** and the Trustee is authorized to take such steps and actions detailed in the Motion as are necessary to carry out the terms of the agreement.

End of Order

SUBMITTED BY

SHAWN K. BROWN
STATE BAR NO. 03170490
HAMCE SCARBOROUGH WRIGHT
GESSING & BRUNLOW
1401 Elm Street, Suite 4750
Dallas, Texas 75202
(214) 651-4308 (telephone)
(214) 744-3615 (facsimile)
sbrown@shwb.com

**ATTORNEYS FOR SHAWN K. BROWN,
CHAPTER 7 TRUSTEE**

FOUR NORTH OPTHALMOLOGIC HOSPITAL, INC. 4/9/A
FOUR NORTH OPTHALMOLOGIC MEDICAL CENTER
SELF-INSURANCE PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT, dated the 15th day of September, 1967
by and between FOUR NORTH OPTHALMOLOGIC HOSPITAL, INC., a non-profit
corporation organized and existing under the laws of the State of
Texas, having its principal place of business in Fort Worth, Tarrant
County, Texas ("Hospital") and TEXAS AMERICAN BANK, of Fort Worth,
Texas, a national banking corporation organized and existing under
the laws of the United States ("Trustee").

WITNESSETH

This trust agreement is to evidence the agreement between the
Hospital and the Trustee with respect to the ADMINISTRATION OF A
SELF-INSURANCE PLAN fund created by the Hospital pursuant to the
Medical Provider Reimbursement Manual promulgated by the United
States Department of Health and Human Services, Social Security
Administration.

ARTICLE I

- (a) The Hospital owns and operates a 251 bedded bed
Hospital and related facilities in Fort Worth, Tarrant County, Texas
- (b) Despite the excellent status and long history of the
Hospital, the annual cost and availability of professional liability
insurance has become a matter of increasing uncertainty and concern
in recent years
- (c) Because of this concern, the Hospital caused an extensive
study and review to be made of the various alternatives available
to provide economical and dependable protection to the Hospital
against professional liability claims.
- (d) After analysis of all the data arising from such
study and review, the Hospital has determined that it is most
reasonable and prudent to maintain a total self-insurance program
with the establishment of a reserve fund and the self-occupation
of the risk loss remaining from malpractice and general patient
liability because of the non-availability of affordable

of the Department of Health and Human Services.

1.01 Plan - shall mean the Hospital's self-insurance plan
with respect to malpractice liability claims

1.02 Plan Year - shall mean September 15, 1967 through
September 15, 1968 to the first year year and beginning October 1,
1968 a year shall mean a 12-month period thereafter

1.03 Trust - shall mean this trust agreement between the
Hospital and the Trustee and all amendments thereto

1.04 Trustee - shall mean Texas American Bank Fort Worth
or any successor or successor Trustee or Trustees

ARTICLE II - CONTRIBUTIONS

The Hospital hereby conveys and delivers to Trustee, in trust,
to be held and administered in accordance with the terms of this
agreement the sum of money set forth in Exhibit A attached hereto
(the receipt of which is acknowledged by the Trustee), which sum of
money together with such additional money or property as may from
time to time be delivered by the Hospital to the Trustee, including
the income and earnings therefrom shall constitute the trust
property. Said sum has been determined by Survey of Malpractice
Chicago, Illinois to be reasonably required as a security deposit
to fund the reserve for such liability insurance incurred and assumed
against the Hospital for the year beginning September 15, 1967
and expiring September 15, 1968. The Trustee shall have power
with respect to the trust property and shall be responsible for the
proper administration and control thereof as hereinafter set forth.

ARTICLE III - ADMINISTRATIVE COMMITTEE

3.01 Membership and Term of Office - The Committee shall
consist of three (3) to five (5) individuals to be named by
the Board from time to time. The Board shall have the right to
remove any member of the Committee at any time. A member may resign
at any time by written resignation to the Committee and Board. If
a vacancy in the Committee should occur, a successor shall be

named by the Board. The Hospital has determined that it would
be in the best interest of the Hospital and community which it
serves to establish a self-funded plan, on an actuarially sound basis,
designed to enable the Hospital to "self insure" against the actual
level of malpractice liability incurred at the Hospital and, where
if required, commercial insurance coverage from the liability in
violation of self-insured limits

(a) The Hospital desires that such self-funding plan be
implemented through a trust designed in such manner as to enable
payments thereon to qualify for Medicare reimbursement, and designed
so as to exempt such trust from the provisions of the applicable
provisions of the Internal Revenue Code

now, WHEREFORE, the Hospital and Trustee do mutually covenant
and agree as follows:

ARTICLE IV - DEFINITION OF TERMS

As used herein, unless otherwise defined or required by the
context, the following words and phrases shall have the meaning indicated.

1.01 Actuary - shall mean an Actuary, insurance company or
broker authorized in the field of medical malpractice and general
liability insurance, independent of any direct or indirect financial
ownership or control by the Hospital and employed to render services
with respect to the plan and the fund

1.02 Board - shall mean the Board of Directors of the Hospital

1.03 Committee - shall mean the committee which shall administer
the plan as provided in Article 3;

1.04 Contributions - shall mean payments by the Hospital to
the trust for the plan

1.05 Fund - shall mean the trust fund created in accordance with
the plan

1.06 Hospital - shall mean Four North Ophthalmic Hospital, Inc.,
4/9/A Fort Worth Ophthalmic Medical Center, Fort Worth, Tarrant
County, Texas

1.07 Medicare Manual - shall mean the Medicare Provider
Reimbursement Manual promulgated by the Social Security Administration

appointed by the Board.

The Hospital shall, by written notice, keep the Trustee notified
of current membership of the Committee, its officers and agents,
and shall furnish the Trustee a certified signature card for the
members of the Committee. For all purposes hereunder, the Trustee
shall be conclusively notified to rely upon such certified
signatures.

3.02 Organization of Administrative Committee - The Committee
shall elect a Chairman and members from among its members. It
may appoint agents if deemed necessary for the effective performance
of its duties and may delegate to such agents or to one or more
members of the Committee such powers and duties, whether ministerial
or discretionary, as the Committee may deem expedient and appropriate.
The Committee shall act by majority vote. Its members shall serve
without compensation.

3.03 Terms of Administrative Committee - The Committee shall
be governed by the Board with respect to the conduct of the admin-
istration of the plan which shall provide it with all powers and
instructions necessary to enable it to properly carry out its
duties in that respect, and all powers conferred upon it by the
plan. Not in limitation, but in amplification of the foregoing,
the Committee shall have the power to conduct the plan, to evalu-
ate periodically the adequacy of funding and of investment performance
and communicate its findings to the Hospital and the Trustee, and
to take steps if deemed necessary to remedy any administrative
error and to determine all questions that shall arise under the
plan. Subject to any limitations imposed on the Committee by the
Board, it shall decide all questions relating to the determination
of payments from the fund, provided such payment shall be payable
for the purposes of the plan as hereinafter provided. All disbursements

by the trustee shall be made known and in accordance with the written orders of the Committee or its designated agent. The decision of the Committee upon all matters within the scope of its authority shall be final and binding upon all parties to this instrument. The Committee shall have the power but not the obligation to employ investment counsel on behalf of the Trust. Any such investment counsel shall be empowered to direct the Trustee with respect to permitted investments.

3.04 Records of Administrative Committee. The courtesy of the Committee shall request or cause to be prepared all acts and determinations of the Committee and all such records, together with such other documents as may be necessary for the administration of the Plan and shall be preserved in the custody of such necessary

3.05 Indemnification of Administrative Committee. The Hospital shall indemnify and save each member of the Committee harmless from the effects and consequences of the acts, omissions and conduct of each member in his official capacity, except as the extent and scope of such effects and consequences shall result from the want or omission of such member to act in good faith.

3.06 Instructions. The Committee shall advise the Trustee and cause to be given to the Trustee such instructions as the Trustee may require to administer the Trust.

The Committee and the Hospital shall be entitled to rely upon all orders, resolutions, certificates, and reports furnished by an attorney or by an accountant, physician, or otherwise authorized or approved by the Hospital or the Committee. The Committee, the Hospital, its officers, and the Trustee shall not be deemed liable or answerable in liability by reason of taking or refraining from any action in reliance upon the advice or opinion of any such attorney, accountant, physician, or otherwise.

ARTICLE I - TRUST PLAN

1.01. The Hospital, after making a full and complete investigation

and analysis of its circumstances, organization and operations, has determined that it is necessary and prudent for it to adopt and implement a plan of self-insurance against anticipated losses. The Trust property shall constitute the fund through which the purposes of the Plan are carried out. The Hospital represents to the Trustee that as part of the Plan it intends to maintain or cause to be maintained an ongoing claims administration and risk management committee to determine whether appropriate liability exists, and the terms and cost thereof, and to minimize the frequency and severity thereof. The Hospital intends that the Plan be established and maintained in accordance with the rules and regulations adopted or implemented from time to time by the United States Department of Health, Education and Welfare, Social Security Administration, or any agent thereof or successor thereof, governing reimbursement to the Hospital for payments made in connection with the Plan. The Hospital assumes full and sole responsibility for compliance with the Medicare regulations. All representations and warranties made with respect to the Plan shall be deemed to be those of the Hospital.

ARTICLE II - TRUST FUND AND TRUSTEE

2.01 Trust Fund. The Trustee shall hold, manage, administer, and after paying all reasonable costs and expenses of the administration of said Trust or covering a cost for the payment thereof, the Trustee shall invest and reinvest the Trust funds in income-producing securities, assets and properties as may be authorized by the terms and laws of the United States applicable to national banks exercising trust powers and regulations issued thereunder, and any amendments thereto. All investments respecting investments by fiduciaries now or hereinafter required by the laws of the State of Texas, except that any laws be or hereinafter be and obligations, securities or properties of Hospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, interest, dividends, etc. shall be retained and

held by the Trustee and become a part of the Trust fund. Such retained income shall be considered and used for the purposes of determining and establishing adequate fund levels by Hospital's insurance agency. The Trustee shall be under no duty to determine whether the amount of any contribution to the Trust exceeds from time to time made by the Hospital is in accordance with the Plan or the Medicare regulations or to enforce or to collect payment of any contributions.

2.02 Reimbursement for Medicare. Upon termination of the Plan from the Medicare program, the Hospital shall obtain from the attorney a determination of the adequacy of the balance of the fund as of the date of such termination in order to determine the amount to pay to be offset against the Hospital's allowable costs to be reimbursed by Medicare if the fund is excessive, as defined in the Medicare Rules.

2.03 Payments from the Trust Property

(a) The Trustee from time to time, upon receipt of written direction from the individual or individuals designated by the Committee or Hospital to act, shall make payment from the income or corpus of the Trust property to such persons and in such amounts and in such amounts as the Committee or as agents thereof in such writing shall direct. Such such written direction shall specify that the payment is related to the Plan, and in no case or more of the purposes specified herein. The Trustee shall make payment solely upon the direction of the Committee and shall not be required to inquire into the purpose or use or liable for the propriety of any such payment. Payment shall be made from the Trust property only for reimbursement of the Hospital under such losses occur from incidents or claims arising after September 15, 1967, providing same are not covered under the terms of any previously held commercial liability insurance policy and may be made for the following expenses to the extent that such are related to the self-insurance plan of the Hospital:

- (1) Expenses for administering the claims management program;
- (2) Expenses of establishing this Trust and the Trust Fund;
- (3) Legal expenses;
- (4) Accounting expenses;
- (5) Costs relating to the acquisition for the Hospital of excess insurance coverage, if purchased by the Trustee;
- (6) Expenses incurred with the maintenance of this Trust and the Trust property by the Trustee;
- (7) Cost of administering any risk management program of the Hospital, if risk management is performed by the Trustee; provided, however, that this paragraph shall not be construed to impose upon the Trustee any duty or obligation to administer any risk management program of the Hospital.

(b) Payment for any of the foregoing purposes shall be deemed proper payment to be paid from the Trust property. It is intended that all payments from the Trust property shall be in accordance with the Medicare regulations, but the Trustee shall not be liable in any way for the Hospital's failure to comply therewith.

2.04 Records. The Trustee shall keep accurate and detailed accounts of all receipts, disbursements and disbursements with respect to the Trust property. Such records or returns as the Hospital shall from time to time designate, including such records as may be required by the Medicare regulations, shall be allowed to review, inspect and audit the books of account relating to the Trust property upon request at any reasonable time during business hours of the Trustee.

Within 60 days after the close of each 12-month period ending on September 30 of each year, the Trustee shall deliver a financial statement and accounting containing such information as the Hospital shall from time to time reasonably request, including but not

limited to the following information:

- (a) The balance of the trust property at the beginning of each Plan year;
- (b) Current period contributions;
- (c) The amount and nature of final payments, including a separate accounting for estate management, legal expenses, estate gifts, and other similar items; and
- (d) The trust property balance at the end of the plan year notwithstanding any obligation to report within 90 days after the close of each 12-month period, Trustee shall render such reports regarding the trust fund and containing such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a Plan Year, or if the Trustee shall resign or be removed, the Trustee shall, within 90 days of such termination, resignation or removal date, submit its final statement and account for the period from the last previous accounting to the date of such termination, resignation or removal.

3.05 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 90 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall render to the Hospital no account of its administration of the Fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the Fund to its successor Trustee.

3.06 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 90 days' written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account and transfer and deliver the assets of the Fund as its successor as provided in the case of the Trustee's resignation.

3.07 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the best qualified and readily available financial institution whom

services to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will continue this agreement indefinitely. However, in the event of a vacancy in the Trusteeship of this Trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this Trust. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

3.08 Liability. Neither any member of the Committee, the Board, the Hospital, the secretary nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own actions, omissions, neglect or for which it is properly held liable.

ARTICLE 5 - POWERS OF TRUSTEE

5.01 Investment Power. The Trustee or any successor Trustee shall have the authority without order of any court or officer to exercise the following powers in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and limitations as provided in the Law of the United States and State of Texas for banks exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To receive, sell, borrow or otherwise in any manner, lease, mortgage, options or other property, including income trust funds established by the Trustee, and such in the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of this direction, except that of using ordinary care; provided, however, that no loans may be made from the trust property to the Hospital or to any person related to the Hospital within the meaning of the business regulations.

(2) To sell, exchange, or otherwise dispose of any property at any time held or required hereunder as public or private sale, for cash or on terms, without the necessity of court approval

or advertisement.

(3) To register any check, bond or other security in the name of a trustee, with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing that such property is a trust asset.

(4) To invest in certificates of deposit and accounts loaned by Trustee.

(5) To vote in person or by proxy all stocks or other securities, to grant proxies, general or limited, and to agree or take any other action in regard to any reorganization, merger, consolidation, acquisition or other transaction or proceedings affecting any property of the Trust.

(6) To serve without making and filing inventory and appraisement, without filing any annual or other return to any court and without giving bond; but the Trustee shall furnish to the Hospital such financial statements as are otherwise required by this agreement.

(7) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that Trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

5.02 Compensation. The Hospital is authorized to pay the Trustee reasonable compensation for its services rendered. Said compensation shall be based on what is reasonable and customarily accepted for services of a similar type or nature in the community and shall include an evaluation of the services rendered by the Trustee together with the experience of payments or distributions under this Trust Agreement.

ARTICLE 7 - MISCELLANEOUS AND TERMINATION

7.01 The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, in whole or in part, any or all of the provisions of the Plan and trust agreement; provided, however,

that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without its consent.

7.02 Termination. The Hospital reserves the right to terminate this Plan at any time by notice to the Trustee in writing to the Trustee. If the Hospital revokes this agreement or terminates the Plan, then upon receipt of written notice thereof, the Trustee shall either:

(1) liquidate and administer in accordance with this agreement upon portion of the trust property of the Hospital shall survive to the Trustee has been determined by an attorney as required by the business regulations to a necessary reserve fund for future purposes of the Plan until such time as the Hospital shall certify to the Trustee that an independent account has determined that such payments had been met or recovered or as longer necessary, whereupon the Trustee shall deliver the balance of the trust property to the Hospital; or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the business regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 8 - INCORPORATION

8.01 Headings. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored if any construction of its provisions hereof

8.02 Construction. This agreement shall be construed in accordance with the Law of the State of Texas. In the construction of this agreement, the masculine shall include the female and the singular the plural in all cases where such meanings would be appropriate.

8.03 Severability. Should any provision of this agreement be deemed in violation of any law, such provision shall be deemed void

to the extent required by law and all provisions of this agreement
other than that said word shall remain in force and effect
if REPLICATED this agreement may be executed in multiple
copies, each of which shall be received for all purposes as
an original; and each copy shall constitute but one and the
same instrument
IN WITNESS WHEREOF, the parties have caused this agreement to
be executed by their duly authorized officers, to be effective on
the date first above written

FIRST WORTH OSTEOPATHIC HOSPITAL, INC.
5750 N. FORT WORTH OSTEOPATHIC MEDICAL
CENTER

By: J. B. [Signature]
Chairman of the Board of Directors

ACCEPTED:

TRUST MEDICAL BANK

By: [Signature]
Senior Vice President and Trust Officer

EXECUTED IN MULTIPLE COPIES, EACH COPY OF WHICH SHALL BE DEEMED TO
BE AN ORIGINAL.

SCHEDULE A

Contingently with the execution and delivery of the
Corporate Trust Agreement, the Hospital conveyed and delivered to the
Trustee pursuant to Section 1 hereof, the sum of One Million Dollars
\$1,000,000.00.

Attachment

Motion to Intervene

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re: #

FORT WORTH OSTEOPATHIC #
HOSPITAL, INC. D/B/A # Case No. 05-41513-DML-7
OSTEOPATHIC MEDICAL CENTER #
OF TEXAS #

Shawn K. Brown, #
Ch. 7 Trustee #
for Fort Worth Osteopathic Hospital, Inc. #
vs # Case No. 07-04016

JP Morgan Chase Bank, N.A. #

PLEA IN INTERVENTION and COMPLAINT

TO THE HONORABLE COURT:

COMES NOW The Estate of Johnny Fisher, Deceased, The Estate of Jackie Fisher,
Deceased, Johnny Fisher, adult son of Johnny Fisher, Deceased and Houston Fisher, adult son of
Johnny Fisher, Deceased, hereafter, at times, "Intervenors", collectively and individually, make
and file this Plea in Intervention and Complaint in the above-styled Adversary Proceeding, and
in support hereof, show:

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 1

ORIGINAL

Intervenors are judgment creditors of FWOH. Intervenors own and hold a judgment, ("The Judgment"), against Fort Worth Osteopathic Hospital, Inc. ("FWOH") as a result of a malpractice claim filed against FWOH in 2001 for damages from injuries sustained by Johnny Fisher, resulting in his death on October 1, 1999. The Judgment was signed and entered June 7, 2007 against FWOH, awarding Intervenors damages in the amount of \$975,000.00. A copy of the live pleadings and The Judgment are attached to and incorporated into this plea, by reference, and marked Exhibit "1" and Exhibit "2", respectively. Intervenors seek, herein, to collect The Judgment and for any and all other damages allowed by law.

Intervenors are the beneficiaries of a trust fund ("The Trust Fund") that was established in 1987 specifically to be used to resolve malpractice claims filed against FWOH pursuant to and in accordance with the terms and provisions of a self-insured trust agreement, ("The Trust Agreement"). The Trust Fund was intended to be maintained in lieu of primary liability insurance and, in part, to satisfy requirements of the Social Security Administration, since FWOH accepted and was receiving medicare and medicaid benefits. A copy of The Trust Agreement is attached to and incorporated into this pleading, by reference, and marked Exhibit "3". Defendant, JP Morgan Chase Bank, N.A., ("Chase") was, at all relevant times, the Trustee of The Trust Fund, under The Trust Agreement.

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 2

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All funds and property, once delivered to Chase from FWOH and/or placed in The Trust Fund, were the property of Chase to be administered by Chase, as Trustee, as hereinabove described.

Intervenors are, therefore, specific beneficiaries of The Trust.

Factual Background

On or about September 22, 1999, Johnny Fisher was admitted to FWOH for spinal surgery to be performed by John Payne, licensed neurosurgeon, credentialed to practice neurosurgery at FWOH. The vertebral artery to the brain was damaged during the operation. FWOH did not have post-surgery facilities available, so Mr. Fisher was sent by hospital personnel to the pediatrics ward and placed under the care of hospital nurses trained only to treat children for non-surgery problems. Mr. Fisher complained of severe and unresolved pain, but the nurses only gave him narcotics to relieve the pain, but did not call in physicians to determine the cause of the pain. Mr. Fisher anguished for days then suffered a stroke as a result of brain-oxygen deficiency on or about September 25 and died October 1, 1999. He was survived by his wife, Jackie Fisher, who recently died, his adult son, Johnny Fisher, his, then, minor son, Houston Fisher, now an adult, and his elderly mother, Mildred Fisher. FWOH was the only hospital in Tarrant County which was allowing Payne on-going privileges to perform neurosurgery at the time of the operation on Mr. Fisher. Payne was subsequently stripped of his license to practice medicine in Texas, as a result of his care of Johnny Fisher and numerous other

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
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improprieties, including patient fraud.

After FWOH filed for bankruptcy, Intervenor's deposed Robert Lansford, the Chase officer assigned to manage The Trust Fund. Lansford gave his deposition January 25, 2006 and explained his management of The Trust Fund.

At all times relevant to Intervenor's claims, Lansford was a Director of FWOH.

The Judgment has not been satisfied. Intervenor's have been advised, and Intervenor's here allege, that the bankrupt estate does not have sufficient funds to satisfy The Judgment.

Standing. Intervenor's have standing to assert this claim against Chase, as the direct beneficiary of The Trust Agreement, for satisfaction of The Judgment, as well as for the recovery of any other damages, statutory and at common law, as a result of Chase's breach of contract and breach of its duties to Intervenor's in connection with the management and administration of The Trust Agreement, as well as for its negligence, gross negligence, fraud, and other improper actions in connection therewith to which Intervenor's are entitled. *Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001)

At all times material to the claims made by Intervenor's in The Lawsuit, FWOH had funds sufficient to fund and maintain The Trust and satisfy Intervenor's claims. *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001)

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CLAIMS

Chase has breached The Trust Agreement by failing to pay and satisfy The Judgment.

Chase breached its fiduciary duties and committed other improper acts in the management and administration of The Trust Fund, resulting in the loss of The Trust Fund assets, for which Chase is directly liable to Intervenors.

Robert Lansford acknowledged, under oath in his deposition, that he had not managed The Trust Fund as The Trust Agreement required it to be managed, and that he had disbursed property and funds from The Trust Fund in a manner contrary to the requirements of The Trust Agreement.

Defendant, Chase, was obligated to pay out Trust Fund property only in satisfaction of malpractice claims, and for no other purpose. However, Chase, by and through its senior trust officer, Robert Lansford, and his designees, each and all employees of Chase and in the course and scope of their employment with Chase, chose to manage and disburse the Trust Fund property improperly and for improper purposes, frittering away The Trust Fund. Then, when FWOH filed for bankruptcy, Chase attempted to wash its hands of its responsibilities under The Trust Agreement by delivering the balance of Trust Fund property on hand to the bankruptcy trustee, in The Hospital's bankruptcy case. Chase's explanation, by Lansford, was that Chase was not required to comply with the terms and provisions of The Trust Agreement, since the trust was a revocable trust.

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Chase also concealed from Intervenor and from the state district court in which Intervenor's malpractice claim was pending, that Chase was not administering and maintaining the Trust Fund in accordance with the terms of The Trust Agreement and was not maintaining funds, as required under The Trust Agreement, and as was represented to the State District Court in which Intervenor's claims were pending. The improper disbursements from The Trust fund were not revealed until Robert Lansford, as senior trust officer of Chase, was deposed by Intervenor's counsel in January, 2004, as above noted.

Intervenor seeks damages from Chase in an amount to satisfy The Judgment, for other statutory and common law damages, for attorney fees, for costs of court, and for any and all other remedies and damages to which Intervenor shows themselves justly entitled.

It was established that Chase failed to manage and administer The Trust Fund as it was intended to be managed and administered and consistent with the purposes for which it was established, specifically in the following ways:

1. Disbursed thousands of dollars from The Trust Fund for matters and/or items that were not made in satisfaction of or related to malpractice claims, specifically including Intervenor's claim;
2. Disbursed Trust Fund property without proper authorization;
3. Disbursed Trust Fund property simply on the telephone-call directives of officers, employees and/or representatives of FWOH;
4. Failed to require on-going actuarial studies of The Trust Fund, to assure proper and adequate funding of The Trust Fund for satisfaction of Intervenor's claim;

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5. Failed to advise Intervenors that The Trust Fund was not being funded, maintained, managed and replenished as required and that Chase had not maintained sufficient funds in The Trust Fund to satisfy Intervenors' malpractice claim;
6. Failed to provide proper accounting of The Trust Fund;
7. Failed to require proper funding and accounting by FWOH of The Trust Fund;
8. Failed to maintain adequate funds and property in The Trust Fund to satisfy Intervenors' claim;
9. Represented that the Trust Fund had sufficient funds to pay Intervenors' malpractice claim, which representation was false;
10. Failed to comply with the requirements of the Social Security Administration in the management of The Trust Fund, to assure sufficient funds being available in The Trust Fund to satisfy Intervenors' claim;
11. Failed to notify the Social Security Administration that The Trust Fund was not being managed or maintained properly and sufficiently to satisfy Intervenors' claim;
12. Failed to require on-going replenishment of The Trust Fund by FWOH, to maintain sufficient funds to satisfy Intervenors' malpractice claim.

Intervenors seek reasonable attorney fees, as allowed by law.

Proximate Cause. At all times relevant to the claims asserted herein by Intervenors in this matter, FWOH had sufficient funds to fund and maintain The Trust Fund to pay Intervenors' claims, but Chase did not require such funding be made and maintained. *Whitfield v.*

Lindemann, 853 F. 2d 1298, 1304 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas*,

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N.A., 274 F. 3d 924 (5th Cir. 2001) Had Chase managed and administered The Trust Fund in accordance with The Trust Agreement, Chase would have had funds on hand, at all relevant times, sufficient to satisfy Intervenors' claims. Therefore, Chase's misconduct in the management and administration of The Trust Fund is a direct and proximate cause of there not being sufficient funds available in the Trust Fund to satisfy The Judgment, for which Chase is liable in damages to Intervenors.

Intervenors seek damages from Chase in an amount to satisfy The Judgment, for other statutory and common law damages, for attorney fees, for costs of court, and for any and all other remedies and damages to which Intervenors show themselves justly entitled.

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PREMISES CONSIDERED, Intervenor's pray that, upon final hearing, Intervenor's recover from Chase any and all damages and any other relief consistent with these pleadings, the law and to which Intervenor's show themselves justly entitled.

Respectfully submitted,

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By: 

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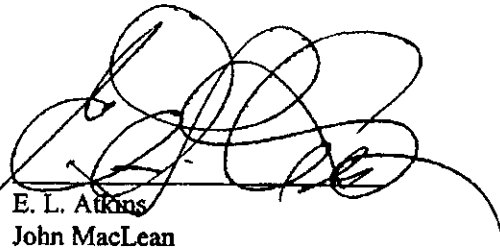
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CERTIFICATE OF SERVICE

This is to certify that on this the _____ day of _____, 2007, a true and correct copy of the above and foregoing Motion to Intervene has been served upon the following as required by law:

Gregory H. Bevel
Kerry Ann Miller
Attorneys
Rochelle Hutcheson & McCullough, LLP
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Attorneys for Plaintiff, Shawn K. Brown, Ch. 7 Trustee
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in Adversary Proceeding No. 07-04016
via CM RRR No.

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in Adversary Proceeding No. 07-04016
via CM RRR No.



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John MacLean

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Exhibits

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MILDRED FISHER
VS
JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, N.F. CASH, R.N., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNE SHENK, D.O. Defendants

IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS
249th JUDICIAL DISTRICT

PLEA AND PETITION IN INTERVENTION

TO THE HONORABLE COURT

COMES NOW JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D (w/a Johnny Fisher), JACKIE FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make this claim and file this PLEA AND PETITION IN INTERVENTION on behalf of the ESTATE OF JOHNNY FISHER, DEC'D, and on behalf of the named individuals, against JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), N.F. CASH, R.N., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNE SHENK, D.O., and others named herein, and in support of this claim, show unto this Honorable Court as follows:

NATURE OF CLAIM

1 This is a claim brought by the Administratrix of the Estate of the Decedent for damages for the recovery of expenses incurred by the Estate, for lost earnings of the Decedent, for Decedent's pain and suffering from the date of injury to the date of death, and for damages allowed by law in the statutory beneficiaries of Johnny Fisher, Decedent. The claims asserted herein are brought pursuant to TEX. REV. CIV. STAT. ANN. art. 4390a (Vernon), and other statutes and at common

Plaintiff's Plea and Petition in Intervention
Fisher/Pleading/Original Petition.pdf

COPY

Bulnes, Tarrant County, Texas 76040.

- b PORT WORTH OSTEOPATHIC HOSPITAL, INC d/b/a OSTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), a hospital and corporation authorized to transact business in Texas. OMCT may be served with citation by serving its registered agent, Yolande Cervantes, who is located at 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107.
c SUZANNE SHENK, D.O., who may be served with citation at 3100 Camp Bowie Blvd., Fort Worth, Tarrant County, Texas 76107;
d N.F. CASH, R.N. (SpP), who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107,
e SUE SAMUEL, R.N., w/a Susan Hadley Samuel, who may be served with citation at 2501 Noole Dr., Burleson, Johnson County, Texas 76028,
f V. PATE, CRT, who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107,

Plaintiffs request that citation be issued and served upon each named Defendant forthwith and in the manner as required by law

FACTUAL SUMMARY

5 Johnny Fisher (DOB November 27, 1957, DOD, October 1, 1999, SS# 466-23-4693, weight approximately 204 lbs., height approximately 5'9"), was first seen and evaluated by JOHN B. PAYNE, D.O., a neurosurgeon, on or about March 26, 1999 with the complaint of moderate neck pain and arm pain. He reported an on-the-job injury sometime in January, 1999. DR. PAYNE recommended steroid injection, cervical collar and non-steroid physical therapy. Mr. Fisher returned to DR. PAYNE in May, 1999 relating no improvement. EMG/NCV was interpreted as left C5 radiculopathy. Past history revealed prior cervical discectomy of C5-6 and C6-7 in 1991 or 1992. On May 11, 1999, Mr. Fisher underwent a cervical myelogram with CT follow up, as well as AP and lateral cervical spine x-rays. Routine x-rays show bony fusion at C3-6 and C6-7. Other disc spaces are said to be well preserved without other abnormality. The patient's standard cervical

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law. The claims brought herein include all wrongful death claims and survival claims pursuant to TEX. CIV. PRAC. & REM. CODE ANN. sec. 71.002, et seq. (Vernon), and TEX. CIV. PRAC. & REM. CODE ANN. sec. 71.021, et seq. (Vernon).

JURISDICTION AND VENUE

2 This is a claim by and on behalf of the ESTATE OF JOHNNY FISHER, DEC'D. The administration of the ESTATE OF JOHNNY FISHER, DEC'D is pending in the Probate Court of Johnson County, Texas. JACKIE FISHER has qualified and is the Administratrix of the Estate to whom Letters of Administration have been issued. One of the Defendants, Sue Samuel, RN, w/a Susan Hadley Samuel is a resident of Johnson County, Texas, residing at 2501 Noole Dr., Burleson, Johnson County, Texas 76028. This Court, therefore, has jurisdiction and venue of this case pursuant to TEX. CIV. PRAC. & REM. CODE, sec. 15.001 et seq., including sec. 15.002 and 15.005 (Vernon).

PARTIES

- 3 The Claimants and Plaintiffs in this lawsuit are:
a JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D,
b JACKIE FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
c JOHNNY FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,
d HOUSTON FISHER, Individually and as heir and Distributee of the ESTATE OF JOHNNY FISHER, DEC'D,

Each and all of the Plaintiffs named herein, as well as Mildred Fisher, are residents of Johnson County, Texas.

- 4 The Defendants in this claim are:
a JOHN B. PAYNE, D.O., who may be served with citation at 313 Westpark Way,

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myelogram with follow-up radiology using Omnipaque showed no abnormality. The CT scan follow-up describes no abnormality at the C4-5 level other than under the impression section which indicates bilateral uncovertebral joint body hypertrophy at C3-4 and C4-5 levels. However, there was no reported significant neural foramina stenosis identified. These were interpreted by DR. PAYNE as revealing significant nerve root compression at C5. DR. PAYNE recommended surgery with plating. A second opinion recommending against surgery at the time was obtained. DR. PAYNE then obtained the opinion of a third neurosurgeon, supporting DR. PAYNE'S decision to operate. Although later records indicate that an MRI scan had been ordered on this patient which showed an abnormality at C4-5, MRI compression was not made with the myelogram as indicated in the report. None of the outpatient studies, as listed above, indicate any notable abnormality at C4-5. The CT post-myelogram report and any reference to the C4-5 level under "impression" has been deleted and a reprinted report is dated October 7, 1999 one week after Mr. Fisher's death.

6 Johnny Fisher was admitted to OMCT, Fort Worth, Texas, on September 22, 1999 for a cervical C4-5 discectomy and interbody fusion with plating. According to the History and Physical by DR. PAYNE, dated September 22, 1999, Johnny Fisher's stated health was unremarkable with the exception of his complaint of moderate neck pain, arm pain and restrictions in the amount of weight he could lift. Past Medical History included an injury to the stomach due to a shotgun blast and prior cervical fusion, above-referenced. The nursing admission record indicates only that he was using eye drops for glaucoma and had otherwise been well other than for the mentioned remote abdominal gun shot wound in 1977 and the previously described cervical fusion. Specifically, there was no history of hypertension, diabetes, pulmonary disease, liver disease, heart disease, venereal disease, syncope, dizziness, or stroke.

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12. Numerous complications followed. Mr Fisher was well documented to go into full blown acute renal failure due to acute tubular necrosis (shock kidney) associated with severe alcoholic hepatitis and bilateral pulmonary chest x-ray findings consistent with acute respiratory distress syndrome (ARDS). Nephrology consult was not obtained until September 25, 1999, (post-operative day three [3]). Dialysis was delayed, per records. Initial evaluation suggested the possibility of a pulmonary embolism by echocardiogram and other testing, however, a CT scan of the chest specifically carried out with spiral CT technique and contrast on September 26, 1999 excluded any filling defects in the pulmonary vasculature. The patient's neurological status markedly deteriorated over the next several hours. Documentation indicated that the patient was dizzy, confused and disoriented times shortly after surgery as per the family and documented by nursing notes and an unusual medicine consult on September 25, 1999.

13. Despite Mr Fisher's clinical picture following surgery suggestive of vascular insufficiency and vertebrobasilar artery ischemia, a CT scan of the brain was not performed until June 26, 1999 (post-op day four [4]) which disclosed an infarction of the right cerebellum and right thalamus. Initial CT scanning showed no notable mass effect, however, over the ensuing several days, mass effect rapidly progressed in the posterior fossa. For records, no low dosage heparin was ordered or administered at any time following the complaints suggestive of arterial occlusion and ischemia. Mr Fisher developed a right to left shift of the fourth ventricle with compression of the brain stem and obstructive hydrocephalus. Ventricular catheters were placed to alleviate his coma, without success. He developed progressively increased brain stem signs and brain death. His care was terminated by fulfilling all the criteria of brain death and he was taken off the respirator. Death is pronounced at 2045 on September 30, 1999, per records.

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the source of his pain assessed or diagnosed. No neurological assessment was made post-surgery until Mr Fisher was evaluated by Dr. Molosh on September 25, 1999, despite clear neurological deficits. Rather, he was given excessive narcotics and sedatives, resulting in progressive inadequate fluid intake, sedation, hypotension, hypoxia and eventually shock. It is evident that Mr Fisher was in a significant amount of pain and confusion during the period September 22, 1999 to September 25, 1999. Not one time during this period did any nurse do an appropriate assessment of the patient or question why he was having so much unusual pain or altered behavior. The nurses only continued administering pain medications which administrations were not documented accurately, further preventing or complicating appropriate assessment. The physician (treating or on-call) was not notified that Mr Fisher was complaining of so much pain, per records.

NEGLIGENCE - PHYSICIANS

16. Indisputably, the patient had a stroke of the cerebellum and basal ganglia on the right, which took place intraoperatively.¹ Early and appropriate assessment of the patient's neurological status

STADOL 1MG IV	0018	PER NURSES NOTES
PERICOET (2) PO	0048	PER MED SHEET & NN
STADOL 1MG IV	0048	PER MED SHEET & NN
PLEXORA 10MG PO	0800	PER MED SHEET & NN
? MED	0800	PER NN - PT MEDICATED
OXYCONTIN 40MG PO	0800	PER MED SHEET X-OUT
OXYCONTIN 40MG PO	1000	PER MED SHEET
DIAMORAL 25MG ?	1400	PER NURSES NOTES
STADOL 1MG IV	1410	PER MED SHEET
STADOL 1MG IV	2000	PER MED SHEET & NN
OXYCONTIN 40MG PO	2000	PER MED SHEET

SEPTEMBER 24 1999

VALIUM 5MG IV	0300	PER MED SHEET & NN
STADOL 1 MG IV	0300	PER NURSES NOTES
STADOL 1MG IV	0430	PER MED SHEET
PERICOET (2) PO	0745	PER MED SHEET
OXYCONTIN 40MG PO	0800	PER MED SHEET
PERICOET (2) PO (CRUSHED)	1300	PER NURSES NOTES
PERICOET (2) PO (CRUSHED)	1948	PER NURSES NOTES
OXYCONTIN 40MG PO	2130	PER MED SHEET

The patient was manifesting pre-ictal symptoms during the first several postoperative days with complaints of nausea, dizziness, weakness, constant consciousness, irritability, dizziness, hypotension as well as

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14. Mr Fisher is survived by his wife, JACKIE FISHER, age 54, who is recovering from diagnosed breast cancer and related mastectomy and chemotherapy, two (2) step-daughters, (1) step-son, two (2) natural-born sons, JOHNNY FISHER and HOUSTON FISHER, and his elderly mother, Mildred Fisher. At the time of his death, Mr. Fisher was gainfully employed by Trinity Materials, Inc. and earning between \$40,000.00 and \$50,000.00, annually. He had systematically received numerous raises during his many years of employment with Trinity Materials, Inc. and was an employee in good standing at the time of his untimely death.

CLAIMS OF CONDUCT BELOW
APPLICABLE STANDARDS OF CARE

15. First, there is little documentation that the patient needed surgery at the C4-5 level as indicated by the lack of significant findings reported on imaging studies. There is a consult report recommending against the surgery, to which DR. PAYNE strongly protested. Second, postoperative status immediately following the surgery is very poorly documented by both physicians and nursing staff other than indicating that he had some postoperative pain, however, he slowly began to demonstrate signs and symptoms not consistent with the usual complaints of the patient following this type surgery. He received considerable sedative and narcotic medication. A summary of the opiates administered, per the records, reveals significant dosages of narcotic contrary to DR. PAYNE's erroneous claim that the patient "did not appear over medicated" (which was dictated after-the-fact).¹ The patient was never appropriately assessed after the surgery nor was

PAIN MEDICATIONS GIVEN 8-23-99 THRU 8-30-99

DRUG/NAME	TIME	DOCUMENTATION
DIAMORAL 12.5MG IV	1758	PER PACU NOTES
DIAMORAL 12.5MG IV	1759	PER PACU NOTES
PHENERGAN 12MG IV	1758	PER PACU NOTES
STADOL 1MG IV	2130	PER MED SHEET

SEPTEMBER 23, 1999

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would have lead to early recognition, timely and appropriate diagnostic testing and treatment of the source of the problem - vertebral artery occlusion.

17. There were also serious errors caused by inadequately following this patient. The record indicates that although the patient was to be discharged on September 25, 1999, DR. PAYNE was no longer available and actually was either unavailable or out of town. Despite a significant clinical picture of unusual post-surgical complications suggestive of vertebral artery injury, appropriate assessment and evaluation of the patient was not carried out in PACU, at Pediatrics or on the medical floor. Contrary to statements in DR. PAYNE's discharge summary, notation is made by covering neurosurgery that they had never been notified of the patient's presence in the hospital or of his condition. This is grossly below standard for a patient experiencing this type surgery. These breaches greatly compromised the patient's safety and management because of patient abandonment and a lack of adequate continuity of care during his postoperative state and during his deteriorating condition which followed. Appropriate neurological assessment postoperatively and proper documentation of the patient's neurological deficits should have been routinely performed by DR. PAYNE throughout the entire hospital stay to monitor any adverse effects of the surgery on the patient's brain and spinal cord, much less his general systemic medical condition. Failure to recognize the patient's neurological injuries contributed to his tragic neurological problems, and, in turn, renal failure, his ARDS, other consequences and complications and, ultimately, his death.

continuing, unrelieved neck pain. The presence of marked change on the CT scan of the cerebellum performed on September 26, 1999 is evidence that the stroke was in fact prevented by at least several days for it to be visualized on the CT scan. An acute infarct would not be so visible by standard CT scanning if the stroke had occurred only a few hours or up to 1-2 days before the initial cerebellar hemorrhagic swelling. This is further evidence that the progression of the stroke and that much of his acute medical deterioration was solely triggered by the stroke events on 9/22/99 and compounded by other factors, as indicated hereinabove. DR. PAYNE and Dr. Shank knew on review of the radiology film and report, that the injury probably occurred during the surgical dissection with plating on September 22, 1999, but did not discuss or disclose this to the family and did not begin appropriate treatment. Rather, the provider's injury to the arterial supply to the cerebellum during the surgery followed by narcotic intoxication, multi-symptom failure and death.

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- b Failure to provide timely and proper administrative orders, directives, policies, procedures and guidelines for hospital nursing personnel who would be assigned to provide nursing care to Johnny Fisher following the surgery,
- c Failure to provide, order and/or authorize appropriate post-surgical recovery facilities for this patient,
- d Failure to follow and monitor the patient, including timely and reasonable nursing collaborations and intervention,
- e authorizing, allowing or administering improper quantities of narcotic medication, overdosing the patient on narcotics,
- f Failure of hospital nurses to intervene and collaborate with treating physicians to recommend, provide, order and obtain timely diagnostic tests before and after the cervical disc surgery with plating,
- g ordering, directing, allowing and acquiescing to the transfer of this patient to a Pediatrics ward following cervical disc surgery with plating, where he was placed under the care of nursing personnel not adequately and properly trained for treating post-neurosurgery patients who may develop neurological or post-surgical complications,
- h providing nursing care to the patient by hospital nursing personnel not sufficiently trained or experienced,
- i Failure to provide appropriately trained and experienced hospital personnel to care for this patient following the cervical disc surgery with plating,
- j having and maintaining grossly deficient hospital policy and procedure, standards, protocol and guidelines regarding post-neurosurgery recovery care of this patient, control of narcotic administration, pain assessment, neurology assessment, timely nursing collaborations and intervention and monitoring of patient care with referring, on-call physicians, and others,
- k failure to appropriately assess and manage neurological complaints,
- l failure to appropriately assess and manage complaints of pain,
- m failure to maintain the patient on oxygen as appropriate,
- n improper documentation of narcotics and other pain medications administered,
- o failure to provide timely and reasonable kidney dialysis to the patient,
- p intent to prevent timely kidney dialysis, and,

q intent to conceal the cause of the patient's cerebral infarct;

PROXIMATE CAUSE

25 As a direct and foreseeable result of the negligent conduct of the named persons and entities, hereinabove enumerated, Johnny Fisher anguish and suffered a needless, senseless, avoidable and preventable injury to the vertebral artery which was left untreated, leading to cerebral infarct, multi-system failure and death.

GROSS NEGLIGENCE

26 The conduct as herein detailed of the named persons and entities constitutes more than ordinary negligence. Their acts and omissions constitute malice and gross neglect as defined by law for which punitive damages are and should be assessed.

DAMAGES

27 The elements of damages are those allowed by statutory and common law to the ESTATE OF JOHNNY FISHER, his heirs and the statutory beneficiaries. Plaintiffs are also entitled to and seek punitive damages as provided and allowed by law.

CONDITIONS PRECEDENT

28 All conditions precedent have been met or will be prior to trial on the merits.

DISCOVERY CONTROL PLAN

29 Plaintiffs and Claimants request an Order from the Court placing this case in Level 3, pursuant to TEX. R. CIV P. 190.4.

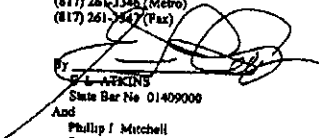
JURY TRIAL

30 Plaintiffs and Claimants request a jury trial and herewith pay jury fee with the filing of this petition.

PREMISES CONSIDERED. Plaintiffs and Claimants pray that citation be issued and served upon the Defendants according to law, that this case be set for trial, and, upon trial, judgment be entered for Plaintiffs and Claimants consistent with these pleadings and including pre-judgment and post-judgment interest as allowed by law.

Respectfully submitted,

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AND ASSOCIATES
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By 
E. L. ATKINS
State Bar No. 01409000
And
Phillip J. Mitchell
Estate Attorney
State Bar No. 00797941

Cause No. C200100173

MILDRED FISHER

VS

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS, et al
Defendants

IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS

413th JUDICIAL DISTRICT

FILED
MAY 15 2007
CLERK OF DISTRICT COURT
JOHNSON COUNTY, TEXAS

AGREED JUDGMENT

On the 2 day of June, 2007, this cause came on to be heard. It was announced to the Court that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie Fisher, Individually and as Administratrix and Representative of the Estate of Johnny Fisher, Deceased, Houston Fisher and Johnny Fisher recover from the Defendant, Fort Worth Osteopathic Hospital, Inc., d/b/s Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and no/100 Dollars (\$975,000.00)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is only to be enforced only in accordance with bankruptcy law, in Case No. 05-41513-DML-7, styled "In Re Fort Worth Osteopathic Hospital, Inc., Debtor", in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.



A CERTIFIED COPY
DISTRICT CLERK
ATKINS & LLOYD
MAY 15 2007
DAVID R. LLOYD
District Clerk Johnson
County Texas

JUDGMENT

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SKINED this 2 day of June, 2007

APPROVED

E.L. Atkins
State Bar No. 01409000
Atkins Law Firm
325 South Mosquito Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

Wayne Clewster
JUDGE PRESIDING

Wayne Clewster
State Bar No. 04328100
Cruce, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Lawrence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.

JUDGMENT

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ORIGIN: SCOTT HENDERSON
E. L. ATKINS LAW

Page: 83/84
PAGE: 86

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SKINED this _____ day of _____, 2007

APPROVED

JUDGE PRESIDING

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JUDGMENT

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAMARA C. HARRIS, CLERK
THE DATE OF ENTRY IS
ON THE COUNTY'S BOOKS

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 25, 2007

Wayne Clewster
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE

FORT WORTH OSTEOPATHIC
HOSPITAL, INC
DBA OSTEOPATHIC MEDICAL
CENTER OF TEXAS

DEBTOR

CASE NO. 05-41513-DML-7

CHAPTER 7

ORDER GRANTING MOTION TO APPROVE AND IMPLEMENT
COMPROMISE AND SETTLEMENT OF TORT CLAIMS BY JACKIE FISHER, ET AL.

Came on for consideration the Motion to Approve and Implement Compromise and Settlement Agreement of Tort Claims by Jackie Fisher, et al (the "Motion") filed by Steven K. Brown, Chapter 7 Trustee in the referenced bankruptcy case. After considering the Motion and the Trustee's certificate of no objections, the Court is of the opinion that the Compromise and Settlement Agreement is in the best interests of the estate, it is therefore

ORDER APPROVING MOTION TO APPROVE AND IMPLEMENT SETTLEMENT AGREEMENT. Page 1 of 1

FIRST NORTH MEMORIAL HOSPITAL, INC. 6/8/A
FIRST NORTH MEMORIAL HOSPITAL, INC. A NON-PROFIT
SELF-INSURANCE PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT, dated the 19th day of September, 1947
by and between FIRST NORTH MEMORIAL HOSPITAL, INC., a non-profit
corporation organized and existing under the laws of the State of
Texas, having its principal place of business in Fort Worth, Tarrant
County, Texas ("Hospital") and TRUST AMERICAN BANK, of Fort Worth,
Texas, a national banking corporation organized and existing under
the laws of the United States ("Trustee")

WITNESSETH

This trust agreement is in witness whereof the agreement between the
Hospital and the Trustee with respect to the organization of a
self-insurance plan fund created by the Hospital pursuant to the
Medical Provider Reimbursement Manual promulgated by the United
States Department of Health and Human Services, Social Security
Administration

ARTICLE I - PURPOSES

- (A) The Hospital owns and operates a 100 hundred bed
Hospital and related facilities in Fort Worth, Tarrant County, Texas
- (B) Despite the excellent claims and loss history of the
Hospital, the annual cost and availability of professional liability
insurance has become a matter of increasing uncertainty and concern
in recent years.
- (C) Because of this concern, the Hospital caused an extensive
study and review to be made of the various alternatives available
to provide economical and dependable protection to the Hospital
against malpractice liability claims.
- (D) After analysis of all the data arising from such
study and review, the Hospital has determined that it is most
reasonable and prudent to maintain a hotel self-insurance program
with the establishment of a reserve fund and the self-insurance
of the risk loss resulting from malpractice and general patient
liability because of the non-availability or exorbitant

of the Department of Health and Human Services.

- 1.01 Plan - shall mean the Hospital's self-insurance plan
with respect to malpractice liability claims
- 1.02 Plan Year - shall mean September 1st, 1947 through
September 30, 1948 as the first Plan Year and beginning October 1,
1948 a Plan Year shall mean a 12-month period thereafter.
- 1.03 Trust - shall mean this trust agreement between the
Hospital and the Trustee and all amendments thereto
- 1.04 Trustee - shall mean Trust American Bank Fort Worth
or any substitute or successor Trustee or Trustees

ARTICLE II - CONTRIBUTIONS

The Hospital hereby covenants and delivers to Trustee, in trust,
to be held and administered in accordance with the terms of this
agreement the sum of money set forth in Exhibit A attached hereto
(the receipt of which is acknowledged by the Trustee), which sum of
money together with such additional money or property as may from
time to time be delivered by the Hospital to the Trustee, including
the income and earnings therefrom, shall constitute the trust
property. Said sum has been determined by means of an
estimate Chicago, Illinois to be reasonably required as a substantially adequate
to fund and reserve for such liability to be incurred and incurred
against the Hospital for the year commencing September 1st, 1947
and expiring September 30, 1948. The Trustee shall have legal
title to the trust property and shall be responsible for the
proper administration and control thereof as hereinafter set forth

ARTICLE III - ADMINISTRATIVE COMMITTEE

3.01 Appointment and Term of Office - The Committee shall
consist of three (3) to five (5) individuals as shall be named by
the board from time to time. The board shall have the right to
remove any member of the Committee at any time. A member may resign
at any time by written resignation to the Committee and Board. If
a vacancy in the Committee should occur, a successor shall be

most of commercial insurance, the Hospital concluded that it would
be in the best interest of the Hospital and community which it
serves to establish a self-funded plan, on an annually reset basis,
designed to enable the Hospital to "self insure" against the
level of malpractice liability incurred by the Hospital and incurred,
if required, commercial insurance coverage from the liability is
excess of self-insured limits.

(E) The Hospital desires that such self-funding plan be
implemented through a trust designed in such manner as to enable
payments thereon to qualify for medical malpractice, and designed
so as to exempt such trust from tax pursuant to the applicable
provisions of the Internal Revenue Code

and, thereupon, the Hospital and Trustee do mutually covenant
and agree as follows:

ARTICLE I - DEFINITIONS OF TERMS

As used herein, unless otherwise defined or required by the
context, the following words and phrases shall have the meanings indicated:

- 1.01 Trustee - shall mean an attorney, insurance company or
broker employed in the field of medical malpractice and general
liability insurance, independent of any direct or indirect financial
control or control by the Hospital and employed to render service
with respect to the plan and the fund.
- 1.02 Board - shall mean the Board of Directors of the Hospital
- 1.03 Committee - shall mean the committee which shall administer
the plan as provided in Article I.
- 1.04 Contributions - shall mean payments by the Hospital to
the Trustee for the Plan.
- 1.05 Fund - shall mean the trust fund created in accordance with
this Plan.
- 1.06 Hospital - shall mean First North Memorial Hospital, Inc.
6/8/A First North Memorial Hospital, Inc., Fort Worth, Tarrant
County, Texas
- 1.07 Medical Manual - shall mean the medical practice
reimbursement manual promulgated by the Social Security Administration

appointed by the board

The Hospital shall, by written notice, keep the Trustee notified
of current membership of the Committee, its officers and agents,
and shall furnish the Trustee a certified signature card for the
members of the Committee. For all purposes hereunder, the Trustee
shall be conclusively notified in only upon such certified
signature

3.02 Organization of Administrative Committee - The Committee
shall elect a chairman and secretary from among its members. It
may appoint agents if deemed necessary for the effective performance
of its duties and may delegate its such appointments to one or more
members of the Committee such powers and duties, whether administrative
or discretionary, as the Committee may deem expedient and appropriate.
The Committee shall meet by majority vote. Its members shall serve
without compensation.

3.03 Power of Administrative Committee - The Committee shall
be governed by the Board with respect to the control of the admin-
istration of the Plan and shall provide it with all powers and
instructions necessary to enable it to properly carry out its
duties in that respect, and all powers conferred upon it by the
Plan. Not in limitation, but in confirmation of the foregoing,
the Committee shall have the power to construct the Plan, to review
periodically the adequacy of funding and of investment performance
and communicate its findings to the Hospital and the Trustee, and
to take such action as may be necessary to remedy any administrative
error and to determine all questions that shall arise under the
Plan. Subject to any limitations imposed on the Committee by the
Board, it shall decide all questions relating to the determination
of payments from the Fund, provided such payment shall be available
for the purpose of the Plan as hereinafter provided.

(incised in, the following information:

- (a) The balance of the trust property at the beginning of each Plan Year;
- (b) Current period contributions;
- (c) The amount and nature of fiscal payments, including a separate accounting for estate management, legal expenses, claims paid, and other similar items; and
- (d) The trust property balance at the end of the Plan Year notwithstanding any obligation to restate within 90 days after the close of each 12-month period. Trustee shall render such reports regarding the trust fund and containing such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a Plan Year, or if the Trustee shall resign or be removed, the Trustee shall, within 90 days of such termination, resignation or removal date, submit its final statement and accounts for the period from the last previous accounting to the date of such termination, resignation or removal.

5.07 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 90 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall render to the Hospital an account of its administration of the Fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the Fund to its successor Trustee.

5.08 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 90 days' written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account and transfer and deliver the assets of the Fund as its predecessor as provided in the case of the Trustee's resignation.

5.09 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the most qualified and readily available financial institution whose

services to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will maintain this agreement indefinitely. However, in the event of a vacancy in the trusteeship of this trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this type. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

5.10 Liability. Neither any member of the Committee, the Board, the Hospital, the attorney nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own acts, omissions, neglect or default when it is grossly negligent.

ARTICLE 6 - POWERS OF TRUSTEE

6.01 Generalized Powers. The Trustee or any successor Trustee shall have the authority without order or report to any court or officer as hereinafter set forth in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and immunities as provided in the laws of the United States and those of the State for banks exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To create, sell, convey or otherwise dispose of any stocks, bonds, securities, options or other property, including common trust funds established by the Trustee, and to act in the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of this discretion, except that of using ordinary care; provided, however, that no loans may be made from the trust property to the Hospital or to any person related to the Hospital within the meaning of the Medicare regulations.

(2) To sell, mortgage, or otherwise dispose of any property as may then hold or require hereunder at public or private sale, for each of the trusts, without the necessity of court approval

or investment:

(3) To register any stock, bond or other security in the name of a nominee, with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing that such property is a trust asset.

(4) To borrow in certificate of deposit and accounts issued by Trustee.

(5) To vote in person or by proxy all stocks or other securities, to grant proxies, general or limited, and to agree or take any other action in regard to any reorganization, merger, consolidation, bankruptcy or other procedure or proceedings affecting any property of the Trust.

(6) To agree without suing and filing inventory and appointment, without filing any account or other return to any court and without giving bond; but the Trustee shall furnish to the Hospital such financial statements as may otherwise be required by this agreement.

(7) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that Trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

6.02 Compensation. The Hospital is authorized to pay the Trustee reasonable compensation for its services rendered. Said compensation shall be based on what is reasonably and customarily charged for services of a similar type or nature in the community and shall include an evaluation of the services rendered by the Trustee together with the experience of persons or disbursements under this Trust Agreement.

ARTICLE 7 - EMERGENCY AND TERMINATION

7.01. The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, in whole or in part, any or all of the provisions of this Plan and Trust Agreement provided, however,

that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without its consent.

7.02 Termination. The Hospital reserves the right to terminate this Plan at any time by action of the Board communicated in writing to the Trustee. If the Hospital rescinds this agreement or terminates the Plan, then upon receipt of written notice thereof, the Trustee shall either:

(1) Notify and administer in accordance with this agreement each portion of the trust property to the Hospital shall certify to the Trustee has been determined by an attorney as required by the Medicare regulations as a necessary trustee fund for future payment of the Plan until such time as the Hospital shall certify to the Trustee that an independent attorney has determined that such payment has been put or reserved as no longer necessary, whereupon the Trustee shall deliver the balance of the trust property to the Hospital or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the Medicare regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 8 - MISCELLANEOUS

8.01 Headings. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

8.02 Severability. This agreement shall be construed in accordance with the laws of the State of Texas. In the construction of this agreement, the drafter shall include the terms and the singular the plural in all cases where such meanings would be appropriate.

8.03 Inapplicability. Should any provision of this agreement be found to violate any law, such provision shall be deemed void

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

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IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 3

EXHIBIT J

ESTATE OF JOHNNY FISHER, DEC'D,
Plaintiff

VS.

J P MORGAN CHASE BANK,
GLENN MILTON, JAY SANDLIN,
LUCY NORRIS, RN, and
NANCY ARGO,
Defendants

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IN THE DISTRICT COURT

413TH JUDICIAL DISTRICT

JOHNSON COUNTY, TEXAS

FILED
JOHNSON COUNTY
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DISTRICT CLERK

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION AND CLAIM OF ESTATE
TO THE HONORABLE COURT:**

This "claim" is brought by the Estate of Johnny Fisher, Deceased, (hereafter, at times, "The Fisher Estate" or "Plaintiff") pursuant to TEX. PROBATE CODE ANN. SEC. 233A (Vernon).

This claim is brought against J.P. MORGAN CHASE BANK (hereafter, at times "Chase Bank") for breach of fiduciary duty and against GLENN MILTON (hereafter, at times "Milton"), JAY SANDLIN (hereafter, at times "Sandlin"), LUCY NORRIS, RN (hereafter, at times, "Norris") and NANCY ARGO, RN (hereafter, at times "Argo") for civil conspiracy to breach a fiduciary duty.

In support of this claim, Plaintiff shows unto the court and the jury, as follows:

Discovery Level

- 1. Plaintiff requests that discovery proceed in this case under **Level 3**, and that an appropriate scheduling order be entered.

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First Amended Original Petition

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Jurisdiction and Venue

2. **Jurisdiction and Venue Provided by Texas Probate Code.** This claim is a “matter appertaining to an estate or incident to an estate”.¹ The administration of the estate bringing this claim is pending in Johnson County, Texas. This is a claim in tort brought by The Fisher Estate based upon various causes of action, hereafter set forth.² The claim was transferred from the Johnson County Probate Court on October 6, 2008, by Order of Transfer, pursuant to the statutory authority granted to the Probate Court.³

This District Court has jurisdiction over this claim because the Probate Court, in which it was filed, has jurisdiction and transferred the case to the 413th District Court, Johnson County, Texas.⁴

3. **Additional Basis for Jurisdiction and Venue Provided by Texas Civil Practice & Remedies Code.** A “substantial part of the events or omissions giving rise to the claim occurred” in Johnson County, Texas.⁵ The medical malpractice claim, upon which a judgment owned and held by The Fisher Estate (hereafter, at times “The Judgment”) was ultimately

¹ § 5, TEX. PROBATE CODE

² § 233A, TEXAS PROBATE CODE

³ §§ 5, 5A and 5B, and 233A, TEXAS PROBATE CODE.

⁴ *Id*

⁵ TEX. CIV. PRAC. & REM. CODE ANN, § 15.002, et seq

obtained, was filed in and tried wholly in the 413th District Court, Johnson County, Texas ("The Underlying Lawsuit" or "the medical malpractice lawsuit"). Concealment of improper conduct is also a significant element of this case. False documents concealing the improper conduct committed by the Defendants were filed in The Underlying Lawsuit. This concealment forms a basis, in whole or in part, of the claims set forth in this lawsuit. This claim involves, in part, the conspiracy to conceal the falsity of these pleadings and the breach of fiduciary duty and civil conspiracy to breach a fiduciary duty and the concealing from Plaintiff, from the 413th District Court, Johnson County, Texas, and from others, the misappropriation of large sums of money from a trust established to resolve and satisfy claims of medical malpractice victims, including Plaintiff's claim. Therefore, a "substantial part of the events or omissions giving rise to the claim occurred" in Johnson County, Texas.⁶

4. The Judgment is a significant element, if not a lynchpin, of Plaintiff's cause of action.⁷
5. Venue is proper in Johnson County, Texas.⁸
6. The amount in controversy exceeds the minimum jurisdictional limits of the District

⁶ TEX. CIV. PRAC. & REM. CODE ANN, § 15.002 (1), et seq

⁷ *Brazos Elec. Power Co-op., Inc. v. McCullough*, 599 S.W. 2d 357, 361 (Tex. Civ. App. - Waco 1980, no writ); *Southern County Mutual Ins., v. Ochoa*, 19 S.W. 3d 452, 461 (Tex. App. - Corpus Christi 2000, no pet.); *Birkes v. Lloyds Casualty Ins.*, 209 S.W. 2d 438 (Tex. Civ. App. - Austin 1948, no writ); *Bonham State Bank v. Beadle*, 907 S.W. 2d 465, 471 (Tex. 1995)

⁸ Plaintiffs are given the right to choose venue first. *Wilson v. Texas Parks & Wildlife Dept.*, 886 S.W. 2d 259, 262 (Tex. 1994) As long as the plaintiff files suit in a county of proper venue (i.e., the selected county is at least a permissive venue and no mandatory provision of the venue statute applies), the plaintiff's venue choice will not be disturbed. *Id.*

First Amended Original Petition

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Courts of Texas.

7. For the reasons herein above stated, this court has jurisdiction and venue over this cause of action to enforce a claim of The Fisher Estate, pursuant to TEX. PROBATE CODE ANN. Sec. 233A (Vernon) and pursuant to TEX. CIV. PAC. & REM. CODE Sec. 15.002, et seq (Vernon).

Parties

8. **Plaintiff:**

a. **The Estate of Johnny Fisher, Deceased**, the administration of which is pending in the Probate Court of Johnson County, Texas.⁹

9. **Defendants:**

a. **JP Morgan Chase Bank, N.A.** Chase Bank is a corporation authorized to transact business in Texas. Chase Bank's registered agent for service of process is CT Corporation Systems, 350 St. Paul St., Dallas, TX 75201.

b. **Glenn Milton**, whose present address is 612 Merrill Drive, Bedford, TX 76022-7130;

c. **Jay Sandlin**, whose present address is 4708 Innisbrook Lane, Fort Worth, Texas 76179;

d. **Nancy C. Argo, RN**, whose present address is 1190 Whispering Oaks Dr., DeSoto, TX 75115-7407; and

e. **Lucy Norris, RN**, whose present address is 2101 Count Fleet Drive, Unit 514, Arlington, Texas 76011-2123;

10. Plaintiff requests that citation be issued and served upon each defendant, as required by

⁹ The Administrator of the Estate of Johnny Fisher, Dec'd, Jackie Fisher, is, now, also deceased. A substitute representative has not been appointed, at this time. *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845 (Tex. 2005); *Lorentz v. Dunn*, 171 S.W.3d 854 (Tex. 2005)

law.

11. **Wrongful Removal Caused Undue Delay.** The wrongful removal of this lawsuit from state court by Chase Bank has prevented this case from moving forward in this state court.

Shortly after this lawsuit was filed in this court, Defendant, Chase Bank improvidently attempted to remove the case to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.¹⁰ The Notice of Removal was not filed with any state court in Johnson County, Texas, as required by law¹¹ and as represented by Chase Bank¹².

12. The Bankruptcy Court abstained from hearing the case and the Federal District Court ruled that the lawsuit was improvidently removed from state court, that there was no fraudulent joinder, as Defendant, Chase Bank alleged, and ordered the case remanded to the state court from which removal was attempted.¹³ A merit less motion to reconsider was filed by Chase Bank

¹⁰ Notice of Removal

¹¹ 28 U.S.C. § 1446 (d)

¹² Chase Bank's Notice of Removal, at ¶ 33., page 10. The affidavits of both the Clerk of the Probate Court of Johnson County, Texas and the Clerk of the District Courts of Johnson County, Texas are filed with the papers in this cause. When this failure was discovered by Plaintiff's counsel and brought to the attention of the Courts, Defendant, Chase Bank unsuccessfully attempted to file the Notice of Removal and have the filing date changed by the Johnson County District Clerk's personnel, to show a filing date in October, 2008 - the date when the Notice of Removal was filed in Federal Court.

¹³ Order of Remand, dated September 23, 2009

First Amended Original Petition

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which was summarily rejected by the Federal Court.¹⁴ The Orders of the Federal Courts are filed with the papers in this cause and in the Probate Court files administering the Fisher Estate.

13. **Delay Prevented Timely Service of Process upon Defendants.** For the reasons herein stated, the wrongful removal of this case to federal courts has resulted in a significant and senseless delay of more than one and one-half years in obtaining service of process upon the individual defendants and a significant delay in this case moving forward in this court.

Nature of Claim

14. The Fisher Estate owns and holds an unsatisfied judgment ("The Judgment") against Fort Worth Osteopathic Hospital, Inc. (hereafter, at times, "FWOH" or "The Hospital") based upon a medical malpractice claim, which The Fisher Estate asserted against The Hospital and filed in Johnson County, Texas.

15. The Hospital is bankrupt.¹⁵

16. The Hospital established a self-insured trust fund in lieu of liability insurance, in 1987, to resolve and satisfy claims of victims of hospital malpractice.¹⁶ The trust is referred to, at times, as "the subject trust" or "The Trust" or "The Trust Fund".

17. Defendant, Chase Bank is the trustee of the subject trust at all relevant times.

¹⁴ Order Denying Motion to Reconsider, dated April 15, 2010

¹⁵ The Hospital's bankruptcy is pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, Case No. 05-41513-DML, Hon. D. Michael Lynn, presiding.

¹⁶ Exhibit "1" - "The Trust Agreement"

18. The individual Defendants, Milton, Sandlin, Norris and Argo were employees and officers of The Hospital at all relevant times and possessed unique knowledge of the operation of the subject trust because of their positions with The Hospital.

19. This is a claim against Chase Bank for breach of fiduciary duty as trustee of the subject trust, and against the individual Defendants, Milton, Sandlin, Norris and Argo for participating in, aiding, encouraging and otherwise conspiring with Chase Bank to misappropriate large amounts of trust funds and to breach its fiduciary duties to Plaintiff, either as a beneficiary of the subject trust or, otherwise, as one to whom a fiduciary duty is owed by Chase Bank as a result of its peculiar relationship with Plaintiff.

20. Plaintiff seeks compensatory damages, exemplary damages, attorney fees and any and all other damages allowed by law against Defendants, jointly and severally.

Factual Background

21. The Fisher Estate is a judgment creditor of The Hospital.

22. The Fisher Estate owns The Judgment as a result of a medical malpractice claim and lawsuit filed against FWOH in 2001 for damages from injuries sustained by Johnny Fisher, a FWOH patient, resulting in his death on October 1, 1999.

23. On numerous occasions, after the medical malpractice lawsuit was filed by The Fisher Estate, the individual Defendants represented to the 413th District Court in Johnson County, Texas in disclosures filed with the Court, in documents provided to Plaintiff and in representations made to Plaintiff, Plaintiff's counsel and others, that The Hospital had

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\$4,000,000.00 in the subject trust The individual defendants also represented that the Hospital had excess liability insurance coverage with upper limits of \$25,000,000.00 specifically established to satisfy any judgment Plaintiff might obtain in The Underlying Lawsuit.

24. The Judgment was signed and entered in the medical malpractice lawsuit on June 7, 2007 by Hon. William Bosworth, District Judge, 413th District Court, Johnson County, Texas, against FWOH, awarding Plaintiff damages in the amount of \$975,000.00.¹⁷

25. Following entry of The Judgment, demand was made for payment to satisfy The Judgment.

26. Chapter 7 Bankruptcy Trustee, Shawn Brown, advised Plaintiff that he did not have funds available from The Trust to pay The Judgment. Chase Bank refused to respond to the demand.

27. In its efforts to determine why the subject trust did not have \$4,000,000.00, as represented, to satisfy The Judgment, Plaintiff discovered the following:

a. Plaintiff was advised by Trustee Brown that he had taken control of The Trust Fund and that there was only a few thousand dollars in The Trust Fund when he seized it.

b. The risk management committee of The Hospital, which included and/or was under the oversight of one or more of the individual Defendants had assigned \$900,000.00 to be reserved for the payment of Plaintiff's medical malpractice claim.

¹⁷ Exhibit "2"

- c. Plaintiff obtained a copy of The Trust Agreement¹⁸ which provides:
- i. The Trust is a separate entity.
 - ii. The Trustee has legal title to The Trust assets and its fund.
 - iii. The Trust is established for a specific purpose and for specific beneficiaries.
 - iv. The purpose of The Trust is to self-insure against the initial levels of malpractice liability.
 - v. The Trust is established for the benefit of victims of hospital malpractice.
 - vi. The Trust is established for the sole purpose of paying medical malpractice claims filed against The Hospital and related expenses of medical malpractice claims and lawsuits.
 - vii. The beneficiaries of The Trust are those having medical malpractice claims against FWOH.
 - viii. Payment shall be made from The Trust only for malpractice losses of The Hospital.
 - ix. Payment from The Trust Fund shall be made only on written authorization from designated hospital representatives, certifying that the payment is related to the Plan and for one or more of the purposes specified in The Trust Agreement.
 - x. The trustee is required to make payment solely upon the direction of an Administrative Committee [of The Hospital].
 - xi. Payment from The Trust is authorized only for malpractice losses of The Hospital, for expenses for administering the claims management program, expenses of establishing the Trust and trust fund, legal expenses, actuarial expenses, costs relating to the acquisition for The Hospital of excess

¹⁸ Exhibit "1"

insurance coverage, expenses involved in the maintenance of The Trust and cost of administering any risk management program of The Hospital.

- xii. No withdrawal or appropriation from The Trust, not enumerated in The Trust, is authorized.
- xiii. The trustee is required to keep accurate and detailed accounts of all receipts, investments and disbursements with respect to The Trust property.
- xiv. The trustee is required to deliver a financial statement to The Hospital at the close of each twelve (12) month period, ending on September 30, of each year.
- xv. In the event The Trust is terminated, funds must be maintained in The Trust to resolve claims pending at the time of termination.
- xvi. Nothing in The Trust Agreement allows its trustee to refuse to pay any judgment obtained by a victim of hospital malpractice, after that victim's claim is reduced to judgment.
- xvii. No provision of The Trust Agreement relieves the trustee of its duty to act prudently and/or in good faith or to exercise independent judgment authority, when appropriate.

28. After Plaintiff was advised by Trustee Brown that there were not sufficient funds in The Trust to satisfy The Judgment, Plaintiff then, through discovery and additional investigation, also determined that The Trust was established in accordance with and to satisfy certain Medicare regulations¹⁹, to wit:

- a. The Hospital must either maintain primary liability insurance to protect The Hospital in connection with medical malpractice claims, or if the hospital elected to establish a self-insured trust fund, in lieu of malpractice insurance, that The

¹⁹ Medicare Provider Reimbursement Manual

Trust Fund be established on specific terms required by and approved by Medicare.

- b. The subject trust was established because The Hospital elected to not obtain and carry primary liability insurance to cover medical malpractice claims asserted against The Hospital.
- c. The Hospital must continually maintain funds in The Trust sufficient to resolve all pending malpractice claims against The Hospital, even in the event of termination of The Trust.
- d. The Hospital was required to maintain excess liability insurance coverage for medical malpractice claims.
- e. The Trust is required to maintain sufficient funds to resolve pending medical malpractice claims, in the event the hospital chooses to terminate The Trust.
- f. Legal title to The Trust must be in a separate entity from The Hospital.
- g. A hospital electing to establish a self-insured trust fund is referred to as the "provider" in the manual.
- h. Loans to the provider [the hospital] from The Trust are prohibited.
- i. Withdrawals from The Trust are only allowed for malpractice claims and related expenses.
- j. An adequate risk management program, similar to programs provided and operated by insurance companies, must be utilized.
- k. A process or procedure was required to be in place to adjust medical malpractice claims.
- l. Programs must be in place at the hospital to minimize malpractice claims.
- m. Adequate excess liability insurance must be maintained.
- n. Failure to comply with the provisions of the manual could result in severe penalties, including denial of Medicare benefits.

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29. The Trust was, initially, funded in 1987 with \$1,000,000.00.
30. Chase Bank produced few records regarding activities of The Trust during the twenty (20) years of its operation.
31. The Hospital purchased what is generally described as "excess coverage" insurance which provided coverage for any claims against The Hospital in excess of the self-insured fund maintenance level of \$4,000,000.00.
32. The "excess" liability insurance policy in place when Plaintiff's claim was asserted against The Hospital required that The Hospital maintain \$4,000,000.00 in the self-insured fund.
33. Failure to maintain the represented level in The Trust could result in cancellation of the excess liability insurance coverage policies, which, in turn, would be a violation of Medicare requirements.
34. If The Trust Fund were not maintained, as required, The Hospital could be closed because Medicare payments were a significant source of hospital income.
35. If Medicare officials discovered that false reports regarding the status of The Trust Fund were filed with Medicare, The Hospital could be denied Medicare benefits.
36. Transactions were discovered that involved depositing large sums of money into The Trust bank account at Chase Bank, then almost immediately withdrawn and used for non-trust purposes.
37. There were sufficient funds in The Trust Fund to satisfy the assigned value of Plaintiff's

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claims prior to the alleged misappropriations.

Representations

38. The following representations were made, which were false:

a. During the course of the litigation in The Underlying Lawsuit, representations were made by The Hospital to Plaintiff that there were sufficient funds to satisfy any judgment Plaintiff might obtain in the underlying malpractice lawsuit.

b. The Hospital represented to the 413th Judicial District Court of Johnson County, Texas, to Medicare, to excess liability insurance carriers and to other creditors of The Hospital, including Plaintiff, that the self-insured trust fund did, in fact, maintain a balance of \$4,000,000.00 to resolve any pending medical malpractice claim.

39. Chase Bank represents that it does not have records of the activities of the subject trust that had been in operation for more than twenty (20) years, other than a few bank statements.

40. When Plaintiff discovered that the individual Defendants knew that trust funds had been withdrawn from The Trust and used for purposes not authorized by The Trust, Defendants, initially, represented that The Trust was really "the hospital's money". Later Chase Bank represented and claimed that The Trust was not The Hospital's money, but, rather, that The Hospital was the "sole beneficiary" of the subject trust. Both of these representations and claims were rejected by The Bankruptcy Court overseeing the bankruptcy of The Hospital.²⁰

²⁰ U.S. Bankruptcy Court Decision to Abstain, dated April 15, 2009, a copy of which is filed with the papers in this cause.

Claims

41. In support of the claims herein asserted, Plaintiff incorporates paragraphs 1. through 40., herein above, the same as if set forth herein, again, verbatim.

42. Plaintiff seeks to recover damages, compensatory and exemplary, from the named Defendants for improper and illegal management of The Trust, for misappropriation of trust funds established for the benefit of Plaintiff, as a victim of hospital malpractice, for breach of fiduciary duty by Chase Bank and for civil conspiracy of the individual Defendants in aiding, encouraging and approving the improper management of The Trust and the misappropriation of large sums of trust funds by Chase Bank.

Breach of Fiduciary Duty

43. In support of this claim, Plaintiff incorporates paragraphs 1. through 42., herein above, the same as if set forth herein, again, verbatim.

44. Chase Bank was the trustee of The Trust.

45. Chase Bank's duties to Plaintiff under The Trust Agreement are clear.

46. Chase Bank, as trustee, had a duty to comply with the terms and provisions of The Trust Agreement.

Plaintiff is Beneficiary of The Trust

47. Based upon the following undisputed facts, Plaintiff is a "person" to whom Chase Bank owed a fiduciary duty to maintain funds in The Trust sufficient to satisfy Plaintiff's claim and judgment:

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- a. The subject trust was established to pay claims of victims of hospital malpractice.
- b. Johnny Fisher was a victim of hospital malpractice.
- c. The Fisher Estate "stands in the shoes" of Johnny Fisher and is, therefore a "person" for whose benefit The Trust was established.²¹
- d. Plaintiff is "a person for whose benefit property is held in trust, regardless of the nature of Plaintiff's interest [in The Trust]".
- e. The Trust refers to the beneficiary of The Trust as a "person"
- f. The Hospital never was a person.
- g. The Hospital has represented in papers filed with the trial court in the underlying medical malpractice lawsuit that Plaintiff is a beneficiary of The Trust.
- h. The Trust was structured to be in compliance with the provisions of the Medicare Provider Reimbursement Manual
- i. The Medicare Provider Reimbursement Manual defines the hospital as the "provider" and not the "beneficiary" of The Trust.
- j. The Medicare Provider Reimbursement Manual define the victims of hospital malpractice as the beneficiaries of this, and similar self-insured retention funds or trusts.

48. Additionally, the following facts further support Plaintiff's claim that it is a beneficiary of the subject trust:

- a. Chase Bank has represented in pleadings filed in The Hospital's bankruptcy case that the beneficiaries of the Trust are victims of hospital malpractice.²²

²¹ § 71.021, TEX. CIV. PRAC. & REM. CODE ANN. (VERNON) "Survival of Cause of Action"

²² JP Morgan Chase Bank, N.A. Motion to Dismiss, March 14, 2007, "In re: Fort Worth Osteopathic Hospital, Inc., Debtor", Case No. 05-415-13-DML, "Shawn K. Brown Chapter 7 Trustee, For Fort Woprth Osteopathic Hospital, Inc., Plaintiff, vs. JPMorgan Chase Bank, N.A., Defendant",

- b. The Hospital has represented that Plaintiff is a beneficiary of The Trust.²³
- c. The Hospital has specifically represented that The Trust fund was available to pay Plaintiff's claim and judgment.²⁴
- d. To conclude that anyone, who is not a victim of hospital malpractice, is the beneficiary of this trust would render The Trust provisions regarding its purpose meaningless.
- e. To conclude that a victim of hospital malpractice is not a beneficiary of this trust would also render The Trust provisions regarding its purpose meaningless.
- f. The Trust provides that payments from The Trust shall be made "only for malpractice losses of the hospital".
- g. Plaintiff, as a victim of hospital malpractice is "sufficiently identified" in The Trust, as a beneficiary of The Trust, as required by state law.
- h. Victims of hospital malpractice are the "persons" who are benefitted "directly" by The Trust and not merely "incidentally" by The Trust.
- i. The Trust is a contract and its beneficiary can enforce its provisions. A reading of The Trust and the Medicare Provider Reimbursement Manual evidences that the

Adversary No. 07-04016-DML sec, p. 3:

Clearly, this suit is an attempt by the Chapter 7 Trustee to enforce claims of personal injury that do not belong to the Debtor, and is not a suit for recovery of funds belonging to the estate. Paragraphs 43 through 46 are replete with references to duties owed and allegedly breached; however, *the beneficiaries are identified as the malpractice victims, and not the Debtor.*

See, Shell Oil Co. v. Humphrey, 880 S.W.2d 170 (Tex. App. - Houston [14th Dist.] 1994, writ denied); *Lansford v. Sage*, 438 S.W.2d 615 (Tex. Civ. App. - Houston [1st Dist.] 1969, writ ref'd, n.r.e.); *Ogden and Johnson v. Bosse*, 86 Tex. 336, 344, 24 S.W. 798 (1894)

²³ Exhibit "3"

²⁴ Exhibit "3"

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beneficiary of The Trust can enforce the terms and provisions of The Trust.

j. The Bankruptcy Court has determined that Plaintiff is a beneficiary of The Trust.²⁵

49. For the reasons herein above stated, the issue of whether Plaintiff is a beneficiary of the subject trust is clear.

50. Plaintiff is sufficiently identified as a beneficiary of The Trust, as a matter of law.

51. Alternatively, Plaintiff is "one that The Trust was intended to benefit" and should, therefore, be deemed a beneficiary of The Trust.

52. Alternatively, Plaintiff is one with whom Chase Bank had a "position of peculiar confidence" and should be deemed a beneficiary of The Trust.²⁶

53. **Duties Breached.** Chase Bank breached its fiduciary duty to Plaintiff in one or more of the following particulars:

- a. Failure to pay from The Trust only those expenditures allowed by the provisions of The Trust Agreement;
- b. Failure to make disbursements from The Trust only on written authorization from designated hospital representatives, certifying that the payment is related to the Plan and is for one or more of the purposes specified in The Trust Agreement;

²⁵ Exhibit "4", Letter Opinion, May 31, 2007, Hon. Dennis Michael Lynn, U.S. Bankruptcy Judge, United State Bankruptcy Court, Northern District of Texas, in *Shawn K. Brown, Ch. 7 Trustee for Fort Worth Osteopathic Hospital, Inc. v. JPMorgan Chase Bank, N.A.*, Adversary Proceeding No. 07-04016

²⁶ *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193 (Tex. 2002); *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex.565, 16 S.W.2d 509, 512 (1942); *Paschal v. Great Western Drilling*, 215 S.W.3d at 451; *In Re Allied Physicians Group, P.A.*, Case No. 397-31267-HCA-7, Civil Action No. 3:02-CV-2368-G (N.D. Tex. 2003) (citing *Kinzbach Tool Co. case*)

- c. Failure to make disbursements from The Trust solely upon the direction of an Administrative Committee [of The Hospital] for designated purposes.
- d. Failure to make disbursements from The Trust only for malpractice losses of The Hospital, as defined in The Trust, to wit: malpractice claims, expenses for administering the claims management program, expenses of establishing the Trust and trust fund, legal expenses, actuarial expenses, costs relating to the acquisition for The Hospital of excess insurance coverage, expenses involved in the maintenance of The Trust and cost of administering any risk management program of The Hospital;
- e. Failure to prepare and maintain accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property;
- f. Failure to deliver a financial statement of The Trust to The Hospital at the close of each twelve (12) month period, ending on September 30, of each year.
- g. Failure to maintain adequate funds or other assets in The Trust on termination of The Trust to satisfy pending malpractice claims;
- h. Failure to maintain at least \$900,000.00 in The Trust Fund to satisfy Plaintiff's claim; and,
- i. Failure to manage The Trust in good faith and to exercise independent judgment authority, as and when appropriate.

Civil Conspiracy

54. In support of this claim, Plaintiff incorporates paragraphs 1. through 53., herein above, the same as if set forth herein, again, verbatim.

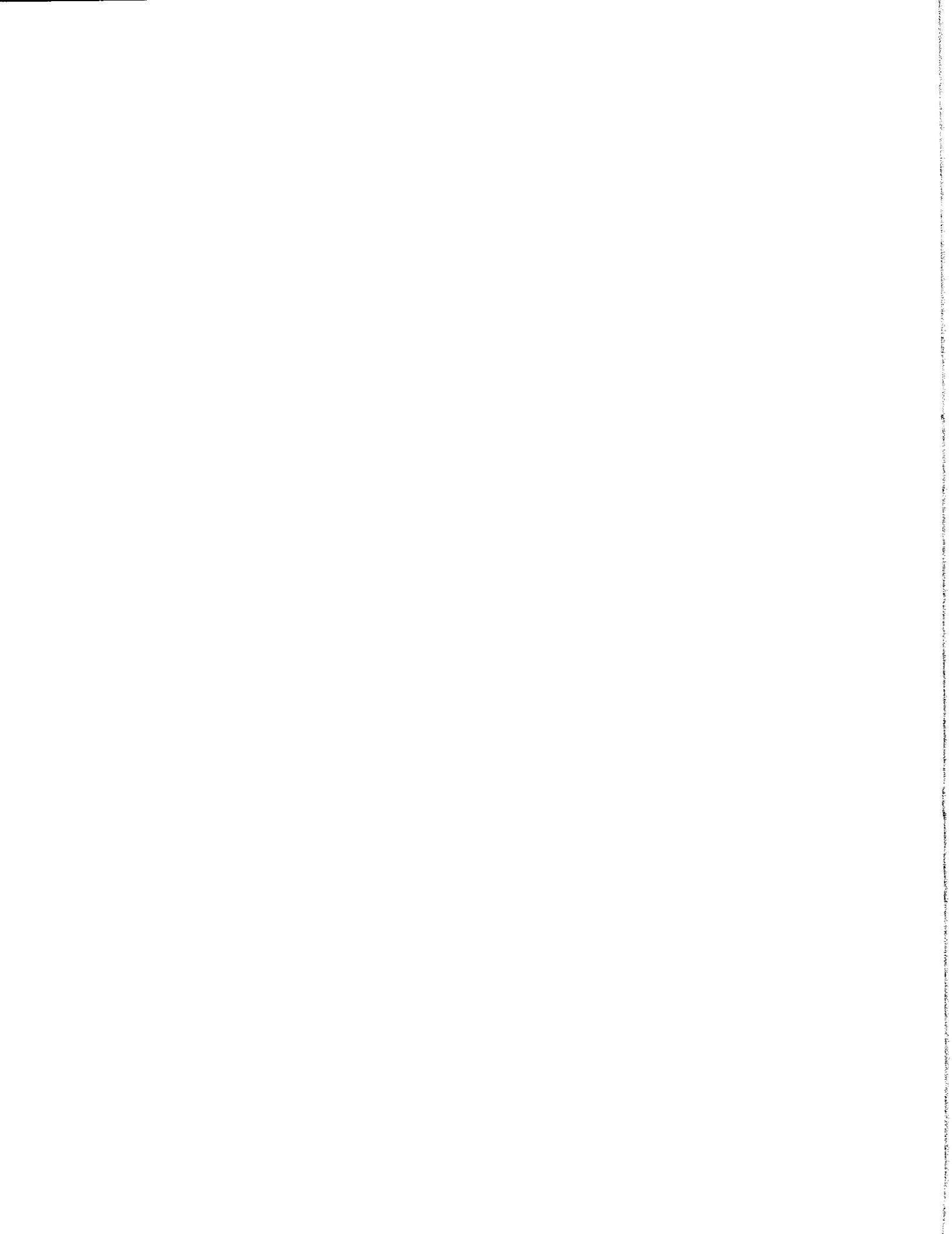
55. Defendants, Milton, Sandlin, Norris and Argo, each and all, were in positions in which they could encourage and assist Chase Bank in the misappropriation of Trust Funds and conceal those misappropriations, to wit:

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- a. each knew the restrictions placed upon the use to be made of trust funds.
- b. each was acquainted with the officers of Chase Bank to whom the management of The Trust was assigned.
- c. each, being officers and/or directors of The Hospital, knew the importance of The Trust being managed properly and in accordance with The Trust Agreement's terms and provisions.
- d. each knew that improper management of The Trust could jeopardize The Hospital's relationship with Medicare and its excess liability insurance coverage.
- e. each had access to the risk management documents of The Hospital and knew how malpractice claims asserted against The Hospital were received, reviewed, evaluated, and processed.
- f. each knew the medicare requirements applicable to The Trust.
- g. each knew the excess liability insurance policy requirements applicable to a self-insured trust or retention fund.
- h. each knew the possible consequences if The Trust Fund was not used for its intended purposes and not managed according the mandatory requirements set forth in The Trust.
- i. each was in a position where he or she could aid and participate in the misappropriation of trust funds and could conceal those misappropriations from liability insurance carriers and from Medicare officials and, even, from other directors and officers of The Hospital.
- j. each was in positions where he or she could also conceal misappropriations of Trust Funds from Plaintiff and from the 413th District Court, Johnson County, Texas.
- k. each was in a position where he or she could direct hospital funds to be deposited into The Trust Fund, then, to almost immediately be withdrawn from the subject trust by Chase Bank and used for purposes not authorized by The Trust.
- l. each knew the amount assigned to Plaintiff's medical malpractice claim and that

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said amount was required to be maintained to satisfy that claim, but allowed those trust funds to be depleted, anyway.

56. As a direct result of the misappropriation of funds by Chase Bank from The Trust with the assistance of Milton, Sandlin, Norris and Argo, each and all, Chase Bank managed to misappropriate several million dollars from The Trust.

57. Defendants, Milton, Sandlin, Norris and Argo, each and all, knew, or should have known, that the representations which were made, as stated in ¶38., herein, were false.

58. As a direct result of the misappropriation of large withdrawals of trust funds by Chase Bank with the active assistance and/or encouragement of Milton, Sandlin, Norris and Argo, each and all, The Trust had less than \$20,000.00 to satisfy Plaintiff's judgment, when The Judgment was obtained and demand for payment made.

59. For the reasons herein stated, Defendants, Milton, Sandlin, Norris and Argo, each and all, knowingly and actively participated and conspired in the concealing of the misappropriation of funds from The Trust, from Medicare officials, from hospital directors, from hospital liability insurance carriers, from the courts and from Plaintiff.

60. For the reasons herein stated, Defendants, Milton, Sandlin, Norris and Argo, each and all, aided and conspired with Chase Bank in the breach of its fiduciary duties to Plaintiff.²⁷

Proximate Cause of Damages

61. Plaintiff alleges and will show that, at all times material to the claims made by Plaintiff in

²⁷ *Kinzbach Tool Co., Inc. v. Cobett-Wallace Corp.*, 138 Tex. 565, 160 S.W.2d 509, 514 (1942)

the underlying malpractice lawsuit, FWOH had funds sufficient to fund and maintain The Trust and satisfy Plaintiff's claims. At times relevant to the medical malpractice claims made by Plaintiff upon The Hospital in The Underlying Lawsuit, after Plaintiff filed the claim and The Hospital assigned a value to that claim, The Trust had sufficient funds to be held in reserve to satisfy the claim. It failed to do so. Therefore, had The Trust been properly managed by Chase Bank and the funds paid to The Trust been retained and used as they were required to be used, there would have been funds in this self-insured fund, in lieu of liability insurance, to satisfy The Judgment. As a direct result of Chase Bank's breach of fiduciary duty and misappropriation of large sums of trust funds and the civil conspiracy of the individual defendants participating in those misappropriations, as herein above enumerated, there are not sufficient funds in The Trust to satisfy The Judgment.²⁸

62. Defendants' wrongful conduct herein above detailed is a direct and proximate cause of Plaintiff's damages, herein enumerated and sought.

Damages

63. Plaintiff states that its damages are not determined, at this time, but include the loss of the value of The Judgment. Plaintiff seeks all actual and compensatory damages, all statutory damages, all punitive damages, and any and all attorney fees to which it is entitled.

Pre-Judgment Interest

²⁸ *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001)

64. Plaintiff seeks pre-judgment interest, as allowed by law.

Written Discovery Attached to Pleading

65. Requests for Disclosure, directed to each of the Defendants, are attached to this pleading, to be served upon each with this pleading. Requests for Production directed to each of the Defendants are also attached to this pleading, to be served upon each with this pleading.

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Prayer

PREMISES CONSIDERED, Plaintiff prays that citation be issued and served upon each of the named Defendants, as allowed and provided for by law, that an appropriate Scheduling Order be entered, that this case be set for and proceed to trial, and that, upon trial, Plaintiff recover damages from each and all of the Defendants, jointly and severally, as herein requested and as allowed by law, and for any other relief to which Plaintiff shows itself justly entitled, at law or in equity.

Respectfully submitted,
LAW OFFICE OF E.L. ATKINS AND ASSOCIATES
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P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346
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By: 

E. L. Atkins
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FORT WORTH OSTEOPATHIC HOSPITAL, INC. D/B/A
FORT WORTH OSTEOPATHIC MEDICAL CENTER
SELF-INSURANCE PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT, dated the 15th day of September, 1987 by and between FORT WORTH OSTEOPATHIC HOSPITAL, INC., a non-profit corporation organized and existing under the laws of the State of Texas, having its principal place of business in Fort Worth, Tarrant County, Texas ("Hospital") and TEXAS AMERICAN BANK, of Fort Worth, Texas, a national banking corporation organized and existing under the laws of the United States ("Trustee").

WITNESSETH:

This trust agreement is to evidence the agreement between the Hospital and the Trustee with respect to the administration of a self-insurance plan fund created by the Hospital pursuant to the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services, Social Security Administration.

RECITALS

- (a) The Hospital owns and operates a 265 hundred bed Hospital and related facilities in Fort Worth, Tarrant County, Texas.
- (b) Despite the excellent claims and loss history of the Hospital, the annual cost and availability of professional liability insurance has become a matter of increasing uncertainty and concern in recent years.
- (c) Because of this concern, the Hospital caused an extensive study and review to be made of the various alternatives available to provide economical and dependable protection to the Hospital against malpractice liability claims.
- (d) After analysis of all the data arising from such study and review, the Hospital has determined that it is most reasonable and prudent to maintain a total self-insurance program with the establishment of a reserve fund and the self-assumption of the risk loss resulting from malpractice and general patient liability because of the non-availability or exhorbitant

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Exhibit # 1

cost of commercial insurance, the Hospital concluded that it would be in the best interest of the Hospital and community which it serves to establish a self-funded plan, on an actuarially sound basis, designed to enable the Hospital to "self insure" against the initial levels of malpractice liability incurred at the Hospital and secure, if required, commercial insurance coverage from the liability in excess of self-insured limits.

(e) The Hospital desires that such self-funding plan be implemented through a trust designed in such manner as to enable payments thereto to qualify for Medicare reimbursement, and designed so as to exempt such trust from tax pursuant to the applicable provisions of the Internal Revenue Code.

NOW, THEREFORE, the Hospital and Trustee do mutually covenant and agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

1.01 Actuary - shall mean an actuary, insurance company or broker experienced in the field of medical malpractice and general liability insurance, independent of any direct or indirect financial ownership or control by the Hospital and employed to render service with respect to the plan and the fund.

1.02 Board - shall mean the Board of Directors of the Hospital.

1.03 Committee - shall mean the committee which shall administer the plan as provided in Article 3.

1.04 Contributions - shall mean payments by the Hospital to the Trustee for the fund.

1.05 Fund - shall mean the trust fund created in accordance with the Plan.

1.06 Hospital - shall mean Fort Worth Osteopathic Hospital, Inc. d/b/a Fort Worth Osteopathic Medical Center, Fort Worth, Tarrant County, Texas.

1.07 Medicare Manual - shall mean the Medicare Provider Reimbursement Manual promulgated by the Social Security Administration

of the Department of Health and Human Services.

1.08 Plan - shall mean the Hospital's self-insurance plan with respect to malpractice liability claims.

1.09 Plan Year - shall mean September 16, 1987 through September 30, 1988 as the first Plan Year and beginning October 1, 1988 a Plan Year shall mean a 12-month period thereafter.

1.10 Trust - shall mean this trust agreement between the Hospital and the Trustee and all amendments thereto.

1.11 Trustee - shall mean Texas American Bank Fort Worth, or any substitute or successor Trustee or Trustees.

ARTICLE 2 - CONTRIBUTIONS

The Hospital hereby conveys and delivers to Trustee, in trust, to be held and administered in accordance with the terms of this agreement the sum of money set forth on Exhibit A attached hereto (the receipt of which is acknowledged by the Trustee), which sum of money together with such additional money or property as may from time to time be delivered by the Hospital to the Trustee, including the income and earnings therefrom, shall constitute the trust property. Said sum has been determined by Marsh & McLellan of Chicago, Illinois to be reasonably required as a actuarially adequate or sound fund reserve for such liability losses incurred and accrued against the Hospital for the year commencing September 16, 1987 and expiring September 30, 1988. The Trustee shall have legal title to the trust property and shall be responsible for the proper administration and control thereof as hereinafter set forth.

ARTICLE 3 - ADMINISTRATIVE COMMITTEE

3.01 Appointment and Term of Office - The Committee shall consist of three (3) to five (5) individuals as shall be named by the Board from time to time. The Board shall have the right to remove any member of the Committee at any time. A member may resign at any time by written resignation to the Committee and Board. If a vacancy in the Committee should occur, a successor shall be

appointed by the Board.

The Hospital shall, by written notice, keep the Trustee notified of current membership of the Committee, its officers and agents, and shall furnish the Trustee a certified signature card for the members of the Committee. For all purposes hereunder, the Trustee shall be conclusively entitled to rely upon such certified signatures.

3.02 Organization of Administrative Committee. The Committee shall elect a chairman and secretary from among its members. It may appoint agents it deems necessary for the effective performance of its duties and may delegate to such appointees or to one or more members of the Committee such powers and duties, whether administrative or discretionary, as the Committee may deem expedient and appropriate. The Committee shall act by majority vote. Its members shall serve without compensation.

3.03 Powers of Administrative Committee. The Committee shall be governed by the Board with respect to the control of the administration of the Plan who shall provide it with all powers and instructions necessary to enable it to properly carry out its duties in that respect, and all powers conferred upon it by the Plan. Not in limitation, but in amplification of the foregoing, the Committee shall have the power to construe the Plan, to review periodically the adequacy of funding and of investment performance and communicate its findings to the Hospital and the Trustee, and to take steps it deems necessary to remedy any administrative error and to determine all questions that shall arise under the Plan. Subject to any limitations imposed on the Committee by the Board, it shall decide all questions relating to the determination of payments from the Fund, provided such payment shall be exclusively for the purposes of the Plan as hereinafter provided. All disbursements

by the Trustee shall be made upon and in accordance with the written notice of the Committee or its designated agent. The decision of the Committee upon all matters within the scope of its authority shall be final and binding upon all parties to this instrument. The Committee shall have the power but not the obligation to employ investment counsel on behalf of the Trust. Any such investment counsel shall be empowered to direct the Trustee with respect to permitted investments.

3.04 Records of Administrative Committee. The secretary of the Committee shall record or cause to be recorded all acts and determinations of the Committee and all such records, together with such other documents as may be necessary for the administration of the Plan and shall be preserved in the custody of such secretary.

3.05 Indemnification of Administrative Committee. The Hospital shall indemnify and save each member of the Committee harmless from the effects and consequences of the acts, omissions and conduct of each member in his official capacity, except to the extent that such effects and consequences shall result from the acts or omissions of such member in bad faith.

3.06 Miscellaneous. The Committee shall advise the Trustee and issue to the Trustee such instructions as the Trustee may require to administer the Trust.

The Committee and the Hospital shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by an actuary or by an accountant, physician, or attorney selected or approved by the Hospital or the Committee. The Committee, the Hospital, its officers, and the Trustee shall not be deemed imprudent or subject to liability by reason of taking or refraining from any action in reliance upon the advice or opinion of any such actuary, accountant, physician, or attorney.

ARTICLE 4 - TRUST PLAN

4.01. The Hospital, after making a full and complete investigation

and analysis of its circumstances, organization and operation, has determined that it is reasonable and prudent for it to adopt and implement a plan of self-insurance against malpractice losses. The trust property shall constitute the Fund through which the purposes of the Plan are carried out. The Hospital represents to the Trustee that as part of the Plan it intends to maintain or cause to be maintained an ongoing claims processing and risk management activity to determine whether malpractice liability exists, and the cause and cost thereof, and to minimize the frequency and severity thereof. The Hospital intends that the Plan be established and maintained in accordance with the rules and regulations adopted or implemented from time to time by the United States Department of Health, Education and Welfare, Social Security Administration, or any agent thereof or successor thereto, governing reimbursement to the Hospital for payments made in connection with the Plan. The Hospital assumes full and sole responsibility for compliance with the Medicare regulations. All representations and recitals herein with respect to the Plan shall be deemed to be those of the Hospital.

ARTICLE 5 - TRUST FUND AND TRUSTEE

5.01 Trust Fund. The Trustee shall hold, manage, administer, and after paying all reasonable costs and expenses of the administration of said Trust or reserving a fund for the payment thereof, the Trustee shall invest and reinvest the trust funds in income-producing securities, assets and properties as may be authorized by the statutes and laws of the United States applicable to national banks exercising trust powers and regulations issued thereunder, and any amendments thereto. All requirements respecting investments by fiduciaries now or hereinafter required by the laws of the State of Texas, except that any loans to or investments and obligations, securities or properties of Hospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, rebates, interest, dividends, etc. shall be retained and

held by the Trustee and become a part of the trust fund. Such retained income shall be considered and used for the purposes of determining and establishing adequate fund levels by Hospital's insurance actuary. The Trustee shall be under no duty to determine whether the amount of any contribution to the trust property from time to time made by the Hospital is in accordance with the Plan or the Medicare regulations or to enforce or to collect payment of any contributions.

5.02 Termination for Medicare. Upon termination of the Plan from the Medicare program, the Hospital shall obtain from the actuary a determination of the adequacy of the balance of the Fund as of the date of such termination in order to determine the amount, if any, to be offset against the Hospital's allowable cost to be reimbursed by Medicare if the Fund is excessive, as defined in the Medicare Manual.

5.03 Payment from the Trust Property.

(a) The Trustee from time to time, upon receipt of written direction from the individual or individuals designated by the Committee or Hospital to so act, shall make payment from the income or corpus of the trust property to such persons and in such manner and in such amounts as the Committee or an agent thereof in such writing shall direct. Each such written direction shall certify that the payment is related to the Plan, and is for one or more of the purposes specified below. The Trustee shall make payment solely upon the direction of the Committee and shall not be required to inquire into the purpose or nor be liable for the propriety of any such payment. Payment shall be made from the trust property only for malpractice losses of the Hospital whether such losses occur from incidents or claims arising after September 15, 1987, providing same are not covered under the terms of any previously held commercial liability insurance policy and may be made for the following expenses to the extent that such are related to the self-insurance plan of the Hospital:

- (1) Expenses for administering the claims management program;
- (2) Expenses of establishing this Trust and the Trust Fund;
- (3) Legal expenses;
- (4) Actuarial expenses;
- (5) Costs relating to the acquisition for the Hospital of excess insurance coverage, if purchased by the Trustee;
- (6) Expenses involved with the maintenance of this Trust and the trust property by the Trustee;
- (7) Cost of administering any risk management program of the Hospital, if risk management is performed by the Trustee; provided, however, that this subparagraph shall not be construed to impose upon the Trustee any duty or obligation to administer any risk management program of the Hospital.

(b) Payment for any of the foregoing purposes shall be deemed proper payment to be paid from the trust property. It is intended that all payments from the trust property shall be in accordance with the Medicare regulations, but the Trustee shall not be liable in any way for the Hospital's failure to comply therewith.

5.04 Accounts. The Trustee shall keep accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property. Such person or persons as the Hospital shall from time to time designate, including such persons as may be required by the Medicare regulations, shall be allowed to review, inspect and audit the books of account relating to the trust property upon request at any reasonable time during business hours of the Trustee.

Within 60 days after the close of each 12-month period ending on September 30 of each year, the Trustee shall deliver a financial statement and accounting containing such information as the Hospital shall from time to time reasonably request, including but not

limited to, the following information:

- (a) The balance of the trust property at the beginning of that Plan Year;
- (b) Current period contributions;
- (c) The amount and nature of final payments, including a separate accounting for claims management, legal expenses, claims paid, and other similar items; and
- (d) The trust property balance at the end of the Plan Year.

Notwithstanding any obligation to report within 60 days after the close of each 12-month period, Trustee shall render such reports regarding the trust fund and containing such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a Plan Year, or if the Trustee shall resign or be removed, the Trustee shall, within 45 days of such termination, resignation or removal date, submit its final statement and account for the period from the last previous accounting to the date of such termination, resignation or removal.

5.05 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 60 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall render to the Hospital an account of its administration of the Fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the Fund to its successor Trustee.

5.06 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 60 days' written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account and transfer and deliver the assets of the Fund to its successor as provided in the case of the Trustee's resignation.

5.07 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the best qualified and readily available financial institution whose

service to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will continue this agreement indefinitely. However, in the event of a vacancy in the trusteeship of this Trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this Trust. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

5.08 Liability. Neither any member of the Committee, the Board, the Hospital, the actuary nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own acts, omissions in bad faith or for which it is grossly negligent.

ARTICLE 6 - POWERS OF TRUSTEE

6.01 Enumerated Powers. The Trustee or any successor Trustee shall have the authority without order of or report to any court or officer to exercise the following powers in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and immunities as provided in the laws of the United States and State of Texas for banks exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To retain, sell, invest or reinvest in any stocks, bonds, securities, options or other property, including common trust funds established by the Trustee, and stock in the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of this discretion, except that of using ordinary care; provided, however, that no loans may be made from the trust property to the Hospital or to any person related to the Hospital within the meaning of the Medicare regulations.

(2) To sell, exchange, or otherwise dispose of any property at any time held or required hereunder at public or private sale, for cash or on terms, without the necessity of court approval

or advertisement.

(3) To register any stock, bond or other security in the name of a nominee, with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing that such property is a trust asset.

(4) To invest in certificates of deposit and accounts issued by Trustee.

(5) to vote in person or by proxy all stocks or other securities, to grant proxies, general or limited, and to agree or take any other action in regard to any reorganization, merger, consolidation, bankruptcy or other procedure or proceedings affecting any property of the Trust.

(6) To serve without making and filing inventory and appraisal, without filing any annual or other return to any court and without giving bond; but the Trustee shall furnish to the Hospital such financial statements as are otherwise required by this agreement.

(7) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that Trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

6.02 Compensation. The Hospital is authorized to pay the Trustee reasonable compensation for its services rendered. Said compensation shall be based on what is reasonably and customarily charged for services of a similar type or nature in the community and shall include an evaluation of the services rendered by the Trustee together with the experience of payments or disbursements under this Trust Agreement.

ARTICLE 7 - AMENDMENT AND TERMINATION

7.01. The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, in whole or in part, any or all of the provisions of the Plan and trust agreement; provided, however,

that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without its consent.

7.02. Termination. The Hospital expects this Plan to be continued indefinitely, but of necessity, it reserves the right to terminate the Plan at any time by action of the Board communicated in writing to the Trustee. If the Hospital revokes this agreement or terminates the Plan, then upon receipt of written notice thereof, the Trustee shall either:

(1) Retain and administer in accordance with this agreement such portion of the trust property as the Hospital shall certify to the Trustee has been determined by an actuary as required by the Medicare regulations as a necessary reserve fund for future payment of the Plan until such time as the Hospital shall certify to the Trustee that an independent actuary has determined that such payment has been met or reserves are no longer necessary, whereupon the Trustee shall deliver the balance of the trust property to the Hospital; or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the Medicare regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 8 - MISCELLANEOUS

8.01. Headings. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

8.02. Construction. This agreement shall be construed in accordance with the laws of the State of Texas. In the construction of this agreement, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

8.03. Severability. Should any provision of this agreement be deemed in violation of any law, such provision shall be deemed void

to the extent required by law and all provisions of this agreement other than that held void shall remain in force and effect.

8.04 Counterparts. This agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers, to be effective on the date first above written.

FORT WORTH OSTEOPATHIC HOSPITAL, INC.
D/B/A FORT WORTH OSTEOPATHIC MEDICAL
CENTER

By: Jay Sandelin
Jay Sandelin
Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAN BANK

By: Robert M. Lansford
Robert M. Lansford
Senior Vice President and Trust Officer

EXECUTED IN MULTIPLE COPIES, EACH COPY OF WHICH SHALL BE DEEMED TO BE AN ORIGINAL.

EXHIBIT A

Contemporaneously with the execution and delivery of the foregoing Trust Agreement, the Hospital conveys and delivers to the Trustee pursuant to Section 2 hereof, the sum of One Million Dollars (\$1,000,000.00).

MILDRED FISHER

VS.

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS, et al.
Defendants.

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IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS

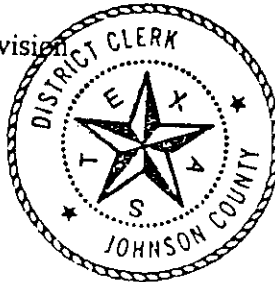
FILED
DAVID R. LLOYD
DISTRICT CLERK
JOHNSON COUNTY, TEXAS
2007 JUN 19 AM 9:31
BY [Signature] 413th JUDICIAL DISTRICT CLERK DUTY

AGREED JUDGMENT

On the 2 day of June, 2007, this cause came on to be heard. It was announced to the Court that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie Fisher, Individually and as Administratrix and Representative of the Estate of Johnny Fisher, Deceased, Houston Fisher and Johnny Fisher recover from the Defendant, Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and no/100 Dollars (\$975,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be enforced only in accordance with bankruptcy law, in Cause No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.



JUDGMENT

A CERTIFIED COPY 5pgs
DISTRICT COURT
ATTEST: 6-19-2007
DATES
DAVID R. LLOYD
District Clerk Johnson
County Texas
By AA

- Exhibit #2

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this 7 day of June, 2007.

APPROVED:


E.L. Atkins

State Bar No. 01409000

Atkins Law Firm

325 South Mesquite Street

P.O. Box 157

Arlington, TX 76010

Telephone: 817-261-3346

Telecopier: 817-261-3347

Attorney for Intervenors, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

Wayne Clawater

State Bar No.04328500

Cruse, Scott, Henderson & Allen, L.L.P.

Attorneys at Law

2777 Allen Parkway, 7th Floor

Houston, Texas 77019-2133

Attorney for Defendants, John Laurence, Sue Samuel, R.N.,
Sharon Ott, R.N., and Karen Cox, R.N.,

JUDGMENT

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\PLEADING\Judgment.wpd


JUDGE PRESIDING

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this _____ day of _____, 2007.

APPROVED:

E.L. Atkins
State Bar No. 01409000
Atkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenors, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

JUDGE PRESIDING

Wayne Clavater
State Bar No. 04328500
Cruse, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Laurence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.,

JUDGMENT

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MILDRED FISHER, ET AL

VS.

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS,
N. P. CASH, R.N., SUE SAMUEL, R.N.,
V. PATE, CRT, and SUZANNE SHENK, D.O.

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IN THE DISTRICT COURT OF

JOHNSON COUNTY, TEXAS

249TH JUDICIAL DISTRICT

**DEFENDANT OSTEOPATHIC MEDICAL CENTER OF TEXAS' SECOND
SUPPLEMENTAL RESPONSE TO INTERVENORS' JACKIE FISHER, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF JOHNNY FISHER, DEC'D.,
JOHNNY FISHER AND HOUSTON FISHER'S REQUEST FOR DISCLOSURE**

TO: Intervenor, by and through their attorney of record, E. L. Atkins, 325 S. Mesquite Street,
Arlington, Texas 76010.

COMES NOW Osteopathic Medical Center of Texas, one of the Defendants herein, and
files its Second Supplemental Response to Jackie Fisher, Individually and as Administratrix of the
Estate of Johnny Fisher, Dec'd., Johnny Fisher and Houston Fisher's Request for Disclosure.

REQUEST FOR DISCLOSURE A: The correct names of the parties to the lawsuit.

RESPONSE: Defendant has no record of any registered nurse in its employ by the name
of "N. P. Cash." Otherwise, the parties have been correctly named to
Defendant's knowledge.

REQUEST FOR DISCLOSURE B: The name, address, and telephone number of any potential
parties.

RESPONSE: None.

REQUEST FOR DISCLOSURE C: The legal theories and, in general, the factual bases of the
responding party's claims or defenses (the responding party
need not marshal all evidence that may be offered at trial).

RESPONSE: Defendant contends that neither it, nor any of its employees, breached the
applicable standard of care with respect to their medical treatment of the
Decedent, and that no act or omission on the part of Defendant, or any of
its employees, was a proximate cause of the death of Decedent or any
resulting damages to Plaintiffs.


REQUEST FOR DISCLOSURE D: The amount and any method of calculating economic
damages.

RESPONSE: Not applicable.

- Exhibit #3

Respectfully submitted,

GOODMAN, ODOM, LACY, FLOYD & BERRY, L.L.P.
301 Commerce Street, Suite 3131
Fort Worth, Texas 76107
817/338-9400
817/338-9494 (fax)

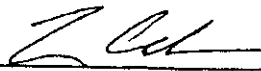
By: 

Lane Odom
Texas Bar No. 15202600

ATTORNEYS FOR DEFENDANT OSTEOPATHIC MEDICAL
CENTER OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon Intervenor's counsel by certified mail, return receipt requested, and upon all other counsel of record by regular U. S. Mail, on the 1st day of March, 2002.



APP. 136

- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography.

RESPONSE: No experts have been retained at this time.

REQUEST FOR DISCLOSURE G: Any indemnity and insuring agreements described in Rule 192.3(f).

RESPONSE: Defendant maintains a self-insured trust with limits of \$2,000,000.00 per occurrence, \$4,000,000.00 aggregate. Excess coverage is provided through Mutual Assurance with limits of \$20,000,000.00. A copy of this self-insured trust agreement and declarations page of the excess insurance policy are attached to this Response to Request for Disclosure.

REQUEST FOR DISCLOSURE H: Any settlement agreements described in Rule 192.3(g).

RESPONSE: None.

REQUEST FOR DISCLOSURE I: Any witness statements described in Rule 192.3(h).

RESPONSE: None, other than the patient's medical records may contain such "statements."

REQUEST FOR DISCLOSURE J: In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE: Not applicable.

REQUEST FOR DISCLOSURE K: In a suit alleging physical and mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE: Defendant assumes that Plaintiffs are in possession of the Osteopathic Medical Center of Texas chart relating to the incident in question. If not, Defendant will make this hospital chart available for inspection and copying at a mutually agreeable time. As for other medical records that may be obtained by virtue of an authorization, this request will be supplemented, assuming that Defendant obtains any responsive information.



UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS
 501 WEST TENTH STREET, ROOM 125
 FORT WORTH, TX 76102-3643

CHAMBERS OF
 DENNIS MICHAEL LYNN
 U.S. BANKRUPTCY JUDGE

Telephone: (817) 333-6020
 Facsimile: (817) 333-6002

May 31, 2007

Shawn K Brown
 1401 Elm Street Suite 4750
 Dallas, TX 75202

Gregory H. Bevel/Kerry Ann Miller
 ROCHELLE HUTCHESON & McCULLOUGH, LLP
 325 N. St. Paul St., Ste 4500
 Dallas, TX 75201

Matthew M. Julius
 JPMorgan Chase Bank
 P.O. Box 655415
 Dallas, TX 75265-5414

Re: *Shawn K. Brown, Ch. 7 Trustee for Fort Worth Osteopathic Hospital, Inc. v. JPMorgan Chase Bank, N.A.*; Adversary No. 07-04016

Dear Counsel:

I have now carefully reviewed the complaint, Defendant's Motion to Dismiss (the "Motion") and supporting brief and Plaintiff's response. As I understand the complaint, Plaintiff's claims are of two types. First, Plaintiff asserts that Defendant breached its duties as trustee under the Fort Worth Osteopathic Medical Center, Inc, d/b/a Fort Worth Osteopathic Medical Center Self-Insurance Trust Agreement (the "Agreement") to the detriment of its intended beneficiaries. Second, Defendant's breaches of its duties were part of a course of conduct undertaken by Debtor's officers and directors which course of conduct harmed Debtor's creditors.

With respect to the first type of claim, I concur with Defendant that Plaintiff lacks the standing to assert for the estate's benefit harm to the beneficiaries of the trust created by the Agreement. Had Defendant properly performed its duties,¹ the corpus of the trust could only have been used to satisfy malpractice claims; the funds would not have been available to Plaintiff for distribution to all of Debtor's creditors.²

¹ I do not reach here the question of whether, in fact, Defendant breached its duties. For purposes of the Motion I must assume it did. See 15 *Moore's Federal Practice*, § 101.30 (Matthew Bender 3d ed); *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 938, No. 06-486, 2007 U.S. LEXIS 5901 (U.S. May 21, 2007); *Neitzke v. Williams*, 490 U.S. 319 (U.S. 1989).

² I note that Defendant turned over to Plaintiff monies held at the petition date. I do not at this time know

Exhibit # 4

Brown v. JPMorgan Chase Bank, N.A.
 May 31, 2007
 Page 2 of 3

Nevertheless, Plaintiff may be able to cause replenishment of the trust by exercising rights retained under the Agreement. For example, in addition to authority to direct distribution to satisfy claims covered cited in the complaint, Debtor, through its board of directors, has considerable power to control the trust under Agreement § 3.03 and may even change the trustee (Agreement § 5.06). Debtor controls the administrative committee, which may "take steps it deems necessary to remedy any administrative error." (Agreement § 3.03). Additionally, the hospital retained the right to inspect and audit the trust account. (Agreement § 5.04). This provision, for example, might give standing to bring an accounting action. See *National Bank of Detroit v Sheldon*, 730 F.2d 421 (6th Cir. 1984); *Sanders v Citizen Nat'l Bank*, 585 So.2d 1064 (Fla. 5th DCA 1991). Because Plaintiff can exercise Debtor's rights (11 U.S.C. § 323), Plaintiff may be able to achieve reimbursement of the trust through exercise of the rights retained by the hospital.

Alternatively, Plaintiff steps into Debtor's shoes as settlor of the trust created by the Agreement. See *West v. Parker (In re Watson)*, 325 B.R. 380, 386 (Bankr. S.D. Tex. 2005) and *Gray v. Exec. Risk Idem., Inc. (In re Molten Metal Tech., Inc.)*, 271 B.R. 711, 721 (Bankr. D. Mass. 2002). Under Texas law³, it may be that the settlor has standing to sue the trustee for improper administration of the trust. See Tex. Prop. Code § 113.151(b) (1992); *Sanders v. Citizen Nat'l Bank*, 585 So.2d 1064 (Fla. 5th DCA 1991) (discussing exceptions to the no-settlor enforcement rule).

Furthermore, if the extent of the retained rights qualifies Debtor as a co-trustee of the trust, Debtor has standing to sue for trustee's breaches. Tex. Prop. Code §§ 111.004(7) and 113.151(b) (1992). Because Plaintiff steps into Debtor's shoes, if Debtor has standing as a co-trustee, Plaintiff would have standing. 325 B.R. 380; 271 B.R. 711.

Should a claim under one of these theories be viable, Plaintiff has stated sufficient facts to support an action in contract or as settlor. If Plaintiff repleads to assert an action under such a theory,⁴ I will allow such an action to proceed. Should Plaintiff fail to replead by June 21, 2007, I will enter an order granting the Motion to the extent of the first type of claim asserted in the complaint.

under what theory Plaintiff received those monies. It may be that, if Plaintiff is successful in asserting the claims referred to below that, upon replenishment of the trust, some theory could be put forward for their transfer to Debtor's estate. Alternatively, the payment of remaining funds to Plaintiff may have been improper.

³ The agreement provides that Texas law applies. (Agreement §8 02)

⁴ I note that such an action would effect replenishment of the trust created by the Agreement, not direct enhancement of Debtor's estate. See, e.g., *Fla. Dep't of Ins v Chase Bank of Tex. N.A.*, 274 F.3d 924 (5th Cir. 2001); *In re Brunswick Hosp. Cir. Inc.*, 156 B.R. 896 (D.N.Y. 1993).

Brown V. JPMorgan Chase Bank, N.A.
May 31, 2007
Page 3 of 3

As to the second kind of claim, I do not believe it is as presently alleged properly articulated. I do conclude, though, that sufficient facts are pleaded to support a claim that Defendant participated with Debtor's officers and directors in a course of conduct harmful to Debtor's creditors. I believe this claim is sufficiently set out to allow discovery to go forward. Once Plaintiff has had an opportunity to flesh out the facts, I would expect a clearer statement of the nature of the cause of action. Should Plaintiff be unable to provide such a delineation of his claim, summary disposition may be appropriate. Therefore, as to the second type of claim asserted in the complaint, the Motion will be denied without prejudice.

Counsel to Plaintiff is directed to prepare and submit² an order consistent with the foregoing. Should Plaintiff not replead by June 21, 2007, Defendant's counsel may submit an appropriate order to the court granting the Motion in part.

Sincerely,


D. Michael Lynn

DML:bt

² Such order shall be provided to Defendant's counsel three business days prior to presentation to the court.



**Service of Process
Transmittal**

07/23/2010

CT Log Number 516994925

TO: Carl Del Vecchio
JPMorgan Chase Bank, N.A.
1 Chase Manhattan Plaza - 20th Floor, Legal Department
New York, NY 10081-

RE: **Process Served in Texas**

FOR: JPMorgan Chase Bank, National Association (Cross Ref Name) (Domestic State: N/A)
JPMorgan Chase Bank, N.A. (True Name)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Estate of Johnny Fisher, Decd, Pltf. vs. J P Morgan Chase Bank, et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Citation, First Amended Original Petition, Exhibits

COURT/AGENCY: 413th Judicial District Court Johnson County, TX
Case # C200800560

NATURE OF ACTION: Breach of fiduciary duty as trustee of Fort Worth Osteopathic Hospital, Inc's
self-Insured trust fund

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Process Server on 07/23/2010 at 10:05

APPEARANCE OR ANSWER DUE: At or Before 10:00 a.m. on the Monday next after the expiration of 10 days

ATTORNEY(S) / SENDER(S): E. L. Atkins
Maclean & Boulware
11 Main Street
Cleburne, TX 76033
817-645-3700

ACTION ITEMS: CT has retained the current log, Retain Date: 07/23/2010, Expected Purge Date:
08/22/2010
Image SOP

SIGNED: C T Corporation System
PER: Beatrice Casarez
ADDRESS: 350 North St Paul Street
Suite 2900
Dallas, TX 75201
TELEPHONE: 214-932-3601

Page 1 of 1 / MN

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

APP. 141

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

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IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 4

EXHIBIT K

ESTATE OF JOHNNY FISHER, DEC'D,
Plaintiff

VS.

J P MORGAN CHASE BANK,
GLENN MILTON, JAY SANDELIN,
LUCY NORRIS, RN, and
NANCY ARGO, RN
Defendants

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IN THE DISTRICT COURT

413TH JUDICIAL DISTRICT

JOHNSON COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION AND CLAIM OF ESTATE
TO THE HONORABLE COURT:

This "claim" is brought by the Estate of Johnny Fisher, Deceased, (hereafter, at times, "The Fisher Estate" or "Plaintiff") pursuant to TEX. PROBATE CODE ANN. SEC. 233A (Vernon), by and through its representative and administrator, Houston Allan Fisher¹, against J.P. MORGAN CHASE BANK (hereafter, at times "Chase Bank") for breach of fiduciary duty and against GLENN MILTON (hereafter, at times "Milton"), JAY SANDELIN² (hereafter, at times "Sandelin"), and NANCY ARGO, RN (hereafter, at times "Argo") for civil conspiracy to breach a fiduciary duty. In support of this claim, Plaintiff shows unto the court and the jury, as follows:

Discovery Level

1. Plaintiff requests that discovery proceed in this case under **Level 3**, and that an

¹ The initial Administrator of the Estate of Johnny Fisher, Dec'd, Jackie Fisher, is deceased. Houston Allan Fisher is the court-appointed substitute Administrator. *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845 (Tex. 2005); *Lorentz v. Dunn*, 171 S.W.3d 854 (Tex. 2005)

² Defendant, Sandelin was misnamed, or misspelled, "Sandlin" in the earlier pleadings.

appropriate scheduling order be entered by the Court.

Jurisdiction and Venue

2. **Jurisdiction and Venue Provided by Texas Probate Code.** This claim is a “matter appertaining to an estate or incident to an estate”.³ It is a claim in tort that is based upon various causes of action.⁴ The administration of the estate bringing this claim is pending in Johnson County, Texas. Pursuant to statutory authority, the claim was transferred from the Johnson County Probate Court to this District Court on October 6, 2008.⁵

3. **Additional Basis for Jurisdiction and Venue Provided by Texas Civil Practice & Remedies Code.** A “substantial part of the events or omissions giving rise to the claim occurred” in Johnson County, Texas.⁶ The medical malpractice claim, upon which a judgment owned by The Fisher Estate (hereafter, at times “The Judgment”) was ultimately obtained, was filed in and tried wholly in the 413th District Court, Johnson County, Texas (“The Underlying Lawsuit” or “the medical malpractice lawsuit”). The Judgment is a significant element, if not a lynchpin, of Plaintiff’s cause of action.⁷ Concealment of improper conduct is also a significant

³ § 5, TEX. PROBATE CODE

⁴ § 233A, TEXAS PROBATE CODE

⁵ §§ 5, 5A and 5B, and 233A, TEXAS PROBATE CODE.

⁶ TEX. CIV. PRAC. & REM. CODE ANN, § 15.002, et seq

⁷ *Bonham State Bank v. Beadle*, 907 S.W. 2d 465, 471 (Tex. 1995); *Brazos Elec. Power Co-op., Inc. v. McCullough*, 599 S.W. 2d 357, 361 (Tex. Civ. App. - Waco 1980, no writ); *Southern County Mutual Ins., v. Ochoa*, 19 S.W. 3d 452, 461 (Tex. App. - Corpus Christi 2000, no pet.); *Birkes v. Lloyds Casualty Ins.*, 209 S.W. 2d 438 (Tex. Civ. App. - Austin 1948, no writ)

element of this case. False documents concealing the improper conduct committed by the Defendants were filed in The Underlying Lawsuit, as hereafter detailed. For these reasons, a “substantial part of the events or omissions giving rise to the claim occurred” in Johnson County, Texas.⁸

4. Additionally, the amount in controversy exceeds the minimum jurisdictional limits of the District Courts of Texas.

5. For the reasons herein above stated, this court has jurisdiction and venue over this cause of action to enforce a claim of The Fisher Estate, pursuant to TEX. PROBATE CODE ANN. Sec. 233A (Vernon) and pursuant to TEX. CIV. PRAC. & REM. CODE Sec. 15.002, et seq (Vernon).⁹

Parties

6. **Plaintiff:**

- a. **The Estate of Johnny Fisher, Deceased**, the administration of which is pending in the Probate Court of Johnson County, Texas.

7. **Defendants:**

- a. **JP Morgan Chase Bank, N.A.** Chase Bank is a corporation authorized to transact business in Texas. Chase Bank’s registered agent for service of process is CT Corporation Systems, 350 St. Paul St., Dallas, TX 75201. Chase Bank has answered and made an appearance in this case and is before the Court for all general purposes.
- b. **Glenn Milton**, whose present address is 612 Merrill Drive, Bedford, TX 76022-

⁸ TEX. CIV. PRAC. & REM. CODE ANN. § 15.002 (1), et seq

⁹ Plaintiffs are given the right to choose venue first. *Wilson v. Texas Parks & Wildlife Dept.*, 886 S.W. 2d 259, 262 (Tex. 1994) As long as the plaintiff files suit in a county of proper venue (i.e., the selected county is at least a permissive venue and no mandatory provision of the venue statute applies), the plaintiff’s venue choice will not be disturbed. *Id.*

7130. Glenn Milton has answered and made an appearance in this case and is before the Court for all general purposes.

- c. **Jay Sandelin**, whose present address is 3200 Meander Rd., Granbury, Texas. Jay Sandelin has answered and made an appearance in this case and is before the Court for all general purposes.
- d. **Nancy C. Argo, RN**, whose present address is 1190 Whispering Oaks Dr., De Soto, TX 75115-7407. Nancy Argo has answered and made an appearance in this case and is before the Court for all general purposes. and
- e. **Lucy Norris, RN**, who has been dismissed from this lawsuit.

Nature of Claim

8. This is a claim against Chase Bank for breach of fiduciary duty as trustee of a trust, more particularly described, hereafter, and against the individual Defendants, Glenn Milton, Jay Sandelin and Nancy Argo for participating in, aiding, encouraging and otherwise conspiring with Chase Bank to misappropriate large amounts of trust funds and to breach its fiduciary duties to Plaintiff, either as a beneficiary of the subject trust or, alternatively, as one to whom a fiduciary duty is owed by Chase Bank as a result of its peculiar relationship with Plaintiff. Plaintiff seeks compensatory damages, exemplary damages, attorney fees and any and all other damages and remedies allowed by law against Defendants, jointly and severally.

Factual Background

9. The Fisher Estate owns an unsatisfied judgment ("The Judgment") against Fort Worth Osteopathic Hospital, Inc. (hereafter, at times, "The Hospital") based upon a medical malpractice

claim which The Fisher Estate filed against The Hospital in Johnson County, Texas. The Judgment was signed and entered in The Underlying Lawsuit on June 7, 2007 by Hon. William Bosworth, District Judge, 413th District Court, Johnson County, Texas, against The Hospital, awarding Plaintiff damages in the amount of \$975,000.00.¹⁰

10. The Hospital has filed Chapter 7 bankruptcy¹¹ and Shawn Brown is the appointed Chapter 7 Trustee.

11. The Hospital established a self-insured trust fund in lieu of liability insurance in 1987, to resolve claims of victims of hospital malpractice, including the hospital malpractice claim of Johnny Fisher, Deceased.¹² The trust is referred to, at times, as “the subject trust” or “The Trust” or “The Trust Fund”. The provisions of The Trust are set forth in a Trust Agreement. Particulars of the Trust Agreement are also set forth in paragraphs 18. and 19., hereafter. Defendant, Chase Bank is the trustee of the subject trust at all relevant times.

12. The individual Defendants, Glenn Milton, Jay Sandelin and Nancy Argo were employees, representatives and/or officers of The Hospital at all relevant times and possessed unique knowledge of the operation of the subject trust because of their positions with The Hospital.

13. Transactions were discovered removing large amounts of trust funds from the trust by

¹⁰ attached to prior petitions filed by Plaintiff, and identified therein as Exhibit “2”

¹¹ United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, Case No. 05-41513-DML, Hon. D. Michael Lynn, presiding.

¹² A copy of The Trust Agreement is filed with the papers in this cause and is incorporated herein for all necessary purposes. It is attached to prior petitions filed by Plaintiff, and identified therein as Exhibit “1”

Chase Bank, then delivering those trust funds to The Hospital to be used for improper purposes. Transactions were also discovered that involved depositing large sums of money into The Trust bank account at Chase Bank, then almost immediately directing Chase Bank to withdraw a like amount, and using those funds for non-trust purposes.

14. There were sufficient funds in The Trust Fund to satisfy the assigned value of Plaintiff's claims prior to the alleged illegal removals and misappropriations.

15. The Hospital, through its representatives, represented to Plaintiff, Plaintiff's counsel and to others, that The Hospital had \$4,000,000.00 in the subject trust and excess liability insurance coverage to satisfy any judgment which Plaintiff might obtain against The Hospital, as a defendant in the hospital malpractice lawsuit. Specifically, The Hospital represented, in its disclosures to Plaintiff and to the trial court:

Defendant maintains a self-insured trust with limits of \$2,000,000.00 per occurrence, \$4,000,000.00 aggregate. Excess coverage is provided through Mutual Assurance with limits of \$20,000,000.00. A copy of this self-insured trust agreement and declarations page of the excess insurance policy are attached to this Response to Request for Disclosure.

16. Following entry of The Judgment, demand was made upon the Trustee, Chase Bank, for payment to satisfy The Judgment from The Trust Fund. Shawn Brown advised that he had seized control of The Trust Fund. He advised Plaintiff that there was only a few thousand dollars in The Trust Fund when he seized it and that there were not sufficient funds or assets in The Trust to pay and satisfy The Judgment. Chase Bank refused to respond to the demand to pay The Judgment from The Trust.

17. Persons, selected by The Hospital to manage and oversee the Risk Management Program

of The Hospital, including Defendant, Nancy Argo, assigned \$900,000.00 to be reserved for the payment of Plaintiff's medical malpractice claim.

18. The Trust Agreement provides:
- a. The Trust is a separate entity.
 - b. The Trustee has legal title to The Trust assets and its fund.
 - c. The Trust is established for a specific purpose and for specific beneficiaries.
 - d. The purpose of The Trust is to self-insure against the initial levels of malpractice liability.
 - e. The Trust is established for the benefit of victims of hospital malpractice.
 - f. The Trust is established for the sole purpose of paying medical malpractice claims filed against The Hospital and related expenses of medical malpractice claims and lawsuits. Payment shall be made from The Trust only for malpractice losses of The Hospital.
 - g. Payment from The Trust Fund shall be made only on written authorization from designated hospital representatives, certifying that the payment is related to the Plan and for one or more of the purposes specified in The Trust Agreement.
 - h. No withdrawal or appropriation from The Trust, not enumerated in The Trust, is authorized.
 - i. The trustee is required to keep accurate and detailed accounts of all receipts, investments and disbursements with respect to The Trust property.
 - j. The trustee is required to deliver a financial statement to The Hospital at the close of each twelve (12) month period, ending on September 30, of each year.
 - k. In the event The Trust is terminated, funds must be maintained in The Trust to resolve claims pending at the time of termination.
 - l. Nothing in The Trust Agreement allows its trustee to refuse to pay any judgment obtained by a victim of hospital malpractice, after that victim's claim is reduced to judgment.

- m. No provision of The Trust Agreement relieves the trustee of its duty to act prudently and/or in good faith or to exercise independent judgment authority, when appropriate.
19. The Trust was established because The Hospital elected to not carry primary liability insurance to cover medical malpractice claims asserted against The Hospital. As a result of this election, requirements were imposed by Medicare on the Trust, which were:
- a. The Hospital must continually maintain funds in The Trust sufficient to resolve all pending malpractice claims against The Hospital, even in the event of termination of The Trust.
 - b. Legal title to The Trust must be in a separate entity from The Hospital.
 - c. An adequate risk management program, similar to programs provided and operated by insurance companies, must be utilized and a process or procedure was required to be in place to adjust medical malpractice claims.
 - d. Adequate excess liability insurance must be maintained.
20. Failure to comply with Medicare requirements could result in severe penalties, including denial of Medicare benefits for The Hospital.
21. The Trust was, initially, funded in 1987 with \$1,000,000.00, which amount was deemed “actuarially sufficient”, at the time to resolve pending hospital malpractice claims. The Hospital purchased what is generally described as “excess coverage” insurance which provided coverage for any claims, including the claims made by Plaintiff against The Hospital in excess of the self-insured fund maintenance level of \$4,000,000.00.

Representations

22. During the course of the litigation in The Underlying Lawsuit, The Hospital, by and

through its representatives, represented to Plaintiff and to the trial court, through written disclosures, that there were sufficient funds in The Trust to satisfy any judgment Plaintiff might obtain in the underlying malpractice lawsuit. Plaintiff alleges that one or more of the individual defendants either made this representation, or knew that the representation was made, that it was false, and did not disclose its falsity to Plaintiff during the course of the Underlying Lawsuit.

23. After The Hospital filed for bankruptcy protection, Chase Bank presented its trust officer, Robert Lansford, for deposition. Mr. Lansford testified, under oath, that he produced, at that deposition, all the records of The Trust “that he could find” that were in the possession of Chase Bank regarding activities of The Trust for the twenty-plus years that The Trust had been in operation. Chase Bank, now, refuses to produce any documents regarding The Trust. Mr. Lansford admitted that all withdrawals from The Trust were made at the direction of personnel of The Hospital. Mr. Lansford further admitted that withdrawals from The Trust were not made in accordance with the requirements of the Trust Agreement.

24. When Plaintiff disclosed the wrongful removal of large amounts of trust funds from The Trust, Chase Bank and The Hospital, by and through their representatives claimed that the funds in The Trust were property of The Hospital. Chase Bank, later, represented and claimed that The Trust was not The Hospital’s money, but, rather, that The Hospital was the “sole beneficiary” of the subject trust. Both of these representations and claims were rejected by The Bankruptcy Court overseeing the bankruptcy of The Hospital.¹³

¹³ U.S. Bankruptcy Court Decision to Abstain, dated April 15, 2009, a copy of which is filed with the papers in this cause.

Claims

25. In support of the claims herein asserted, Plaintiff incorporates paragraphs 1. through 24., herein above, the same as if each were set forth herein, again, verbatim.

26. Plaintiff seeks to recover damages, compensatory and exemplary, from the named Defendants for improper and illegal management of The Trust, for misappropriation of trust funds established for the benefit of Plaintiff, as a victim of hospital malpractice, for breach of fiduciary duty by Chase Bank and for civil conspiracy of the individual Defendants in aiding, encouraging and approving the improper management of The Trust and the misappropriation of large sums of trust funds by Chase Bank.

Breach of Fiduciary Duty

27. In support of this claim, Plaintiff incorporates paragraphs 1. through 26., herein above, the same as if each were set forth herein, again, verbatim.

28. Chase Bank was the trustee of The Trust. Chase Bank's duties to Plaintiff under The Trust Agreement are clear. Chase Bank, as trustee, had a duty to comply with the terms and provisions of The Trust Agreement. Chase Bank has produced few records regarding activities of The Trust during the twenty (20) years of its operation, either because it has, but has refused to produce those records, or those records have been destroyed.

29. **Plaintiff is Beneficiary of The Trust.** Plaintiff filed its claim against The Hospital in 2001, and The Hospital continually denied that claim, until a Judgment, supporting that claim, in the amount of \$975,000.00 was entered in June, 2007, at which time Plaintiff's malpractice claim was established and reduced to judgment. Based upon the following undisputed facts, Plaintiff

was a beneficiary of The Trust or, in the alternative, is a "person" to whom Chase Bank owed a fiduciary duty to maintain funds in The Trust sufficient to satisfy Plaintiff's claim and judgment:

- a. The subject trust was established to pay claims of victims of hospital malpractice.
- b. Johnny Fisher was a victim of hospital malpractice.
- c. The Fisher Estate "stands in the shoes" of Johnny Fisher and is, therefore a "person" for whose benefit The Trust was established.¹⁴
- d. Plaintiff is "a person for whose benefit property is held in trust, regardless of the nature of Plaintiff's interest [in The Trust]".
- e. The Trust refers to the beneficiary of The Trust as a "person". The Hospital is referred to, in The Trust Agreement as the "provider" and is not, and never was, a "person".
- f. The Hospital has represented in papers filed with the trial court in the underlying medical malpractice lawsuit that Plaintiff is a beneficiary of The Trust and that The Trust would pay any judgment that Plaintiff might recover in that lawsuit.
- g. The Trust was structured to be in compliance with the provisions of the Medicare Provider Reimbursement Manual
 - i. The Medicare Provider Reimbursement Manual defines the hospital as the "provider" and not the "beneficiary" of The Trust.
 - ii. The Medicare Provider Reimbursement Manual defines the victims of hospital malpractice as the beneficiaries of this, and similar self-insured retention funds or trusts.

30. The following facts further support Plaintiff's claim that it is a beneficiary of the subject trust and one to whom a fiduciary duty is owed by Chase Bank to comply with the provisions of The Trust and to maintain sufficient funds and assets in The Trust to satisfy any judgment that

¹⁴ § 71.021, TEX. CIV. PRAC. & REM. CODE ANN. (VERNON) "Survival of Cause of Action"

Plaintiff might obtain in the Underlying Lawsuit:

- a. Chase Bank has represented in pleadings filed in The Hospital's bankruptcy case that the beneficiaries of the Trust are victims of hospital malpractice.¹⁵
- b. The Hospital, through disclosures filed in the Underlying Lawsuit, has represented that Plaintiff is a beneficiary of The Trust and that The Trust Fund was available to pay Plaintiff's claim and judgment.
- c. To conclude that anyone, who is not a victim of hospital malpractice, is the beneficiary of this trust would render The Trust provisions regarding its purpose meaningless.
- d. To conclude that anyone, who is a victim of hospital malpractice is not a beneficiary of this trust would also render The Trust provisions regarding its purpose meaningless.
- e. The Trust provides that payments from The Trust shall be made "only for malpractice losses of the hospital".
- f. Victims of hospital malpractice are the "persons" who are benefitted "directly" by The Trust and not merely "incidentally" by The Trust.
- g. Plaintiff, as a victim of hospital malpractice, although not specifically named, is "sufficiently identified" in The Trust, as a beneficiary of The Trust, as required by state law.
- h. The Trust is a contract and its beneficiary, or beneficiaries can enforce its

¹⁵ JP Morgan Chase Bank, N.A. Motion to Dismiss, March 14, 2007, "In re: Fort Worth Osteopathic Hospital, Inc., Debtor", Case No. 05-415-13-DML, "Shawn K. Brown Chapter 7 Trustee, For Fort Worth Osteopathic Hospital, Inc., Plaintiff, vs. JPMorgan Chase Bank, N.A., Defendant", Adversary No. 07-04016-DML see, p. 3:

Clearly, this suit is an attempt by the Chapter 7 Trustee to enforce claims of personal injury that do not belong to the Debtor, and is not a suit for recovery of funds belonging to the estate. Paragraphs 43 through 46 are replete with references to duties owed and allegedly breached; however, *the beneficiaries are identified as the malpractice victims, and not the Debtor.*

See, Shell Oil Co. v. Humphrey, 880 S.W.2d 170 (Tex. App. - Houston [14th Dist.] 1994, writ denied); *Lansford v. Sage*, 438 S.W.2d 615 (Tex. Civ. App. - Houston [1st Dist.] 1969, writ ref'd, n.r.e.); *Ogden and Johnson v. Bosse*, 86 Tex. 336, 344, 24 S.W. 798 (1894)

provisions. A reading of The Trust and the Medicare Provider Reimbursement Manual further evidences that a beneficiary of The Trust can enforce the terms and provisions of The Trust.

i. The Bankruptcy Court has determined that Plaintiff is a beneficiary of The Trust.¹⁶

31. For the reasons herein above stated, the issue of whether Plaintiff is a beneficiary of the subject trust is clear. Plaintiff is sufficiently identified as a beneficiary of The Trust, as a matter of law.

32. Alternatively, Plaintiff is “one that The Trust was intended to benefit” and should, therefore, be deemed a beneficiary of The Trust.

33. Alternatively, Plaintiff is one with whom Chase Bank had a “position of peculiar confidence” and should be deemed a beneficiary of The Trust.¹⁷

34. **Duties Breached.** Chase Bank breached its fiduciary duty to Plaintiff in one or more of the following particulars:

- a. Failure to pay from The Trust only those expenditures allowed by the provisions of The Trust Agreement;
- b. Failure to make disbursements from The Trust only on written authorization from designated hospital representatives, certifying that the payment is related to the Plan and is for one or more of the purposes specified in The Trust Agreement;

¹⁶ Letter Opinion, May 31, 2007, Hon. Dennis Michael Lynn, U.S. Bankruptcy Judge, United State Bankruptcy Court, Northern District of Texas, in *Shawn K. Brown, Ch. 7 Trustee for Fort Worth Osteopathic Hospital, Inc. v. JPMorgan Chase Bank, N.A.*, Adversary Proceeding No. 07-04016 (attached to prior petitions filed herein by Plaintiff and identified therein as Exhibit “4”)

¹⁷ *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193 (Tex. 2002); *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex.565, 16 S.W.2d 509, 512 (1942); *Paschal v. Great Western Drilling*, 215 S.W.3d at 451; *In Re Allied Physicians Group, P.A.*, Case No. 397-31267-HCA-7, Civil Action No. 3:02-CV-2368-G (N.D. Tex. 2003) (citing *Kinzbach Tool Co.* case)

- c. Failure to make disbursements from The Trust solely upon the proper direction of an Administrative Committee [of The Hospital] for designated purposes.
- d. Failure to make disbursements from The Trust only for malpractice losses of The Hospital, as defined in The Trust, to wit: malpractice claims, expenses for administering the claims management program, expenses of establishing the Trust and trust fund, legal expenses, actuarial expenses, costs relating to the acquisition for The Hospital of excess insurance coverage, expenses involved in the maintenance of The Trust and cost of administering any risk management program of The Hospital;
- e. Failure to prepare and maintain accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property;
- f. Failure to deliver a financial statement of The Trust to The Hospital at the close of each twelve (12) month period, ending on September 30, of each year.
- g. Failure to maintain adequate funds or other assets in The Trust on termination of The Trust to satisfy pending malpractice claims;
- h. Failure to maintain at least \$900,000.00 in The Trust Fund to satisfy Plaintiff's claim until Plaintiff's claim was resolved, either by settlement, dismissal or judgment;
- i.
- j. Intentionally and illegally removed large sums of trust funds from The Trust, knowing that the funds were misappropriated and not used for trust purposes; and,
- k. Notwithstanding any other duty, the failure to manage The Trust in good faith and to exercise appropriate, independent judgment authority, as and when appropriate.

Civil Conspiracy Claims

35. Plaintiff incorporates paragraphs 1. through 34, herein above, in the civil conspiracy claims, hereafter made.

36. **General Facts Relevant to Civil Conspiracy Claims.** The Hospital adopted "a plan" to resolve hospital malpractice claims, pursuant to a risk management program, entitled "Risk Management Plan for Osteopathic Health System of Texas". The program was managed by

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personnel by The Hospital. Overall administration of "The Plan" was by an "Administrative Committee", consisting of members selected by The Hospital. The Trust was established to provide and maintain the funds necessary to resolve those malpractice claims, since The Hospital elected to not carry primary liability insurance. The Trust Agreement sets forth specific requirements for management of The Trust by its trustee consistent with the provisions of the Risk Management Plan, or Program. Chase Bank was trustee of The Trust at the time Plaintiff obtained The Judgment. Pursuant to the specific provisions of the Trust Agreement, Trust funds could be withdrawn, only by Chase Bank Trust Officers and used only to pay victims of hospital malpractice claims and related expenses of The Plan. Chase Bank was required to manage The Trust in compliance with those requirements. Chase Bank was required to maintain a sufficient amount in The Trust which was "actuarially adequate or sound " to resolve the malpractice claims. In the event the trust is terminated, an actuarial study was to be made to determine the amount necessary to be retained, as reserves, for payment of pending until it is certified that such reserve is no longer necessary. Chase Bank was required to keep accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property. Chase Bank was only authorized to withdraw funds from the trust fund upon receipt of written directive from individuals designated by the Administrative Committee or the Hospital to so act, certifying that the funds withdrawn are to used solely related to The Plan. The Chase Bank officer assigned to manage the Trust was given the authority to withdraw funds from the Trust, by check, or by transfer from the trust account to another account or accounts. Chase Bank trust officer, Robert Lansford was assigned the duties of management of the trust fund at various

relevant times. Mr. Lansford had the authority, on his own signature, to withdraw trust funds from The Trust. Mr. Lansford was, at times, also a member of The Hospital's Board of Directors.

37. **Purpose or Object of The Civil Conspiracy.** The purpose or object of the conspiracy was to remove trust funds from The Trust and to, then, appropriate those trust funds to the general operation of The Hospital, after The Hospital, and its affiliate companies and corporations, began to experience financial losses. Such removal and appropriations of the trust funds were illegal.

38. **Plan.** The plan implemented to carry out the illegal purpose of the conspiracy was for personnel of the hospital to request that Chase Bank, which had control over the Trust Fund, remove, by withdrawal or transfer, trust funds from the trust bank account and deliver those funds to hospital personnel. Chase Bank did not question or object to these illegal requests and withdrawals. Chase Bank trust officers, upon receipt of the requests, would transfer trust funds to The Hospital and not inquire into whether the funds were being used for the specific purposes set forth in the Trust Agreement. The individual Defendants, herein named, as hereafter alleged, either participated, directly, in requesting that trust funds be illegally removed and used for improper purposes, or knew that such illegal withdrawals were being made, and did not disclose those illegal withdrawals, allowing The Trust to be virtually depleted of its assets.

39. To accomplish this illegal purpose, The Hospital personnel must agree to obtain the funds from the Trust, then use them for illegal purposes and, at the same time, the Chase Bank trust officers must agree to remove funds from The Trust, knowing that the withdrawals and use of the

Trust Funds was illegal. Therefore, this illegal scheme could not be accomplished without the joint efforts and cooperation of both The Hospital personnel requesting and using the funds for illegal purposes and Chase Bank agreeing to remove funds from The Trust without demanding and requiring that the funds only be used for Trust purposes.

40. Each of the named Individual Defendants, Milton, Sandelin and Argo, because of their positions and their relationships with The Hospital and, specifically, with The Hospital's Risk Management Plan, or program, were in positions in which they could encourage, assist and aid Chase Bank in the illegal removal and the misappropriation of Trust Funds and conceal and not disclose those misappropriations, to wit:

- a. each knew the restrictions placed upon the use to be made of trust funds.
- b. each knew the officers of Chase Bank to whom the management of The Trust was assigned, including Robert Lansford, who was, also, a member of The Hospital's Board of Directors.
- c. each, being officers and/or selected personnel of The Hospital, knew the importance of The Trust being managed properly and in accordance with The Trust Agreement's terms and provisions.
- d. each had access to the risk management documents of The Hospital and knew how malpractice claims asserted against The Hospital were received, reviewed, evaluated, and processed.
- e. each knew the possible consequences if The Trust Fund was not used for its intended purposes and not managed according the mandatory requirements set forth in The Trust.
- f. each was in a position where he or she could direct or request that hospital funds be deposited into The Trust Fund, then, to almost immediately be withdrawn from the subject trust by Chase Bank and used for purposes not authorized by The Trust.

Civil Conspiracy Claims against Defendant, Glenn Milton

41. Plaintiff adopts, by reference paragraphs 1. through 40. herein above, the same as if set forth herein, verbatim.

42. Defendant, Milton was the CFO of The Hospital for periods through 1999. He knew the terms and provisions of The Trust Agreement. He also knew the terms and provisions of The Risk Management Program of The Hospital and the purposes of that plan, specifically regarding the management and resolution of hospital malpractice claims. As CFO of The Hospital, Defendant, Milton, had the authority and the power to direct how withdrawals from The Trust could be used. In 1999, shortly before Johnny Fisher became a victim of egregious hospital malpractice, Defendant, Milton specifically directed Chase Bank to remove large sums of money from The Trust, then directed that those trust funds be used in violation of the Trust Agreement. Defendant, Milton's directives to Chase Bank to withdraw trust funds were in violation of the requirements of The Trust Agreement and Chase Bank did not require compliance, on the claim that the trust was a revocable trust. It is believed that large amounts of those trust funds were then used to purchase equipment and other items, in the name of The Hospital. Defendant, Milton, also knew that funds must be maintained in The Trust, in an amount that was "actuarially adequate" to resolve hospital malpractice claims. He was in a position to learn and know what amount was required to be in The Trust for the trust fund to be "actuarially adequate". However, not only did Defendant, Milton direct that large sums of money be illegally withdrawn from the Trust and misappropriated for purposes in violation of the Trust Agreement, he did not require

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and he did not intend to require that the Trustee maintain trust funds, sufficient to satisfy pending hospital malpractice claims, as the Trust Agreement required. Defendant, Milton, knew that Chase Bank was not complying with the provisions of The Trust Agreement, but he did not require Chase Bank to follow those required procedures. He knew that Chase Bank would not question or object to his use of trust funds.

43. At the time that Plaintiff's claim was made and evaluated by the Risk Management Personnel, sometime after Johnny Fisher's death, there were sufficient funds in The Trust to resolve Plaintiff's claim. Defendant, Milton was no longer the CFO of The Hospital at the time Plaintiff's hospital malpractice claim was made. However, if Defendant, Milton, had required that funds be and remain on hand in The Trust to satisfy malpractice claims, and if Milton had not assisted Chase Bank in illegally removing large amounts of trust funds from the trust, then misappropriating those funds, there probably would have been sufficient funds on hand to satisfy Plaintiff's judgment of \$975,000.00. Therefore, as a direct result of Defendant, Milton's improper conduct, trust funds were illegally removed from The Trust and misappropriated. As a direct and proximate result of Defendant, Milton's improper conduct, The Trust was depleted of funds necessary to resolve Plaintiff's claim and resulting judgment which, otherwise, would have been on hand.

44. For the reasons herein stated, Defendant, Milton, knowingly and actively participated and conspired in the illegal removal and misappropriation of trust funds and in the breach of Chase Bank's fiduciary duties to Plaintiff, proximately causing damage to Plaintiff, as herein after

detailed.¹⁸

Civil Conspiracy Claim Against Defendant, Nancy Argo

45. Plaintiff adopts, by reference paragraphs 1. through 40. herein above, the same as if set forth herein, verbatim.

46. Defendant, Nancy Argo was employed in The Hospital's Risk Management Program for many years, including the period from on and after October 1, 1999 until the hospital filed for bankruptcy protection in 2005. Her duties included management and resolution of hospital malpractice claims, including Plaintiff's claim.

47. Defendant, Argo knew the provisions of the Hospital's Risk Management Plan. She knew the provisions and requirements of The Trust Agreement and the importance of those requirements being followed. In performing her duties associated with Risk Management, Defendant, Argo worked closely with Defendants, Milton and Sandelin, and with the Chase Bank trust officer, Robert Lansford, who had the authority to remove funds from The Trust, and Mr. Lansford's assistants.

48. Risk management personnel, with the assistance of Defendant, Argo assigned a value of at least \$900,000.00 to Plaintiff's hospital malpractice claim and she knew that trust funds must be maintained to resolve Plaintiff's claim, as it was valued by Risk Management.

49. Defendant, Argo, knew that Defendants, Milton and Sandelin were directing Chase Bank to remove large sums from The Trust to be used for purposes, other than the resolution of

¹⁸

Kinzbach Tool Co., Inc. v. Cobett-Wallace Corp., 138 Tex. 565, 160 S.W.2d 509, 514 (1942)

hospital malpractice cases. She knew the meaning and purpose of the term “actuarially adequate”, as used in the Trust Agreement and that the trustee did not maintain “actuarially adequate” funds, sufficient to resolve pending hospital malpractice cases and that Defendants, Chas Bank, Milton and Sandelin did not require that such adequate funds be maintained in The Trust. Defendant, Argo knew that the illegal removal of and misappropriation of trust funds could not be accomplished without the concerted and joint efforts of both Chase Bank and Defendants, Milton or Sandelin. Defendant, Argo, knew of these illegal uses of Trust Funds, but did not disclose those illegal acts to proper parties, including the attorneys and the court, in Plaintiff’s underlying malpractice case.

50. Defendant, Argo, also knew that the representations contained in The Hospital’s disclosures to the trial court or to Plaintiff’s counsel in the underlying malpractice lawsuit, that the trust maintained sufficient funds to satisfy any judgment Plaintiff might obtain were false.

51. If Defendant, Argo, had demanded that funds be and remain on hand in The Trust and removed only to satisfy Plaintiff’s claim, as well as other hospital malpractice claims under her management, and if Argo had disclosed the illegal use of trust funds to the proper parties and authorities, there probably would have been sufficient funds on hand in The Trust to satisfy Plaintiff’s judgment of \$975,000.00.

52. For the reasons herein stated, Defendant, Argo, knowingly and actively participated and conspired in the concealing of the illegal removal and misappropriation of the trust funds. For the reasons herein above stated, Defendant, Nancy Argo conspired with Chase Bank in the

breach of its fiduciary duties to Plaintiff, as a beneficiary of The Trust.¹⁹

Civil Conspiracy Claim Against Defendant, Jay Sandelin

53. Plaintiff adopts, by reference paragraphs 1. through 39. herein above, the same as if set forth herein, verbatim.

54. Defendant, Sandelin was The Hospital's CEO, for periods on and after October 1, 1999 and specifically, while Plaintiff's malpractice claim against The Hospital was pending.

Defendant, Sandelin knew the terms and provisions of The Trust Agreement because he signed it. He also knew the terms and provisions of the Risk Management Plan of The Hospital, which was in writing and revised, from time to time because he signed those written plans, also.

Defendant, Sandelin knew Robert Lansford, personally. Mr. Lansford was, at times, on the board of directors of The Hospital. Defendant, Sandelin knew Nancy Argo, and knew that she managed the malpractice claims filed against The Hospital, which would include Plaintiff's claim. As CEO of The Hospital, Defendant, Sandelin had the authority and the power to direct how withdrawals from The Trust could be used. Defendant, Sandelin directed Chase Bank to withdraw large sums of money from The Trust, then directed those funds be used for purposes not authorized by The Trust Agreement. Chase Bank did not question Defendant, Sandelin's directives and did not require such compliance. Defendant, Sandelin, as CEO had the authority to direct how those funds were to be used. Defendant, Sandelin did not require that the trust remain "actuarially adequate" to resolve malpractice claims against the hospital and he knew that

¹⁹

Kinzbach Tool Co., Inc. v. Cobett-Wallace Corp., 138 Tex. 565, 160 S.W.2d 509, 514 (1942)

neither Defendant, Chase Bank, nor Defendant, Milton required that adequate funds be maintained in The Trust bank account to satisfy hospital malpractice claims.

55. Defendant, Sandelin, knew that The Trust did not have sufficient funds to satisfy the amount assigned to Plaintiff's malpractice claim or to satisfy any judgment Plaintiff might recover, and that the representations contained in The Hospital's disclosure made in the Underlying Lawsuit that The trust did have sufficient funds, were false. He did not disclose those false representations to the trial court, to the excess carriers or to Plaintiff's counsel.

56. Defendant, Sandelin, knew that published representations regarding the sufficiency of funds set aside to resolve pending malpractice claims, which representations were made in connection with the attempted sale of The Hospital, were false, further concealing the fact that The Trust had been depleted of its funds to resolve pending malpractice claims, including Plaintiff's claim.

57. If Defendant, Sandelin, had required or demanded that Chase Bank maintain funds in The Trust to satisfy Plaintiff's claim until that claim was resolved, there probably would have been sufficient funds on hand to satisfy Plaintiff's judgment of \$975,000.00. As a direct result of Defendant, Sandelin's illegal conduct, The Trust had less than \$20,000.00 to satisfy Plaintiff's judgment when The Judgment was finally obtained and demand was made upon Chase Bank for its payment from The Trust.

58. For the reasons herein stated, Defendant, Sandelin, knowingly and actively participated and conspired in the removal and misappropriation of trust funds and in the breach of Chase Bank's fiduciary duties to Plaintiff, proximately causing damage to Plaintiff, as herein after

detailed.²⁰

Proximate Cause of Damages

59. At all times material to the claims made by Plaintiff in the underlying malpractice lawsuit, The Hospital had funds sufficient to fund and maintain The Trust and satisfy Plaintiff's claims, had The Trust been managed and maintained, properly. The individual defendants, Milton, Sandelin and Argo, as herein above detailed, either directed, authorized, or acquiesced to the illegal withdrawal of trust funds by Chase Bank and then used for illegal purposes. Had The Trust been properly managed by Chase Bank and the funds paid to The Trust been retained and used as required, there would have been funds in The Trust to satisfy The Judgment. As a direct and proximate result of Chase Bank's breach of its fiduciary duties, with the aid of the individual conspirators, Defendants Milton, Sandelin and Argo, and the knowing misappropriation of large sums of trust funds, there are not sufficient funds in The Trust to satisfy The Judgment when it was obtained and demand for payment was made upon Chase Bank.²¹ Defendants' wrongful conduct herein above detailed is a direct and proximate cause of Plaintiff's damages, herein enumerated and sought.

Damages

60. Plaintiff's damages include the loss of the value of The Judgment. Plaintiff seeks all actual and compensatory damages, all statutory damages, all punitive damages, and any and all

²⁰ *Kinzbach Tool Co., Inc. v. Cobett-Wallace Corp.*, 138 Tex. 565, 160 S.W.2d 509, 514 (1942)

²¹ *Whitfield v. Lindemann*, 853 F.2d 1298, 1304 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F.3d 924 (5th Cir. 2001)

attorney fees to which it is entitled.

61. Plaintiff seeks punitive damages, as allowed and as determined by the Court and The Jury.

Pre-Judgment Interest

62. Plaintiff seeks pre-judgment interest, as allowed by law.

Prayer

PREMISES CONSIDERED, Plaintiff prays that upon trial, Plaintiff recover damages from each and all of the Defendants, jointly and severally, as herein requested and as allowed by law, and for any other relief to which Plaintiff shows itself justly entitled, at law or in equity.

Respectfully submitted,
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By: 

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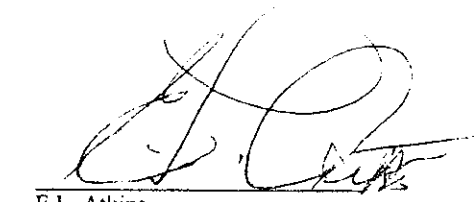
CERTIFICATE OF SERVICE

This is to certify that on this the 7th day of June, 2011, a true and correct copy of the above and foregoing pleading, **Plaintiff's Second Amended Original Petition and Claim of Estate**, has been served upon the following, as required by law:

Robert G. Richardson
Albon O. Head, Jr.
Jeffrey G. Hamilton
Heather M. Forrest
Jackson Walker L.L.P.
Attorneys
901 Main St.
Suite 6000
Dallas, TX 75202
Attorneys for JP Morgan Chase Bank, N.A.,
via CM RRR no. 7010 0780 0000 2690 4363

Susan E. Baird
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Fort Worth, TX 76102
Attorneys for Glenn Milton and Lucy Norris, Defendants
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E.L. Atkins
John MacLean

EXHIBIT L



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- Chapter 7 -- Value of Services of Nonpaid Workers
- Chapter 8 -- Purchase Discounts and Allowances, and Refunds
- Chapter 9 -- Compensation of Owners
- Chapter 10 -- Cost to Related Organizations
- Chapter 12 -- Return on Equity Capital of Proprietary Providers
- Chapter 14 -- Reasonable Cost of Therapy and Other Services
- Chapter 15 -- Change of Ownership

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Chapter 21 -- Costs Related to Patient Care

Chapter 22 -- Determination of Cost of Services

Chapter 23 -- Adequate Cost Data and Cost Finding

Chapter 24 -- Payment to Providers

Chapter 25 -- Limitations on Coverage of Costs Under

Chapter 26 -- Lower of Cost or Charges

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For purposes of this section, a "deductible" refers to the amount of first dollar losses not covered by a purchased insurance policy, a funded self-insurance program, or a combination of both.

2162.6 Losses in Excess of Coverage.--Where a provider incurs losses which are in excess of purchased commercial and/or limited purpose insurance coverage or actuarially determined funded contributions to an approved self-insurance fund in meeting specified deductibles, coinsurance provisions, or total self-insurance, such costs are allowable in the year paid where the provider submits evidence to the satisfaction of the intermediary that the insurance coverage or funding levels reflected the decisions of prudent management.

Losses in excess of coverage for events that occurred prior to the provider's participation in the Medicare program, where the actual amount of the loss was unknown and could not be determined at the time of the event, are allowable, provided the determination and actual payment of the losses are made subsequent to the provider's entry into the program, and assuming that the required evidence of prudent management in establishing insurance coverage or funding levels has been submitted.

2162.7 Conditions Applicable to Self-Insurance.--

A. Definition of Self-Insurance.--Self-insurance is a means whereby a provider(s), whether proprietary or nonproprietary, undertakes the risk to protect itself against anticipated liabilities by providing funds in an amount equivalent to liquidate those liabilities.

If a provider enters into an agreement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. For example, any agreement designed to provide administrative services only shall be considered self-insurance and must meet the requirements specified below. If administrative services agreements do not meet these requirements, any amounts funded as part of the agreement will not be allowed. Payments from the fund, however, will be treated on a claim-paid basis as specified in §2162.3.

There may be situations in which there is a fine line between self-insurance and purchased or commercial insurance. This is particularly true of "cost-plus" type arrangements. As long as there is at least some shifting of risk to the unrelated party, even if limited to situations such as provider bankruptcy or employee termination, the arrangement will not be considered self-insurance.

B. Self-Insurance Fund.--The provider or pool establishes a fund with a recognized independent fiduciary such as a bank, a trust company, or a private benefit administrator. In the case of a State or local governmental provider or pool, the State in which the provider or pool is located may act as a fiduciary. The provider or pool and fiduciary must enter into a written agreement which includes all of the following elements:

1. General Legal Responsibility--The fiduciary agreement must include the appropriate legal responsibilities and obligations required by State laws.
2. Control of Fund--The fiduciary must have legal title to the fund and be responsible for proper administration and control. The fiduciary cannot be related to the provider either through ownership or control as defined in Chapter 10, except where a State acts as a fiduciary for a State or local governmental provider or pool. Thus, the home office of a chain organization or a religious order of which the provider is an affiliate cannot be the fiduciary. In addition, investments which may be made by the fiduciary from the fund are limited to those approved under State law governing the use of such fund; notwithstanding this, loans by the fiduciary from the fund to the provider or persons related to the provider are not permitted. Where the State acts as fiduciary for itself or local governments, the fund cannot make loans to the State or local governments.
3. Payments by Fiduciary--The agreement must provide that withdrawals must be for malpractice and comprehensive general liability or unemployment or workers' compensation insurance losses, or employee health benefits coverage only and those expenses listed in §2162.8. Any rebates, dividends, etc., to the provider from the fund will be used to reduce allowable cost. Furthermore, evidence of a practice of payments from the fund for purposes unrelated to the proper administration of the fund may result in a withdrawal of recognition of the self-insurance fund by the Medicare program. In such instances, payments into the fund will not be considered an allowable cost. Intermediaries will submit incidents of impropriety to the appropriate regional office.
4. Termination--The agreement must state that upon termination from the Medicare program, the provider must obtain a determination of the adequacy of the fund balance as of the date of termination from an independent actuary, insurance company, or broker (as defined in B below). Any reserves that are deemed excessive must be offset against the provider's allowable costs in the provider's final cost report. If the reserve fund is deemed inadequate, additional contributions to the fund subsequent to the date of termination are not allowable.
5. Reporting--The agreement must require that a financial statement be forwarded to the provider or pool members by the fiduciary no later than 60 days after the end of each annual insurance reporting period. This statement must

show the balance in the fund at the beginning of the period, current period contributions, and amount and nature of final payments, including a separate accounting for claims management, legal expenses, claims paid, etc., and the fund balance. This report and fiduciary's records must be available for intermediary review and audit.

6. Income Earned.--The agreement must provide that any income earned by the fund must become part of the fund and used in establishing adequate fund levels.

C. Soundness of the Fund.--The provider submits to the intermediary an annual certified statement from an independent actuary, insurance company, or broker that has actuarial personnel experienced in the appropriate field of medical malpractice and general liability insurance, unemployment compensation, workers' compensation or employee health care insurance. To be independent, there must not be any financial ownership or control, as defined in Chapter 10, either directly or indirectly in the provider.

The actuary, insurance company, or broker shall determine the amount necessary to be paid into the fund. The fund should include reserves for losses based on accepted actuarial techniques customarily employed by the section of the insurance industry writing the type of insurance coverage the fund is designed to provide, and expenses related to the self-insurance fund as specified in §2162.8. The actuary, insurance company, or broker shall also provide for an estimate of the amounts in the fund that are in excess of what is reasonably needed to support anticipated disbursements from the fund. This excess amount must be treated as specified in §2162.10. Where funds have been established to cover employee health care, the actuary, insurance company or broker must limit fund payments to the cost of insurance premiums for comparable purchased coverage at the same level offered by the fund. Fund payments exceeding this amount will be treated as excess payments.

The actuary, insurance company, or broker must state the actuarial basis and the coverage period used in establishing reserve levels. Reserves will not be recognized as allowable Medicare costs for losses specifically denied by other subsections of §§2160, 2161, and 2162. Thus, reserve payments will not be recognized for items such as:

1. Losses in excess of the greater of 10 percent of a provider's net worth or \$100,000 where a provider elects to pay losses directly in lieu of establishing a funded self-insurance fund (§2162.5);

2. Losses in excess of coverage levels which an intermediary deems do not reflect the decisions of prudent management (§2162.6).

The actuary, insurance company, or broker must provide its workpapers to Medicare intermediaries upon request.

There must be separate accountability to reflect all operations within each fund.

EXHIBIT M

Case No. C2000800560

ESTATE OF JOHNNY FISHER, DEC'D,
Plaintiff

VS.

J P MORGAN CHASE BANK,
GLENN MILTON, JAY SANDLIN,
LUCY NORRIS, RN, and
NANCY ARGO,
Defendants

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IN THE DISTRICT COURT

413TH JUDICIAL DISTRICT

JOHNSON COUNTY, TEXAS

2011 MAR -4 AM 11:14
RN

PLAINTIFF'S INITIAL RESPONSE TO REQUESTS FOR DISCLOSURE FOR ALL DEFENDANTS

TO: JP Morgan Chase Bank, N.A., Defendant, by and through its attorneys of record, Robert G. Richardson, Albon O. Head, Jr., Jeffrey G. Hamilton and Heather M. Forrest, Jackson Walker L.L.P., Attorneys, 901 Main St., Suite 6000, Dallas, TX 75202, via CM RRR No. 7010 1870 0000 3726 8545;

Nancy Argo, Defendant, by and through her attorneys of record, Susan E. Baird, Cotten Schmidt & Abbott, L.L.P., Attorneys, 550 Bailey Ave., Suite 600, Fort Worth, TX 76107, via CM RRR no. 7010 1870 0000 3726 8576;

Glenn Milton and Lucy Norris, Defendants, by and through their attorneys of record, William Kirkland and Susanna Johnson, Bourland & Kirkman, Attorneys, 201 Main St., Suite 1400, Fort Worth, TX 76102, Attorneys via CM RRR no. 7010 1870 0000 3726 8552

Plaintiff, Estate of Johnny Fisher, Dec'd, hereby makes and files its initial response to ALL Defendants' Requests for Disclosure.

Disclosure No. a - the correct names of the parties to the lawsuit.

Response to Request for Disclosure a:

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Initial Response: At this time, Plaintiff believes that the correct name of the parties are, as follows:

Plaintiff: The Estate of Johnny Fisher, Deceased, by and through its duly appointed Administrator, Houston Allan Fisher.

Defendants: JP Morgan Chase Bank, N.A. Chase Bank, a corporation authorized to transact business in Texas (hereafter, at times, referred to as "Chase Bank"); Glenn Milton (hereafter, at times "Milton"); Jay Sandelin (incorrectly named Jay Sandlin in the original petition, (hereafter, at times "Sandelin"); Nancy C. Argo, RN (hereafter, at times, "Argo"); and, Lucy Norris, RN (hereafter, at times "Norris"). Sandelin has not been served with citation, at this time.

Disclosure No. b - the name, address and telephone number of any potential parties.

Response to Request for Disclosure b:

Initial Response: Plaintiff is not aware of any additional potential parties, at this time.

Disclosure No. c - the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

Response to Request for Disclosure c:

Initial Response:

1. Legal Theories: At this time, the legal theories of Plaintiff's claims are breach of fiduciary duties by Defendant, JPMorgan Chase Bank, N.A. and civil conspiracy by the individual defendants, Glenn Milton, Jay Sandelin, Lucy Norris, RN and Nancy Argo, RN proximately causing damage to Plaintiff, including the value of the judgment that Plaintiff obtained against Fort Worth Osteopathic Hospital, Inc. (hereafter, at times "FWOH" or "The Hospital") plus attorney fees plus punitive damages. All Defendants are jointly and severally liable.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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a. Legal Theories for Plaintiff's Claim of Breach of Fiduciary Duties asserted against Defendant, JPMorgan Chase Bank, N.A.

- i. The elements of a cause of action for breach of fiduciary duty claim are (1) a fiduciary relationship between the plaintiff and defendant, (2) a breach by the defendant of his fiduciary duty to the plaintiff, and (3) an injury to the plaintiff or benefit to the defendant as a result of the defendant's breach. *Lundy v. Masson*, 260 S.W.3d 482 (Tex. App. - Houston [14th Dist.] 2008, pet. denied); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App. - Dallas 2006, pet. denied); *Punts v. Wilson*, 137 S.W.3d 889, 891 (Tex. App. - Texarkana 2004, no pet.)
- ii. A trustee holds legal title to and right to possession of trust property. *City of Mesquite v. Malouf*, 553 S.W.2d 639, 644 (Tex. App. - Texarkana 1977, writ ref'd n.r.e.); *Jameson v. Bain*, 693 S.W.2d 676, 680 (Tex. App. - San Antonio 1985, no writ)
- iii. A trustee holds legal title to and right to possession of trust property for the benefit of the beneficiary.
- iv. The beneficiary of a trust is vested with equitable title to the trust property. *Faulkner v. Bost*, 137 S.W.3d 254 (Tex. App. - Tyler 2004, no pet.)
- v. A trustee of a Texas trust has, by law, a fiduciary duty toward a beneficiary of the trust to perform its duties in compliance with the terms and provisions of the trust agreement, whether written or oral. *Meyer v. Cathey*, 167 S.W.3d 327 (Tex. 2005)
- vi. A trustee is liable to the beneficiary or beneficiaries of a trust for the misappropriation and mismanagement of trust property, even though its misconduct is caused, or contributed to by the misconduct of others. *Alpert v. Riley*, 274 S.W.3d 277 (Tex. App. - Houston [1st Dist.] 2008, pet. denied); Tex. Prop Code Sec. 114.001
- vii. The beneficiary of a trust, revocable or otherwise, is "a person for whose benefit property is held in trust, regardless of the nature of the interest." Sec. 111.004 (2) Tex. Prop. Code

Plaintiff's Response to Requests for Disclosure - All Defendants.

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- viii. A beneficiary of a trust does not have to be named in the trust document, as long as the beneficiary is sufficiently "identified" in the trust agreement. *Perfect Union Lodge No. 10 v. Interfirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988); *Pickelner v. Adler*, 229 S.W.3d 516, 526 (Tex. App.-Houston [1st Dist.] 2007, pet. denied); *In re Estate of Berger*, 174 S.W.3d 845, 848 (Tex. App.-Waco 2005, no pet.) It is commonplace for a trust to provide for identified, but unnamed beneficiaries.
- ix. A trustee has the burden to prove that the trust was administered properly and that there would be sufficient funds in the trust to accomplish its purpose, but for the breach of the trustee's fiduciary duties. *Keck, Mahin, et al v. Nat. Union Fire Ins. Co of Pittsburgh, P.A., et al* 20 S.W.3d 692, 695 (Tex. 2000); *Archer v. Griffith*, 390 S.W.2d 735, 739 (Tex. 1964)
- (1) Causation is proved by showing that sufficient funds were (or were not) available to properly fund and administer the trust and that those funds would have been reserved and available for satisfaction of Plaintiff's medical malpractice claim, had the millions of dollars deposited been managed and appropriated properly. *Whitfield v Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988); § 212, comment e, and §205, comment. 5, Restatement (Second) of Trusts
- x. One who has obtained a judgment against an insured is a third party beneficiary of the insured's liability insurance policy and can bring a direct action in tort against the insurer once the judgment is obtained. *State Farm Mutual Ins. Co. v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989)
- xi. Breach of a fiduciary duty can be the basis of a conspiracy claim. *Paschal v. Great Drilling, Ltd.*, 215 S.W.3d 437, 450 (Tex. App. - Eastland 2006, pet. denied)
- xii. Punitive damages may be awarded for breach of fiduciary duty by a trustee, when acting in conspiracy with one or more others. *International Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 584 (Tex. 1963); *Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex. 1983); *Brousseau v. Renzani*, 81 S.W.3d 381 (Tex. App. - Beaumont 2002, pet. denied);

Plaintiff's Response to Requests for Disclosure - All Defendants.

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- b. Factual Bases for Plaintiff's Claim of Breach of Fiduciary Duty by Chase Bank. Little or no discovery has been conducted at this time. This response will be supplemented, as appropriate, after further discovery is completed. However, at this time, Plaintiff relates the following facts which evidence Plaintiff's claim of breach of fiduciary duty.
- i. The trustee of the subject trust during relevant times was Chase Bank, with trust management duties assigned to Chase Bank Sr. Vice President, Robert Lansford.
 - ii. Robert Lansford was a director of The Hospital.
 - iii. Chase Bank, as trustee, held legal title to all trust property, as the subject trust agreement provided and as Texas law provides.
 - iv. The subject trust provided specific procedures required for Chase Bank to follow to be authorized to withdraw and pay out trust funds for the specific purposes of the trust.
 - v. Chase Bank did not follow the specific procedures set forth in the subject trust agreement required to be followed for Chase Bank to be authorized to withdraw and pay out trust funds for the specific purposes of the trust.
 - (1) Signatures of hospital personnel who were authorized to order disbursements were required to be verified to the trustee.
 - (2) Chase Bank was not provided with the names of those persons authorized to direct withdrawals from The Trust.
 - (3) Chase Bank did not request a list or identity of the names of those persons authorized to direct withdrawals from The Trust.
 - (4) Chase Bank did not have certified copies of the signatures of those persons authorized to direct withdrawals from The Trust on file with the bank.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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- (5) Chase Bank did not demand certified copies of the signatures of those persons authorized to direct withdrawals from The Trust.
 - (6) The purpose of withdrawals from the trust fund was not certified and documented, as required by the subject trust agreement.
 - (7) Withdrawals were made from The Trust by Chase Bank without proper instructions.
 - (8) Chase Bank never questioned withdrawal requests by hospital officers and representatives.
 - (9) Chase Bank was never advised as to the adequacy of the funds or property in The Trust, as required by the trust agreement.
 - (10) Chase Bank never inquired into the adequacy of the funds or property in The Trust.
- vi. The specific directives in the trust agreement were not discretionary.
 - vii. No provision of the trust agreement authorized trust funds to be used to pay salaries and general operating expenses of The Hospital, or any subsidiary, or any other corporation or entity affiliated with The Hospital.
 - viii. Robert Lansford acknowledged Chase Bank's duty to comply with the requirements of The Trust.
 - ix. Chase Bank, as trustee, misappropriated millions of dollars of trust funds at the direction of one or more of the individual defendants and with the knowledge, approval, and/or acquiescence of one or more of the individual defendants during the period that Robert Lansford was an officer of Chase Bank and a director of The Hospital.
 - x. Chase Bank, as trustee, misappropriated millions of dollars of trust funds at the direction of one or more of the individual defendants and with the knowledge, approval, and/or acquiescence of one or more of the individual defendants, on the baseless and groundless excuse that the trust was a

Plaintiff's Response to Requests for Disclosure - All Defendants.

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revocable trust and that although Chase Bank held title, the fund was really The Hospital's funds.

xi. Johnny Fisher is deceased. He died as a direct result of the negligence of representatives and employees of The Hospital. Johnny Fisher's estate asserted a hospital malpractice, survival and wrongful death claim against The Hospital. A lawsuit was filed against The Hospital to pursue that malpractice claim and a judgment was obtained by the Estate of Johnny Fisher against The Hospital. Johnny Fisher, and his estate, standing in his stead, is a "victim of hospital malpractice" and is, therefore, a beneficiary of the subject trust or, otherwise, was one to whom a fiduciary duty is owed by Chase Bank as a result of its peculiar relationship with Plaintiff and owed a fiduciary duty to Plaintiff to maintain funds in The Trust sufficient to satisfy Plaintiff's claim and resulting judgment based, in part, upon the following factual matters:

- (1) The subject trust was established to pay claims of victims of hospital malpractice.
- (2) Johnny Fisher was a victim of hospital malpractice.
- (3) The Fisher Estate "stands in the shoes" of Johnny Fisher and is, therefore a "person" for whose benefit The Trust was established.¹
- (4) Plaintiff is "a person for whose benefit property is held in trust, regardless of the nature of Plaintiff's interest [in The Trust]".
- (5) The Trust refers to the beneficiary of The Trust as a "person".
- (6) The Hospital never was a "person".
- (7) The Hospital never was referred to as a "person" in the subject trust agreement.
- (8) Victims of hospital malpractice are the "persons" who are

¹ § 71.021, TEX. CIV. PRAC. & REM. CODE ANN. (VERNON) "Survival of Cause of Action"

Plaintiff's Response to Requests for Disclosure - All Defendants.

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benefitted "directly" by The Trust and not merely "incidentally" by The Trust.

- (9) The Trust was structured to be in compliance with the provisions of the Medicare Provider Reimbursement Manual.
 - (a) The Medicare Provider Reimbursement Manual defines The Hospital as the "provider" and not the "beneficiary" of The Trust.
 - (b) The Medicare Provider Reimbursement Manual define the victims of hospital malpractice as the beneficiaries of this, and similar self-insured retention funds or trusts.
- (10) Chase Bank has represented in pleadings filed in The Hospital's bankruptcy case that the beneficiaries of the Trust are victims of hospital malpractice, including Plaintiff.²
- (11)
- (12) The Hospital has represented in papers filed with the trial court in the underlying medical malpractice lawsuit that Plaintiff, along with Plaintiff's mother, filed against The Hospital for injuries and damages resulting from hospital malpractice, in Cause No. C200100173, "Mildred Fisher, et al v. John B. Payne, D.O., et al" in the 413th District Court, Johnson County, Texas, that Plaintiff is

² JP Morgan Chase Bank, N.A.'s Motion to Dismiss, March 14, 2007, "In re: Fort Worth Osteopathic Hospital, Inc., Debtor", Case No. 05-415-13-DML, "Shawn K. Brown Chapter 7 Trustee, For Fort Worth Osteopathic Hospital, Inc., Plaintiff, vs. JPMorgan Chase Bank, N.A., Defendant", Adversary No. 07-04016-DML, see. p. 3:

Clearly, this suit is an attempt by the Chapter 7 Trustee to enforce claims of personal injury that do not belong to the Debtor, and is not a suit for recovery of funds belonging to the estate.

¶¶ 43, 44, 45 and 46 of said Motion to Dismiss are replete with references to duties owed and allegedly breached; however, *the beneficiaries are identified as the malpractice victims, and not the Debtor, Fort Worth Osteopathic Hospital, Inc.*

Plaintiff's Response to Requests for Disclosure - All Defendants.

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a beneficiary of The Trust and that The Trust was established to pay any and all judgments obtained by Plaintiffs in that malpractice lawsuit.³

(13) To conclude that anyone, who is not a victim of hospital malpractice, is the beneficiary of this trust would render The Trust provisions regarding its purpose meaningless.

(14) To conclude that a victim of hospital malpractice is not a beneficiary of this trust would also render The Trust provisions regarding its purpose meaningless.

(a) The Trust provides that payments from The Trust shall be made "only for malpractice losses of the hospital".

(15) Plaintiff, as a victim of hospital malpractice, is "sufficiently identified" in The Trust, as a beneficiary of The Trust, as required by state law.

(16) The United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, has determined and ruled that Plaintiff is a beneficiary of The Trust.

c. Legal Theories for Plaintiff's Claim of Civil Conspiracy asserted against Defendants, Glenn Milton; Jay Sandelin; Nancy C. Argo, RN; and, Lucy Norris, RN. Plaintiff claims that the individuals named as defendants, Glenn Milton; Jay Sandelin; Nancy C. Argo, RN; and, Lucy Norris, RN conspired with Chase Bank to mismanage and misappropriate trust funds and conceal those illegal disbursements from Medicare, from The Hospital's excess liability insurance carrier(s) and from the Texas Courts in which hospital malpractice claims were being prosecuted.

i. Civil conspiracy is proved by showing: (1) two or more persons; (2) an objective to be accomplished; (3) a meeting of the minds on the objective:

³ Response to Requests for Disclosure, filed by The Hospital in the underlying hospital and medical malpractice case.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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(4) one or more unlawful, overt acts; and (5) proximate damages. *Chon Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005) The conspiracy may involve an unlawful purpose or unlawful means of achieving a lawful purpose. *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996).

- ii. Proof of a conspiracy does not require direct evidence. *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 858 (Tex. 1969).
- iii. Conspiracies, often, must be inferred from and proved by circumstantial evidence. *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 858 (Tex. 1969);
- iv. Civil conspiracy is a derivative tort; therefore, the plaintiff must plead and prove the underlying tort claim upon which the conspiracy is based. *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996); *Berry v. Golden Light Coffee Co.*, 327 S.W.2d 436, 438 (Tex. 1959); *Hinojosa v. Guidant Corp.*, 2005 WL 2177212, at 4 (S.D. Tex., Sept. 7, 2005) (citing *Grizzle v. Texas Commerce Bank*, 38 S.W.3d 265, 285 (Tex. App.- Dallas 2001, rev'd, in part, on other grounds at 96 S.W.3d 240 (Tex. 2002))
- v. All members of a civil conspiracy are jointly and severally liable for their co-conspirators' wrongful acts. *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 160 S.W.2d 509, 514 (Tex. 1942); *Kastner v. Jenkins & Gilchrist, P.C.*, 231 S.W.3d 571, 580 (Tex. App. -Dallas 2007, no pct.) ("When a third party knowingly participates in the breach of a fiduciary duty, the third party becomes a joint tort-feasor and is liable as such") *Bentley v. Bunton*, 94 S.W.3d 561, 619 (Tex. 2002) (even if a co-conspirator's acts occurred before the conspiracy formed, all the conspiring parties are liable for those acts, as long as those acts are made in furtherance of the 'common goal' of the conspiracy)
- vi. "Notice" of a fact is information concerning a fact actually communicated to a person or acquired by him from an authorized source, or presumed by law to have been acquired. *Fluck v. First National Bank of Dalhart*, 148 Tex. 495, 226 S.W.2d 628 (1950)

Plaintiff's Response to Requests for Disclosure - All Defendants.

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- (1) Notice is not synonymous with knowledge, as a person may be held to have notice of something about which he has no knowledge. *Id.*
- (2) Notice is actual or constructive. *Id.*
- (3) Actual notice is that which is expressed or which would cause a reasonably prudent person to make inquiry and exercise the means at hand to disclose information. *Id.*
- (4) Notice is a question of fact. *Id.*

d. Factual Bases for the allegation of Civil Conspiracy. Little or no discovery has been conducted at this time. This response will be supplemented, as appropriate, after further discovery is completed. However, at this time, Plaintiff relates the following facts which evidence and support Plaintiff's claim of civil conspiracy.

- i. One or more of the individual defendants knew, or should have known, and had constructive knowledge of, the specific terms and requirements of the subject trust. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.
- ii. One or more of the individual defendants knew, or should have known, and had constructive knowledge, that compliance with medicare regulations was critical to the continued receipt, by The Hospital, of medicare funds. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.
- iii. Requirements for the establishment and operation of the subject trust, that are contained in the Medicare Provider Reimbursement Manual are also contained in the subject trust agreement.
 - (1) One or more of the individual defendants knew, or should have known of the requirements for the establishment and operation of the subject trust as contained in the Medicare Provider

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Reimbursement Manual and that those requirements are contained in the subject trust agreement. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.

- iv. One or more of the individual defendants knew, or should have known, and had constructive knowledge, that the subject self-insured trust fund was not being administered properly and was not maintaining sufficient funds to resolve pending hospital malpractice claims. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.
- v. One or more of the individual defendants falsely represented that the trust was sufficiently funded to resolve The Hospital's pending medical malpractice cases, in brochures provided to prospective purchasers of The Hospital. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.
- vi. One or more of the individual defendants were actively involved in the handling and the resolution of medical malpractice cases against The Hospital, or were on the board of directors and knew the activities of the trust, through information supplied (or the lack of information supplied) by the Trustee, regarding medical malpractice case activities. The nature and extent of each individual defendant's knowledge, actual or constructive, will be determined after further discovery.
- vii. One or more of the individual defendants could not withdraw trust funds from the trust in a manner contrary to the requirements of the subject trust agreement without Robert Lansford's signature and cooperation. The nature and extent of each individual defendant's involvement in those withdrawals, will be determined after further discovery.
- viii. Chase Bank had no reason or excuse to use trust funds for any purpose other than the purposes set forth in the trust agreement, except that one or more of the individual defendants directed him to do so. The nature and extent of each individual defendant's involvement in those withdrawals,

Plaintiff's Response to Requests for Disclosure - All Defendants.

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will be determined after further discovery.

- ix. Chase Bank could not misappropriate trust funds without the aid of one or more of the individual defendants directing the misappropriation of trust funds. The nature and extent of each individual defendant's involvement in those misappropriations, will be determined after further discovery.
- x. It is reasonable to conclude that the "common goal" or "objective" of the trustee and one or more of the alleged conspirators, Sandelin, Milton, Norris and Argo, was the appropriation of trust funds to hospital bank accounts for use in ways that were inconsistent with and in violation of the terms and purposes of the subject trust.

Disclosure No. d - the amount and any method of calculating economic damages.

Response to Request for Disclosure d:

Initial Response: At this time, Plaintiff alleges that the economic damages are the value of the judgment which Plaintiff obtained against Fort Worth Osteopathic Hospital, Inc., in June, 2007, in the amount of \$975,000.00, which would have been paid from the subject trust, pursuant to its terms and provisions, but for the misappropriation of trust funds. Additionally, Plaintiff's damages include reasonable and necessary attorney fees. Further discovery is necessary to establish additional damages. Plaintiff may be entitled to punitive damages.

Disclosure No. e - the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

Response to Request for Disclosure e:

Initial Response: At this time, Plaintiff identifies: Houston Fisher, E.L. Atkins, John MacLean, Jay Sandelin, Lucy Norris, Nancy Argo, Glenn Milton, Bruce Edwards, Shawn Brown, Jeffrey Hamilton, Albon O. Head, Jr., Barrett Stetson, Jim Stanley, St. Clair Newbern, Sean McCaffity, Chase Bank Trust Officers, including Robert Lansford, Hon. D. Michael Lynn, United States Bankruptcy Judge for the Northern District of Texas, Fort Worth Division. This list will be supplemented with addresses, and additional persons, as further information is learned.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Disclosure No. f - for any testifying expert:

Disclosure No. f (1) - the expert's name, address, and telephone number.

Response to Request for Disclosure f (1):

Initial Response: In an abundance of caution, Plaintiff initially identifies Robert Lansford, trust officer, or former trust officer, of JPMorgan Chase Bank, and former director of The Hospital, whose address is unknown, at this time, Jay Sandelin, former CEO, Fort Worth Osteopathic Hospital, Inc., whose address is believed to be 3200 Meander Rd., Granbury, Texas and Bruce Edwards, former accountant for Fort Worth Osteopathic Hospital, Inc., whose address and telephone number is also unknown, at this time. Plaintiff has not selected testifying experts, at this time.

Disclosure No. f (2) - the subject matter on which the expert will testify.

Response to Request for Disclosure f (2):

Initial Response: In an abundance of caution, Plaintiff identifies:

Robert Lansford: the duties of a trust officer of a major bank in administering and managing a trust owned and held by the bank for management; proper reporting of trust management activities to the trustor, to the FDIC, and to the trustee, bank; the responsibilities of a member of a board of directors of a corporation which has delivered property in trust to a bank for management pursuant to the terms and provisions of a trust agreement prepared by the corporation. The duties of a member of the board of directors of a charitable corporation who, at the same time, is an officer of a bank named as a trustee of a trust established by the same charitable corporation. Additionally, Robert Lansford has given depositions in Case No. 05-41513-DML-7, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor" and in Case No. 05-41513-DML-7, Adversary No. 07-4016 "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A.".

Plaintiff's Response to Requests for Disclosure - All Defendants.

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These cases are related to the same trust agreement that is at issue in this case. A copy of Mr. Lansford deposition transcripts will be provided under separate cover. Plaintiff identifies Mr. Lansford's opinions and conclusions, as are set forth in his depositions, to the extent such testimony and opinions qualify as the opinions and conclusions of an expert.

Jay Sandelin. the duties and the responsibilities of one who is both a CEO and a member of a board of directors of a non-profit corporation, which corporation has transferred title to and delivered property in trust to a bank for management pursuant to the terms and provisions of a trust agreement prepared by the corporation. Mr. Sandelin has given more than one deposition, including at least one deposition in Case No. 05-41513-DML-7, Adversary No. 07-4016 "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A.". Plaintiff identifies Sandelin's opinions and conclusions, as are set forth in his deposition, to the extent those opinions and statements qualify as the opinions and conclusions of an expert.

Bruce Edwards. general duties of an accountant of a charitable hospital corporation, that receives medicare funds and that has established a self-insured trust fund, in lieu of liability insurance. Mr. Edwards has given at least one deposition in Case No. 05-41513-DML-7, Adversary No. 07-4016 "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A.". A copy of his deposition transcript will be provided under separate cover. Plaintiff identifies Mr. Edward's opinions and conclusions, as are set forth in his deposition, to the extent those opinions and conclusions qualify as the opinions and conclusions of an expert.

Nancy Argo, RN. the duties and responsibilities of one retained as expert and director of a hospital risk management department of a non-profit hospital corporation that receives medicare funds and in which the hospital has established a self-insured trust fund in lieu of liability insurance for the specific purpose of paying hospital malpractice claims pursuant to the terms and conditions of the self-insured trust agreement and at all times relevant to the claims asserted in the underlying hospital and medical malpractice claim and lawsuit.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Lucy Norris, RN. the duties and responsibilities of a reasonable, careful and prudent director of a board of directors for a charitable hospital that receives medicare funds, such as Fort Worth Osteopathic Hospital, Inc., specifically in connection with the resolution of hospital malpractice claims asserted against the hospital, when the hospital maintains a self-insured trust fund established in lieu of primary liability insurance and at all times relevant to the claims asserted in the underlying hospital and medical malpractice claim and lawsuit. In addition, the subject matter of Lucy Norris's testimony will include a hospital's duties to comply with Medicare regulations, including the requirement to maintain adequate funds in a self-insured trust fund established in lieu of liability insurance for the satisfaction of hospital malpractice claims and the consequences of any failure to do so and at all times relevant to the claims asserted in the underlying hospital and medical malpractice claim and lawsuit.

Disclosure No. f (3) - the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information.

Response to Request for Disclosure f (3):

Initial Response: Robert Lansford: Unknown, at this time, other than the deposition testimony, given previously in related cases, and as herein above identified.

 Jay Sandelin: Unknown, at this time, other than the deposition testimony, given previously in a related case, and as herein above identified.

 Bruce Edwards: Unknown, at this time, other than the deposition testimony, given previously in a related case, and as herein above identified.

 Nancy Argo, RN: Unknown, at this time.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Lucy Norris, RN: Unknown, at this time

Disclosure No. f (4) - if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

Disclosure No. f (4) (A) - all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony.

Response to Request for Disclosure F(4)(A):

Initial Response: Plaintiff has not retained any experts, at this time.

Disclosure No. f (4) (B) - the expert's current resume and bibliography.

Response to Request for Disclosure f(4)(B):

Initial Response: Plaintiff has not retained any experts, at this time.

Disclosure No. g - any indemnity and insuring agreements described in Rule 192.3(f).

Response to Request for Disclosure g:

Initial Response: not applicable to Plaintiff

Disclosure No. h - any settlement agreements described in Rule 192.3(g).

Response to Request for Disclosure h:

Initial Response: there are none.

Disclosure No. i - any witness statements described in Rule 192.3(h).

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Response to Request for Disclosure i:

Initial Response: Plaintiff identifies the depositions of Robert Lansford, one taken January 25, 2006, in the Bankruptcy case of Fort Worth Osteopathic Hospital, Case No. 05-41513-DML, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor". In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division and another deposition taken February 5, 2008 in Adversary No. 07-04016, in the Bankruptcy case of Fort Worth Osteopathic Hospital, Case No. 05-41513-DML, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. Copies will be supplied under separate cover.

Plaintiff also identifies the deposition of Jay Sandelin, taken February 13, 2008 in Adversary No. 07-04016, in the Bankruptcy case of Fort Worth Osteopathic Hospital, Case No. 05-41513-DML, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division . A copy is provided to all parties under separate cover.

Plaintiff also identifies the deposition of Bruce Edwards, taken February 12, 2008 in Adversary No. 07-04016, in the Bankruptcy case of Fort Worth Osteopathic Hospital, Case No. 05-41513-DML, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. A copy is provided to all parties under separate cover.

Disclosure No. j - in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

Response to Request for Disclosure j:

Initial Response: At this time, Plaintiff is not seeking damages for physical or mental injury.

Disclosure No. k - in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

Plaintiff's Response to Requests for Disclosure - All Defendants.

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Response to Request for Disclosure:

Initial Response:

At this time Plaintiff is not seeking damages for physical or mental injury.

Disclosure No. 1:

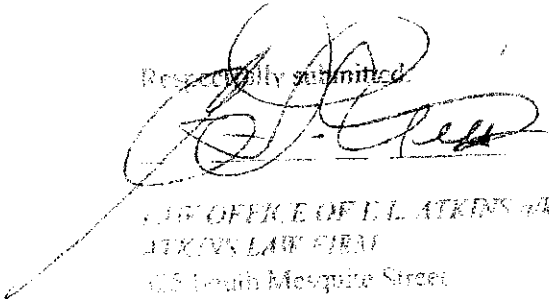
the name, address, and telephone number of any person who may be designated as a responsible third party

Response to Request for Disclosure:

Initial Response:

Plaintiff is not aware of any person who may be designated as a responsible third party at this time.

Respectfully submitted,



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Plaintiff's Response to Requests for Disclosure - All Defendants

17 Richardson and Settles Drive, Suite 1000, Richardson, Texas 75080
Disclosure/Management of the Report (RFR) Initial Complaint

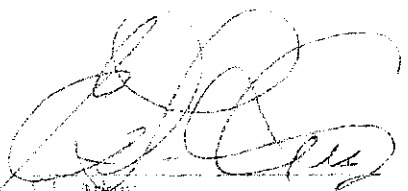
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing pleading, Plaintiff's Initial Response and Request for Disclosure for all Defendants, has been served upon the following as required by law:

Robert G. Richardson
Anna C. Hood, Jr.
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via C.M. RRR No. 2010 1870 0000 3726 4347


Inter Virtual, Inc.

Plaintiff's Request for Discovery and Initial Response

In accordance with Article 101, Section 171, Government Code, Chapter 171, Subchapter A, Government Code, Section 171.001, the undersigned hereby certifies that this document is a true and correct copy of the original.

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

§
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IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 5

EXHIBIT N

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	#	
	#	
FORT WORTH OSTEOPATHIC	#	
HOSPITAL, INC. D/B/A	#	Case No. 05-41513-DML-7
OSTEOPATHIC MEDICAL CENTER	#	
OF TEXAS	#	

Estate of Johnny Fisher, Dec'd,	#	
Plaintiff	#	
vs	#	Adversary No. 08-4168-DML
	#	
JP Morgan Chase Bank, N.A.,	#	
Glenn Milton, Jay Sandlin, Lucy	#	
Norris, RN and Nancy Argo, RN,	#	
Defendants	#	

MOTION TO REMAND

COMES NOW THE ESTATE OF JOHNNY FISHER, DEC'D, (herein, at times, "The Estate" or "Movant" or "Plaintiff") makes and files its **MOTION TO REMAND** and in support, shows:

Nature of Motion

This lawsuit was improvidently removed from state court to this bankruptcy court.

MOTION TO REMAND

PAGE NO. 1

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Movant moves this Honorable Bankruptcy Court to abstain and to remand the case to state court, in which it was originally filed, for final disposition. Exhibits, supporting this Motion to Remand, are identified, attached to and incorporated into this motion.

Factual Background

The lawsuit which is the subject of this Motion to Remand was brought by The Estate in state court based upon various causes of action, set forth in the petition. Exhibit "1" The lawsuit is filed in connection with the probate of the estate of Johnny Fisher, Deceased, pending in the Probate Court of Johnson County, Texas since 1999, pursuant to Tex. Probate Code ann. sec. 233A (Vernon) and as defined in Tex. Probate Code ann. sec. 3 (c) (Vernon).

The Estate owns a judgment ("The Judgment", Exhibit "10") against Fort Worth Osteopathic Hospital, Inc. ("FWOH" or "The Hospital") on a medical malpractice claim filed in Johnson County, Texas in 2001 against FWOH in the amount of \$975,000.00. Exhibit "1"

During efforts to collect The Judgment, The Estate discovered that a trust established by The Hospital to pay Movant's malpractice claim had been virtually depleted of its funds. Chase Bank is the trustee of the trust. The trust was established by The Hospital *in lieu* of liability insurance and pursuant to specific Medicare regulations. Medicare Provider Reimbursement Manual, secs. 2162.7, *et seq.* Exhibit "5" The Medicare Provider

MOTION TO REMAND

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Reimbursement Manual is herein referred to, at times, as "the Manual". A copy of the trust agreement, entitled Fort Worth Osteopathic Hospital, Inc., d/b/a Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement, is marked Exhibit "2". The Estate is an alleged beneficiary of that trust and the issues in the lawsuit involve the alleged mismanagement and misappropriation of the trust's funds. The Texas Property Code (incorporating The Texas Trust Act) provides exclusive jurisdiction over such claims in the probate court, in which the estate administration is pending, and/or the District Court in the same county. Tex. Prop. Code Sec. 115.001 (1) and (5), "Prop. Jurisdiction" The statute provides that "except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction, over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to construe a trust instrument;.....ascertain beneficiaries". Subsection (d) provides that the jurisdiction is exclusive, except for jurisdiction conferred by law on a statutory probate court. The estate administration was filed in the Johnson County, Texas Probate Court years before FWOH filed for bankruptcy.

Movant alleges, in the lawsuit, that the trust was improperly managed by Chase Bank and that millions of dollars, which had been placed in the trust account by The Hospital to

MOTION TO REMAND

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be held in reserve for the payment of The Estate's medical malpractice claim and other malpractice claims, were misappropriated and wrongfully disposed of by Chase Bank, with the aid of the individuals named as defendants in the lawsuit. Exhibit "1" The trust agreement is, at times herein, referred to as "The Trust", or "The Trust Agreement". The fund maintained pursuant to The Trust Agreement is, at times, referred to as "The Trust Fund".

The claim is one for breach of fiduciary duty by the Trustee, Chase Bank and for civil conspiracy to breach fiduciary duties on the part of the individual defendants, resulting in damage to The Estate, as beneficiary of the subject trust. Movant contends that the evidence proves, without dispute, that Chase Bank failed to comply with the terms of the trust. Movant alleges that such failures constitute a breach of Chase Bank's fiduciary duties. The Estate seeks damages, as allowed by law, and as enumerated in the petition against each and every Defendant, jointly and severally, proximately caused by their wrongful conduct. FWOH is not a party to the lawsuit. Exhibit "1"

Chase Bank has removed the lawsuit from state court to this bankruptcy court.

Bases for Removal

Chase Bank has removed the state court action to this bankruptcy court on the

MOTION TO REMAND

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following, alternative bases:

- **REMOVAL, PURSUANT TO 28 U.S.C. SEC. 1334, 28 U.S.C. SEC. 1452 AND 28 U.S.C. SEC. 1367, ALLEGING THAT THE CLAIM IS ONE ARISING IN OR RELATED TO CASES UNDER TITLE 11; AND, ALTERNATIVELY,**
- **REMOVAL PURSUANT TO 28 U.S.C. SEC. 1332 AND 28 U.S.C. SEC. 1441, ALLEGING DIVERSITY OF CITIZENSHIP AND IMPROPER JOINDER OF RESIDENT DEFENDANTS.**

BASIS FOR REMOVAL NUMBER ONE:

- **REMOVAL, PURSUANT TO 28 U.S.C. SEC. 1334, 28 U.S.C. SEC. 1452 AND 28 U.S.C. SEC. 1367, ALLEGING THAT THE CLAIM IS ONE ARISING IN OR RELATED TO CASES UNDER TITLE 11.**

Outline of Movant's Argument Regarding Basis for Removal Number One

Abstention Appropriate.

Applicable Law.

Applicable Law Applied to Relevant Facts.

Summary

Argument

Abstention Appropriate. Contrary to Chase Bank's assertions, it is appropriate for this Bankruptcy Court to abstain from taking this lawsuit and to remand the case to the state court

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in which it was filed in connection with the on-going administration of The Estate. 28 U.S.C. Sec. 1334 (c) (1) and (2)

Applicable Law. The test, generally, for discretionary abstention is whether the claim is vitally important to any reorganization or to any of the bankrupt's creditors; whether the outcome of the subject proceeding can conceivably have any effect on the estate being administered in bankruptcy. *Matter of McRae Fire Protection, Inc.*, 49 B.R. 773 (E.D. Mich S.D., May, 1985) Mandatory abstention: Under 28 U.S.C. § 1334(c)(2), a federal court must voluntarily abstain from hearing a proceeding if the following factors are met: (1) a timely motion to abstain is filed, (2) the removed proceeding is based on a state law claim or state law cause of action, (3) the removed proceeding is "related to" a bankruptcy case, but does not "arise under" Title 11 or "arise in" a case under Title 11, (4) the action could not have been commenced in a United States court absent jurisdiction under 28 U.S.C. § 1334, (5) the action was pending when the bankruptcy was filed, and (6) the action can timely be adjudicated in the state forum of appropriate jurisdiction. 28 U.S.C. § 1334(c)(2). If all of these elements are present, a court must abstain from hearing the matter. *In Re Mercer's Enterprises, Inc.*, 387 B.R. 681 (Bkcy Ct. E.D. N.C. 2008)

A review of the many cases dealing with this issue hold, generally, that abstention is

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appropriate, if not mandatory, when the claim does not involve property of the bankrupt estate or will not have any impact on the bankrupt's estate available for distribution to other creditors of the bankrupt, *In Re Hardwicke Companies, Inc.* (S.D. N.Y. 1985) when there are no strong bankruptcy interests at stake in the claim, *Re Tom Carter Enterprises, Inc.*, 44 B.R. 605 (C.D. Cal 1984), when the outcome is not vitally important to any reorganization, *UNR Industries, Inc. v. Continental Insurance Co.*, 623 F. Supp. 1319 (N.D. Ill., 1985); when the claim is made in connection with an on-going state action pending prior to the bankruptcy claim being filed *Re Bob Lee Beauty Supply Co.*, 56 B.R. 17 (BC ND Ala 1985); when the dispute is governed by state law, *Re Sweeney*, 49, B.R.1008 (N.D. Ill., 1985); and when the dispute is best handled by state court. *Re Alabama Fuel Sales Co.*, 45 B.R. 365 (N.D. Ala 1985) In resolving the abstention issue, a general rule is that state laws are better addressed by state courts and the respect for state law favors abstention to allow the state court to interpret its own laws. *Re Illinois-California Express, Inc.*, 50 B.R. 232 (B.C. DC Colo 1985) In *Re American Energy, Inc.*, 50 B.R. 175 (BC DC ND 1985), the court held that the bankruptcy court will abstain when the case is based solely on matters of state law and is only incidentally related to the bankruptcy. Further, the court noted that the parties had requested a jury trial, that was not available in the bankruptcy court. *Id.* The cases

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provide a clear picture that the question of abstention, generally, is measured by the impact that the third party claim has on the debtor's estate and the character of the claim asserted.

Certainly, the claims in the state court action are "related to" the bankruptcy of FWOH; however, they are not "inextricably tied" to traditional bankruptcy proceedings [core proceedings]. 28 U.S.C. Sec. 157 (b) (2) (O); *Baker v. Highland and Pustelak v. Van-Denberghe*, Nos. 84-1067 and 84-1068, slip op. Bkrcty., E.D. Mi. Jan. 1985); *Matter of McRae Fire Protection, Inc.*, 49 B.R. 773 (E.D. Mich. S.D., May, 1985) and cannot be demonstrated to have any detrimental effect on the bankrupt estate or its creditors. *Matter of McRae Fire Protection, Inc.*, 49 B.R. 773 (E.D. Mich. S.D., May, 1985)

Applicable Law Applied to Relevant Facts. This is a claim by a creditor of FWOH against third parties. The defendants are not the bankrupt hospital and are not, themselves, in bankruptcy. State law clearly must be applied to interpret the provisions of the subject trust agreement, to define the duties of the trustee, Chase Bank, to determine the nature and extent of any breach of fiduciary duties, to determine the status of Movant as a claimed beneficiary of the trust and to determine damages allowed by law. There are issues of law as well as of fact. *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) The dispute is governed solely by state law. The claim is filed in connection with the administration of the Fisher

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estate, which is on-going in the Johnson County Probate Court and which was filed years before The Hospital's bankruptcy was filed. The FWOH bankruptcy is a Chapter 7 bankruptcy, and, therefore, the outcome is not vital to any hospital reorganization. The outcome of this lawsuit is not vital or controlling on the outcome of any other creditor of The Hospital. There are no strong bankruptcy interests at stake in the claims asserted by Movant. Property of the bankrupt estate is not involved. Legal title to trust fund/trust property of the subject self-insured trust passed from FWOH to the Trustee, to be held and administered, in trust, for the benefit of its defined beneficiaries. Exhibit "2", at Art. 2; Alpert v. Riley, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) This trust is not an insurance policy; however, it is established *in lieu* of a liability insurance policy. Proceeds of a liability insurance policy insuring the debtor are not property of the bankrupt estate. *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 55 (5th Cir. 1993); *Oilfield Operations, Inc. v. Official Unsecured Creditor's Committee (In re Equinox Oil Co., Inc.)*, 300 F. 3d 614, 618 (5th Cir. 2003); *Landry v. Exxon Pipeline Co.*, 260 B.R. 769 (MD La 2001); *In re Burr Wolff, LP* (S.D. Tex. [Hous. Div.], Bankruptcy No. 06-37073-H3, 10-10-2007) Plaintiff gained rights when it obtained the Judgment. Movant became a defined claimant when The Estate became a victim of hospital malpractice in 1999 and the claim for damages was formally

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served upon The Hospital in November, 1999. Exhibit "7" That claim became indisputable and indisputably enforceable when it was reduced to judgment in June, 2007. The claims asserted against the defendants are not "inextricably tied" to any traditional bankruptcy proceeding. The claims are not relevant to the liquidation of the assets of the bankrupt. The effect of this litigation will have no detrimental effect either upon the bankrupt estate or upon its creditors. State law governs this case. The law is clear that property interests are determined by state law. *Butner v. United States*, 440 U.S. 48 (1979) The District Courts of Texas and The Statutory Probate Courts of Texas have exclusive jurisdiction to construe the provisions of the subject trust and ascertain its beneficiaries. Tex. Prop. Code, Sec. 115.001 (1) and (5), (Vernon) The relevant statute provides that:

"except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction, over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to construe a trust instrument;.....ascertain beneficiaries".

Subsection (d) provides that the jurisdiction is exclusive, except for jurisdiction conferred by law on a statutory probate court. Plaintiff can choose its forum. In *Citizens Ins. v. Daccach*, 217 S.W.3d 430 (Tex. 2007), the Supreme Court notes:

Parties often decide to drop claims to achieve a desired objective; to enter a particular forum or venue, to avoid removal to federal court, to avoid expense for claims with little likelihood of success, to refrain from opening

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evidentiary doors harmful to client or case, or to focus the case on claims most likely to be successful. *Citizens Ins. v. Daccach*, 217 S.W.3d at 433

Movant has requested the fact issues be resolved by a jury.

Plaintiff is a creditor of the bankrupt hospital and is seeking to recover damages from the trustee of a trust established by the debtor and from named individual defendants, as conspirators, as joint tort-feasors, proximately caused by the trustee's mismanagement and misappropriation of trust funds and the civil conspiracy of other third parties. Those facts are not sufficient to confer jurisdiction upon this Bankruptcy Court to resolve Plaintiff's claims against Chase Bank or the individual defendants. *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001); *Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972) Like the case at hand, the *Florida Dept. of Ins.* case (*supra*) involved a trust in which Chase Bank was the named trustee. Also, as in the case at hand, that trust was established to create a "readily available pool of assets for payment of claims of policyholders of the bankrupt [insurance company]". [emphasis added] The trust was funded with a \$5.4 million certificate of deposit, which later proved to be worthless. Chase Bank concealed the worthless nature of the trust. The Receiver/Trustee for the bankrupt debtor that established the trust sued Chase Bank, as trustee, on behalf of the policyholders of claims against the bankrupt debtor [a certain class

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or category of creditors of the bankrupt debtor] for breach of its duties, as trustee of the fund. The Court ruled that the claim was not one for the Bankruptcy Court. The Court, citing *Caplin v. Marine Midland Grace Co. of New York*, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972), stated:

the Supreme Court [in *Caplin*] held that a Trustee in bankruptcy did not have standing to bring claims against a third party on behalf of creditors of the insolvent corporation [bankrupt] *Florida Dept. of Ins.*, 274 F. 3d at 929

Pursuit of any claim by Plaintiff against Chase Bank in state court for damages resulting from improper management of the subject trust has and will have no negative or detrimental impact upon the Trustee's claims on behalf of the bankruptcy estate. Resolution of Plaintiff's claims against Chase Bank will probably reduce claims against the bankruptcy estate. *Matter of McRae Fire Protection, Inc.*, 49 B.R. 773 (E.D. Mich. S.D., May, 1985)

Summary. Pursuant to the provisions of 28 U.S.C. Sec. 1334 (c) (1) and (2), it is appropriate for this court to abstain and to allow this claim to be resolved by the state court in which it was filed: state law is to be applied in resolving the issues, the claims are not by or against the bankrupt estate, the outcome of the lawsuit will have no detrimental effect on either the bankrupt or its creditors, there is no reorganization of the bankrupt hospital, so the outcome will have no effect on any reorganization, and there are no strong bankruptcy

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interests at stake.

BASIS FOR REMOVAL NUMBER TWO:

**REMOVAL PURSUANT TO 28 U.S.C. SEC. 1332 AND 28 U.S.C. SEC. 1441,
ALLEGING DIVERSITY OF CITIZENSHIP AND IMPROPER JOINDER OF
RESIDENT DEFENDANTS.**

Outline of Movant's Argument Regarding Basis Number Two.

Joinder of Resident Defendants is Proper.

Applicable Law.

Complete Diversity Required.

Improper Joinder.

**Burden on Removing Party - Prove Inability to Establish Cause of Action against
Non-Diverse Defendant.**

Court May Review Pleadings and Evidence.

**Beneficiary Status - Pleadings and Evidence Sufficient to Support
Movant's Claim that Movant is a Beneficiary of the Trust.**

**Civil Conspiracy - Pleadings and Evidence Sufficient to Support Cause of
Action for Civil Conspiracy.**

**Breach of Fiduciary Duty - Pleadings and Evidence Sufficient to Support
Cause of Action for Breach of Fiduciary Duty.**

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Proximate Cause - Pleadings and Evidence Sufficient to Support Proximate Cause.

Argument

Joinder of Resident Defendants is Proper. Chase Bank alleges that a federal district court has jurisdiction over the subject lawsuit because the joinder of the resident defendants was improper, or as described by Chase Bank "fraudulent". This basis for removal is without merit. The joinder of the resident defendants is proper. They have been joined, as defendants in the state court action, because Movant allege they conspired with Chase Bank to mismanage and misappropriate funds of the subject trust, intending to conceal and concealing their illegal actions from Medicare officials, from liability insurance carriers that had issued excess policies to The Hospital, and from state courts relying upon the representation that The Trust was funded with, minimum, \$4,000,000.00 available to pay hospital malpractice claims. Exhibit "3" The joinder is proper and, therefore, there is not complete diversity.

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Chase Bank refers to the joinder of the individual defendants in the state court action as "fraudulent joinder". However, in the context of removal and remand, improper joinder carries no requirement as to a "state of mind". Thus, even though case law may use terms like "fraud" or "sham" to describe improper joinder and the term "fraudulent joinder" is often-times used by the courts, in the Fifth Circuit, the preferred term is "improper joinder." . . . *Miramont Management Company, LLC, d/b/a Miramont Country Club v. John Sibbald Associates, Inc., et al.* (Cause No. H-08-2188 (United States District Court, S.D. Texas, Houston Division, August 26, 2008) at footnote 4. (fn4))

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Applicable Law.

Complete Diversity Required. To establish subject-matter jurisdiction predicated on diversity, there must be complete diversity of citizenship among the parties and the amount in controversy must exceed \$75,000.00. 28 U.S.C. § 1332.

Improper Joinder. A case may be removed from state court to federal court, despite a non-diverse defendant, if that non-diverse defendant was improperly joined, i.e. was named for the purpose of destroying diversity. *Hornbuckle v. State Farm Lloyds*, 385 F.3d 538, 542 (5th Cir. 2004) Improper joinder can be established in two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999) There is no dispute as to the residency of the individual defendants in this case; accordingly, the Court should focus on the second test. *Travis v. Irby*, 26 F.3d 644 (5th Cir. 2003)

Burden on Removing Party - Prove Inability to Establish Cause of Action against Non-Diverse Defendant

The removing party bears the heavy burden of demonstrating improper joinder. *Travis v. Irby*, 326 F.3d 644, 649 (5th Cir. 2003). The removing party has the burden to prove that the plaintiff cannot establish a cause of action against the non-diverse party in state court -

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it is not the Plaintiff's burden to prove it can establish the cause of action. In *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914), the court states:

"Merely to traverse the allegations upon which the liability of the resident defendant is rested, or to apply the epithet '[improper]' to the joinder, will not suffice: the showing must be such as compels the conclusion that the joinder is without right and made in bad faith." *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914) [emphasis added]

In determining the issue of improper joinder, the court's inquiry should not focus on the probability that the plaintiff will prevail on the merits against the non-diverse defendant; rather, that the action is brought in good faith and there is only a reasonable possibility of recovery against the non-diverse defendant. See, *Burden v. General Dynamics Corp.*, 60 F.3d 213, 216 (5th Cir. 1995); *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914) A conclusion can be drawn that the plaintiff's decision to join the local defendant is improper "only if no reasonable basis of recovery exists, ..." *McDonald v. Abbott Laboratories*, 408 F.3d 177, 183 (5th Cir. 2005) (emphasis in original text).

In *Travis v. Irby*, 26 F.3d 644 (5th Cir. 2003), the non-resident defendant removed the state court action to the federal court, after the plaintiff responded to interrogatories to the effect that "further discovery was necessary to determine the extent of liability of the Defendants, including the resident defendants". The plaintiff attempted to remand to state

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court which was denied by the federal court to which the case had been removed. The Fifth Circuit Court reversed the trial court's denial of the plaintiff's Motion to Remand, and reasoned:

We conclude that the district court relied too heavily on the interrogatory responses noted above without considering them in the context of the entire record, the status of discovery, and without resolving all ambiguities in Travis' [Plaintiff's] favor. The district court agreed with the defendant that Travis' second supplemental interrogatory responses should be treated as admissions that she had no factual basis or evidence in support of her claims against Defendant Irby. We disagree with that conclusion [of the federal trial court]. Travis' supplemental answers did not withdraw her earlier responses. Plaintiff responded earlier that expert testimony was required to fully respond and provided lists of eyewitnesses from whose testimony the plaintiff expected to establish facts to support her allegations against Irby [resident defendant]. The defendants did not point to any evidence that would negate Irby's fault as alleged in the complaint. *Travis v. Irby*, 26 F.3d at 648

Court May Review Pleadings and Evidence. The court may look to the pleadings and to any evidence submitted in resolving this motion. *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc) (quoting *Travis*, 326 F.3d at 646-47); *Keating v. Shell Chemical Co.*, 610 F.2d 328, 333 (5th Cir. 1980) The Fifth Circuit, in *Smallwood*, endorsed a Rule 12(b)(6) - like inquiry as the preferred method for determining whether joinder is proper. *Smallwood*, 385 F.3d at 573 As the court in *Smallwood* noted, in many cases, "discrete facts, needed to determine the propriety of the joinder, may be missing from the plaintiff's pleading". In those cases, the court, in its discretion, may utilize

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a summary judgment-like procedure, if it concludes such is useful. *Id.* Therefore, the inquiry may not center solely on the plaintiff's state court petition, but on the record as a whole and summary judgment evidence offered by the parties, if deemed helpful. *Id.* In the event the Court elects to review evidence in addition to the Plaintiff's pleadings, "all disputed issues of fact and any ambiguities of state law must be resolved in the [plaintiff's] favor." *Smith v. Petsmart, Inc.*, No.06-60497, 2008 WL 2062257, at *2 (S.D. Tex., May 15, 2008) (citing *Travis*, 326 F.3d at 649). [emphasis added] In *Smallwood*, the Court notes that the summary inquiry is not without limits:

Attempting to proceed beyond this summary process carries a heavy risk of moving the court beyond resolving the question of jurisdiction and into a resolution on the merits, as distinguished from an analysis of the court's diversity jurisdiction by a simple and quick exposure of the changes of the claim against the in-state defendant alleged to be improperly joined. *Smallwood*, 385 F.3d at 574

See, also, *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 549 (5th Cir. 1981) ("the removing party must show . . . there is no possibility that the plaintiff would be able to establish a cause of action" (emphasis added)); *Parks v. New York Times Co.*, 308 F.2d 474, 476-7 (5th Cir. 1962), ("The joinder is fraudulent only if it is "clear" that . . . the facts asserted . . . could not possibly create . . . liability . . ." (emphasis added)); *Parks v. New York Times Co.*, 308 F.2d 474, 476 (5th Cir. 1962) (no fraudulent joinder if "probable case in law" (citing *Dudley*

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v. *Community Public Service Co.*, 108 F.2d 119, 123 (5th Cir. 1939))

The reviewing court must also take into account all unchallenged factual allegations, including those alleged in the complaint, in the light most favorable to the plaintiff. [emphasis added] *Carriere v. Sears, Roebuck & Co.*, 893 F.2d 98, 100 (5th Cir 1990); *Griggs*, 181 F.3d at 699-702. Any contested issues of fact and any ambiguities of state law must be resolved in favor of the Plaintiff seeking remand. *Griggs*, 181 F.3d at 699. The burden of persuasion on those who claim fraudulent joinder is also a heavy one. *B, Inc.*, 663 F.2d at 549; *Travis v. Irby*, 26 F.3d 644 (5th Cir. 2003) *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F. 3d 305 (5th Cir. 2002), confirmed this point:

[T]he court determines whether that party has any possibility of recovery against the party whose joinder is questioned. If there is arguably a reasonable basis for predicting that the state law might impose liability on the facts involved, then there is no fraudulent joinder. *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d at 313.

Some courts use the term "absolutely no possibility" while others use the term "reasonable basis.". The terms are considered equivalent in determining the issue of proper versus improper joinder because each is presented as a restatement of the other. *Travis v. Irby*, 26 F.3d 644 (5th Cir. 2003)

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**Beneficiary Status - Pleadings and Evidence Sufficient to Support
Movant's Claim that Movant is a Beneficiary of the Trust.**

The pleadings and the evidence are sufficient to support Plaintiff's claim that it is a beneficiary of the trust established for payment of claims to victims of hospital malpractice. The Estate enters these proceedings with clean hands and files this action in good faith. *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914) The Estate seeks damages for the wrongful destruction and misappropriation of a trust fund which was established for malpractice victims of FWOH and represented, specifically, to be available to satisfy any judgment which The Estate might have obtained in connection with its malpractice claim. Exhibit "3" The Estate has consistently claimed that it is a beneficiary of The Trust.

It is without dispute that The Estate, to prevail in this case, must prove and convince the court and the jury that The Estate, standing in the shoes of Johnny Fisher, Deceased, an undisputed victim of hospital malpractice, is a beneficiary of The Trust. Tex. Prop. Code Sec. 114.001. "Liability of Trustee to Beneficiary"

The beneficiary of a trust, revocable or otherwise, is "a person for whose benefit property is held in trust, regardless of the nature of the interest." Sec. 111.004 (2) Tex. Prop. Code [emphasis added] Movant alleges that The Trust is clear in providing that victims of hospital malpractice are beneficiaries of The Trust. Nonetheless, applying settled law, in the

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event the Trial Court determines that the trust is ambiguous regarding the identity of the beneficiary of the trust, which is a question of law, and the identity of the beneficiary is disputed, the jury must determine the intent of the settlor. *Eckels v. Davis*, 111 S.W.3d 687 (Tex. App. - Fort Worth 2003, no pet.); *In Re Estate of Berger*, 174 S.W. 3d 845, 848 (Tex. App. - Waco 2005, no pet.)

The rules of construction of trusts are well settled. *Hurley v. Moody National Bank of Galveston*, 9 S.W.3d 307, 310 (Tex. App. - Houston [1st Dist.] 2003, no pet.) The construction of a trust instrument is a question of law for the trial court. *Id.* A court must construe a trust to ascertain the intent of the settlor. *Eckels v. Davis*, 111 S.W.3d 687 (Tex. App. - Fort Worth 2003, no pet.) The intent of the settlor must be ascertained from the language used within the four corners of the instrument. *Id.* All terms must be harmonized to properly give effect to all parts. *Hutton v. Methodist Home*, 615 S.W. 2d 289, 292 (Tex. Civ. App. - Fort Worth 1981 Writ ref'd n.r.e.); *Eckels v. Davis*, 111 S.W.3d 687 (Tex. App. - Fort Worth 2003, no pet.) If possible, the court should construe the instrument to give effect to all provisions so that no provision is rendered meaningless. *Myrick v. Moody*, 802 S.W.2d 735, 738 (Tex. App. - Houston [14th Dist.] 1990, writ denied) In *Eckels*, Justice Walker states:

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If the language of a trust is unambiguous and expresses the intent of the settlor, it is unnecessary to construe the instrument because it speaks for itself [citing *Hurley*, 98 S.W.2d at 310 (citing *Jewett*, 618 S.W.2d at 112)] If, on the other hand, the meaning of the instrument is uncertain or "reasonably susceptible to more than one meaning", the instrument is ambiguous. *Myrick*, 802 S.W. 2d at 738. *Eckels v. Davis*, 111 S.W.3d at 694

In construing the terms of a trust to ascertain the settlor's intent, the court shall attempt to determine the primary objective of the trust. *Eckels v. Davis*, 111 S.W.3d at 694 Where there is ambiguity, it is proper for the court to admit extrinsic evidence to show the settlor's intent. *In re Estate of Cohorn*, 622 S.W.2d 486, 487-8 (Tex. App. - Eastland 1981, writ ref'd n.r.e.) If ambiguous, declarations by the settlor dealing with his intention may be received as an aid in resolving specific problems of interpretation. *Eckels v. Davis*, 111 S.W.3d at 695; *Stewart v. Selder*, 473 S.W.2d 3, 7 (Tex. 1971) (finding that extrinsic "declarations by a testator dealing with his intention may be received as an aid in resolving specific problems of interpretation, such as equivocation or latent ambiguity") Further, in *Eckels*, which was an appeal from a declaratory judgment action construing the terms of a living trust and resolving the disputed intent of the settlor, the court noted that documents prepared by the bank regarding the trust which were contrary to the settlor's letters and notes and other declarations were correctly rejected by the court to prove the settlor's intent. *Eckels v. Davis*, 111 S.W.3d at [fn 4], page 698 - ([trustee's] document was an internal form

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required by the management company and not [evidence of] settlor's intent - at page 697)

Movant contends that the instrument is not ambiguous and, as a matter of law, The Estate is an intended beneficiary of The Trust. By its expressed terms, the self-insured trust fund was intended to be used *in lieu* of liability insurance, intended to be for the benefit of victims of hospital malpractice and intended to be used to only pay malpractice claims and related expenses, as therein specified. Exhibit "2", Art. 5.03 The Trust is not equivocating. It uses the word "shall" in setting forth the duties of the Trustee in this regard. The Trust states that its purpose is to "...self-insure against the initial levels of malpractice liability incurred at the hospital..." Payment [from the fund] "shall be *exclusively* for the purpose of the Plan", stating:

Payment shall be made from The Trust property only for malpractice losses of the Hospital.... para. 5.03 (a) [emphasis added]

Clearly, The Trust was structured to be in conformity with Medicare Requirements, as set forth in the Medicare Provider Reimbursement Manual. Exhibit "5"; and, see, Exhibit "2", "Witnesseth" paragraph, page 1 Both the relevant state statutes and the provisions of the Medicare Provider Reimbursement Manual refer to a beneficiary as "person". The Trust refers to the beneficiary as "a person". The Trust agreement tracks terms and provisions of the Manual. At no place in the Manual is The Hospital [a provider] identified as the

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beneficiary of The Trust [a self-insured trust] or as a "person". The Hospital, as settlor of The Trust is referred to in the Manual as "provider", not "person" or "beneficiary". There is nothing in the trust agreement that states The Hospital is to be the beneficiary of The Trust, much less the sole beneficiary. The Hospital is not a person, never was a person and never will be a person. A patient, however, is and will always be a "person".

A comparison of terms and provisions of The Trust and relevant provisions of the Medicare Provider Reimbursement Manual clearly evidence that "the primary objective of The Trust" is to pay and resolve claims of hospital malpractice victims, as is the test. *Eckels v. Davis*, 111 S.W.3d at 694 The Trust provides that payments from the trust fund are to be made on directives of specific individuals, not Chase Bank. Chase Bank argues that this method to be used in making disbursements is evidence that The Hospital - not the victim - is the beneficiary of the trust. This argument is misguided and without merit and ignores the clear provisions of and the intent of the Medicare Provider Reimbursement Manual.

It is evident from a reading of The Trust and of the Medicare Provider Reimbursement Manual, that The Trust was intended to be structured and managed in conformity with Medicare's requirements set forth in the Manual, some of which are:

- an on-going claims process and risk management program be in place;

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- ▶ a process be in place to adjust claims;
- ▶ an adequate risk management program, similar to insurance company programs, to be utilized;
- ▶ the trustee to have legal title to trust funds and trust property;
- ▶ withdrawals only for malpractice claims and related expenses;
- ▶ financial statements from fiduciary to be provided to the provider annually;
- ▶ loans to the provider are prohibited; to name several,

which can be seen are provisions that are also contained in The Trust Agreement. The applicable manual provision(s) state:

D. Claims Management, Risk Management, and Coordination of Benefits Program. A provider or pool has an ongoing claims process and risk management program. The provider or pool must demonstrate to the intermediary that it has an ongoing claims process to determine whether malpractice and comprehensive general liability, unemployment and workers' compensation insurance liabilities, and the liability for employee health care insurance exist, their causes where applicable and the cost of claims. A provider or pool may either utilize its qualified personnel or an independent contractor, such as an insurance company, to adjust claims. In addition, a provider or pool must obtain adequate legal assistance in carrying out its claims process. Each provider must also have an adequate risk management program to examine the cause of losses and to take action to reduce the frequency and severity of them. Such risk management program has the essential characteristics of programs required by insurers which currently insure providers for these risks. Therefore, a provider must have an ongoing safety program, professional and employee training programs, etc., to minimize the frequency and severity of malpractice and

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comprehensive general liability, as well as workers' compensation insurance incidents. Medicare Provider Reimbursement Manual, sec. 2162.7 D [emphasis added]

From the wording, above, it is evident that this requirement that distributions be made on the directive of specific representatives of the provider is to assure that claims will be appropriately evaluated and handled by a qualified risk management program, as would be provided by a liability insurance carrier. This requirement is not evidence that the intent and purpose of The Trust is to make The Hospital its beneficiary.

It is true that no victim of hospital malpractice is specifically named in the trust document. This fact, however, does not defeat Movant's claim that it is a beneficiary of the trust. A beneficiary does not have to be named in a trust document, as long as the beneficiary is sufficiently "identified" in the trust agreement. See *Perfect Union Lodge No. 10 v. Interfirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988); *Pickelner v. Adler*, 229 S.W.3d 516, 526 (Tex. App.-Houston [1st Dist.] 2007, pet. denied); *In re Estate of Berger*, 174 S.W.3d 845, 848 (Tex. App.-Waco 2005, no pet.) It is commonplace for a trust to provide for identified, but unnamed beneficiaries.

Nor, is it controlling that The Estate was not a party to the trust agreement nor "in-being" when the trust was established. Except in the case of rare and seldom seen spendthrift

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trusts, the beneficiary of a trust is never a party to the trust agreement and, in many instances, is not even in existence when the trust is established. [citations omitted]

A trust is a contract and contract law applies in issues involving a trust. A contract beneficiary can enforce the provisions of a contract, even when that beneficiary is not a party to the contract, or the trust agreement. *Energy Service Co. v. Superior Snubbing*, 236 S.W.3d 190, 194 (Tex. 2007) In determining whether a third party can enforce a contract, the intention of the contracting parties is controlling. *Corpus Christi Bank & Trust v. Smith*, 525 S.W.2d 501, 503-4 (Tex. 1975); *Energy Service Co. v. Superior Snubbing*, 236 S.W.3d 190, 194 (Tex. 2007); *Knox v. Ball*, 191 S.W.2d 17, 21 (Tex. 1945) In *Energy Service*, the Supreme Court states:

the common law allows parties to contract for the benefit of others - in effect, with others - if they do so explicitly, and when they do, the beneficiary can enforce the promissor's's obligation in his favor as if he were himself a party. *Energy Service Co. v. Superior Snubbing*, 236 S.W.3d at 194

To qualify as one for whose benefit a contract was made, a third party must show that he is either a donee or creditor beneficiary, and not one who is benefitted only incidentally by the performance of the contract. *Republic Nat'l Bank of Dallas v. National Bankers Life Ins. Co.*, 427 S.W.2d 76, 89 (Tex. Civ. App. - Dallas 1968, writ ref'd n.r.e.); 1 Williston on Contracts, sec. 356; 4 Corbin on Contracts sec. 779C (1951) This court, in *In re Fort Worth*

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Osteopathic Hospital, Inc. 287 B.R. 706 (Bkrcty. N.D. Tex. 2008), cited *O/E Systems, Inc. v. Inacom Corporation*, 179 F. Supp. 2d 363, 367 (D. Del. 2002), which also held:

In the event that a party is not a named insured, that party may still recover under an insurance policy if the contracting parties to that policy actually intended to benefit the unnamed third-party. [citing *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A. 2d 531 (Del Super 1990)] *O/E Systems, Inc. v. Inacom Corporation*, 179 F. Supp. 2d at 367

This trust is not a liability insurance policy; it is, however, a trust that is established and intended to be managed and maintained *in lieu* of liability insurance. Therefore, the law applicable to the rights of one holding a judgment against an insured should provide further guidance in determining the settlor's intent and in determining rights of a beneficiary of a self-insured trust, established and intended to be *in lieu* of liability insurance. The Estate now holds a judgment to prove its status as a victim of hospital malpractice and Texas recognizes that one who has obtained a judgment against an insured is a third party beneficiary of the insured's liability policy and can bring a direct action in tort against the insurer once the judgment is obtained. *State Farm Mutual Ins. Co. v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989)

The Trust could not be more explicit in stating for whose benefit the trust fund was established and to be maintained. The Hospital, as settlor, established the trust. It is

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reasonable to conclude, therefore, that The Hospital, by and through its officers, directors and representatives, knows who is/are the intended beneficiary/beneficiaries of The Trust. Bruce Edwards, The Hospital's Director of Accounting, Edwards Deposition, Exhibit "9", page 8, line 5 - page 9, line 22, stated, under oath, that he knew the beneficiaries of the Trust were the victims of hospital malpractice, because The Trust was established to pay the claims of hospital malpractice victims. Edwards Deposition, Exhibit "9", page 16, lines 3 - 23 Mr. Edwards stated:

- Q. Okay. Do you have an understanding as to who the beneficiary of the self-insurance trust was?
- A. If you – what – well, what I understood was that it was to pay malpractice claims or legal – legal fees associated with the claim.
- Q. Anything else?
- A. Not that I'm aware of.

In papers filed in the state court malpractice action filed by The Estate against FWOH, The Hospital represented that The Trust was a liability or indemnity agreement which would be liable (not might be liable) to the victim to satisfy part or all of a judgment rendered in the medical malpractice lawsuit filed by The Estate against The Hospital or to indemnify or reimburse for payments made to satisfy the judgment The Estate might obtain. Exhibit "3"; Exhibit "4" The representation to the 413th District Court Exhibit "3" is that The Hospital

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had a self-insured trust "available to satisfy part or all of any judgment rendered in the action against The Hospital or to indemnify or reimburse for payments made to satisfy the judgment". Tex. R. Civ. P. 192.3 (f) and 194.2(g) Specifically, The Hospital represented that it had a self-insured trust fund established, *in lieu* of primary medical malpractice insurance, in the amount of \$4,000,000.00 plus excess liability insurance coverage with upper limits of \$25,000,000.00 to resolve The Estate's pending medical malpractice claim and to satisfy any judgment The Estate might obtain in the lawsuit as a result of The Hospital malpractice claim. Exhibit "3"; Exhibit "4" Similar representations were made to other state courts in actions filed by victims of FWOH malpractice.

Declarations and representations were also made to excess liability insurance carriers that this self-insured trust fund was to pay victims of hospital malpractice. Exhibit "4"

To find that The Hospital is the sole beneficiary would render the trust agreement meaningless, which would not be a proper interpretation of the trust agreement. *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 464 (Tex. 1998)

Summarizing, the beneficiary of The Trust is sufficiently identified as being victims of hospital malpractice. It is Movant's position that the intent of The Trust is clear and unambiguous - The Estate is a beneficiary of The Trust. However, if the trial court

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determines that The Trust is ambiguous regarding this issue, Movant has demonstrated that the evidence, here provided, supports Movant's position. The evidence shows that documents prepared by The Hospital evidence that The Hospital intended the Trust to be for the benefit of The Estate. The Hospital's Director of Accounting, Bruce Edwards, stated under oath that victims of hospital malpractice were the beneficiaries of The Trust. The Medicare Provider Reimbursement Manual evidences that the beneficiary/ies of The Trust and similar self-insured trusts, is/are intended to be victims of hospital malpractice and The Trust is structured such as clearly intending to be in conformity with Medicare rules and regulations. Analyzing The Trust "from all four corners", to conclude that any entity, other than a person who is a victim of hospital malpractice is beneficiary of The Trust would be senseless and would be contrary to Medicare requirements. There are sufficient pleadings and evidence to support The Estate's claim that it is a beneficiary of The Trust. As beneficiary, The Estate can bring an action against the trustee for breach of fiduciary duties and against any civil conspirators participating in Chase Bank's breach of its fiduciary duties.

Movant respectfully states and urges that this dispute is best resolved by a state court and jury.

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Civil Conspiracy - Pleadings and Evidence Sufficient to Support Cause of Action for Civil Conspiracy.

The petition and the evidence here presented is sufficient to support Movant's claim that the individuals named as defendants did conspire with Chase Bank to mismanage and misappropriate trust funds and conceal those illegal disbursements from Medicare, from The Hospital's excess liability insurance carriers and from the Texas Courts in which hospital malpractice claims were being prosecuted.

Civil conspiracy is proved by showing: (1) two or more persons; (2) an objective to be accomplished; (3) a meeting of the minds on the objective; (4) one or more unlawful, overt acts; and (5) proximate damages. *Duzich v. Advantage Finance Corp.*, 395 F.3d 527, 530 (5th Cir. 2004). The conspiracy may involve an unlawful purpose or unlawful means of achieving a lawful purpose. *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996). Proof of a conspiracy does not require direct evidence. See *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 858 (Tex. 1969). Conspiracies, often, must be inferred from and proved by circumstantial evidence. *Id.* See, also, *Miramont Management Company, LLC, d/b/a Miramont Country Club v. John Sibbald Associates, Inc., et al*, (Cause No. H-08-2188 (United States District Court, S.D. Texas, Houston Division, August 26, 2008)

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In Texas, civil conspiracy is a derivative tort; therefore, the plaintiff must plead and prove the underlying tort claim upon which the conspiracy is based. *Hinojosa v. Guidant Corp.*, 2005 WL 2177212, at 4 (S.D. Tex., Sept. 7, 2005) (citing *Grizzle v. Texas Commerce Bank*, 38 S.W.3d 265, 285 (Tex. App.- Dallas 2001, rev'd in part on other grounds at 96 S.W.3d 240 (Tex. 2002)). [See discussion, herein after, "**Breach of Fiduciary Duty - Pleadings and Evidence Sufficient to Support Cause of Action for Breach of Fiduciary Duty by Chase Bank**"] All members of a conspiracy are jointly and severally liable for their co-conspirators' wrongful acts. *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 160 S.W.2d 509, 514 (Tex. 1942); *Kastner v. Jenkins & Gilchrist, P.C.*, 231 S.W.3d 571, 580 (Tex. App. -Dallas 2007, no pet.) ("When a third party knowingly participates in the breach of a fiduciary duty, the third party becomes a joint tort-feasor and is liable as such") Furthermore, even if a co-conspirator's acts occurred before the conspiracy formed, all the conspiring parties are liable for those acts, as long as those acts are made in furtherance of the 'common goal' of the conspiracy. . . ." *Bentley v. Bunton*, 94 S.W.3d 561, 619 (Tex. 2002)

The Hospital relied extensively upon Medicare funds for its survival and excess liability insurance coverage was critical. Edwards Deposition, Exhibit "9", page 15, lines 2 - 11 Medicare funds accounted for between 45% and 65% of its annual revenue, a fact

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confirmed by the Director of Accounting, Bruce Edwards. Edwards Deposition, Exhibit "9", page 104, lines 3-4 The Medicare Provider Reimbursement Manual provides, in part:

1. General Legal Responsibility. The fiduciary agreement must include the appropriate legal responsibilities and obligations required by State laws.
2. Control of Fund. The fiduciary must have legal title to the fund and be responsible for proper administration and control. The fiduciary cannot be related to the provider either through ownership or control as defined in Chapter 10, except where a State acts as a fiduciary for a State or local governmental provider or pool...
3. Payments by Fiduciary. The agreement must provide that withdrawals must be for malpractice and comprehensive general liability or unemployment or workers' compensation insurance losses, or employee health benefits coverage only and those expenses listed in Sec. 2162.8. ... Furthermore, evidence of a practice of payments from the fund for purposes unrelated to the proper administration of the fund may result in a withdrawal of recognition of the self-insurance fund by the Medicare program. In such instances, payments into the fund will not be considered an allowable cost. Intermediaries will submit incidents of impropriety to the appropriate regional office.

These Medicare requirements are also contained in The Trust Agreement. It is reasonable to conclude that the individual defendants knew these requirements and knew that they were required to be followed.

Medicare expects the provisions of the Manual to be followed and incidents of impropriety are to be reported by the Intermediaries. It is common knowledge that failure to comply with Medicare laws can result in either civil or criminal penalties, or both for those

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who knowingly violate Medicare laws. *Thompson v. Columbia/HCA Healthcare*, 125 F.3d 899 (5th Cir. 1997); 31 U.S.C. § 3729 et seq (federal False Claims Act); *Thompson v. Columbia/HCA Healthcare*, 125 F. 3d 899 (5th Cir. 1997); *U.S. ex Rel. Bledsoe v. Community Health Sys.*, 342 F.3d 634 (6th Cir. 2003)

At this point, there is sufficient evidence and it is reasonable to conclude that the defendants knew that the provider [The Hospital] can lose its rights to medicare reimbursement and can be held liable and accountable, civilly as well as criminally, if it violates Medicare rules and regulations. 31 U.S.C. § 3729 *et seq* (federal False Claims Act); *Thompson v. Columbia/HCA Healthcare*, 125 F. 3d 899 (5th Cir. 1997); *U.S. ex Rel. Bledsoe v. Community Health Sys.*, 342 F.3d 634 (6th Cir. 2003); *Whitfield v. Lindemann*, 853 F. 2d 1298 (5th Cir. 1988) It is likewise reasonable to conclude from the evidence that loss of Medicare funds could financially cripple The Hospital.

The evidence provided shows that the trust fund balances were not maintained but were reduced from more than \$4,000,000.00 to less than \$20,000.00 while Movant's malpractice claim was pending, which fact was concealed from significant parties - hospital insurance carriers, claimants and state courts. Movant alleges that these misappropriations were also concealed from Medicare Intermediaries. Defendant, Nancy Argo was the Risk

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Manager for The Hospital and was directly in charge of assigning a value to The Estate's claim. Exhibit "6" Ms. Argo is the person consulted for explanations of requested withdrawals for malpractice claims; the "go to" person. Exhibit "6"; Edwards Deposition, Exhibit "9", page 45, lines 12 - 24 It is reasonable to conclude that she knew the requirements and the provisions of The Trust and that those requirements and provisions were not being complied with and followed. It is also reasonable to conclude that Ms. Argo knew the severe consequences that might result if improper management of or improper appropriations from The Trust were revealed to the public or to Medicare. Defendant, Glenn Milton was the Chief Financial Officer of The Hospital during relevant periods from 1999 until The Hospital closed. He knew that trust funds were to only be used to resolve malpractice claims. Edwards Deposition, Exhibit "9", page 38, line 18 - page 39, line 25 The financial statements of The Hospital were structured under Defendant, Milton's directives in a manner that improper withdrawals from The Trust were not reported to The Hospital's Board of Directors. Edwards Deposition, Exhibit "9", page 39, line 23 - page 40, line 1 It is reasonable to conclude that Defendant, Milton also knew that using trust funds for purposes other than related to malpractice claims was improper and a violation of Medicare laws and severe consequences could result if misappropriations were not

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concealed. Defendant, Jay Sandlin was the CEO of The Hospital during these relevant periods and discussed these appropriations with Melton and Argo because they knew that The Trust was required to maintain the balances represented and that it was "risky" to remove funds from The Trust and use those funds in a manner contrary to the provisions of The Trust. Edwards Deposition, Exhibit "9", page 110, line 3 - page 112, line 19

There is sufficient evidence, at this juncture of the case, to conclude and it is reasonable to so conclude that the individual defendants knew the on-going management of the trust by Chase Bank and the appropriation of trust funds were improper and knew that, if such improprieties were revealed, The Hospital, as well as individuals involved, could suffer severe consequences, both civilly and criminally. It is also reasonable to conclude that the individual defendants and Chase Bank knew that misappropriating trust funds and trust properties established by a charitable institution could have severe consequences, independent of Medicare laws. [citations omitted] Stated another way, based upon the evidence available, it is reasonable to conclude that the "common goal" or "objective" of the trustee and the conspirators was "the appropriation of trust funds to hospital bank accounts for use in other ways, inconsistent with and in violation of the terms and purposes of the self-insured trust agreement, and to conceal such improprieties from Medicare and others,

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knowing of possible dire consequences, if the misappropriations were revealed".

It is also significant that, from the evidence developed to this point, neither the improper use of the trust funds nor the concealing of the improper use of the Trust from Medicare officials, the Court, The Estate or The Hospital's excess liability insurance carrier officials could have been accomplished, *but for* the conspiracy and the agreement between Chase Bank and the individual defendants - the combination - to commit such unlawful acts. Certainly, there is no evidence that Chase Bank acted independently in misappropriating trust funds and the individual defendants could not have accomplished a transfer of the funds for improper purposes, had Chase Bank followed the clear requirements of The Trust.

There are sufficient pleadings and evidence to support The Estate's good faith claim that the individual defendants were co-conspirators with Chase Bank to misappropriate trust funds and trust property. The joinder is not fraudulent or improper.

Breach of Fiduciary Duty - Pleadings and Evidence Sufficient to Support Cause of Action of Breach of Fiduciary Duty by Chase Bank.

A trustee of a Texas trust has, by law, a fiduciary duty toward the beneficiary or beneficiaries of the trust to perform its duties in a prudent manner and to comply with the terms and provisions of the trust agreement, whether written or oral. *Meyer v. Cathey*, 167 S.W.3d 327, 330 (Tex. 2005) The elements of a cause of action for breach of fiduciary duty

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claim are (1) a fiduciary relationship between the plaintiff and defendant, (2) a breach by the defendant of his fiduciary duty to the plaintiff, and (3) an injury to the plaintiff or benefit to the defendant as a result of the defendant's breach. *Lundy v. Masson*, 260 S.W.3d 482 (Tex. App. - Houston [14th Dist.] 2008, pet. denied); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App. - Dallas 2006, pet. denied); *Punts v. Wilson*, 137 S.W.3d 889, 891 (Tex. App. - Texarkana 2004, no pet.) Whether any breach of fiduciary duty is a “clear and serious violation of duty” is a question of state law to be resolved by the court, *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

A trustee is liable to the beneficiary or beneficiaries of The Trust for the misappropriation and mismanagement of trust property, even though its misconduct is caused, or contributed to by the misconduct of others. *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008); Tex. Prop Code Sec. 114.001 Once a settlor completes a transfer of assets to a trust, the beneficiaries gain beneficial title and the trustee gains sole legal title in, and exclusive control over, the trust property, subject to the trust instrument. *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) [emphasis added]; Black's Law Dictionary, at page 1546 (8th ed. 2004) (explaining characteristics of various trusts); see also *Pickelner v. Adler*, 229 S.W.3d 516, 526 (Tex.

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App.-Houston [1st Dist.] 2007, pet. denied) At the same time, the trustee, as a fiduciary, has an equitable duty to hold and manage the property for the benefit of the beneficiaries. Tex. Prop. Code ann. §§ 113.051, 113.056(a) (Vernon 2007); *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) Certain of those fiduciary duties are nondelegable. *Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 249 (Tex. 2002); *Slay v. Burnett Trust*, 187 S.W.2d 377, 387-88 (Tex. 1945); see also *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 476 (Tex. 1979) ("The general rule is that a trustee may not delegate his discretionary power to another. A trustee may, however, . . . give authority to another to carry out ministerial or mechanical acts. . . .") The trustee alone is responsible as a fiduciary if he allows the settlor to mismanage trust property to the detriment of the trust. *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008)

The trustee of The Trust during relevant times was Chase Bank, with trust management duties assigned to Chase Bank Sr. Vice President, Robert Lansford, who was also a director of The Hospital. Lansford Deposition, Exhibit "8", page 5, line 17 - page 7, line 16 and page 13, lines 2 - 14 Without dispute, Chase Bank, as trustee, held legal title to all trust property, as the law required. Exhibit "2"; *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) Liability of Chase Bank, as trustee, can be established

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through the testimony of Chase Bank officers, former hospital employees and individual defendants, as well as by bank records.

The Trust provided specific procedures for Chase Bank to follow to be authorized to withdraw and pay out trust funds for the specific purposes of the trust. Payments were to be made from the trust only upon the written directives of verified signatures and for specific designated purposes. Exhibit "2", at Art. 5.03 (a) There is credible evidence that the procedures for payment of trust funds as set forth in the trust were not followed: Signatures of hospital personal who were authorized to order disbursements were required to be verified to the trustee, but this requirement was not followed by Chase Bank. Lansford Deposition, Exhibit "8", at page 56, lines 5 - 19 The purpose of withdrawals from the trust fund was not certified and documented, as required, and withdrawals were made by Chase Bank without proper instructions. Exhibit "2", at Art. 5.03; and, see, Lansford Deposition, Exhibit "8", exhibit number 7 to the deposition, which is discussed at page 54, lines 14 - 22 of his deposition Chase Bank never questioned withdrawal requests, since the trust was a revocable trust. Lansford Deposition, Exhibit "8", at page 47, line 22 - page 49, line 8 and page 94, line 10 - page 97, line 9 Chase Bank did not know and was not provided with the names of those persons authorized to direct withdrawals and to have certified copies of their signatures on

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file and did not demand them. Lansford Deposition, Exhibit "8", at page 90, line 11 - page 91, line 10 Chase Bank was never advised as to the adequacy of the funds or property in The Trust, as required and Chase Bank never inquired. Lansford Deposition, Exhibit "8", at page 92, line 5 - page 93, line 12

These specific directives were not discretionary. Exhibit "2"; Exhibit "5" These directives could not be abandoned or ignored by the trustee, simply because someone asked the trustee to not follow them. *Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 249 (Tex. 2002); *Slay v. Burnett Trust*, 187 S.W.2d 377, 387-88 (Tex. 1945); see also *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 476 (Tex. 1979); *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) Chase Bank's senior vice president, Robert Lansford, who was in charge of the management of The Trust during all relevant times, acknowledged this duty to comply with the requirements of The Trust, whether the trust was a revocable trust or not. Lansford Deposition, Exhibit "8", at page 62, line 3 - page 65, line 17

Chase Bank, as trustee, is liable to the beneficiary or beneficiaries of The Trust for the misappropriation and mismanagement of trust property, even though its misconduct is caused, or contributed to by the misconduct of the individual defendants. *Alpert v. Riley*, 01-

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06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008); Tex. Prop Code Sec. 114.001

The pleadings and evidence are sufficient to support The Estate's claim of breach of fiduciary duty by Chase Bank, as trustee of The Trust.

Proximate Cause - Pleadings and Evidence Sufficient to Support Proximate Cause.

Arguably, Chase Bank has the burden, as the identified trustee of The Trust, to prove that there would have been sufficient funds available to satisfy Movant's claim, but for the breach of the trustee's fiduciary duty. *Keck, Mahin, et al v. Nat. Union Fire Ins. Co of Pittsburgh, P.A., et al* 20 S.W.3d 692, 695 (Tex. 2000); *Archer v. Griffith*, 390 S.W.2d 735, 739 (Tex. 1964) *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988) In *Archer v. Griffith*, the Supreme Court states:

"The burden of establishing its perfect fairness, adequacy, and equity, is thrown upon the attorney [fiduciary], upon the general rule, that he who bargains in a matter of advantage with a person, placing a confidence in him, is bound to show that a reasonable use has been made of that confidence; a rule applying equally to all persons standing in confidential relations with each other." Story, Equity Jurisprudence, 7th ed. 1857, § 311. This principle has always been recognized by the Texas courts. 390 S.W.2d at 739 (Tex. 1964)

However, whether the burden lies with the trustee or the beneficiary to prove that a breach of fiduciary duty did or did not proximately cause damage, causation is proved by showing that sufficient funds were (or were not) available to properly fund the trust and that those funds

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would have been reserved and available for satisfaction of Movant's medical malpractice claim, had the millions of dollars deposited been managed and appropriated properly.

Whitfield v. Lindemann, 853 F. 2d 1298, 1304 (5th Cir. 1988); and, see Section 212, comment e. of the Restatement (Second) of Trusts which provides that

a trustee is not liable for a loss resulting from the breach of trust if the same loss would have been incurred if he had committed no breach of trust. Put another way, "If the trustee commits a breach of trust and if a loss is incurred the trustee may not be chargeable with the amount of the loss if it would have occurred in the absence of a breach of trust." Id. § 205, comment f;

and, see, also *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 924 (5th Cir. 2001) (conspiracy by Chase Bank to conceal bogus nature of self-insured fund); *Shriners Hospitals for Crippled Children v. Gardiner*, 152 Ariz. 519, 523, 733 P.2d 1102, 1106 (1986), vacated on other grounds, 152 Ariz. 527, 733 P.2d 1110 (1987); *Fort Myers Memorial Gardens, Inc. v. Barnett Banks Trust Co.*, 474 So.2d 1215, 1218 (Fla. App. 2d Dist. 1985); *Seven G. Ranching Co. v. Stewart Title & Trust*, 128 Ariz. 590, 592, 627 P.2d 1088, 1090 (1981); *Estate of Stetson*, 463 Pa. 64, 83-84, 345 A.2d 679, 690 (1975); See also Bogert, Trusts and Estates § 592 at 410-11 (2d ed. 1980 & Supp. 1988); § 862 n. 10 (2d ed. 1982 & Supp. 1988); and III Scott, The Law of Trusts § 205.1 at 1673 (3d ed. 1967) In *Whitfield*, the Fifth Circuit Court holds:

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The authorities are not in accord with regard to the burden of proof on the issue of causal relation. The cases cited in the preceding paragraph hold that, once the existence of a loss has been established, the burden is on the trustee to show [Page 1305] that there was no causal relation between his breach and the loss, i.e., *that the loss would have occurred regardless of the breach*. However, there also is authority that it is the plaintiff's duty to prove a causal connection between the breach and the loss, particularly where the party sought to be held is not a named trustee. E.g., *United States Life Ins. Co. v. Mechanics & Farmers Bank*, 685 F.2d 887, 895-97 (4th Cir. 1982); *Leigh v. Engle*, 727 F.2d 113, 137 (7th Cir. 1984); *Brandt v. Grounds*, 687 F.2d 895, 898 (7th Cir. 1982). Assuming that the burden of proof is on the defendants in the instant case, the record as it presently stands satisfies us that, except for the overpayment of \$243,038^[fn2] which the Pension Plan made to SCP, they have met this burden. Indeed, if other issues in the case did not require a remand in any event, we would be inclined to hold in favor of the defendants on this point without remanding to the district court for further findings. See *Kratzer v. Capital Marine Supply, Inc.*, 645 F.2d 477, 483 (5th Cir. 1981); *Tomlin v. Ceres Corp.*, 507 F.2d 642, 648 n. 2 (5th Cir. 1975); see also *Canadian Transport Co. v. Irving Trust Co.*, 548 F.2d 53, 55 (2d Cir. 1977).

[18] Insofar as this item of damage is concerned, we direct that the district court on remand give the Secretary an opportunity to meet the defendants' proof concerning the lack of available assets and then make specific findings as to whether Shanbaum and Carp had any assets, other than the radio station and microwave system, that could have been used to satisfy Judge Higginbotham's Consent Order. If they had no other assets, the fact, as the district court found, that the two properties were transferred at an inflated value, did not harm the Pension Plan, except as the inflated values led to the \$243,038 repayment. "If trustees act imprudently, but not dishonestly, they should not have to pay a monetary penalty for their imprudent judgment so long as it does not result in a loss to the Fund." *Brock v. Robbins*, 830 F.2d 640, 647 (7th Cir. 1987). Should the district court find that other assets were available for payment to the Plan, the damage figure of \$243,038 may be increased by an amount representing such available assets until the total amount of the unpaid balance of the Consent Order has been reached. *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304-5 (5th Cir. 1988) [emphasis

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added]

Movant alleges, and has been advised previously by hospital representatives, and by the Trustee, Shawn Brown, that FWOH assigned \$900,000.00 to the malpractice claim of Johnny Fisher shortly after the notice of claim was served upon FWOH in August, 2000. Exhibit "6" Bank records evidence that funds had been deposited to the trust fund, sufficient to satisfy Movant's claim, as it was valued by FWOH representative, Nancy Argo, one of the individual defendants in this lawsuit. Exhibit "7" The deposition of Bruce Edwards evidences that The Hospital had sufficient funds to properly maintain The Trust, but simply chose to deplete The Trust of its funds and appropriate those funds to other uses, inconsistent with the requirements of The Trust. Edwards Deposition, Exhibit "9", page 117, line 9 - page 121, line 1

Further discovery is needed; however, based upon the evidence that has been developed and here provided, it is reasonable to conclude that Plaintiff can prove and persuade a jury that had the trust been administered properly, there would have been sufficient funds to satisfy Plaintiff's claims and it will be difficult, if not impossible, for Chase Bank and the individual defendants to prove otherwise.

Movant served its claim for damages resulting from hospital malpractice on FWOH

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on August 24, 2000 and filed its malpractice lawsuit in April 23, 2001. Exhibit "6" FWOH represented, shortly after the malpractice lawsuit was filed and continuously thereafter, that it had, in the self-insured trust fund, \$4,000,000.00 to satisfy Movant's malpractice claim. Exhibit "4" While that claim was pending in the 413th District Court, Johnson County, Texas, trust fund bank records in the possession of Chase Bank reveal that more than \$5,000,000.00 was delivered to Chase Bank by FWOH for deposit into the subject trust fund and was, in fact, deposited into said account. Exhibit "7" During the period, then, from on and after August, 2000 to September 30, 2005, there were sufficient funds available for satisfaction of Movant's claim, as that claim was valued by FWOH. Lansford Deposition, Exhibit "8", page 69, line 22 - page 72, line 4; Exhibit "7" It is reasonable to conclude that \$900,000.00 was and would have remained reserved by The Trust for The Estate's claim, but that reserve was not maintained or retained by Chase Bank, as Medicare required and as The Trust required.

Trust fund bank statements, Exhibit "7", indicate that funds sufficient to satisfy The Estate's judgment were not in the trust when Movant's judgment was obtained. However, the Manual requires that adequate funds remain in the trust fund, even if the provider chooses to revoke and terminate the trust. "Termination". Medicare Provider

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Reimbursement Manual, Sec. 2162.7.B.4, Exhibit "5" This requirement is, also, contained in The Trust. Exhibit "2", Sec. 5.02, "Termination from Medicare" The Trust was never revoked or terminated. Lansford Deposition, Exhibit "8", page 94, line 10 - page 95, line 6 Therefore, it is reasonable to conclude and Movant alleges that had The Trust been managed properly and trust funds not misappropriated, there would have been sufficient funds to satisfy the judgment, even if the trust had been revoked and terminated. It is not a defense for Chase Bank to claim that it was told to appropriate trust funds for improper purpose and purposes inconsistent with the provisions of The Trust because a trustee is liable if he mismanages the trust at the direction of the settlor. *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008); See, also, *Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 249 (Tex. 2002); *Slay v. Burnett Trust*, 187 S.W.2d 377, 387-88 (Tex. 1945); see also *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 476 (Tex. 1979); *Alpert v. Riley*, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008)

It is reasonable to conclude Defendants' wrongful conduct is a proximate cause of The Estate's damages, herein enumerated and sought. *Whitfield v. Lindemann*, 853 F. 2d 1298, 1304 (5th Cir. 1988)

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The damages are not determined, at this time, but they certainly exceed \$75,000.00. Further discovery is necessary to establish the damages in detail. However, the fact such allegations have not been more fully developed or established at this early date is not grounds to deny remand. *Miramont Management Company, LLC, d/b/a Miramont Country Club v. John Sibbald Associates, Inc., et al.* (Cause No. H-08-2188 (United States District Court, S.D. Texas, Houston Division, August 26, 2008))

Conclusion. For the reasons set forth in this Motion to Remand, this Court should and Movant respectfully requests that this Court abstain from accepting this case improvidently removed from state court by Chase Bank and remand the case to the state court from which it was removed.

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APP. 248

Prayer

Movant prays that, upon hearing, this Motion to Remand be SUSTAINED AND GRANTED, and this case returned to the state court from which it was removed, and for any other order the Court deems appropriate.

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CERTIFICATE OF SERVICE

This is to certify that on this the ~~20~~^{21st} day of January, 2009, a true and correct copy of the above and foregoing Motion to Remand has been served upon the following, as required by law:

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28 U.S.C. Sec. 1332
28 U.S.C. Sec. 1334
28 U.S.C. Sec. 1441
28 U.S.C. Sec. 1452
28 U.S.C. Sec. 1367
31 U.S.C. § 3729 et seq (Federal False Claims Act)

Tex. Probate Code ann., Sec 233A, and 3(c)
Tex. Prop. Code Sec. 111.004 (2)
Tex. Prop. Code ann. §§ 113.051, 113.056(a)
Tex. Prop. Code ann. §§ 113.051, 113.056(a)
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Section 212, comment c, of the Restatement (Second) of Trusts
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1 Williston on Contracts, sec. 356

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Exhibits

- Exhibit "1" - Petition, with attachments
- Exhibit "2" - Trust Agreement
- Exhibit "3" - FWOH's Response to Request for Disclosure
- Exhibit "4" - Dec sheet for excess liability insurance policy issued by Mutual Assurance Insur. Co.
- Exhibit "5" - Medicare Provider Reimbursement Manual sections
- Exhibit "6" - Affidavit of E.L. Atkins
- Exhibit "7" - Chase Bank Records and Statements of The Trust Account, identified by Chase Bank Vice President, Robert Lansford, marked as Exhibit "8" to Deposition of Robert Lansford, taken January 25, 2006
- Exhibit "8" - Portions of deposition of Robert Lansford, taken January 25, 2006
- Exhibit "9" - Portions of deposition of Bruce Edwards, taken February 12, 2008
- Exhibit "10" - Judgment obtained in Fisher vs FWOH medical malpractice case

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IN RE: IN THE PROBATE COURT
COURT NO. 1
 ESTATE OF JOHNNY FISHER, DEC'D, JOHNSON COUNTY, TEXAS

ESTATE OF JOHNNY FISHER, DEC'D, IN THE PROBATE COURT
 Plaintiff COURT NO. 1
 VS. JOHNSON COUNTY, TEXAS
 J.P. MORGAN CHASE BANK, N.A., GLENN MILTON, JAY SANDLIN, LUCY NORRIS, RN, and NANCY ARGO, RN, Defendants

ORIGINAL PETITION AND CLAIM OF ESTATE

TO THE HONORABLE PROBATE COURT:

This claim is brought by the Estate of Johnny Fisher, Deceased, (hereafter, at times, "THE ESTATE") in the above styled and numbered Probate Proceeding pursuant to the provisions of the Texas Probate Code.

Jurisdiction and Venue

This claim is a matter appertaining to an estate or incident to an estate. See 5 TEX. PROB. CODE This is a claim in real property brought by THE ESTATE based upon various causes of action, hereinafter set forth. All or a significant portion of the causes of action herein set forth

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- 4. Lucy Norris, RN, 1000 Montgomery St., Fort Worth, Texas 76107, and,
 - 5. Nancy C. Argo, RN, whose present address is unknown at this time.
- J.P. Morgan Chase Bank, N.A. is herein referred to, at times, as "CHASE BANK"

Nature of Claims

THE ESTATE owns a judgment ("The Judgment") against Fort Worth Osteopathic Hospital, Inc. ("FWOH" or "The Hospital") in a medical malpractice claim filed in Johnson County, Texas. As a result of efforts to collect The Judgment, THE ESTATE discovered that a trust fund, in which CHASE BANK was Trustee and which was managed by CHASE BANK Senior Vice President and Trust Officer, Robert M. Lawford, a CPA, (hereinafter, at times, "Lawford") established for the specific purpose of paying FWOH's medical malpractice claims, had been improperly managed and funds, which had been placed in the trust account to be held in reserve for the payment of THE ESTATE's medical malpractice claim had been wrongfully disposed of by CHASE, with the aid of Defendants Glenn Milton, Jay Sandlin, Lucy Norris, RN, and Nancy C. Argo, RN, each and all of whom were agents, servants, officers, employees and/or directors of FWOH. A copy of the trust agreement, entitled "Fort Worth Osteopathic Hospital, Inc. d/b/a Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement" is attached herein and marked Exhibit "1". The trust agreement is, at times herein, referred to as "The Trust", or "The Trust Agreement". The fund maintained pursuant to The Trust Agreement is, at times, referred to as "The Trust Fund". This is a claim for breach of fiduciary duty by the

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occurred in Johnson County, Texas. The claim, upon which the judgment was obtained was filed in and tried wholly in Johnson County, Texas in Cause No. C200100173, styled Mildred Fisher, Plaintiff vs. John B. Payne, Osteopathic Medical Center of Texas, et al in the 413rd Judicial District Court, Hon. William C. Bosworth presiding. The conspiracy and agreement to conceal the improper conduct and conceal the true status of a self-insured trust fund from Judge Bosworth and from the 413rd District Court of Johnson County, Texas, which form the basis, in whole or in part, of the causes of action herein set forth, occurred, in part, and were published and filed in the 413rd District Court, Johnson County, Texas. Therefore, this Court has jurisdiction and venue over this suit to enforce a claim of THE ESTATE, pursuant to Sec. 5.5A and 5B, TEX. PROBATE CODE.

Discovery Level

THE ESTATE requests that discovery proceed in this case under Level 3, and that an appropriate order be so entered.

Parties

Plaintiff: The Estate of Johnny Fisher, Deceased, the administration of which is pending in this Court. Plaintiff is herein referred to, at times, as "THE ESTATE".

Defendants:

- 1. J.P. Morgan Chase Bank, N.A., 400 Throckmorton, Fort Worth, Texas;
- 2. Glenn Milton, 1000 Montgomery St., Fort Worth, Texas 76107;
- 3. Jay Sandlin, whose address is 7408 Ennisbrook Lane, Fort Worth, Texas 76179;

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Trustee, CHASE BANK and for conspiracy to breach a fiduciary duty, resulting in damage to THE ESTATE, as beneficiary of the subject trust, hereinafter defined and described. THE ESTATE seeks compensatory damages, exemplary damages, attorney fees and any and all other damages allowed by law against each and every Defendant, jointly and severally.

Factual Background

THE ESTATE is a judgment creditor of FWOH. THE ESTATE owns The Judgment as a result of a medical malpractice claim filed against FWOH in 2001 for damages from injuries sustained by Johnny Fisher, hospital patient, resulting in his death on October 1, 1999. The Judgment was signed and entered June 7, 2007 by Hon. William C. Bosworth, District Judge, against FWOH, awarding THE ESTATE damages in the amount of \$975,000.00. A copy of The Judgment is attached to and incorporated into this petition and marked Exhibit "2".

On numerous occasions, and continuously after the medical malpractice lawsuit was filed by THE ESTATE, Defendants represented to the 413rd District Court in Johnson County in documents filed with the case, to THE ESTATE and to others, in general, that FWOH had a self-insurance trust plan and fund established, in lieu of primary medical malpractice insurance, in the amount of \$4,000,000.00 plus excess liability insurance coverage with upper limits of \$25,000,000.00 to satisfy any judgment THE ESTATE might obtain in the lawsuit. A copy of one of the on-going representations made to Judge Bosworth regarding the self-insured fund in lieu of insurance is attached to this pleading and marked Exhibit "3". CHASE BANK was the

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trustee of the self-insured trust and trust fund. (Exhibit "2") CHASE BANK selected Lansford to manage the affairs of The Trust for CHASE BANK.

THE ESTATE was an unnamed beneficiary of the trust. The Trust provides that it was established for the sole purpose of paying med-mal claims against The Hospital and related expenses of med-mal claims and lawsuits. The Trust clearly states that the beneficiaries are those having med-mal claims against FWOH. The Hospital assigned \$900,000.00, to be reserved for the payment of THE ESTATE'S med-mal claims and, pursuant to the provisions of The Trust Agreement, are to be maintained until THE ESTATE'S claim is resolved. The Hospital specifically represented that The Trust Fund was an indemnity agreement under which The Hospital would be liable to THE ESTATE to satisfy part or all of a judgment rendered in the medical malpractice lawsuit filed by THE ESTATE against The Hospital or to indemnify or

reimburse for payments made to satisfy the judgment. (Exhibit "3") The Fund was, therefore, for the benefit of THE ESTATE, in the event THE ESTATE obtained a judgment against The Hospital.

Following entry of The Judgment, demand was made upon the trustee in bankruptcy for FWOH, Shawn Brown, for payment from the self-insured fund to satisfy The Judgment. THE ESTATE was advised by Mr. Brown that there was only a few thousand dollars in The Trust Fund when demand for payment was made, although, as herein above stated, The Trust had been represented as having \$4,000,000.00 to satisfy any judgment THE ESTATE might obtain in the med-mal lawsuit. (Exhibit "3") Mr. Brown advised THE ESTATE there were not sufficient funds in the self-insured trust fund to satisfy The Judgment.

The Trust Agreement is clear and unambiguous. The Trustee's duties under The Trust Agreement (Exhibit "1") are mandatory. The trust is a separate entity (Trustee to have legal title) and the fund created by The Trust Agreement and funded by The Hospital is separate and distinct and established for a specific purpose and for specific beneficiaries. The Trust Agreement uses the word "shall", stating:

The Trustee shall have *legal title* to The Trust property and shall be responsible for the proper administration and control thereof, as hereinafter set forth. [emphasis added]

The purpose of The Trust Agreement is to

...self-insure against the initial levels of malpractice liability

Sec. 111.004 (2) Tex. Prop. Code (Vernon); Knox v. Bell, 181 S.W.2d 17, 21 (Tex. 1945). A third party may recover on a contract made between other parties if the parties intended to secure some benefit to that third party, and if the contracting parties entered into the contract for the third party's benefit. To qualify as one for whose benefit the contract was made, the third party must show that he is either a donee or creditor beneficiary of, and not one who is benefited only incidentally by the performance of, the contract. Republic Nat'l Bank of Dallas v. National Bankers Life Ins. Co., 427 S.W.2d 76, 99 (Tex. Civ. App. - Dallas 1968, writ ref'd n.r.s.); 1 Williston on Contracts, sec. 354; 4 Corbin on Contracts sec. 776 (1961). The self-insured trust fund was intended to be in lieu of liability insurance and intended to be used to pay malpractice claims. Texas recognizes that one who has obtained a judgment against an insured in a third party beneficiary of the insured's liability policy and can bring a direct action against the insurer to satisfy the judgment. State Farm Mutual Ins. Co. v. Olin, 789 S.W.2d 722, 723 (Tex. 1989); whether THE ESTATE is a beneficiary of the self-insured trust fund is a question of fact. In re Estate of Berger, 174 S.W.3d 845, 848 (Tex. App. - Waco 2005, no pet.)

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incurred at the hospital...

Legal title to The Trust property was placed in Chase Bank and payment [from the fund]

"shall be exclusively for the purpose of the Plan", stating

Payment shall be made from The Trust property only for malpractice losses of the Hospital... para. 3.03 (emphasis added)

The Trust Agreement made it clear under what circumstances funds could be withdrawn and to whom they were to be paid. Payments from The Trust Fund shall be made only on written authorization from designated hospital representatives, certifying that the payment is related to the Plan and is for one or more of the purposes specified in The Trust Agreement. The Trustee shall make payment solely upon the decision of an Administrative Committee. Payment shall be made only for malpractice losses of The Hospital, for expenses for administering the claims management program, expense of establishing the Trust and trust fund, legal expenses, actuarial expenses, costs relating to the acquisition for the Hospital of excess insurance coverage, expenses involved with the maintenance of the trust and cost of administering any risk management program of The Hospital. No other payment was authorized or proper. The trustee was required to keep accurate and detailed accounts of all receipts, investments and disbursements with respect to the trust property. The trustee was required to deliver a financial statement to The Hospital at the close of each 12 month period, ending on September 30, of each year, as The Trust Agreement required.

There is nothing in The Trust Agreement that provides that The Trustee is not obligated

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to pay a judgment obtained in a malpractice claim/lawsuit, unless The Trustee is so advised by the hospital to do so. The Trust Agreement does not relieve The Trustee of its duty to act prudently or to exercise independent judgment authority, when that is appropriate.

After THE ESTATE was advised by Mr. Brown that there were not sufficient funds in The Trust Fund, THE ESTATE, then, through further discovery determined that, in fact, the self-insured trust and trust fund were created by FWOH to satisfy requirements of Medicare and the United States Social Security Administration which required that the hospital either maintain primary liability insurance to protect The Hospital in connection with medical malpractice claim, or establish a self-insured trust fund, in lieu of malpractice insurance, on specific terms required and approved by Medicare, which included the requirement that The Hospital continually maintain funds in the trust sufficient to resolve all pending malpractice claims against FWOH. The self-insured trust was initially funded with \$1,000,000.00 and represented to have a maintained level of \$4,000,000.00. The Hospital also acquired what is generally described as "excess coverage", which provided liability insurance for any claims against The Hospital in excess of the self-insured fund (in excess of \$4,000,000.00). The "excess" policies, also, required that the self-insured trust fund be maintained at the level of \$4,000,000.00 by The Hospital. The Hospital represented to the 41st District Court, to Medicare representatives, to excess liability insurance carriers, and to other creditors of The Hospital, including THE ESTATE, that the self-insured trust fund did, in fact, maintain a balance of \$4,000,000.00 to resolve any pending medical malpractice claims. The failure to maintain this balance could

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result in The Hospital being denied Medicare payments, or return of medical payments made, and cancellation of excess liability insurance, which would also be a violation of Medicare rules. If the fund was not maintained, as required, The Hospital could be closed because Medicare payments were a significant source of hospital income.

Until CHASE BANK and Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN, and Nancy C. Argo, RN, each and all began their course of action to deplete the trust of its funds and assets and not require replenishment of those withdrawals, and conceal those depletions from Medicare, The Hospital's excess liability insurance carriers, the 413th District Court and THE ESTATE, there were sufficient funds in The Trust Fund to satisfy THE ESTATE's claims and the resulting judgment.³

Claims

The Factual Background, herein above, is incorporated into these claims, by reference.

THE ESTATE seeks herein, to recover damages, compensatory and exemplary, and for attorney fees from the named Defendants for breach of fiduciary duty by the Trustee, CHASE BANK and for conspiracy by Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN, and Nancy C. Argo, RN, each and all, in aiding and abetting, encouraging and approving the improper management of The Trust by CHASE BANK.

³ *Wittfield v. Linowern*, 853 F. 2d 1238, 1284 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas, N.A.*, 274 F. 3d 824 (5th Cir. 2001) but for the wrongful conduct of the Defendants, there would have been sufficient funds in The Trust Fund to satisfy The Judgment.

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At all times relevant to the claims aside herein, Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, were, each and all, agents, servants, representatives, officers and/or directors of FWOH.

Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, knew that CHASE BANK was not complying with the terms and provisions of The Trust Agreement and allowed it to do so, anyway. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, aided CHASE BANK to violate the terms and provisions of The Trust Agreement and allowed and/or directed funds to be deposited into The Trust Fund, then, almost immediately withdrawn, to conceal from THE ESTATE, from Medicare officials, and from officers and representatives of excess medical liability insurance carriers, as well as from THE ESTATE and the Court, that funds were not only being wrongfully removed from the trust, but were not being replenished, as required. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, aided CHASE BANK in the breach of its fiduciary duties.⁴

Conspiracy

Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, had a duty to assure that the self-insured trust agreement was operated according to Medicare laws and regulations and to reveal and not conceal any management or operation of the

⁴ *Kinzbach Tool Co., Inc. v. Cobble-Wellace Corp.*, 138 Tex. 85, 180 S.W.2d 509, 514 (1942)

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Breach of Fiduciary Duty

CHASE BANK was Trustee of the self-insured trust agreement (The Trust). THE ESTATE was an unnamed beneficiary of The Trust.⁵ A "beneficiary" of a trust is defined as "a person for whose benefit property is held in trust, regardless of the nature of the interest." Sec. 111.004(2) TEX. PROP. CODE. The trust funds were held in trust for the medical claimants - not The Hospital. The Trust was a revocable trust, but was never revoked. THE ESTATE has established that no revocation, modification or amendment of The Trust Agreement, as shown on Exhibit "1" was ever made in writing, which was required. Sec. 111.051, TEX. PROP. CODE. As long as the self-insured trust agreement was in place and the trust was not revoked, CHASE BANK had a fiduciary duty to THE ESTATE, as a beneficiary whose claim had been assigned a value of \$900,000.00 and funds reserved for such, to manage The Trust and its funds in compliance with the terms of The Trust Agreement. CHASE BANK's duties under The Trust Agreement are clear. CHASE BANK owed THE ESTATE a fiduciary duty to maintain sufficient funds in The Trust Fund as required by The Trust Agreement. CHASE BANK had a duty to comply with the terms and provisions of The Trust Agreement.

CHASE BANK breached its fiduciary duty to THE ESTATE and depleted the trust and its funds of more than \$4,000,000.00 during most of the time that THE ESTATE's medical malpractice claim was pending in the 413th Judicial District Court of Johnson County, Texas.

⁵ *Supra*, at footnote 1

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trust by the trustee, CHASE BANK, that was improper and the duty of good faith and fair dealing to assure that the self-insured trust agreement was operated in the manner intended. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, breached their duties in these regards. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, conspired with CHASE BANK. The purpose of that conspiracy was to deplete the trust of its funds and use those funds in the furtherance of hospital business, and, at the same time, to conceal the depleting and unlawful management and use of trust funds from the social security administration and officials of Medicare, from various excess liability insurance carriers, from the 413th Judicial District Court of Johnson County, Texas, and from THE ESTATE, knowing that, if such improper conduct was discovered, Medicare funding of patient care would, or could be denied, jeopardizing the continued operation of The Hospital, since The Hospital relied heavily upon Medicare funds for its survival.

Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, each and all, agreed to allow CHASE BANK to deplete The Trust Fund without disclosure of the unlawful conduct to the Social Security Administration and Medicare officials, the excess liability insurance carriers, THE ESTATE or the 413th Judicial District Court of Johnson County, Texas which was a common purpose of the conspiracy. As a result, The Trust Fund was reduced from more than \$4,000,000.00, with sufficient funds, in reserve, to satisfy The Judgment, to less than \$20,000.00. Funds, necessary to satisfy THE ESTATE's claims, were not maintained, as required. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN

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knew the amount to be maintained for THE ESTATE's claim, but depleted, and allowed to be depleted, that reserve and conceal such depletions, anyway. Neither the improper use of The Trust Funds or the concealing of the improper use from Medicare officials, the Court. THE ESTATE or excess liability insurance carrier officials could have been accomplished, but for the conspiracy and the agreement between CHASE BANK and Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN to commit such unlawful acts. Defendants, Glenn Milton, Jay Sandlin, Lucy Norris, RN and Nancy C. Argo, RN, knowingly participated in CHASE BANK'S breach of its fiduciary duties and are, therefore, each and all joint tortfeasors with CHASE BANK.

Proximate Cause of Damages

THE ESTATE alleges that, at all times material to the claims made by THE ESTATE in the underlying malpractice lawsuit, FWOH had funds sufficient to fund and maintain The Trust and satisfy THE ESTATE'S claims. Therefore, had The Trust been properly managed by CHASE BANK, there would have been funds in this self-insured fund, in lieu of liability insurance, to satisfy The Judgment and, but for the Defendants' wrongful conduct and conspiracy, herein enumerated, there are not sufficient funds in the trust to satisfy The Judgment. Defendants' wrongful conduct is a proximate cause of THE ESTATE'S damages, herein enumerated and sought. THE ESTATE states that the damages are not determined, at this time.

⁵ *Whitefield v. Lindemann*, 853 F. 2d 1282, 1284 (5th Cir. 1988); *Florida Dept. of Ins. v. Chase Bank of Texas*, N.A., 274 F. 3d 824 (5th Cir. 2001)

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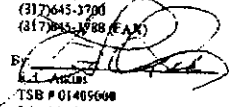
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Prayer

PREMISES CONSIDERED, THE ESTATE prays that citation be issued and served upon each of the named Defendants, as provided for by law, that this matter be set for trial, and upon trial, THE ESTATE recover from each and all of the Defendants, jointly and severally, as herein requested, and for any other relief in which THE ESTATE shows itself justly entitled, at law or in equity.

Respectfully submitted,
LAW OFFICES OF E.L. ATKINS AND ASSOCIATES
225 South Meaprice Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346 METRC
(214) 254-8803 (Cell)
(817) 261-3347 FAX
Attkw@wfirm@tscglobal.net

and
MACLEAN & BOWLE
Attorneys at Law
11 Main Street
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(817) 645-3700
(817) 645-3788 (FAX)

By: 
E.L. Atkins
TSB # 01405000
John MacLean
TSB # 12764000

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**PORT NORTHERN HOSPITAL, INC. D/B/A
PORT NORTHERN ORTHOPAEDIC HOSPITAL CENTER
SELF-INSURANCE PLAN TRUST AGREEMENT**

THIS TRUST AGREEMENT, dated the 13th day of September, 1997, is made between PORT NORTHERN ORTHOPAEDIC HOSPITAL, INC., a non-profit corporation organized and existing under the laws of the State of Texas, having its principal place of business in Fort Worth, Tarrant County, Texas ("Hospital") and TRUST AMERICAN BANK, OF FORT WORTH, TEXAS, a national banking corporation organized and existing under the laws of the United States ("Trustee").

WITNESSETH:

This trust agreement is to evidence the agreement between the Hospital and the Trustee with respect to the administration of a self-insurance plan fund created by the Hospital pursuant to the Federal Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services, Social Security Administration.

RECITALS

- (1) The Hospital owns and operates a 265 hundred bed hospital and related facilities in Fort Worth, Tarrant County, Texas.
- (2) Despite the excellent claim and loss history of the Hospital, the annual cost and volatility of professional liability insurance has become a matter of increasing uncertainty and concern to recent years.
- (3) Because of this concern, the Hospital caused an extensive study and review to be made of the various alternatives available to provide reasonable and dependable protection to the Hospital against malpractice liability claims.
- (4) After analysis of all the data arising from such study and review, the Hospital has determined that it is most reasonable and prudent to maintain a self-insurance program with the establishment of a reserve fund and the self-assumption of the first loss resulting from malpractice and general patient liability business of the non-vested liability of practitioners.

Over of commercial insurance, the Hospital concluded that it would be in the best interest of the Hospital and community which it serves to establish a self-funded plan, or an equivalently sound basis, designed to enable the Hospital to "self insure" against the initial levels of malpractice liability incurred at the Hospital and reserve, if required, commercial insurance coverage from the liability in excess of self-insured limits.

(5) The Hospital desires that such self-funding plan be implemented through a trust designed to such extent as to enable payments therefrom to qualify for Medicare reimbursement, and designed so as to exempt such trust from the payment to the applicable provisions of the Internal Revenue Code.

HENCE, THEREFORE, the Hospital and Trustee do mutually covenant and agree as follows:

ARTICLE I - DEFINITION OF TERMS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

- 1.01 Agency** - shall mean an agency, insurance company or broker experienced in the field of medical malpractice and general liability insurance, independent of any direct or indirect financial ownership or control by the Hospital and employed to render service with respect to the plan and the Trust.
- 1.02 Board** - shall mean the Board of Directors of the Hospital.
- 1.03 Committee** - shall mean the committee which shall administer the plan as provided in Article 2
- 1.04 Contributions** - shall mean payments by the Hospital to the Trustee for the fund.
- 1.05 Fund** - shall mean the trust fund created in accordance with with the plan.
- 1.06 Hospital** - shall mean Port North Orthopaedic Hospital, Inc. d/b/a Port North Orthopaedic Medical Center, Fort Worth, Tarrant County, Texas.
- 1.07 Reimburse Manual** - shall mean the Medicare Provider Reimbursement Manual promulgated by the Social Security Administration

of the Department of Health and Human Services.

1.05 Plan - shall mean the Hospital's self-insurance plan with respect to malpractice liability claims.

1.06 Plan Year - shall mean September 15, 1987 through September 15, 1988 as the first Plan Year and beginning October 1, 1988 a Plan Year shall mean a 12-month period thereafter.

1.07 Trust - shall mean this trust agreement between the Hospital and the Trustee and all amendments thereto.

1.08 Trustee - shall mean Texas American Bank Pure Trust, or any substitute or successor Trustee or Trustees.

ARTICLE 2 - CUSTODY

The Hospital hereby conveys and delivers to Trustee, in trust, to be held and administered in accordance with the terms of this agreement the sum of money set forth on Exhibit A Attached hereto (the receipt of which is acknowledged by the Trustee), which sum of money together with such additional money or property as may from time to time be delivered by the Hospital to the Trustee, including the income and savings therefrom, shall constitute the trust property. Said sum has been determined by Arch & Metcalfe of Chicago, Illinois to be reasonably required as a actually adequate or sound fund reserve for such liability losses incurred and reserved against the Hospital for the year commencing September 15, 1987 and expiring September 15, 1988. The Trustee shall have legal title to the trust property and shall be responsible for the proper administration and control thereof as hereinafter set forth.

ARTICLE 3 - ADMINISTRATIVE COMMITTEE

3.01 Composition and Term of Office - The Committee shall consist of three (3) to five (5) individuals as shall be named by the Board from time to time. The Board shall have the right to remove any member of the Committee at any time. A member may resign at any time by written resignation to the Committee and Board. If a vacancy in the Committee should occur, a successor shall be

appointed by the Board.

The Hospital shall, by written action, keep the Trustee notified of current membership of the Committee, its officers and agents, and shall furnish the Trustee a certified signature card for the members of the Committee. For all purposes hereunder, the Trustee shall be conclusively entitled to rely upon such certified signatures.

3.02 Organization of Administrative Committee - The Committee shall elect a chairman and secretary from among its members. It may appoint agents if deemed necessary for the effective performance of its duties and may delegate to such agents or to one or more members of the Committee such powers and duties, whether administrative or discretionary, as the Committee may deem expedient and appropriate. The Committee shall act by majority vote. Its members shall serve without compensation.

3.03 Powers of Administrative Committee - The Committee shall be governed by the Board with respect to the control of the administration of the Plan and shall provide it with all powers and instructions necessary to enable it to properly carry out its duties in that respect, and all powers conferred upon it by the Plan. Not in limitation, but in amplification of the foregoing, the Committee shall have the power to construct the Plan, to review periodically the adequacy of funding and of investment performance and communicate its findings to the Hospital and the Trustee, and in like steps if deemed necessary to remedy any administrative error and to determine all questions that shall arise under the Plan. Subject to any limitations imposed on the Committee by the Board, it shall decide all questions relating to the determination of payments from the Fund, provided such payment shall be exclusively for the purposes of the Plan as hereinafter provided. All disbursements

by the Trustee shall be made upon and in accordance with the written advice of the Committee or its designated agent. The decision of the Committee upon all matters within the scope of its authority shall be final and binding upon all parties to this agreement. The Committee shall have the power but not the obligation to employ investment counsel on behalf of the Trust. Any such investment counsel shall be empowered to direct the Trustee with respect to permitted investments.

3.04 Records of Administrative Committee - The secretary of the Committee shall record or cause to be recorded all acts and determinations of the Committee and all such records, together with such other documents as may be necessary for the administration of the Plan and shall be preserved in the custody of such secretary.

3.05 Indemnification of Administrative Committee - The Hospital shall indemnify and save each member of the Committee harmless from the effects and consequences of the acts, omissions and conduct of each member in his official capacity, except to the extent that such effects and consequences shall result from the acts or omissions of such member if he had faith.

3.06 Discretion - The Committee shall advise the Trustee and issue to the Trustee such instructions as the Trustee may require to administer the Trust.

The Committee and the Hospital shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by an actuary or by an accountant, physician, or attorney selected or approved by the Hospital or the Committee. The Committee, the Hospital, the actuary, and the Trustee shall not be deemed imprudent or subject to liability by reason of acting or refraining from any action in reliance upon the advice or opinion of any such actuary, accountant, physician, or attorney.

ARTICLE 4 - TRUST FUND

4.01 - The Hospital, after making a full and complete investigation

and analysis of its circumstances, organization and operation, has determined that it is reasonable and prudent for it to adopt and implement a plan of self-insurance against malpractice losses. The trust property shall constitute the fund through which the purposes of the Plan are carried out. The Hospital represents to the Trustee that as part of the Plan it intends to maintain or cause to be maintained an ongoing claims processing and risk management activity to determine whether malpractice liability exists, and the cause and cost thereof, and to minimize the frequency and severity thereof. The Hospital intends that the Plan be established and maintained in accordance with the rules and regulations adopted or implemented from time to time by the United States Department of Health, Education and Welfare, Social Security Administration, or any agent thereof or successor thereto, governing contribution to the Hospital for payments made in connection with the Plan. The Hospital assumes full and sole responsibility for compliance with the Medicare regulations. All representations and covenants herein with respect to the Plan shall be deemed to be those of the Hospital.

ARTICLE 5 - TRUST FUND AND TRUSTEE

5.01 Trust Fund - The Trustee shall hold, manage, administer, and after paying all reasonable costs and expenses of the administration of said Trust or reserving a fund for the payment thereof, the Trustee shall invest and reinvest the trust funds in income-producing securities, assets and properties as may be authorized by the statutes and laws of the United States applicable to national banks exercising trust powers and regulations issued thereunder, and any amendments thereto. All requirements respecting investments by fiduciaries now or hereinafter required by the laws of the State of Texas, except that any loans to or investments and obligations, securities or properties of Hospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, rebates, interest, dividends, etc. shall be retained and

held by the trustee and hence a part of the trust fund. Such interest income shall be considered and used for the purposes of determining and establishing requisite fund levels by Hospital's insurance activity. The trustee shall be under no duty to determine whether the amount of any contribution to the trust property from time to time made by the Hospital is in accordance with the Plan or the Medicare regulations or to enforce or to collect payment of any contributions.

3.01 Termination for Medicare. Upon termination of the Plan from the Medicare program, the Hospital shall obtain from its actuary a determination of the adequacy of the balance of the fund as of the date of such termination in order to determine the amount, if any, to be offset against the Hospital's allowable cost to be reimbursed by Medicare if the fund is excessive, as defined in the Medicare Manual.

5.01 Payment from the Trust Property.

(1) The Trustee from time to time, upon receipt of written direction from the individual or individuals designated by the Committee or Hospital to do so, shall make payment from the income or corpus of the trust property to such persons and in such amounts and in such amounts as the Committee or Hospital in such writing shall direct. Each such written direction shall certify that the payment is related to the Plan, and is for one or more of the purposes specified below. The Trustee shall make payment only upon the direction of the Committee and shall not be required to inquire into the purpose or use of the property of any such payment. Payment shall be made from the trust property only for malpractice losses of the Hospital whenever such losses occur from incidents or claims arising after September 15, 1977, providing same are not covered under the terms of any previously held commercial liability insurance policy and may be paid for the following expenses to the extent that such are related to the self-insurance plan of the Hospital:

- (1) Expenses for administering the claims management program;
- (2) Expenses of establishing this Trust and the Trust Fund;
- (3) Legal expenses;
- (4) Actuarial expenses;
- (5) Costs relating to the acquisition for the Hospital of excess insurance coverage, if purchased by the Trustee;
- (6) Expenses involved with the maintenance of this Trust and the trust property by the Trustee;
- (7) Cost of administering any risk management program of the Hospital, if risk management is performed by the Trustee; provided, however, that this subparagraph shall not be construed to impose upon the Trustee any duty or obligation to administer any risk management program of the Hospital.

(8) Payment for any of the foregoing purposes shall be deemed proper payments to be paid from the trust property. It is intended that all payments from the trust property shall be in accordance with the Medicare regulations, but the Trustee shall not be liable in any way for the Hospital's failure to comply therewith.

5.04 Accounting. The Trustee shall keep accurate and detailed records of all receipts, disbursements and disbursements with respect to the trust property. Such person or persons as the Hospital shall from time to time designate, including such persons as may be required by the Medicare regulations, shall be allowed to review, inspect and audit the books of account relating to the trust property upon request at any reasonable time during business hours of the Trustee.

Within 60 days after the close of each 12-month period ending on September 30 of each year, the Trustee shall deliver a financial statement and accounting containing such information as the Hospital shall from time to time reasonably request, including but not

limited to, the following information:

- (1) The balance of the trust property at the beginning of each 12-month period;
 - (2) Current period contributions;
 - (3) The amount and nature of final payments, including a separate accounting for claim management, legal expenses, claims paid, and other similar items; and
 - (4) The trust property balance at the end of the 12-month period.
- Notwithstanding any obligation to report at this 60 days after the close of each 12-month period, the Trustee shall, upon request regarding the trust fund and concerning such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a 12-month year, or if the Trustee shall resign or be removed, the Trustee shall, within 45 days of such termination, resignation or removal, submit its final statements and account for the period from the last previous accounting to the date of such termination, resignation or removal.

5.05 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 30 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall transfer to the Hospital, at the expense of the administration of the fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the fund to its successor Trustee.

5.06 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 30 days' written notice to the Trustee. In the event of such removal the Trustee shall be under the same duty to account and transfer and deliver the assets of the fund to its successor as provided in the case of the Trustee's resignation.

5.07 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the best qualified and readily available financial institution whose

service to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will continue this agreement indefinitely. However, in the event of a vacancy in the trusteeship of the Trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this Trust. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

5.08 Liability. Neither any member of the Committee, the Board, the Hospital, the Trustee nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own acts, omissions in fact or for which it is grossly negligent.

ARTICLE 3 - POWERS OF TRUSTEE

3.01 Enumerated Powers. The Trustee or any successor Trustee shall have the authority without order of or report to any court or officer to exercise the following powers in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and immunities as provided in the laws of the United States and State of Texas for persons exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To receive, sell, invest or reinvest in any stocks, bonds, securities, options or other property, including common trust funds established by the Trustee, and assets of the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of said discretion, except that of acting contrary to the provisions hereunder; provided, however, that no fees may be paid from the trust property to the Hospital or to any person related to the Hospital, within the meaning of the Medicare regulations.

(2) To sell, mortgage, lease, encumber or dispose of any property or any time held or received hereunder as public or private sale, for cash or by term, without the necessity of court approval

or advertisement.

(1) To register any stock, bond or other security in the name of a trustee, with or without disclosure of any fiduciary relationship, and accurate records shall be maintained showing that such property is a trust asset.

(2) To issue in certificates of deposit and accounts owned by trustee.

(3) To vote in person or by proxy all stocks or other securities, in great powers, general or limited, and to execute or take any other action in regard to any reorganization, merger, consolidation, bankruptcy or other procedure or proceedings affecting any property of the trust.

(4) To serve without taking and filing inventory and appraisement, without filing any annual or other return to any court and without giving bond; but the trustee shall furnish to the hospital such financial statements as are otherwise required by this agreement.

(5) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

6.02 COMPENSATION. The Hospital is authorized to pay the trustee reasonable compensation for the services rendered. Said compensation shall be based on what is reasonably and customarily charged for services of a similar type or nature in the community and shall include an evaluation of the services rendered by the trustee together with the experience of persons of distinguished under this trust agreement.

ARTICLE 7 - AMENDMENT AND TERMINATION

7.01. The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, in whole or in part, any or all of the provisions of the Trust and trust agreement; provided, however,

and the nature, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without the consent.

7.02. Termination. The Hospital expects this plan to be continued indefinitely, but if necessary, it reserves the right to terminate the plan at any time by action of the Board communicated in writing to the Trustee. If the Hospital rescinds this agreement or terminates the plan, then upon receipt of written notice thereof, the Trustee shall deliver:

(1) Within one hundred (100) days after the date of this agreement such portion of the trust property as the Hospital shall certify to the Trustee has been determined by an agency as required by the Medicare regulations as a secondary reserve fund for future payment of the plan until such time as the Hospital shall certify to the Trustee that an independent agency has determined that such payment has been met or reserves are no longer necessary, whichever the Trustee shall follow the nature of the trust property to the Hospital; or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the Medicare regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 8 - INTERPRETATION

8.01 Binding. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored if any interpretation of the provisions thereof.

8.02 Construction. This agreement shall be construed in accordance with the laws of the State of Texas. In the construction of this agreement, the masculine shall include the female and the singular the plural in all cases where such meaning could be appropriate.

8.03 Invalidity. Should any provision of this agreement be found in violation of any law, such provision shall be deemed void.

to the extent required by law and all provisions of this agreement other than that held void shall remain in force and effect.

8.04 COUNTERPARTS. This agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers, to be effective on the date first above written.

POPE JOHN CENTER HOSPITAL, INC.
15700 ROAD NORTH GASTROPHYSIC MEDICAL CENTER

By: John Smith
Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAN BANK

By: Robert Johnson
Senior Vice President and Trust Officer

EXECUTED IN MULTIPLE COPIES, EACH COPY OF WHICH SHALL BE DEEMED TO BE AN ORIGINAL.

EXHIBIT A

Concomitantly with the execution and delivery of the foregoing Trust Agreement, the Hospital conveyed and delivered to the Trustee pursuant to Section 3 hereof, the sum of One Million Dollars (\$1,000,000.00).

MILDRED FISHER

VS.

JOHN B. PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, et al
Defendants

IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS

433rd JUDICIAL DISTRICT

APPROVED
DAN R. LLOYD
DISTRICT CLERK
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JUL 11 AM 9:31

AGREED JUDGMENT

On the 7 day of June, 2007, this cause came on to be heard. It was announced to the Court that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie Fisher, Individually and as Administratrix and Representative of the Estate of Johnny Fisher, Deceased, Houston Fisher and Johnny Fisher recover from the Defendant, Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and no/100 Dollars (\$975,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be enforced only in accordance with bankruptcy law, in Cause No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.



CERTIFIED COPY
DISTRICT CLERK
JUL 11 AM 9:31
DAN R. LLOYD
District Clerk (Judge's
County Seal
By [Signature]

JUDGMENT

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are

taxed against the party incurring same.

SIGNED this 7 day of June, 2007.

APPROVED

E. L. Atkins
State Bar No. 01409030
Atkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

[Signature]
JUDGE PRESIDING

Wayne Clewator
State Bar No. 04326590
Cruse, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
1777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Lawrence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.

JUDGMENT

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CRUSE SCOTT HENDERSON
E. L. ATKINS LAW

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PAGE 87

APP. 264

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are
taxed against the party incurring same.

SIGNED this _____ day of _____, 2007.

APPROVED

JUDGE PRESIDING

E. L. Atkins
State Bar No. 01409030
Atkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administratrix and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

[Signature]
Wayne Clewator
State Bar No. 04326590
Cruse, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
1777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
Attorney for Defendants, John Lawrence, Sue Samuel, R.N.,
Sharon Orr, R.N., and Karen Cox, R.N.

JUDGMENT

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MILDRED FISHER, ET AL

VS.

IN THE DISTRICT COURT OF
JOHNSON COUNTY, TEXAS

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS,
N. P. CASH, R.N., SUE SAMUEL, R.N.,
V. PATE, CRT, and SUZANNE SHENK, D.O.

246th JUDICIAL DISTRICT

DEFENDANT OSTEOPATHIC MEDICAL CENTER OF TEXAS' SECOND
SUPPLEMENTAL RESPONSE TO INTERVENORS' JACKIE FISHER, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF JOHNNY FISHER, DEC'D.,
JOHNNY FISHER AND HOUSTON FISHER'S REQUEST FOR DISCLOSURE

TO: Intervenor, by and through their attorney of record, E. L. Atkins, 325 S. Mesquite Street,
Arlington, Texas 76010.

COMES NOW Osteopathic Medical Center of Texas, one of the Defendants herein, and
files its Second Supplemental Response to Jackie Fisher, Individually and as Administratrix of the
Estate of Johnny Fisher, Dec'd., Johnny Fisher and Houston Fisher's Request for Disclosure.

REQUEST FOR DISCLOSURE A: The correct names of the parties to the lawsuit.

RESPONSE: Defendant has no record of any registered nurse in its employ by the name
of "N. P. Cash." Otherwise, the parties have been correctly named to
Defendant's knowledge.

REQUEST FOR DISCLOSURE B: The name, address, and telephone number of any potential
parties.

RESPONSE: None

REQUEST FOR DISCLOSURE C: The legal theories and, in general, the factual bases of the
responding party's claims or defenses (the responding party
need not marshal all evidence that may be offered in trial).

RESPONSE: Defendant contends that neither it, nor any of its employees, breached the
applicable standard of care with respect to their medical treatment of the
Decedent, and that no act or omission on the part of Defendant, or any of
its employees, was a proximate cause of the death of Decedent or any
resulting damages to Plaintiffs.

REQUEST FOR DISCLOSURE D: The amount and any method of calculating economic
damages.

RESPONSE: Not applicable

Respectfully submitted,

GOODMAN, ODOM, LACY, FLOYD & BERRY, L.L.P.
301 Commerce Street, Suite 3131
Fort Worth, Texas 76107
817/338-9400
817/338-8498 (fax)

By: L. Odum
Lane Odum
Texas Bar No. 15202622

ATTORNEYS FOR DEFENDANT OSTEOPATHIC MEDICAL
CENTER OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing documents was served upon Intervenor's counsel by certified mail, return receipt requested, and upon all other counsel of record by regular U. S. Mail, on the 17th day of March, 2002.

L. Odum

- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography.

RESPONSE: No experts have been retained at this time.

REQUEST FOR DISCLOSURE G: Any indemnity and tracking agreements described in Rule 192.3(f).

RESPONSE: Defendant maintains a self-insured trust with limits of \$2,000,000.00 per occurrence, \$4,000,000.00 aggregate. Excess coverage is provided through Mutual Assurance with limits of \$20,000,000.00. A copy of the self-insured trust agreement and declarations page of the excess insurance policy are attached to this Response to Request for Disclosure.

REQUEST FOR DISCLOSURE H: Any settlement agreements described in Rule 192.3(g).

RESPONSE: None.

REQUEST FOR DISCLOSURE I: Any witness statements described in Rule 192.3(h).

RESPONSE: None, other than the patient's medical records may contain such "statements."

REQUEST FOR DISCLOSURE J: In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE: Not applicable.

REQUEST FOR DISCLOSURE K: In a suit alleging physical and mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE: Defendant assumes that Plaintiff is in possession of the Osteopathic Medical Center of Texas chart relating to the incident in question. If not, Defendant will make this hospital chart available for inspection and copying at a mutually agreeable time. As for other medical records that may be obtained by virtue of an authorization, this request will be implemented assuming that Defendant obtains any responsive information.

Exhibit “2”

MOTION TO REMAND

PAGE NO. 58

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PORT WORTH OSTEOPATHIC HOSPITAL, INC. d/b/a
PORT WORTH OSTEOPATHIC MEDICAL CENTER
SELF-INSURANCE PLAN TRUST AGREEMENT

THIS TRUST AGREEMENT, made the 15th day of September, 1967, by and between PORT WORTH OSTEOPATHIC HOSPITAL, INC., a non-profit corporation organized and existing under the laws of the State of Texas, having its principal place of business in Fort Worth, Tarrant County, Texas ("Hospital") and TEXAS AMERICAN BANK, of Fort Worth, Texas, a national banking corporation organized and existing under the laws of the United States ("Trustee").

WITNESSETH:

This trust agreement is to evidence the agreement between the Hospital and the Trustee with respect to the administration of a self-insurance plan fund created by the Hospital pursuant to the Medical Provider Reimbursement Manual promulgated by the United States Department of Health and Human Services, Social Security Administration.

RECITALS

- (a) The Hospital owns and operates a 765 bed hospital and related facilities in Fort Worth, Tarrant County, Texas.
- (b) Despite the excellent claim and loss history of the Hospital, the annual cost and availability of professional liability insurance has become a matter of increasing uncertainty and concern in recent years.
- (c) Because of this concern, the Hospital caused an extensive study and review to be made of the various alternatives available to provide economical and dependable protection to the Hospital against malpractice liability claims.
- (d) After analysis of all the data arising from such study and review, the Hospital has determined that it is most reasonable and prudent to maintain a rural self-insurance program with the establishment of a reserve fund and the self-acceptance of the risk loss resulting from malpractice and general patient liability because of the non-availability or exorbitant

of the Department of Health and Human Services

1.01 Plan - shall mean the Hospital's self-insurance plan with respect to malpractice liability claims.

1.02 Plan Year - shall mean September 16, 1967 through September 30, 1968 as the first plan year and beginning October 1, 1968 a plan year shall mean a 12-month period thereafter.

1.03 Trust - shall mean this trust agreement between the Hospital and the Trustee and all amendments thereto.

1.04 Trustee - shall mean Texas American Bank Fort Worth, or any substitute or successor Trustee or Trustees.

ARTICLE I - CONTRIBUTIONS

The Hospital hereby conveys and delivers to Trustee, in trust, to be held and administered in accordance with the terms of this agreement the sum of money set forth on Exhibit A attached hereto (the receipt of which is acknowledged by the Trustee), with such money together with such additional money or property as may from time to time be delivered by the Hospital to the Trustee, including the income and earnings therefrom, shall constitute the trust property. Said sum has been determined by a valuation of Chicago, Illinois to be reasonably required as a actuarially adequate or sound fund reserve for such liability losses incurred and accrued against the Hospital for the year commencing September 16, 1967 and expiring September 30, 1968. The Trustee shall have legal title to the trust property and shall be responsible for the proper administration and control thereof as hereinafter set forth.

ARTICLE II - ADMINISTRATIVE MATTERS

2.01 Composition and Term of Office - The Committee shall consist of three (3) or five (5) individuals as shall be named by the Board from time to time. The Board shall have the right to remove any member of the Committee at any time. A member may resign at any time by written resignation to the Committee and Board. If a vacancy in the Committee should occur, a successor shall be

appointed by the Board. The Hospital acknowledges that it would be in the best interest of the Hospital and community which it serves to establish a self-funded plan, on an actuarially sound basis, designed to enable the Hospital to "self insure" against the initial levels of malpractice liability incurred at the Hospital and secure, if required, commercial insurance coverage from the liability in excess of self-insured limits.

(c) The Hospital desires that such self-funding plan be implemented through a trust designed in such manner as to enable payments thereon to qualify for Medicare reimbursement, and designed so as to exempt such trust from tax pursuant to the applicable provisions of the Internal Revenue Code.

NOTWITHSTANDING, the Hospital and Trustee do mutually covenant and agree as follows:

ARTICLE III - DEFINITION OF TERMS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

3.01 Attorney - shall mean an attorney, insurance company or broker experienced in the field of medical malpractice and general liability insurance, independent of any direct or indirect financial ownership or control by the Hospital and employed to render advice with respect to the Plan and the Fund.

3.02 Board - shall mean the Board of Directors of the Hospital.

3.03 Committee - shall mean the committee which shall administer the plan as provided in Article 2.

3.04 Contributions - shall mean payments by the Hospital to the Trustee for the Plan.

3.05 Fund - shall mean the trust fund created in accordance with with the Plan.

3.06 Hospital - shall mean Port Worth Osteopathic Hospital, Inc. d/b/a Port Worth Osteopathic Medical Center, Fort Worth, Tarrant County, Texas.

3.07 Reimburse Manual - shall mean the Medicare Provider Reimbursement Manual promulgated by the Social Security Administration

appointed by the board.

The Hospital shall, by written notice, keep the Trustee notified of corporate membership of the Committee, its officers and agents, and shall furnish the Trustee a certified signature card for the members of the Committee. For all purposes hereunder, the Trustee shall be conclusively entitled to rely upon such certified signatures.

3.07 Organization of Administrative Committee. The Committee shall elect a chairman and secretary from among its members. It may appoint agents if deemed necessary for the effective performance of its duties and may delegate to such appointees or to one or more members of the Committee such powers and duties, whether administrative or discretionary, as the Committee may deem expedient and appropriate. The Committee shall act by majority vote. Its members shall serve without compensation.

3.08 Power of Administrative Committee. The Committee shall be governed by the Board with respect to the control of the administration of the Plan and shall provide it with all powers and instructions necessary to enable it to properly carry out its duties in that respect, and all powers conferred upon it by the Plan. Not in limitation, but in amplification of the foregoing, the Committee shall have the power to conserve the Plan, to review periodically the adequacy of funding and of investment performance and communicate its findings to the Hospital and the Trustee, and to take such steps as deemed necessary to carry any administrative matter and to determine all questions that shall arise under the Plan. Subject to any limitations imposed on the Committee by the Board, it shall decide all questions relating to the determination of payments from the Fund, provided such payment shall be exclusively for the purposes of the Plan as hereinafter provided. All disbursements

by its Trustee shall be made upon and in accordance with the written notice of the Committee or its designated agent. The decision of the Committee upon all matters within the scope of its authority shall be final and binding upon all parties to this instrument. The Committee shall have the power but not the obligation to employ investment counsel on behalf of the Trust. Any such investment counsel shall be empowered to direct the trustee with respect to permitted investments.

3.04 Power of Administrative Committee. The Secretary of the Committee shall record or cause to be recorded all acts and determinations of the Committee and all such records, together with such other documents as may be necessary for the administration of the Plan and shall be preserved in the custody of such secretary.

3.05 Indemnification of Administrative Committee. The Hospital shall indemnify and save each member of the Committee harmless from the effects and consequences of the acts, omissions and conduct of each member in his official capacity, except to the extent that such effects and consequences shall result from the acts or omissions of such member in bad faith.

3.06 Discontinuance. The Committee shall advise the Trustee and times of the Trustee such discontinuance as the Trustee may require to administer the Trust.

The Committee and the Hospital shall be entitled to rely upon all tables, valuations, computations, and reports furnished by an actuary or by an accountant, physician, or attorney selected or approved by the Hospital or the Committee. The Committee, the Hospital, its officers, and the Trustee shall not be deemed negligent or subject to liability by reason of taking or refraining from any action in reliance upon the advice or opinion of any such actuary, accountant, physician, or attorney.

ARTICLE 4 - TRUST PLAN

4.01. The Hospital, after making a full and complete investigation

and analysis of its circumstances, organization and operation, has determined that it is reasonable and proper for it to adopt and implement a plan of self-insurance against malpractice losses. The trust property shall constitute the fund through which the purposes of the plan are carried out. The Hospital represents to the Trustee that as part of the plan it intends to maintain or cause to be maintained an ongoing claims processing and risk management service to determine whether malpractice liability exists, and the cause and cost thereof, and to minimize the frequency and severity thereof. The Hospital intends that the plan be established and maintained in accordance with the rules and regulations adopted or implemented from time to time by the United States Department of Health, Education and Welfare, Social Security Administration, or any agent thereof or successor thereto, governing reimbursement to the Hospital for payments made in connection with the plan. The Hospital assumes full and sole responsibility for compliance with the medical regulations. All agreements and results hereto with respect to the plan shall be deemed to be those of the Hospital.

ARTICLE 5 - TRUST FUND AND TRUSTEE

5.01 Trust Fund. The Trustee shall hold, manage, administer, and after paying all reasonable costs and expenses of the administration of said trust or reserving a fund for the payment thereof, the Trustee shall invest and reinvest the trust funds in income-producing securities, assets and properties as may be suggested by the trustee and laws of the United States applicable to national banks operating trust powers and regulations issued thereunder, and any applicable statute. All requirements respecting investments by fiduciaries now or hereinafter required by the laws of the State of Texas, except that any loans to or investments in children's, securities or properties of Hospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, interest, dividends, etc. shall be retained and

held by the Trustee and become a part of the trust fund. Such retained income shall be considered and used for the purposes of determining the net operating surplus fund levels by Hospital's insurance secretary. The Trustee shall be under no duty to determine whether the amount of any contribution to the trust property from time to time made by the Hospital is in accordance with the plan or the Medicare regulations or to enforce or to collect payment of any contributions.

5.02 Termination for Medicare. Upon termination of the Plan from the Medicare program, the Hospital shall obtain from the actuary a determination of the adequacy of the balance of the Fund as of the date of such termination in order to determine the amount, if any, to be added to the Hospital's allowable cost to be reimbursed by Medicare if the Fund is excessive, as defined in the Medicare Manual.

5.03 Payment from the Trust Property.

(a) The Trustee from time to time, upon receipt of written direction from the individual or individuals designated by the Committee or Hospital to do so, shall make payment from the income or corpus of the trust property to such persons and in such amounts and in such amounts as the Committee or its agent thereof in such writing shall direct. Such such written direction shall certify that the payment is required in the Plan, and is for one or more of the purposes specified below. The Trustee shall make payments solely upon the direction of the Committee and shall not be required to inquire into the purpose or not be liable for the propriety of any such payment. Payment shall be made from the trust property only for malpractice losses of the Hospital whenever such losses occur from incidents or claims arising after September 18, 1981, providing such are not covered under the terms of any previously held commercial liability insurance policy and may be made for the following expenses to the extent that such are related to the self-insurance plan of the Hospital:

- (1) Expenses for administering the claim management program;
- (2) Expenses of establishing the trust and the trust fund;
- (3) Legal expenses;
- (4) Actuarial expenses;
- (5) Costs relating to the acquisition for the Hospital of excess malpractice coverage, if purchased by the Trustee;
- (6) Expenses involved with the maintenance of this trust and the trust property by the Trustee;
- (7) Cost of administering any risk management program of the Hospital, if risk management is performed by the Trustee; provided, however, that this subprogram shall not be construed to impose upon the Trustee any duty or obligation to administer any risk management program of the Hospital.

The payments for any of the foregoing purposes shall be deemed proper payment to be paid from the trust property. It is intended that all payments from the trust property shall be in accordance with the Medicare regulations, and the Trustee shall not be liable in any way for the Hospital's failure to comply therewith.

5.04 Accounting. The Trustee shall keep accurate and detailed accounts of all receipts, payments and disbursements with respect to the trust property. Each person or persons as the Hospital shall from time to time designate, including such persons as may be required by the Medicare regulations, shall be allowed to review, inspect and audit the books of account relating to the trust property upon request at any reasonable time during business hours of the Trustee.

Within 60 days after the close of each 12-month period ending on September 30 of each year, the Trustee shall deliver a financial statement and accounting containing such information as the Hospital shall from time to time reasonably request, including but not

Limited to, the following information:

(a) The balance of the trust property at the beginning of that Plan Year;

(b) Current period contributions;

(c) The amount and nature of final payments, including a separate accounting for claim management, legal expenses, claims paid, and other similar items; and

(d) The trust property balance at the end of the Plan Year. Notwithstanding any obligation to report within 60 days after the close of each 12-month period, Trustees shall render such reports regarding the trust fund and containing such information as Hospital shall reasonably request from time to time.

If this agreement shall be terminated for any reason during a Plan Year, or if the Trustee shall resign or be removed, the Trustee shall, within 45 days of such termination, resignation or removal date, submit its final statement and account for the period from the last previous accounting to the date of such termination, resignation or removal.

3.15 Resignation of Trustee. The Trustee may resign from this trust at any time by giving 60 days' written notice to the Board. Upon such resignation becoming effective, the Trustee shall render to the Hospital an account of its administration of the fund during the period following that covered by its last annual accounting and shall perform all acts necessary to transfer and deliver the assets of the fund to its successor Trustee.

3.16 Removal of Trustee. The Board may remove the Trustee at any time upon the delivery of 60 days' written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account and transfer and deliver the assets of the fund as its successor as provided in the case of the Trustee's resignation.

3.17 Original and Successor Trustee. Trustee herein named has been selected by the Board on the basis that Trustee is the best qualified and readily available financial institution whose

services to the Hospital in the past has proved beneficial. It is contemplated that Trustee and Hospital will continue this agreement indefinitely. However, in the event of a vacancy in the trusteeship of this Trust occurring at any time, the Board shall designate and appoint a qualified successor Trustee of this Trust. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee.

3.18 Liability. Neither any member of the Committee, the Board, the Hospital, the attorney nor the Trustee shall be liable for any breach of responsibility on the part of persons other than itself, but shall be liable for its own acts, omissions in bad faith or for which it is grossly negligent.

ARTICLE 4 - POWERS OF TRUSTEE

4.01 Enumerated Powers. The Trustee or any successor Trustee shall have the authority without order of or report to any court or officer to exercise the following powers in such reasonable manner as may be fair and equitable under the circumstances and is hereby given and granted said powers, authorities, privileges and immunities as provided in the laws of the United States and State of Texas for banks exercising trust functions and the regulations issued thereunder. The powers shall include, but not be limited to, the following, to wit:

(1) To retain, sell, lease or interest in any stocks, bonds, securities, options or other property, including common trust funds established by the Trustee, and stock in the Trustee, which is deemed proper, necessary or expedient without responsibility for the exercise of this discretion, except that of using ordinary care; provided, however, that no loans may be made from the trust property to the Hospital or to any person related to the Hospital within the meaning of the Medicare regulations.

(2) To sell, exchange, or otherwise dispose of any property at any time held or required hereunder at public or private sale, for cash or on terms, without the necessity of court approval

or advertisement.

(3) To register any stock, bond or other security in the name of a nominee, with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing that such property is a trust asset.

(4) To invest in certificates of deposit and accounts issued by Trustee.

(5) To vote in person or by proxy all stocks or other securities, to grant, provide, general or limited, and to agree or take any other action in regard to any reorganization, merger, amalgamation, bankruptcy or other procedure or proceeding affecting any property of the Trust.

(6) To serve without making and filing inventory and appraisement, without filing any annual or other return to any court and without giving bond; but the Trustee shall furnish to the Hospital such financial statements as are otherwise provided by this agreement.

(7) Trustee is relieved from any responsibility of diversifying investments of said trust fund. However, it is contemplated that Trustee agrees to seek the highest rate of return commensurate with a sound investment policy.

4.02 Compensation. The Hospital is authorized to pay the Trustee reasonable compensation for the services rendered. Said compensation shall be based on what is reasonable and customarily charged for services of a similar type or nature as the community and shall include an evaluation of the services rendered by the Trustee together with the experience of payments or disbursements under this Trust Agreement.

ARTICLE 5 - AMENDMENT AND TERMINATION

5.01. The Hospital, through its Board, shall have the right and power at any time and from time to time by instrument in writing delivered to the Trustee to amend, if whole or in part, any or all of the provisions of the Plan and trust agreements provided, however,

that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased or decreased without its consent.

5.02. Termination. The Hospital agrees this Plan to be continued indefinitely, but if necessary, it reserves the right to terminate the Plan at any time by action of the Board communicated in writing to the Trustee. If the Hospital revokes this agreement or terminates the Plan, then upon receipt of written notice thereof, the Trustee shall withdraw:

(1) Assets and administer in accordance with this agreement such portion of the trust property as the Hospital shall verify to the Trustee has been determined by an actuary to be required by the Medicare regulations as a necessary reserve fund for future payments of the Plan until such time as the Hospital shall certify to the Trustee that an independent actuary has determined that such payment has been met or reserves are no longer necessary, whereupon the Trustee shall deliver the balance of the trust property to the Hospital; or

(2) Upon certification to the Trustee by the Hospital that such payment is consistent with the Medicare regulations, the Trustee shall deliver the balance of the trust property to the Hospital.

ARTICLE 6 - MISCELLANEOUS

6.01. Headings. The headings and sub-headings in this agreement have been inserted for convenience of reference only and are to be ignored if any inconsistency of the provisions herein.

6.02. Construction. This agreement shall be construed in accordance with the laws of the State of Texas. In the construction of this agreement, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

6.03. Severability. Should any provision of this agreement be found in violation of any law, such provision shall be deemed void

to the extent required by law and all provisions of this agreement
shall remain in full force and effect.

1.04 COPIES. This agreement may be executed in multiple
copies, each of which shall be regarded for all purposes as
an original; and such counterparts shall constitute but one and the
same instrument.

IN WITNESS WHEREOF, the parties have caused this agreement to
be executed by their duly authorized officers, to be effective on
the date first above written.

FOUR MONTHS OUTPATIENT SURGICAL, INC.
BY/AS FOUR MONTHS OUTPATIENT SURGICAL
CENTRE:

By: John A. [Signature]
John A. [Signature]
Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAN BANK

By: Robert E. [Signature]
Robert E. [Signature]
Senior Vice President and Trust Officer

EXECUTED IN MULTIPLE COPIES. EACH COPY OF WHICH SHALL BE DEEMED TO
BE AN ORIGINAL.

EXHIBIT A

Contemporaneously with the execution and delivery of the
foregoing Trust Agreement, the Receipt, conveyance and delivery to the
Trustee pursuant to Section 2 hereof, the sum of One Million Dollars
(\$1,000,000.00).

Exhibit "3"

MOTION TO REMAND

PAGE NO. 59

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MILDRED FISHER, ET AL
VS.
JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS
N. P. CASH, R.N., SUE SAMUEL, R.N.,
V. FATE, CRT, and SUZANNE BRENK, D.O.

Case No. 0208100173

IN THE DISTRICT COURT OF
JOHNSON COUNTY, TEXAS

249th JUDICIAL DISTRICT

Respectfully submitted,

GOODMAN, OGOM, LACY, FLOYD & BERRY, L.L.P.
261 Commerce Street, Suite 2151
Fort Worth, Texas 76107
817/338-3400
817/338-9484 (fax)

By: L. Deem
Lane Deem
Texas Bar No. 15207800

ATTORNEYS FOR DEFENDANT OSTEOPATHIC MEDICAL
CENTER OF TEXAS

DEFENDANT OSTEOPATHIC MEDICAL CENTER OF TEXAS' SECOND
SUPPLEMENTAL RESPONSE TO INTERVENORS' JACKIE FISHER, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF JOHNNY FISHER, DEC'D.,
JOHNNY FISHER AND HOUSTON FISHER'S REQUEST FOR DISCLOSURE

TO: Intervenor, by and through their attorney of record, E. L. Atkins, 325 S. Macy to Street,
Arlington, Texas 78010.

COMES NOW Osteopathic Medical Center of Texas, one of the Defendants herein, and
files its Second Supplemental Response to Jackie Fisher, Individually and as Administratrix of the
Estate of Johnny Fisher, Dec'd., Johnny Fisher and Houston Fisher's Request for Disclosure

REQUEST FOR DISCLOSURE A: The correct names of the parties to the lawsuit

RESPONSE: Defendant has no record of any registered nurse in its employ by the name
of "N. P. Cash." Otherwise, the parties have been correctly named to
Defendant's knowledge.

REQUEST FOR DISCLOSURE B: The name, address, and telephone number of any potential
parties.

RESPONSE: None.

REQUEST FOR DISCLOSURE C: The legal theories and, in general, the factual bases of the
responding party's claims or defenses (the responding party
need not marshal all evidence that may be offered at trial)

RESPONSE: Defendant contends that neither it, nor any of its employees, breached the
applicable standard of care with respect to their medical treatment of the
Decedent, and that no act or omission on the part of Defendant, or any of
its employees, was a proximate cause of the death of Decedent or any
resulting damages to Plaintiff.

REQUEST FOR DISCLOSURE D: The amount and any method of calculating economic
damages

RESPONSE: Not applicable.

(3) the general substance of the expert's mental impressions and opinions and a brief
summary of the basis for them, or if the expert is not retained by, employed by, or
otherwise subject to the control of the responding party documents reflecting such
information;

(4) if the expert is retained by, employed by or otherwise subject to the control of the
responding party

(A) all documents, tangible things, reports, models or data compilations that
have been provided to, reviewed by, or prepared by or for the expert in
anticipation of the expert's testimony; and

(B) the expert's current resume and biography

RESPONSE: No experts have been retained at this time

REQUEST FOR DISCLOSURE G: Any indemnity and insuring agreements described in Rule
192.3(f).

RESPONSE: Defendant maintains a self-insured trust with limits of \$2,000,000.00 per
occurrence, \$4,000,000.00 aggregate. Excess coverage is provided
through Mutual Assurances with limits of \$20,000,000.00. A copy of the self-
insured trust agreement and declaration page of the excess insurance
policy are attached to this Response to Request for Disclosure

REQUEST FOR DISCLOSURE H: Any settlement agreements described in Rule 192.3(g)

RESPONSE: None

REQUEST FOR DISCLOSURE I: Any witness statements described in Rule 192.3(h).

RESPONSE: None, other than the patient's medical records may contain such
statements.

REQUEST FOR DISCLOSURE J: In a suit alleging physical or mental injury and damages from
the occurrence that is the subject of the case, all medical
records and bills that are reasonably related to the injuries or
damages asserted or, in lieu thereof, an authorization
permitting the disclosure of such medical records and bills

RESPONSE: Not applicable.

REQUEST FOR DISCLOSURE K: In a suit alleging physical and mental injury and damages
from the occurrence that is the subject of the case, all
medical records and bills obtained by the responding party
by virtue of an authorization furnished by the requesting
party.

RESPONSE: Defendant assumes that Plaintiff is in possession of the Osteopathic
Medical Center of Texas chart relating to the incident in question. If not
Defendant will make its hospital chart available for inspection and copying
at a mutually agreeable time. As for other medical records that may be
obtained by virtue of an authorization, the request will be supplemented,
assuming that Defendant obtains a by responsive information.

Exhibit “4”

MOTION TO REMAND

PAGE NO. 60

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HEALTH CARE FACILITY EXCESS UMBRELLA LIABILITY POLICY COVERAGE SUMMARY

Holder and Address: Health Care of Texas, Inc.
(as per Named Insured Endorsement)
1000 Montgomery Street
Fort Worth, Texas 76107

Policy Number: HX00198

1. Policy Period: From October 1, 1999 to October 1, 2000 at 12:01 A.M. Standard Time at the address of the Policyholder as stated above

2. Total Premium: [REDACTED]

3. Limits of Liability:

Commercial Liability Coverage (Umbrella) (COVERAGE A-UM):
(1) Each Occurrence Limit: \$ 18,890,000
(2) General Aggregate Limit: \$ 24,000,000

Professional Liability Coverage (Excess of Self-Insured Retention) (COVERAGE B-SIR):
(1) Each Medical Incident: \$ 25,000,000
(2) General Aggregate Limit: \$ 25,000,100

4. Self-Insured Retention (Applicable Only to Coverages Written Excess of Self-Insured Retention)

Professional Liability Coverage (Excess of Self-Insured Retention) (COVERAGE B-SIR):
(1) Each Medical Incident: \$ 2,000,000
(2) General Aggregate Retention: \$ 4,000,000

5. Minimum Retentions (Applicable Only to Umbrella Coverages): \$ 26,000

6. Schedule of Primary Coverage:

Type of Insurance	General Liability	Employers Liability	Auto Liability	Garage Liability	Feloned Liability
Company or Plan:	St. Paul	IGVA	St. Paul	St. Paul	National Union Fire
Policy Number:	HX003956		HX0039125	HX0039138	AP 3220256
Policy Period:	10/01/99 to 10/01/2000	1/01/1999 to 10/01/2000	10/01/99 to 10/01/2000	10/01/99 to 10/01/2000	10/01/99 to 10/01/2000
Limits:	1,000,000 per occurrence \$2,000,000 aggregate	\$500,000 each occurrence \$1,000,000 policy limit \$500,000 each employee	\$1,000,000 O&L		\$10,000,000
Type of Coverage:	occurrence		Occurrence including covered & hired	occurrence	

HX-UMB-02-11-98

Health Care Facility Excess Umbrella Liability Policy Coverage Summary
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Page 1 of 2

Schedule of Primary Coverage, each/each

Type of Insurance:	Hospital	HCT Fitness	One Day Surgery	Physicians (Osteopathic First Clinic)
Company or Plan:	Self-Insured	The Medical Assurance Company, Inc.	The Medical Assurance Company, Inc.	The Medical Assurance Company, Inc.
Policy Number:	N/A	MA002207	MA002204	MA002206
Policy Period:	10/01/1999-10/01/2000	10/31/1999-10/01/2000	10/01/1999-11/01/99	10/01/1999-10/01/2000
Limits:	\$ 2,000,000 per claim \$ 4,000,000 policy aggregate	\$ 1,000,000 per claim \$ 2,000,000 policy aggregate	\$ 1,000,000 per claim \$ 2,000,000 policy aggregate	\$ 1,000,000 per claim \$ 4,000,000 policy aggregate
Type of Coverage:	Claims-Made	Claims-Made	Claims-Made	Claims-Made
Claims-Made Retroactive Date:	See Named Insured endorsement	10/01/99	10/01/99	11/01/99

9. Retroactive Dates apply to Professional Liability only and apply as per the Named Insured endorsement

Endorsed by:

Barry Couch, Jr.
Authorized Representative

MA-UMB-02-11-98

Health Care Facility Excess Umbrella Liability Policy Coverage Summary
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Page 2 of 2

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

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IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 6

Exhibit "5"

MOTION TO REMAND

PAGE NO. 61

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The following illustrates alternatives to full insurance coverage from commercial sources which providers, acting individually or as part of a group or a pool, can adopt to obtain malpractice, and comprehensive general liability, unemployment compensation, workers' compensation, and employee health care insurance protection:

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21-42.1

B. Self-insurance.—Where a provider maintains a self-insurance program for other than malpractice and comprehensive general liability coverage in conjunction with malpractice coverage, as well as unemployment compensation and workers' compensation insurance coupled with second injury coverage, or employee health insurance coverage, provided it meets the requirements of §2162.7, contributions to a self-insurance reserve fund referred to below are not includable in allowable costs. (See §2162.9 for the effect on equity capital.) Although contributions to the self-insurance reserve fund are not allowable, a reserve fund established under the conditions of this section need not be considered available for patient care in determining the necessity of borrowing under §202.2. However, where such a program meets the following conditions, any allowable loss cannot exceed the amount of the fund as of the date of the loss; that is, the date a claim is actually paid:

1. The provider must maintain a self-insurance reserve fund to meet any actual losses that are sustained. In the event of a loss, the amount allowable will be limited to the balance in the reserve fund at the date of the loss.
 2. The provider must furnish to the intermediary pertinent details about the specific assets that are to be covered by the self-insurance reserve fund.
 3. The reserve must be maintained in a segregated account and the funds must not be commingled with any other funds.
 4. The self-insurance reserve must be sufficient to meet losses of the type and to the extent that they would ordinarily be covered by insurance.
- 21-42
5. Contributions to the reserve must be made not less frequently than annually.
 6. The provider's total allowable interest expenses under the Medicare program will be offset by income earned by invested insurance reserve funds.
 7. Where appropriate, the provider must demonstrate the ability to effectively replace the inspection service, the loss-handling service, and the legal defense service of the insurance company.
 8. The treatment of casualty losses sustained by the self-insurance fund shall follow the procedure provided in §8133f.

2162. PROVIDER COSTS FOR MALPRACTICE AND COMPREHENSIVE GENERAL LIABILITY PROTECTION, UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, AND EMPLOYEE HEALTH CARE INSURANCE

A. General.—Where provider costs incurred for protection against malpractice and comprehensive general liability, or for protection against malpractice liability only, unemployment compensation, workers' compensation coupled with second injury coverage, and employee health care insurance, do not meet the requirements of §2161.A, costs incurred for that protection under other arrangements will be allowable under the conditions stated below. Costs incurred for comprehensive general liability coverage not in conjunction with malpractice liability coverage are allowable only under the provisions of §§2160 or 2161.

Usually coupled with workers' compensation laws are second injury laws which provide that the employer shall be liable only for the disability resulting from an injury to an employee incurred during his/her current employment without regard to a preexisting handicap. Where reference is made to workers' compensation coverage, it also includes second injury coverage where such liability is incurred by the provider.

a. The necessary contributions to the fund based on an actuarial determination (as described in §2162.7C) of anticipated losses for malpractice, comprehensive general liability coverage in conjunction with malpractice, unemployment compensation, workers' compensation, and employee health care insurance. The determination of necessary contributions to the fund may also be made by a governmental agency for unemployment compensation and workers' compensation.

- o The cost of any insurance to supplement self-insurance, like stop-loss insurance.
- o The comparative commercial insurance premium.

2162.1 Insurance with a Deductible or Coinsurance Provision.—If you purchase an insurance policy with a deductible or coinsurance provision from a commercial insurance company, the cost of the insurance coverage for losses in excess of the deductible or coinsurance is an allowable cost. (See §2162.5 for the discussion of losses related to deductibles or coinsurance.)

2162.2 Insurance Purchased From a Limited Purpose Insurance Company.—

A. Premium Costs.—Some providers, groups of providers, and State hospital associations have established limited purpose insurance companies (often known as captive insurance companies) to insure themselves against malpractice and, in some instances, comprehensive general liability losses as well as unemployment and workers' compensation insurance and employee health care costs. The regular premiums (other than the supplemental premiums) paid to such companies for provider malpractice and comprehensive general liability coverage in conjunction with malpractice coverage, or for malpractice liability coverage only, as well as unemployment insurance costs paid to the Federal Government and to the States, workers' compensation insurance costs paid to commercial insurance companies, and employee health benefit premiums paid to such companies are allowable costs if they are not in excess of the cost of available comparable commercial insurance premiums and meet the reasonable cost provisions of §2100. If comparable insurance premiums are not available, the captive insurance company must obtain an evaluation of the adequacy and reasonableness of its insurance premiums by an independent actuary, commercial insurance company, or broker as described in §2162.7 C. The allowable premium may not exceed the amount which such evaluation determines to be reasonable.

In addition, supplemental premiums which are assessed by limited purpose insurers to build reserve against catastrophic losses, as distinguished from capital costs, are allowable costs if, when added to the regular premium, the total premium costs do not exceed a commercial insurance premium for comparable coverage. The supplemental premiums must have the essential characteristics of normal insurance premiums, i.e., they must stand at risk against potential losses and must be available to support losses. Any excess premiums not allowed in a subsequent cost reporting period to the extent that when added to premiums paid to the captive insurance company in that period for comparable coverage, the total premium costs do not exceed the comparable commercial insurance premium for that period. Premiums paid to a limited purpose insurance company are recognized in your allowable costs only if all of the conditions of this section are met.

Any funds returned to the insured by the insurer (refunds, distributions, etc.) must be offset against the costs in the year you receive them. Such returned funds may be offset against the costs of the Employee Health and Welfare Cost Center for employee health care and against the costs of the Administrative and General Cost Center for other than employee health care. However, if a captive insurance company is liquidated, no offset is required for the return of capitalization costs previously paid by providers receiving the rebate. If payments are made to other than providers, i.e., the home office of a chain organization, appropriate adjustment of your cost is still necessary. Proper allocation of distributions by the home office to you must be made based on the appropriate facts in each situation.

The premium paid by you for hospital-based physicians is subject to the requirements in §2162.B.

1. Insurance purchased from a commercial insurance company which provides coverage after a deductible or coinsurance provision has been met;
2. Insurance purchased from a limited purpose insurance company (captive);
3. Total self-insurance; or
4. A combination of purchased insurance and self-insurance.

The conditions for Medicare reimbursement stated below are for provider malpractice liability and comprehensive general liability coverage in conjunction with malpractice coverage or for malpractice liability coverage only, unemployment compensation, workers' compensation insurance, and employee health care insurance, not for liability coverage costs such as automobile liability, fire, theft, or general liability only.

B. Effect on Interns, Residents, and Other Provider-Based Physicians.—The cost of malpractice coverage that a provider incurs for its employee interns and residents is allowable, subject to the provisions of §2120. However, the cost of malpractice coverage incurred by a provider for the personal risks of physicians other than interns and residents for direct medical care rendered to patients is not allowable except where the provider incurs such cost for its hospital-based physicians as described in Regulations No. 3, 4465-430(f) and §21014 of this manual. This cost incurred by the provider for its hospital-based physicians must be considered part of the physicians' total compensation. Regulations No. 5, 4465-434, requires that this total physicians' compensation must be apportioned between the services rendered to the institution (Part A) and the services rendered to patients in a private provider cost. The portion of the physicians' compensation for services rendered to patients is allowed provider cost. The portion of supplementary medical insurance program through the appropriate billing or cost-apportionment mechanism.

C. Documentation Required Where Type of Insurance Changes.—A provider usually selects the type of arrangement which is most reasonable and proper, taking into account all pertinent facts and circumstances related to its organization and operation. When a change is made from commercial insurance as described in §2161 to one of the alternatives or from one provider's choice to another, the provider must document a comparative analysis which shows that the alternative is consistent with sound management practices. The provider's comparative analysis should be performed on a periodic basis, usually every 3 to 5 years, to assure continuous application of the prudent buyer principle and to properly monitor the cost effectiveness of the insuring method being applied. The provider should retain these analyses to assist in its determination in determining the reasonableness of the insurance cost. These analyses should show the following information:

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- o The administrative cost for the arrangement, including the cost for the maintenance of a fund by a fiduciary, legal cost, cost of a risk management program, cost of claims management program, actuarial costs, and other related costs.

The captive insurance company must have an adequate claims management and risk management program and, in cases where the captive insurance company is designed to cover employee health care insurance, it is suggested that a coordination of benefits program be employed as described in §2162.7 D. In cases where a limited purpose insurance company has both Medicare and non-Medicare participating providers, such premiums must be determined so that Medicare providers do not share in premium costs that must be borne by the non-Medicare providers, and non-Medicare providers do not share in premium costs that must be borne by Medicare providers.

If a provider or group of providers is related to the insurer through ownership or control, as defined in Chapter 10, the following additional provisions apply:

1. The captive insurance company must be established in and meet the appropriate insurance laws of one of the United States, District of Columbia, or foreign government, if it is foreign offshore.
2. The excess of actuarially determined loss reserves and related operating expenses over actual losses and related operating expenses and gains and losses from investments must be taken into account in establishing reasonable premium levels which do not reflect a profit factor.
3. If you terminate from the Medicare program, you must obtain a final determination of the adequacy of premium reserves as of the date of termination. This broker as described in §2162.7. Any reserves that are earned in excess of the date of termination must be offset against your allowable costs in your final cost report. If reserves are deemed inadequate, additional premium payments subsequent to the date of termination are not allowable provider costs.

4. In the case of offshore captives, investments by a related captive insurance company are limited to low risk investments in United States dollars such as bonds and notes issued by the United States Government; debt securities issued by United States corporations or governmental entities within the United States rated in the top two classifications by United States recognized securities rating organizations at the time of investment; debt securities of foreign subsidiaries of United States corporations rated in the top two classifications by United States recognized securities rating organizations at the time of investment where the parent United States corporations guaranteed (on the face of the securities) payment of the securities securities; and deposits (including Certificates of Deposit) in United States banks or their foreign subsidiaries, and foreign banks rated in the top two short term classifications by United States recognized securities rating organizations. Low risk investments may also include investments in non-United States issuers including foreign governments and corporations and supranational agencies rated in the top two classifications by United States recognized securities rating organizations (effective with investments made on or after 10/1/51). Effective for investments made on or after 10/06/93, the limitation on related offshore captive insurance company investments is extended to include the above described low risk investments in the top three classifications by United States recognized securities rating organizations. Additionally, investments may include dividend paying equity securities issued on a United States stock exchange provided that the investment in equity securities does not exceed 10 percent of the company's admitted assets, with the investment in any specific equity issues further limited to 10 percent of the total equity security investment. (All such equities are required to annually submit to a designated intermediary a certified statement from an independent certified public accountant of actuary attesting to compliance or non-compliance with those requirements for the previous period.) These investments cannot be pledged or used as collateral for loans obtained by the captive or parent related to the captive either directly or indirectly, nor may investments be made in a related organization.

Recognizing that a captive's portfolio may presently contain other than low risk United States based investments and that possible losses in converting a captive's current portfolio to acceptable investments may result, the Medicare program allows any investments owned by the captive on July 31, 1978 to be considered acceptable investments under this section. As

Investments held by the captive on July 31, 1978 subsequently mature, are exchanged for other types of investments or sold, any proceeds that are reinvested must be invested in accordance with the provisions of this section.

5. Loans or any transfer of funds by the insurance company to policy holders, owners of providers, or parties related to them are prohibited.

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2162.3 Self-Insurance--You may believe that it is more prudent to maintain a total self-insurance program (i.e., the assumption by you of the risk of loss) independently or as part of a group or pool rather than to obtain protection through purchased insurance coverage. If such a program meets the conditions specified in §2162.7, payments into such funds are allowable costs.

2162.4 Combination of Purchased Insurance and Self-Insurance--You may believe it appropriate to self-insure some of the risk independently or as part of a group or pool and purchase insurance for the remainder of the risk. Where you decide to fund all or some of the risk covered through self-insurance, payments into a fiduciary fund are allowable costs if you or the pool sets up a program which meets the conditions specified in §2162.7. The cost of the insurance is also an allowable cost subject to the conditions of §2162.

2162.5 Allowability of Actual Losses Related to Deductibles or Coinsurance--Where you, or your option, are willing to commit your resources toward meeting first dollar losses through a deductible (as defined below), losses relating to the deductible are allowable costs in the year paid without funding if the aggregate deductible is no more than the greater of 10 percent of your (or, if appropriate, a chain organization's) net worth--fund balances as defined for Medicare cost reporting purposes--at the beginning of the insurance period or \$100,000 per provider. The same rule applies where you contract with an insurance carrier. This requirement is deemed a reasonable test as to whether you are acting prudently in this regard. So long as you stay within the above limitations, you can be assumed to be exercising sound judgment in deciding to meet first dollar losses or coinsurance payments out of available resources. This requirement also permits you to pay reasonable losses without insuring costs to fund such payments. If you deductible or coinsurance exceeds the above requirements and the provider does not make payments into a fiduciary fund as required by §2162.7, any losses paid by the provider in excess of the greater of 10 percent of the provider's or, if applicable, a chain organization's net worth, or \$100,000 per provider, are not allowable.

21-42.6 Rev. 406 04-28 COSTS RELATED TO PATIENT CARE 2162.7

For purposes of this section, a "deductible" refers to the amount of first dollar losses not covered by a purchased insurance policy, a funded self-insurance program, or a combination of both.

2162.6 Losses in Excess of Coverage--Where a provider incurs losses which are in excess of purchased commercial and/or limited purpose insurance coverage or actuarially determined funded contributions to an approved self-insurance fund in meeting specified deductibles, coinsurance provisions, or total self-insurance, such costs are allowable in the year paid where the provider submits evidence to the satisfaction of the intermediary that the insurance coverage or funding levels reflected the decisions of prudent management.

Losses in excess of coverage for events that occurred prior to the provider's participation in the Medicare program, where the actual amount of the loss was unknown and could not be determined at the time of the event, are allowable, provided the determination and actual payment of the losses are made subsequent to the provider's entry into the program, and

date of termination from an independent actuary, insurance company, or broker (as defined in B below). Any reserves that are accrued subsequent to the date of termination are the provider's allowable costs in the provider's final cost report. If the reserve fund is deemed inadequate, additional contributions to the fund subsequent to the date of termination are not allowable.

5. Reporting--The agreement must require that a financial statement be forwarded to the provider or pool members by the fiduciary no later than 60 days after the end of each annual insurance reporting period. This statement must

21-42.6 Rev. 406 04-28 COSTS RELATED TO PATIENT CARE 2162.7 (Cont.)

show the balance in the fund at the beginning of the period, current period contributions, and assets and nature of fund payments, including a separate accounting for claims management, legal expenses, claims paid, etc., and the fund balance. This report and fiduciary's records must be available for intermediary review and audit.

6. Income Payout--The agreement must provide that any income earned by the fund must become part of the fund and need not establishing adequate fund levels.

C. Soundness of the Fund--The provider submits to the intermediary an annual certified statement from an independent actuary, insurance company, or broker that has actuarial personal experience in the appropriate field of medical malpractice and general liability insurance, unemployment compensation, workers' compensation or employee health care insurance. To be independent, there must not be any financial ownership or control, as defined in Chapter 10, either directly or indirectly in the provider.

The actuary, insurance company, or broker shall determine the amount necessary to be paid into the fund. The fund should include reserves for losses based on accepted actuarial techniques customarily employed by the section of the insurance industry writing the type of insurance coverage the fund is designed to provide, and expenses related to the self-insurance fund as specified in §2162.8. The actuary, insurance company, or broker shall also provide for an estimate of the amount in the fund that is in excess of what is reasonably needed to support anticipated disbursements from the fund. This excess amount must be treated as special fund in §2162.10. Where funds have been established to cover employee health care, the actuary, insurance company or broker must limit fund payments to the cost of insurance premiums for comparable purchased coverage at the same level offered by the fund. Fund payments exceeding this amount will be treated as excess payments.

The actuary, insurance company, or broker must state the actuarial basis and the coverage period used in establishing reserve levels. Reserves will not be recognized as allowable Medicare costs for losses specifically denied by other subsections of §2160, 2161, and 2162. Thus, reserve payments will not be recognized for items such as:

1. Losses in excess of the greater of 10 percent of a provider's net worth or \$100,000 where a provider elects to pay losses directly in lieu of establishing a funded self-insurance fund (§2162.5);

2. Losses in excess of coverage levels which an intermediary deems do not reflect the decisions of prudent management (§2162.6);

The actuary, insurance company, or broker must provide its worksheets to Medicare intermediaries upon request.

There must be separate accountability to reflect all operations within each fund.

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assuming that the required evidence of prudent management in establishing insurance coverage or funding levels has been submitted.

2162.7 Conditions Applicable to Self-Insurance--

A. Definition of Self-Insurance--Self-insurance is a means whereby a provider(s), whether proprietary or nonproprietary, undertakes the risk to protect itself against anticipated liabilities by providing funds in an amount equivalent to liquidate those liabilities.

If a provider enters into an agreement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. For example, any agreement designed to provide administrative services only shall be considered self-insurance and must meet the requirements specified below. If administrative services agreements do not meet these requirements, any amounts funded as part of the agreement will not be allowed. Payments from the fund, however, will be treated on a claim-paid basis as specified in §2162.3.

There may be situations in which there is a fine line between self-insurance and purchased or commercial insurance. This is particularly true of "cost-plus" type arrangements. As long as there is at least some shifting of risk to the unrelated party, even if limited to situations such as provider bankruptcy or employee termination, the arrangement will not be considered self-insurance.

B. Self-Insurance Fund--The provider or pool establishes a fund with a recognized independent fiduciary such as a bank, a trust company, or a private benefit administrator. In the case of a State or local governmental provider or pool, the State in which the provider or pool is located may act as a fiduciary. The provider or pool and fiduciary must enter into a written agreement which includes all of the following elements:

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1. General Legal Responsibility--The fiduciary agreement must include the appropriate legal responsibilities and obligations required by State laws.

2. Control of Fund--The fiduciary must have legal title to the fund and be responsible for proper administration and control. The fiduciary cannot be related to the provider either through ownership or control as defined in Chapter 10, except where a State acts as a fiduciary for a State or local governmental provider or pool. Thus, the home office of a chain organization or a religious order of which the provider is an affiliate cannot be the fiduciary. In addition, investments which may be made by the fiduciary from the fund are limited to those approved under State law governing the use of such funds notwithstanding debts, loans by the fiduciary from the fund to the provider or persons related to the provider are not permitted. Where the State acts as fiduciary for itself or local governments, the fund cannot make loans to the State or local governments.

3. Payments by Fiduciary--The agreement must provide that withdrawals must be for malpractice and comprehensive general liability or unemployment or workers' compensation insurance losses, or employee health benefits coverage only and these expenses listed in §2162.8. Any rebates, dividends, etc., to the provider from the fund will be used to reduce allowable costs. Furthermore, evidence of a practice of payments from the fund for purposes unrelated to the proper administration of the fund may result in a withdrawal or recognition of the self-insurance fund by the Medicare program. In such instances, payments (to the fund) will not be considered an allowable cost. Intermediaries will submit notices of impropriety to the appropriate regional office.

4. Termination--The agreement must state that upon termination from the Medicare program, the provider must obtain a determination of the adequacy of the fund balance as of the

2162.7 (Cont.) COSTS RELATED TO PATIENT CARE 04-28

D. Claims Management, Risk Management, and Coordination of Benefits Program--A provider or pool has an ongoing claims process and risk management program. The provider or pool must demonstrate to the intermediary that it has an ongoing claims process to determine whether malpractice and comprehensive general liability, unemployment and workers' compensation insurance liabilities, and the liability for employee health care insurance exist, coordinate insurance liabilities, and the cost of claims. A provider or pool may either utilize its own qualified personnel or an independent contractor, such as an insurance company, to adjust claims. In addition, a provider or pool must obtain adequate legal assistance in carrying out its claims process. Each provider must also have an adequate risk management program to examine the cause of losses and to take action to reduce the frequency and severity of them. Such risk management programs include the essential characteristics of programs required by insurers which currently insure providers for these risks. Therefore, a provider must have an ongoing safety program, professional and employee training programs, etc., to minimize the frequency and severity of malpractice and comprehensive general liability, as well as workers' compensation insurance incidents.

For funds established to cover employee health care, the provider, or its fiduciary, should consider the institution of an effective coordination of benefits program. A program of this nature would seek to determine whether any beneficiary of the fund is partly or fully covered by another insurance plan, such as a family plan provided to a spouse as a fringe benefit of employment or a private insurance plan held by the beneficiary with a commercial insurance company. A program of this type would assure that each health plan pays its appropriate share of the expenses related to the beneficiary's illness, thus reducing the liability for full payment by the provider's fund.

E. Trust Mechanism Applicable to Employee Health Care--If the provider wishes, the program will recognize the establishment of self-insurance funds for employee health care in accordance with the provisions of §501(c)(9) of the Internal Revenue Code. This code section grants a tax exemption to funds established in trust, provided the funds are used to pay for life, sick, accident or other employee benefits.

Application of this Internal Revenue procedure would allow a provider to establish its employee health care self-insurance fund without relinquishing legal title to the fund to an independent fiduciary. In addition, fund trustees may also be employees of the provider, as long as the employees are independent in their administration of the trust. All other conditions applicable to self-insurance eligible in this manual section, however, will be applicable to employee health care trusts established under this Internal Revenue procedure, i.e., payments by fiduciary, termination, reporting, soundness of the fund, etc.

2162.8 Expenses Related to Losses Paid Out of Self-Insurance Fund--The following expenses will be considered costs attributable to a self-insurance fund established by a provider or pool: expenses of establishing the provider fund or pool, expenses for administering the claims management program, expenses involved with maintenance of the fund by the fiduciary, legal expenses, actuarial expenses, excess insurance coverage (if purchased by the fiduciary or pool), risk management (if performed by the fiduciary or

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pool), and a coordination of benefits program (if performed by the fiduciary pool or provider) to the extent that such expenses are related to the provider's self-insurance program. All other expenses will not be considered costs attributable to the fund, but should be included in provider administrative and general costs in the year incurred.

2162.9 Reimbursement Principles Where a Provider Has Self-Insurance--

A. Medicare's participation in the fund contributions will be limited to actual funded payments made by a provider into the fund and only to the extent of the amounts permitted by §2162.7C. Accruals of payments to be made into the fund are allowable costs in the year of accrual if paid within 75 days after the end of a provider's cost reporting period. Payments made after the 75th day will be deemed allowable in the reporting period paid, provided the total contributions made in that period do not exceed the amount prescribed by the actuary as necessary for the adequacy of the fund.

B. Total fund contributions for employee health care are included in the Employee Health and Welfare Cost Center and for other than employee health care in the Administrative and General Cost Center and allocated in the cost-finding process in the same manner as commercial insurance premium costs.

C. Medicare's share of allowable contributions to a fund which meets the conditions in §2162.7 will be included in the calculation of the regular interim reimbursement. The interim rate will be based on the payments required by the actuary, insurance company, or broker for the current year under the agreement setting up the fund.

D. Interim reimbursement for actual losses related to deductibles or coinsurance which are not covered by a funded self-insurance program as described in §2162.5 will be based on the provider's estimate of Medicare's share of total paid claims to be made the coming year. Factors such as the provider's previous year's claims paid experience, claims pending, etc., should be used in establishing the estimated losses for interim payment purposes.

2162.10 Treatment of Dupes Expenses—Contributions or pool payments for any period in excess of the amount required by §2162.7C are needed to support disbursements are not allowable costs for such period but may be allowed in the subsequent reporting period to the extent that when added to contributions paid in the subsequent year, the sum does not exceed the prescribed amount.

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2162.11 COSTS RELATED TO PATIENT CARE 08-28

2162.11 Effective Date and Retroactive Application--

A. Malpractice and Comprehensive General Liability—The provisions of this section are effective with payments for malpractice and comprehensive general liability protection in conjunction with malpractice protection or malpractice liability protection only, beginning April 1, 1977. If a provider did not have full coverage under commercial insurance after December 31, 1974, and disbursed funds for such protection under alternative arrangements, such costs of protection are allowable when:

1. The disbursement was made after December 31, 1974;
2. The intermediary determines that the arrangement and cost for securing such protection were reasonable; and
3. The provider conforms to the provisions of this section before:

- a. November 1, 1977, for arrangements other than through purchase of protection from a captive insurance company; or
- b. July 1, 1978, for protection purchased from a captive insurance company.

Where a provider or group of providers included self-insured losses and related expenses in allowable costs after December 31, 1974, and before April 1, 1977, in accordance with §2161.B, such providers may request cessation and revision of cost reports for applicable cost reporting periods to recognize reasonable disbursements for such protection in lieu of the costs previously

2162. PROVIDER COSTS FOR MALPRACTICE AND COMPREHENSIVE GENERAL LIABILITY PROTECTION, UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, AND EMPLOYEE HEALTH CARE INSURANCE

A. General—Where provider costs incurred for protection against malpractice and comprehensive general liability, or for protection against malpractice liability only, unemployment compensation, workers' compensation coupled with second injury coverage, and employee health care insurance, do not meet the requirements of §2161.A, costs incurred for that protection under other arrangements will be allowable under the conditions stated below. Costs incurred for comprehensive general liability coverage not in conjunction with malpractice liability coverage are allowable only under the provisions of §2160 or 2161.

Usually coupled with workers' compensation laws are second injury laws which provide that the employer shall be liable only for the disability resulting from an injury in an employment incurred during his/her current employment without regard to a preexisting limitation. Where reference is made to workers' compensation coverage, it also includes second injury coverage where such liability is incurred by the provider.

The following illustrates alternatives to full insurance coverage from commercial sources which providers, acting individually or as part of a group or a pool, can adopt to obtain malpractice, and comprehensive general liability, unemployment compensation, workers' compensation, and employee health care insurance protection:

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allowed, if the self-insurance arrangement met the provisions of this section before November 1, 1977. Such postponing and revision are not mandatory for periods prior to April 1, 1977.

If a provider has made payments to a self-insurance fund or a pool during the period after December 31, 1974, and before April 1, 1977, an independent actuary, insurance company, or broker must review the adequacy of the payments made by the end of the cost reporting period ending on or after November 1, 1977. If the actuary, insurance company, or broker believes that the payments made are excessive, then reimbursement will be limited to the amount determined necessary by the actuary, insurance company, or broker. Any excess amounts may be carried forward and included in the subsequent year's contribution to the cost fund, when added to contributions paid in the subsequent year, they do not exceed the amount determined necessary by the actuary, insurance company, or broker.

In a self-insurance or pool arrangement, contributions must be paid into the fund within 75 days after the end of a cost reporting period for the contributions to be recognized as an allowable cost for that cost reporting period. Any withdrawals from the fund for other than malpractice losses or comprehensive general liability losses in conjunction with

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malpractice coverage and related expenses must be offset against allowable contributions to the fund. In addition, all income earned by the fund must become part of the fund and used to establish adequate fund levels. Any income earned and used for other than this purpose must be offset against allowable payments in the year earned.

2162 (Cont.) COSTS RELATED TO PATIENT CARE 08-29

1. Insurance purchased from a commercial insurance company which provides coverage after a deductible or coinsurance provision has been met;
2. Insurance purchased from a limited purpose insurance company (captive);
3. Total self-insurance; or
4. A combination of purchased insurance and self-insurance.

The conditions for Medicare reimbursement stated below are for provider malpractice liability and comprehensive general liability coverage in conjunction with malpractice coverage or for malpractice liability coverage only, unemployment compensation, workers' compensation insurance, and employee health care insurance, not for liability coverage costs such as automobile liability, fire, theft, or general liability only.

B. Effect on Interns, Residents, and Other Provider-Based Physicians—The cost of malpractice coverage that a provider incurs for its employee interns and residents is allowable, subject to the provisions of §2120. However, the cost of malpractice coverage incurred by a provider for the personal risks of physicians other than interns and residents for direct medical care rendered to patients is not allowable except where the provider incurs such cost for its hospital-based physician as described in Regulations No. 5, §405.480(f) and §2101(f) of this manual. The cost incurred by the provider for its hospital-based physicians must be considered part of the physician's total compensation. Regulations No. 5, §405.484, requires that this total physician's compensation must be apportioned between the services rendered to the institution (Part A) and the services rendered to patients (Part B). The portion of the physician's compensation for services rendered to the institution is an allowable provider cost. The portion of the physician's compensation for services rendered to patients is reimbursed under the supplementary medical insurance program through the appropriate billing or cost-apportionment mechanism.

C. Documentation Required Where Type of Insurance Changes—A provider usually selects the type of arrangement which is most reasonable and prudent, taking into account all pertinent facts and circumstances related to its organization and operation. When a change is made from commercial insurance as described in §2161 to one of the alternatives or from one alternative to another, the provider must document a comparative analysis which shows that the provider's choice results in a reasonable cost for the coverage offered and that the extent of coverage is consistent with sound management practices. The provider's comparative analysis should be performed on a periodic basis, usually every 3 to 5 years, to assure consistent application of the prudent buyer principle and to properly monitor the cost effectiveness of the insuring method being applied. The provider should retain these analyses to assist its intermediary in determining the reasonableness of the insurance costs. These analyses should show the following information:

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o The administrative cost for the arrangements, including the cost for the maintenance of a fund by a fiduciary, legal cost, cost of a risk management program, cost of claims management program, actuarial costs, and other related costs.

o The necessary contributions to the fund based on an actuarial determination (as described in §2162.7C) of anticipated losses for malpractice, comprehensive general liability coverage in conjunction with malpractice, unemployment compensation, workers' compensation, and employee health care insurance. The determination of necessary contributions to the fund may also be made by a governmental agency for unemployment compensation and workers' compensation.

o The cost of any insurance to supplement self-insurance, like stop-loss insurance.

o The cooperative commercial insurance premium.

2162.1 **Insurance with a Deductible or Coinsurance Provision.**—If you purchase an insurance policy with a deductible or coinsurance provision from a commercial insurance company, the cost of the insurance coverage for losses in excess of the deductible or coinsurance is an allowable cost, to the extent that the amount of coverage is consistent with sound management practices. (See §2162.3 for the discussion of losses related to deductibles or coinsurance.)

2162.2 **Insurance Purchased From a Limited Purpose Insurance Company.**—

A. **Premium Costs.**—Some providers, groups of providers, and State hospital associations have established limited purpose insurance companies (often known as captive insurance companies) to insure themselves against malpractice and, in some instances, comprehensive general liability losses as well as unemployment and workers' compensation insurance and employee health care costs. The regular premiums (other than the supplemental premiums) paid to such companies for malpractice and comprehensive general liability coverage in conjunction with malpractice coverage, or for unemployment and workers' compensation insurance costs paid to commercial insurance companies, and employee health benefit premiums paid to such companies are allowable costs if they are not in excess of the cost of available comparable commercial insurance premiums and meet the reasonable cost provisions of §21600. If comparable insurance premiums are available, the captive insurance company must obtain an evaluation of the adequacy and reasonableness of its insurance premium by an independent actuary, commercial insurance company, or broker as described in §2162.7C. The allowable premium may not exceed the amount which such evaluation determines to be reasonable.

3. If you terminate from the Medicare program, you must obtain a final determination of the adequacy of premium reserves as of the date of termination. This determination must be obtained from an independent actuary, commercial insurance company or broker as described in §2162.7. Any reserves that are deemed excessive at the date of termination must be offset against your allowable costs in your final cost report. If reserves are deemed inadequate, additional premium payments subsequent to the date of termination are not allowable provider costs.

4. In the case of offshore captive investments by a related captive insurance company are limited to low risk investments in United States dollars such as bonds and notes issued by the United States Government, debt securities issued by United States corporations or governmental securities rating organizations in the top two classifications by United States recognized securities rating organizations at the time of investment; debt securities of foreign subsidiaries of United States corporations rated in the top two classifications by United States recognized securities rating organizations at the time of investment where the parent United States corporation guaranteed (on the face of the securities) payment of the subsidiary's securities; and deposits (including Certificates of Deposit) in United States banks or their foreign subsidiaries, and foreign banks rated in the top two short term classifications by United States recognized securities rating organizations. Low risk investments may also include investments of non-United States issuers including foreign governments and corporations and governmental agencies rated in the top two classifications by United States recognized securities rating organizations (effective with investments made on or after 10/11/91). Effective for investments made on or after 10/11/91, the limitation on related offshore captive insurance company investments is extended to include the above described low risk investments noted in the top three classifications by United States recognized securities rating organizations. Additionally, investments may include dividend paying equity securities listed on a United States stock exchange provided that the investment in equity securities does not exceed 10 percent of the company's admitted assets, with the investment in any specific equity issue further limited to 10 percent of the total equity security investment. (All such captives are required to annually submit to a designated intermediary a certified statement from an independent certified public accountant or actuary attesting to compliance or non-compliance with these requirements for the previous period.) These investments cannot be pledged or used as collateral for loans obtained by the captive or parties related to the captive either directly or indirectly, nor may investments be made in a related organization.

Recognizing that a captive's portfolio may presently contain other than low risk United States based investments and that possible losses in converting a captive's current portfolio to acceptable investments may result, the Medicare program allows any investments owned by the captive on July 31, 1978 to be considered acceptable investments under this section. As investments held by the captive on July 31, 1978 subsequently mature, are exchanged for other types of investments or sold, any proceeds that are reinvested must be invested in accordance with the provisions of this section.

5. Loans or any transfer of funds by the insurance company to policy holders, owners of providers, or parties related to them are prohibited.

Exhibit "6"

MOTION TO REMAND

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re: #

FORT WORTH OSTEOPATHIC #
HOSPITAL, INC. D/B/A # Case No. 05-41513-DML-L
OSTEOPATHIC MEDICAL CENTER #
OF TEXAS #

Estate of Johnny Fisher, Dec'd, #
Plaintiff #
vs # Adversary No. _____

JP Morgan Chase Bank, N.A., #
Glenn Milton, Jay Smullen, Lucy #
Norris, RN and Nancy Argo, RN, #
Defendants #

AFFIDAVIT OF E.L. ATKINS

BEFORE ME, on this date, personally appeared E.L. ATKINS, who, upon his oath deposes and states, as follows:

My name is E.L. Atkins. I am an attorney licensed to practice law in Texas, TBN 01409000. My license is in good standing and has remained so for the forty-two (42) years that I have practiced law in Texas. I am over the age of twenty-one (21) and am of sound mind. I have personal knowledge of the matters contained in this affidavit, and the same are true and correct.

I am one of the attorneys of record for The Estate of Johnny Fisher, Deceased, in the above-styled case, along with John MacLean. I began representing The Estate of Johnny Fisher

Affidavit of E.L. Atkins
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in November, 1999, when his widow, Jackie Fisher, retained me to represent her in all matters surrounding and in connection with his death in October, 1999 at Fort Worth Osteopathic Hospital ("FWOH"). My investigation revealed malpractice on the part of Fort Worth Osteopathic Hospital which directly led to and caused Johnny Fisher's death. Accordingly, I filed papers to begin administration of his estate in the probate court in Johnson County, Texas, where he lived at the time of his death and asserted a medical malpractice claim against FWOH for Mrs. Fisher, for Johnny Fisher's children and for his estate. I served the written claim on FWOH August 24, 2000. When the claim could not be settled, I filed suit on behalf of the estate in Johnson County, Texas. I filed the medical malpractice lawsuit against FWOH April 23, 2001 in the Johnson County Probate Court, and the case was transferred to the 411st District Court, Johnson County, Texas, for trial, shortly after it was filed.

I have personally participated in all phases of the administration of The Estate of Johnny Fisher, which is pending in the Probate Court of Johnson County, Texas and I have personal knowledge of all those proceedings. I was the lead counsel for The Estate of Johnny Fisher, Deceased continuously throughout the malpractice case. I personally prepared all the plaintiff's pleadings, discovery requests, discovery responses and various motions. I attended and participated in all hearings and all depositions and all mediation and settlement conferences. I conducted all depositions taken by The Estate in the malpractice case. There were more than twenty (20) depositions taken by me during the course of the lawsuit. Much discovery was conducted during the case and numerous attempts were made to settle and resolve the case with

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*E.L. Atkins
10/10/10*

FWOH while it was pending.

In all settlement meetings and conferences, I always negotiated with Nancy Argo, who was represented as the Risk Manager for FWOH. I have had several malpractice cases against FWOH and always negotiated with Nancy Argo in those cases as FWOH's representative along with FWOH's attorneys assigned to the cases. In every case, initial responses to notices of claim and settlement demands sent to FWOH were made by Nancy Argo. Nancy Argo attended every court-ordered mediation conference I had in cases involving FWOH malpractice and she was the one who made, or communicated to me, the final decision as to the position of FWOH in the claim.

I have filed numerous malpractice lawsuits against FWOH during the past fifteen (15) years and in every lawsuit, FWOH represented that it had a self-insured trust fund established in lieu of first-level liability insurance to pay any judgment my client might recover against FWOH, in addition to excess liability policies. The self-insured trust fund was always represented by FWOH to be \$4,000,000.00.

In 2005, FWOH filed for bankruptcy. I retained St. Clair Newbern and, with his assistance, obtained an Order from this Bankruptcy Court lifting the automatic bankruptcy stay allowing me to proceed with the Fisher malpractice case in state court. I, then, proceeded to complete the "Fisher vs FWOH" malpractice trial in Johnson County, Texas. In June, 2007, a judgment was entered by presiding Judge William Borworth in the malpractice case against FWOH for \$975,000.00.

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I was advised by FWOH during the entirety of the Fisher malpractice case, that FWOH had two types of insurance coverage to pay my client's malpractice claim: a self-insured trust fund established in lieu of first-level liability insurance and excess liability insurance coverage, to \$25,000,000.00. A copy of the trust agreement and a copy of the excess liability insurance policy was provided me by FWOH's attorney of record in the case. Accordingly, I proceeded to collect that \$975,000.00 judgment from the self-insured trust fund through the Trustee, Shawn Brown. I was advised that Mr. Brown had taken all funds in The Trust from Chase Bank and that, at that time, there was only a few thousand dollars in The Trust when he took possession of it. He advised me, therefore, that the judgment could not be satisfied from The Trust Fund. I notified Chase Bank of the judgment and demanded that Chase Bank, as Trustee, account for the loss of trust funds and why the trust was not in the status as had been represented to the state District Court and why the trust could not satisfy the judgment. Chase Bank did not respond.

I sought and obtained an order from this Bankruptcy Court, again with the assistance of Mr. Newbern, to take the deposition of Robert Lansford, the designated Chase Bank representative overseeing the trust. I took that deposition on January 25, 2006. I determined, from that deposition, that Mr. Lansford was both an officer of Chase Bank and a director of FWOH. He admitted that he had made disbursements from the trust fund that were, apparently, contrary to the requirements of the trust agreement, but were made by Chase Bank on the directive of individuals at FWOH.

I spoke, again, on several occasions with Shawn Brown. He advised me that he had

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reviewed records of the risk management department of FWOH, which came within possession, as trustee, and that those risk management papers indicated that the Johnny Fisher malpractice claim had been assigned a value of \$900,000.00 by FWOH shortly after the claim was filed.

I attended the deposition of Bruce Edwards, the former Director of Accounting for Fort Worth Orthopaedic Hospital.

I learned that Mr. Brown had filed an adversary proceeding against Chase Bank, seeking an accounting from Chase Bank of the self-insured trust. Since The Estate of Johnny Fisher had a judgment which FWOH had represented to the Johnson County District Court was to be satisfied from a \$4 million dollar trust fund, I sought and obtained permission from this Bankruptcy Court to intervene in that adversary proceeding, alleging that The Estate of Johnny Fisher was a beneficiary of the subject trust fund and was entitled to damages as a result of Chase Bank's handling of the trust fund. When I learned that Chase Bank had attempted to settle the Trustee's claim in that adversary proceeding in a manner that would destroy any and all claims The Estate of Johnny Fisher has or might have against Chase Bank as a result of Chase Bank's mismanagement of the trust, I now limited the Estate's intervention in the adversary proceeding, filed suit in the pending estate's administration in the Johnson County probate court to seek damages from Chase Bank for misappropriating trust funds and conspiracy with individuals who assisted Chase Bank in those misappropriations, and filed objections with this Bankruptcy Court, objecting to the proposed settlement agreement which was attempting to destroy any claim The Estate of Johnny Fisher might have against Chase Bank or anyone else for Chase Bank's

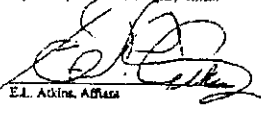
Affidavit of E.L. Atkins

Documents and Services Available Online for Free at District Court and County Clerk's Office LIBRARY/CLETS
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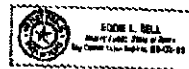
Page No. 5

misappropriation of funds in the trust.

This affidavit is prepared and submitted to the Bankruptcy Court in connection with a Motion to Repeal, which I have filed on behalf of The Estate of Johnny Fisher, Deceased in the Bankruptcy Court. This affidavit is attached to and incorporated into that motion. I have reviewed the other documents which I attached as exhibits to the Motion to Repeal and can affirmatively state that each and all the documents I have obtained through discovery during the course of my protecting both the administration of The Estate of Johnny Fisher, Deceased and the medical malpractice lawsuit I filed on the estate's behalf against FWOH and are the work product of my efforts on behalf of The Estate of Johnny Fisher, Deceased. Further, Affiant sayeth not.


E.L. Atkins, Affiant

BEFORE ME, on this 17 day of January, 2009, personally appeared E.L. Atkins who, upon his oath, states that he has read the above and foregoing affidavit and that same is true and correct, to certify which, witness my hand and seal of authority.




Notary Public

Affidavit of E.L. Atkins

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Exhibit "7"

MOTION TO REMAND

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Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v
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UNITED STATES OF AMERICA
SECURITY AND INVESTMENT BOARD
WASHINGTON, D.C. 20535

FOR THE UNITED STATES OF AMERICA

CONFIDENTIAL
EXEMPT FROM GDS
DATE 11/15/00

THE UNITED STATES OF AMERICA
BY: [Name] [Title]
ATTORNEY GENERAL

THE UNITED STATES OF AMERICA
BY: [Name] [Title]
ATTORNEY GENERAL

THE UNITED STATES OF AMERICA
BY: [Name] [Title]
ATTORNEY GENERAL

THE UNITED STATES OF AMERICA
BY: [Name] [Title]
ATTORNEY GENERAL

THIS STATEMENT IS NOT AN OFFICIAL RECORD OF THE INVESTIGATION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.
IT IS THE POLICY OF THE UNITED STATES OF AMERICA TO PROTECT THE CONFIDENTIALITY OF INFORMATION RELAYED TO THE PUBLIC.
THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

ACCOUNT SUMMARY 10/31/00 TO 02/28/01
PT MORTGAGE INVESTMENT GROUP INC

ACCOUNT NAME	AMOUNT
MARKET VALUE ON 10/31/00	5,571,722.41
INVESTMENT INCOME	24,824.37
NET INVESTMENT INCOME	4,318,139.81
TOTAL INVESTMENT INCOME	1,253,582.60
MARKET VALUE ON 02/28/01	15,871.97
NET INVESTMENT INCOME	37,319.29
TOTAL INVESTMENT INCOME	157,144.89
MARKET VALUE ON 02/28/01	1,198,384.85
NET INVESTMENT INCOME	281.17
TOTAL INVESTMENT INCOME ON 02/28/01	1,198,666.02

MARKET VALUE STATEMENT 02/28/01
PT MORTGAGE INVESTMENT GROUP INC

ACCOUNT NAME	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE
2700 - INVESTMENT	2,143,117.85	2,108,344.85	194.00	961.12
2700 - INVESTMENT	2,143,117.85	2,108,344.85	194.00	961.12
TOTAL MARKET VALUE	2,143,117.85	2,108,344.85	194.00	961.12

What are you doing?
[Signature]

DATE	DESCRIPTION	AMOUNT	ACQUISITION COST	MARKET PRICE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE
10/01/78	CONTRIBUTION TO THE ACCOUNT	2,345.00							
11/27/78	INTEREST ON THE ACCOUNT	684.10							
12/31/78	STATEMENT OF ACCOUNT								
01/31/79	STATEMENT OF ACCOUNT								
02/28/79	STATEMENT OF ACCOUNT								
03/31/79	STATEMENT OF ACCOUNT								
04/30/79	STATEMENT OF ACCOUNT								
05/31/79	STATEMENT OF ACCOUNT								
06/30/79	STATEMENT OF ACCOUNT								
07/31/79	STATEMENT OF ACCOUNT								
08/31/79	STATEMENT OF ACCOUNT								
09/30/79	STATEMENT OF ACCOUNT								
TOTAL		2,345.00							

DATE	DESCRIPTION	AMOUNT	ACQUISITION COST	MARKET PRICE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE
01/01/79	STATEMENT OF ACCOUNT								
02/01/79	STATEMENT OF ACCOUNT								
03/01/79	STATEMENT OF ACCOUNT								
04/01/79	STATEMENT OF ACCOUNT								
05/01/79	STATEMENT OF ACCOUNT								
06/01/79	STATEMENT OF ACCOUNT								
07/01/79	STATEMENT OF ACCOUNT								
08/01/79	STATEMENT OF ACCOUNT								
09/01/79	STATEMENT OF ACCOUNT								
TOTAL									

DATE	DESCRIPTION	AMOUNT	ACQUISITION COST	MARKET PRICE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE
10/01/78	CONTRIBUTION TO THE ACCOUNT	2,345.00							
11/27/78	INTEREST ON THE ACCOUNT	684.10							
12/31/78	STATEMENT OF ACCOUNT								
01/31/79	STATEMENT OF ACCOUNT								
02/28/79	STATEMENT OF ACCOUNT								
03/31/79	STATEMENT OF ACCOUNT								
04/30/79	STATEMENT OF ACCOUNT								
05/31/79	STATEMENT OF ACCOUNT								
06/30/79	STATEMENT OF ACCOUNT								
07/31/79	STATEMENT OF ACCOUNT								
08/31/79	STATEMENT OF ACCOUNT								
09/30/79	STATEMENT OF ACCOUNT								
TOTAL		2,345.00							

DATE	DESCRIPTION	AMOUNT	ACQUISITION COST	MARKET PRICE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE	MARKET VALUE
01/01/79	STATEMENT OF ACCOUNT								
02/01/79	STATEMENT OF ACCOUNT								
03/01/79	STATEMENT OF ACCOUNT								
04/01/79	STATEMENT OF ACCOUNT								
05/01/79	STATEMENT OF ACCOUNT								
06/01/79	STATEMENT OF ACCOUNT								
07/01/79	STATEMENT OF ACCOUNT								
08/01/79	STATEMENT OF ACCOUNT								
09/01/79	STATEMENT OF ACCOUNT								
TOTAL									

DATE	DESCRIPTION	DEPOSIT	PRINCIPAL	INTEREST
01/30/19	TOTAL VALUE OF MONEY MARKET FUND FOR PERIOD 10/01/18 TO 09/30/19	1,445,455.09	9,337.73	9,337.72
09/30/19	ENDING BALANCE WITH INTEREST	3,445,455.09	17,349,131.85	

ERNEST & YOUNG LLP
201 MAIN ST. SUITE 1100
FORT WORTH, TX 76102-3161

Annual Account Statement

FT WORTH CREDIT MONEY CBN SELF-INS
Account Number 83187498
October 1, 1896 - September 30, 2000

BANK ONE, TEXAS, N.A.
INVESTMENT MANAGEMENT
400 HICKORY AVENUE
FORT WORTH, TX 76102
www.bankone.com

Your Wealth Advisor is:
ROBERT LAMBSON
(817) 864-1151 or 800-465-6366

Having your own Retirement Report
This report has been designed to provide you with a detailed listing of both
current and past investment information. It is divided into sections, which include:
Summary, Analysis, Data, and Summary.
Please refer to the Bulletin board section of the statement as it contains important
messages.

DATE	DESCRIPTION	DEPOSIT	PRINCIPAL	INTEREST
07/23/19	STATE OF TEXAS - PAYROLL FUND	2,450,000.00		
08/01/19	STATE OF TEXAS - PAYROLL FUND	48,000.00		
08/01/19	STATE OF TEXAS - PAYROLL FUND	1,000.00		
09/30/19	ENDING BALANCE WITH INTEREST	1,331,721.21	475,000.00	675,000.00

Who made this check in?

DATE	DESCRIPTION	DEPOSIT	PRINCIPAL	INTEREST
08/20/19	STATE OF TEXAS - PAYROLL FUND	23,455.34	476,564.72	676,444.72
09/30/19	ENDING BALANCE WITH INTEREST	907.13	1,071,164.01	1,651,194.31



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Market reconciliation

Account Name	Balance	Change	Balance
Equity	\$2,164,001.35	\$1,997.19	\$2,165,998.54
Debt	6,884,387.13	4,184.10	6,888,571.23
Other	8,252,857.73	(5,584,661.86)	2,668,195.87
Total	17,299,246.21	1,506.43	17,300,752.64
Equity	1,000,000.00	0.00	1,000,000.00
Debt	10,000,000.00	0.00	10,000,000.00
Other	6,299,246.21	1,506.43	6,300,752.64
Total	17,299,246.21	1,506.43	17,300,752.64

FT WORTH (ORTF) WARP GEN SELF INS
Account Number: 6338741300 Contract: September 30, 2000

Summaries
Page 1

Transaction summary

Account Name	Balance	Change	Balance
Beginning cash balance 1/1/99	\$3,745,633.89		\$3,745,633.89
Cash receipts	30.00	30.00	3,745,663.89
Overseas foreign and payments	17,304.85	(17,304.85)	3,728,359.04
Foreign (double and non-accrual)	4,643,571.11	(4,643,571.11)	(915,212.01)
Other cash receipts	4,721,872.88	4,721.88	4,726,594.76
Total cash receipts			4,726,594.76
Cash disbursements			4,726,594.76
Cash disbursements	4,726,594.76	(4,726,594.76)	0.00
Administrative expenses	10,000.00	10,000.00	10,000.00
Total cash disbursements			4,736,594.76
Ending cash balance 9/30/00			10,000.00

FT WORTH (ORTF) WARP GEN SELF INS
Account Number: 6338741300 Contract: September 30, 2000

Summaries
Page 2

Holdings summary

Account Name	Balance	Change	Balance
Cash equivalents	2,164,001.35	0.00	2,164,001.35
Equity	6,884,387.13	4,184.10	6,888,571.23
Debt	8,252,857.73	(5,584,661.86)	2,668,195.87
Other			
Total Holdings	17,299,246.21	1,506.43	17,300,752.64
Appraisals pending adjustment for tax purposes	325,524		325,524
Total Holdings with accounts			17,626,276.64

Income summary

Account Name	Balance	Change	Balance
Income	30.00	30.00	60.00
Overseas foreign and payments	17,304.85	(17,304.85)	0.00
Foreign (double and non-accrual)	4,643,571.11	(4,643,571.11)	0.00
Other income	4,721,872.88	4,721.88	4,726,594.76
Total income			60.00
Expenses			60.00
Administrative expenses	10,000.00	10,000.00	10,000.00
Total expenses			10,000.00
Net income			50.00

The Income Summary Analysis includes and summarizes income for each principal and income beneficiaries, please refer to the Transaction Detail for an income breakdown. These amounts include deposits, income and payments (including any other amounts) for the Income Summary Service reporting.

FT WORTH OBTEN HDQP OBEY BELF-MS
 Account number: 8328574500 October 1 - September 30, 2000



Analysis
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Only the Asset Allocation analysis includes Mutual Fund Holdings. The Bond Quality and Maturity analysis (if applicable) are restricted to holding mutual funds.

Investment objective: Principal Preservation

The strategy seeks to provide a high level of current income while maintaining security and principal stability through investments in high-quality, short-term money market securities. Principal stability is not expected to be at risk.

Asset Allocation

100.0% - Cash equivalents



The Asset Allocation may not be exactly as described in the Investment Objective due to Other Asset Holdings.

FT WORTH OBTEN HDQP OBEY BELF-MS
 Account number: 8328574500 October 1 - September 30, 2000



Detail
page 8

Holding detail

Cash equivalents

Very liquid assets

Description	Quantity	Share price \$ % of par	Market value	Book value	Unrealized gain/loss	Current yield	Estimated annual income
ONE GROUP PRIME MONEY MARKET FUND	31,681,440	1.000	\$31,681,444	\$31,681,444	\$0.00	0.17%	\$5,609.21
ONE GROUP TREASURY ONE MONTH BILLY TD	883,890	1.000	\$883,884	\$883,888	\$0.00	6.00%	\$5,172.20
INCOME CASH	1,324,967,700	1.000	\$1,324,967,700	\$1,324,967,700	\$0.00	0.00%	\$0.00
PRINCIPAL CASH	852,188,730	1.000	\$852,188,730	\$852,188,730	\$0.00	0.00%	\$0.00
Total Cash equivalents			\$3,012,520,758	\$3,012,520,758	\$0.00		\$10,781.21
Total Holdings			\$3,012,520,758	\$3,012,520,758	\$0.00		\$10,781.21
Accounts (includes amount for net asset value)			\$25,813.08	\$25,813.08	\$0.00		\$0.00
Total Holdings with accounts			\$3,038,333.86	\$3,038,333.86	\$0.00		\$10,781.21

Assets identified with an asterisk (*) are held in the Inherited Income Portfolio.

Transaction detail continued

Date	Description	Amount	Balance	Previous
12/15/99	ADMINISTRATIVE FEES COLLECTED THROUGH NOVEMBER			
12/16/99	CASH DISBURSEMENT			
12/16/99	TRANSFER TO DISBURSEMENT			
12/16/99	PER WRITTEN REQUEST OF CUMMULATIVE			
12/16/99	U.S. TREASURY BILLS			
12/16/99	TRADE DATE 12/16/99			
12/16/99	16,000 PAR VALUE			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	16,000 PAR VALUE AT 4.875118 %			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE			
12/16/99	TRADE DATE 12/16/99			
12/16/99	50,000 PAR VALUE AT 4.875118 %			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE AT 4.875118 %			

FT MORTGAGE INVESTMENT SELF INS
 Account Number 8888888888 Date 12/16/99 20,000



Transaction detail continued

Date	Description	Amount	Balance	Previous
12/16/99	CASH DISBURSEMENT			
12/16/99	PAID TO A/C			
12/16/99	WITHDRAWAL FROM ACCOUNT			
12/16/99	MONTHLY INSURANCE PREMIUM			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	ONE GROUP FUND MONEY MARKET FUND			
12/16/99	PER WRITTEN REQUEST OF CUMMULATIVE			
12/16/99	U.S. TREASURY BILLS			
12/16/99	400,000 PAR VALUE			
12/16/99	TRADE DATE 12/16/99			
12/16/99	400,000 PAR VALUE AT 4.875118 %			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	400,000 PAR VALUE AT 4.875118 %			

FT MORTGAGE INVESTMENT SELF INS
 Account Number 8888888888 Date 12/16/99 20,000

Transaction detail

Date	Description	Amount	Balance	Previous
12/16/99	ADMINISTRATIVE FEES COLLECTED THROUGH NOVEMBER			
12/16/99	CASH DISBURSEMENT			
12/16/99	TRANSFER TO DISBURSEMENT			
12/16/99	PER WRITTEN REQUEST OF CUMMULATIVE			
12/16/99	U.S. TREASURY BILLS			
12/16/99	TRADE DATE 12/16/99			
12/16/99	16,000 PAR VALUE			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	16,000 PAR VALUE AT 4.875118 %			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE			
12/16/99	TRADE DATE 12/16/99			
12/16/99	50,000 PAR VALUE AT 4.875118 %			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE AT 4.875118 %			

FT MORTGAGE INVESTMENT SELF INS
 Account Number 8888888888 Date 12/16/99 20,000



Transaction detail continued

Date	Description	Amount	Balance	Previous
12/16/99	U.S. TREASURY BILLS			
12/16/99	TRADE DATE 12/16/99			
12/16/99	16,000 PAR VALUE AT 4.875118 %			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	16,000 PAR VALUE AT 4.875118 %			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE			
12/16/99	TRADE DATE 12/16/99			
12/16/99	50,000 PAR VALUE AT 4.875118 %			
12/16/99	CASH RECEIPT OF INTEREST EARNED ON			
12/16/99	U.S. TREASURY BILLS			
12/16/99	50,000 PAR VALUE AT 4.875118 %			

FT MORTGAGE INVESTMENT SELF INS
 Account Number 8888888888 Date 12/16/99 20,000

Transaction detail continued

Date	Description	Amount	Balance
4/28/00	OVERDRAFT CHARGE COLLECTED		
5/1/00	DATED 05/01/00	417.47	
5/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	1,070.13	
5/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH APRIL MONTH	(118.67)	
5/1/00	FEDUCARY TAX RETURN PREP COLLECTED	(52.00)	
5/2/00	CASH DISBURSEMENT PAID TO AFCD	142,496.00	
5/7/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM	83.58	
6/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
6/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH JUNE MONTH	(42,785.08)	
6/2/00	CASH DISBURSEMENT PAID TO AFCD	887.51	
7/30/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM	3.34	
7/30/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
7/30/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	3.34	
7/30/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
7/30/00	ADMINISTRATIVE FEES COLLECTED THROUGH JUNE MONTH		

FT MORTGAGED HOEP GEN SELF-INS
 Account Number: 028874500 October 1 - September 30, 2000

Detail Page 8

Transaction detail continued

Date	Description	Amount	Balance
7/20/00	CASH DISBURSEMENT PAID TO AFCD	543,485.00	
8/1/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM	427.39	
8/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	4.27	
8/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
8/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH JULY MONTH	252.38	
8/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	4.41	
8/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
8/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH	848.2 (848.2)	
8/31/00	ENDING CASH BALANCE 8/31/00		848.2 (848.2)

No pending trades.

Transaction detail continued

Date	Description	Amount	Balance
1/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH DECEMBER MONTH END	4607.50	
1/28/00	CASH DISBURSEMENT PAID TO AFCD	(42,485.00)	
2/1/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM	58.76	
2/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	34,614,591.18	
2/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	4,314,571.18	
2/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	(418.67)	
2/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH JANUARY MONTH	142,950.08	
2/1/00	CASH DISBURSEMENT PAID TO AFCD	80,000.00	
2/1/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM		
2/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		
2/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY		
2/1/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		
2/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH MARCH MONTH		
2/1/00	CASH DISBURSEMENT PAID TO AFCD		
2/1/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM		
2/1/00	OVERDRAFT CHARGE COLLECTED		

FT MORTGAGED HOEP GEN SELF-INS
 Account Number: 028874500 October 1 - September 30, 2000

Detail Page 9

Transaction detail continued

Date	Description	Amount	Balance
3/3/00	SOLD \$45,000 PAIR VALUE OF U.S. TREASURY BILLS	\$1,285.25	
3/3/00	TRADE DATE 3/3/00		
3/3/00	BOLD THROUGH GOLDMAN SACHS		
3/3/00	362 DAY PAIR VALUE AT 97.244 %		
3/3/00	CASH RECEIPT OF INTEREST EARNED ON U.S. TREASURY BILLS	\$9,106.16	
3/1/00	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY	(418.67)	
3/27/00	CASH DISBURSEMENT PAID TO AFCD	142,485.00	
3/28/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM	(17.47)	
3/28/00	OVERDRAFT CHARGE COLLECTED DATED 03/28/00	(17.47)	
3/28/00	OVERDRAFT CHARGE COLLECTED DATED 03/28/00	(17.47)	
4/3/00	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	1,170.48	
4/3/00	INTEREST FROM 3/1/00 TO 3/31/00		
4/3/00	ADMINISTRATIVE FEES COLLECTED THROUGH MARCH MONTH	(418.67)	
4/2/00	CASH DISBURSEMENT PAID TO AFCD	142,485.00	
4/2/00	WITHDRAWAL FROM ACCOUNT MONTHLY INSURANCE PREMIUM		
4/2/00	OVERDRAFT CHARGE COLLECTED	(17.47)	

FT WORTH US1 ED HOSP CEN BELF-INS
Account number: 838574600 October 1, September 30, 2000



Annual Account Statement

FT WORTH OSTED HOSP CEN BELF-INS
Account number 838574600
October 1, 2000 - September 30, 2000

BANK ONE N.A.
INVESTMENT MANAGEMENT
200 THROCKMORTON
FT WORTH, TX 76102
www.bankone.com

Your Advisor is:
ROBERT LANGFORD
(817) 884-1151 or (800) 483-5686

Thank you for the opportunity to serve your financial needs. We appreciate your confidence in us.
Please remember to check my Dunlap form (attached at the back of your statement) for important messages from Bank One.
Don't hesitate to contact your advisor if you have any questions, comments or concerns.

BERNARD A. YOUNG, L.L.P.
201 MARK ST., SUITE 1100
FORT WORTH, TX 76102-3181

FT WORTH OSTED HOSP CEN BELF-INS
Account number: 838574600 October 1, September 30, 2000



Bulletin board
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Mutual funds, including proprietary mutual funds, and various other investable securities are owned or purchased by the Federal Deposit Insurance Corporation (FDIC) or by a government sponsored agency of the following government or state funds. All these investments are subject to the principal amount invested. One State Fund may be a recipient or obligator of and are not guaranteed by Bank One Corporation or its Bank or non-bank affiliates. Although market values and prices have been obtained from sources we believe reliable, we do not guarantee their accuracy. Certain bond income accretions and assets that are not subject to liquidity restrictions are reported net of fees. This statement is not an offer of insurance or any other financial product. When reviewing your Holdings detail, the market value listed for each asset may vary slightly from the actual value due to rounding. The market value shown on this page is the most accurate figure. The Holdings detail does not identify an asset as being pledged. There are certain bonds that do not receive a rating as outlined in the bond rating table. Since your account holds one of these bonds, you should not access in the table. In addition, the bonds are not rated. However, the rating is not one of the common ratings listed in the table.

Market reconciliation

Beginning market value	\$4,288.12	January 1, September 30	\$5,043.75
Dividends	0.00		
Interest	0.00		
Capital gain distributions	8,385.64		(4,778.68)
Change in asset market value	2,797.50		(1,511.61)
Foreign market value	0.00		0.00
	\$6,7,100.88		\$55,043.56

The market reconciliation provides a summary of all activity in the account. The Account and Distribution is withdrawn 10% Value At Risk (VAR) Transactions such as transfers within the account, new money investments, asset transfers and distributions and stock sale transactions. The Transaction Detail section provides a detailed list of transactions. The Transaction Summary provides a summary of all cash flow and investment transactions.

Summaries

Page 3

Transaction summary

Beginning cash balance (USD)	\$682,158.23	October 1, September 30, 2001	\$682,158.23
Cash deposits	0.00		0.00
Dividends (non-accumulated fund income)	0.00		0.00
Interest (accumulated fund income)	2,797.50		0.00
Over cash receipts	0.00		0.00
Total cash receipts	\$2,797.50		\$0.00
Cash distributions	0.00		0.00
Cash withdrawals	0.00		0.00
Administrative charges	0.00		0.00
Total cash payments	\$0.00		\$0.00
Investment transactions	0.00		\$0.00
Purchases	0.00		\$0.00
Sales and redemptions	0.00		\$0.00
Total investment transactions	\$0.00		\$0.00
Ending cash balance (USD)	\$682,158.23		\$682,158.23

Summaries

Page 3

Holdings summary

Cash (USD)	\$682,158.23	Value on September 30, 2001	Value on September 30, 2001	Change in value
Equities	0.00		0.00	0.00
Fixed income	0.00		0.00	0.00
Other	0.00		0.00	0.00
Total Holdings	\$682,158.23		\$682,158.23	\$0.00
Accounts (Income earned for asset realizations)	\$0.00		\$0.00	\$0.00
Total Holdings with accounts	\$682,158.23		\$682,158.23	\$0.00

Income Summary

Income	0.00	January 1, September 30	0.00
Dividends (non-accumulated fund income)	0.00		0.00
Interest (accumulated fund income)	2,797.50		0.00
Other income	0.00		0.00
Total Income	\$2,797.50		\$0.00
Realized gains/losses	0.00		\$0.00
	\$0.00		\$0.00

The income summary includes taxable and tax-advantaged income for both principal and income beneficiaries. Please refer to the Transaction Detail for an income breakdown. Negative amounts represent non-taxable income and qualified proceeds and should not be used for total limited Purpose Benefit reporting.

FT WORTH OSTEO HOSP CBN SELF-INS
Account Number: 6266274600 October 1 - September 30, 2007

Summary

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Description	Quantity	Price per unit	Market value	Market value	Market value	Market value	Market value	Market value
ONE GROUP PRIME	1,000		\$2,038.50					
MONEY MARKET FUND	1,000		\$2,038.50					
ONE GROUP TREASURY	1,000		\$2,038.50					
ONE GROUP BOND	1,000		\$2,038.50					
INCOME CASH	1,000		\$2,038.50					
PRINCIPAL CASH	1,000		\$2,038.50					
Total cash equivalents								
Total Holdings								
Assets (income earned but not yet received)								
Total Holdings with accrued								

Assets identified with an asterisk (*) at the beginning of the asset name are held in one or more income streams.

Holdings details

Cash equivalents

Very liquid assets

Description	Quantity	Price per unit	Market value	Market value	Market value	Market value	Market value	Market value
ONE GROUP PRIME	1,000		\$2,038.50					
MONEY MARKET FUND	1,000		\$2,038.50					
ONE GROUP TREASURY	1,000		\$2,038.50					
ONE GROUP BOND	1,000		\$2,038.50					
INCOME CASH	1,000		\$2,038.50					
PRINCIPAL CASH	1,000		\$2,038.50					
Total cash equivalents								
Total Holdings								
Assets (income earned but not yet received)								
Total Holdings with accrued								

Details

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Description	Quantity	Price per unit	Market value	Market value	Market value	Market value	Market value	Market value
ONE GROUP PRIME	1,000		\$2,038.50					
MONEY MARKET FUND	1,000		\$2,038.50					
ONE GROUP TREASURY	1,000		\$2,038.50					
ONE GROUP BOND	1,000		\$2,038.50					
INCOME CASH	1,000		\$2,038.50					
PRINCIPAL CASH	1,000		\$2,038.50					
Total cash equivalents								
Total Holdings								
Assets (income earned but not yet received)								
Total Holdings with accrued								

Assets identified with an asterisk (*) at the beginning of the asset name are held in one or more income streams.

FT WORTH OSTEO HOSP CBN SELF-INS
Account Number: 6266274600 October 1 - September 30, 2007

Analysis

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Only the Asset Allocation Objectives includes related fund holdings. The fund quality and volatility analysis is separately are depicted including mutual funds.

Investment objectives: Principal Preservation

This strategy seeks to provide a high level of current income while maintaining liquidity and principal stability through investments in high-quality, short-term money market securities. Principal stability is not expected to be an issue.

Asset Allocation

100.0% - Cash equivalents



The Asset Allocation may not be exactly as described in the Investment Objective due to Other Asset Holdings.

Transaction detail continued

Date	Description	Amount	Balance
3/31/01	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY MONTH END	50(11.57)	283.34
4/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 3/31/01 TO 3/31/01	3.68	
4/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 3/31/01 TO 3/31/01	(416.57)	207.47
5/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 4/30/01 TO 4/30/01	3.18	
5/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 4/30/01 TO 4/30/01	(416.57)	194.39
6/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 5/31/01 TO 5/31/01	3.81	
6/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 5/31/01 TO 5/31/01	(525.98)	198.21
6/30/01	ADMINISTRATIVE FEES COLLECTED THROUGH MAY MONTH END	(416.57)	

FT MORTGAGED HOME CSB SELF-INS
 Account Number: 523075500 03/31/01 September 30, 2001

Summary of Balances
 Ending cash balance 804,723.27

Transaction detail continued

Date	Description	Amount	Balance
7/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 6/30/01 TO 6/30/01	2.30	
7/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 6/30/01 TO 6/30/01	(416.57)	158.17
8/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/31/01 TO 7/31/01	2.84	
8/31/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/31/01 TO 7/31/01	(416.57)	148.43
9/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/01 TO 8/31/01	3.48	
9/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/01 TO 8/31/01	(416.57)	145.34
9/30/01	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH END	(416.57)	
	Ending cash balance 804,723.27		804,723.27

No pending trades.

FT MORTGAGED HOME CSB SELF-INS

Transaction detail

Date	Description	Amount	Balance
9/30/01	ADMINISTRATIVE FEES COLLECTED THROUGH SEPTEMBER MONTH END	(416.57)	
10/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 9/30/01 TO 9/30/01	4.31	
10/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 9/30/01 TO 9/30/01	(416.57)	260.18
11/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 10/30/01 TO 10/30/01	4.94	
11/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 10/30/01 TO 10/30/01	(416.57)	265.12
12/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 11/30/01 TO 11/30/01	265.12	
12/30/01	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 11/30/01 TO 11/30/01	(416.57)	265.12
12/30/01	ADMINISTRATIVE FEES COLLECTED THROUGH DECEMBER MONTH END	(416.57)	
1/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 12/30/01 TO 12/30/01	3.54	
1/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 12/30/01 TO 12/30/01	(416.57)	311.09
1/31/02	ADMINISTRATIVE FEES COLLECTED THROUGH JANUARY MONTH END	(416.57)	
2/28/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 1/31/02 TO 1/31/02	3.54	
2/28/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 1/31/02 TO 1/31/02	(416.57)	314.63
2/28/02	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY MONTH END	(416.57)	

FT MORTGAGED HOME CSB SELF-INS
 Account Number: 523075500 03/31/01 September 30, 2001

Summary of Balances
 Ending cash balance 804,723.27

Transaction detail continued

Date	Description	Amount	Balance
3/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 2/28/02 TO 2/28/02	4.58	
3/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 2/28/02 TO 2/28/02	(416.57)	268.63
3/31/02	ADMINISTRATIVE FEES COLLECTED THROUGH MARCH MONTH END	(416.57)	
4/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 3/31/02 TO 3/31/02	4.67	
4/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 3/31/02 TO 3/31/02	(416.57)	273.73
4/30/02	ADMINISTRATIVE FEES COLLECTED THROUGH APRIL MONTH END	(416.57)	
5/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 4/30/02 TO 4/30/02	4.31	
5/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 4/30/02 TO 4/30/02	(416.57)	278.47
5/31/02	ADMINISTRATIVE FEES COLLECTED THROUGH MAY MONTH END	(416.57)	
6/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 5/31/02 TO 5/31/02	3.54	
6/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 5/31/02 TO 5/31/02	(416.57)	282.44
6/30/02	ADMINISTRATIVE FEES COLLECTED THROUGH JUNE MONTH END	(416.57)	

FT MORTGAGED HOME CSB SELF-INS

FT WORTH OSTED HOSP DEN SELF-INS
Account number 8326274500 October 1 - September 30, 2001

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FT WORTH OSTED HOSP DEN SELF-INS
Account number 8326274500 October 1 - September 30, 2001

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Annual Account Statement

FT WORTH OSTED HOSP DEN SELF-INS
Account number 8326274500
October 1, 2001 - September 30, 2002

BANK ONE, N.A.
BANK ONE MANAGEMENT
420 THURGOOD
FT. WORTH, TX 76102
www.bankone.com

Your Address is:
KORBERT LANGFORD
(917) 844-4151 or (800) 480-5955

Thank you for the opportunity to serve your financial needs. We appreciate your confidence in us.

Please monitor and review our Quality Award/Counter at the top of your statement for information regarding your Bank One.

Don't hesitate to contact your advisor if you have any questions, comments or concerns.

ERNEST A. YOUNG, LLP
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Medical funds, including proprietary Mutual funds, and various other marketable securities are insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) or any other government sponsored agency of the Federal Government. All other investments are not insured or guaranteed. Certain investments are not guaranteed by Bank One Corporation or its bank or member institutions. Although market values and prices have been obtained from sources we believe reliable, we do not guarantee their accuracy. Certain fixed income investments and assets include the possibility of reinvestment risk and may be subject to interest rate risk. This statement is not an official document for income tax reporting purposes. When reviewing your Bond quality rating, the percentage are rounded to two when the percentage for a rating category is less than one percent. When reviewing your Holdings detail, the market value listed for each asset may not equal quantity multiplied by share price due to rounding. The Market value column will always provide the most accurate figure. Market values noted in the Mutual recapitalization and Forwardation detail are as of the end of the statement period. The market value on the date of the transaction may be different. Please be aware that the information shown in the Related Investment column (found in the Transaction detail section of your statement) is based on FASB CODD, which may differ from the information shown on your statement due to certain of these values. Please contact your advisor if you have questions regarding the information on any part of your statement.

APP. 296

Market reconciliation

	Beginning balance	January 1 to September 30
Beginning market value	\$22,845,000	\$817,178.78
Revenues		963,771.00
Investments		(1,034,631.39)
Dividends		4,726.84
Capital gains realizations		0.00
Change in asset market value		0.00
ENDING MARKET VALUE	\$22,845,000	\$338,267.00

The Market Reconciliation provides a summary of all activity in the account. The beginning and ending market values are calculated based on the current market prices of all securities held in the account. The beginning and ending market values are calculated based on the current market prices of all securities held in the account. The beginning and ending market values are calculated based on the current market prices of all securities held in the account.

FT WORTH OBTED HOSP GEN SELF-INS
 Account number: 888874500 October 1 - September 30, 2002

Summaries page 3

	Balance	Period
Beginning cash balance (USD)	\$1,004,732.87	\$304,732.27
Cash receipts		0.00
Disbursements (Investment Management Fund Income)		0.00
Net cash receipts		0.00
Total cash receipts	\$1,004,732.87	\$304,732.27
Cash disbursements		0.00
Disbursements (Investment Management Fund Income)		0.00
Net cash disbursements		0.00
Total cash disbursements		0.00
Ending cash balance (USD)	\$1,004,732.87	\$304,732.27

Transaction summary

	Balance	Period
Beginning cash balance (USD)	\$1,004,732.87	\$304,732.27
Cash receipts		0.00
Disbursements (Investment Management Fund Income)		0.00
Net cash receipts		0.00
Total cash receipts	\$1,004,732.87	\$304,732.27
Cash disbursements		0.00
Disbursements (Investment Management Fund Income)		0.00
Net cash disbursements		0.00
Total cash disbursements		0.00
Ending cash balance (USD)	\$1,004,732.87	\$304,732.27

Summaries page 4

	Value at September 30, 2002	Value at September 20, 2002	Change in Value
Cash	\$22,845,000	\$22,845,000	0.00
Equities	0.00	0.00	0.00
Fixed Income	0.00	0.00	0.00
Total Holdings	\$22,845,000	\$22,845,000	0.00
Accounts Payable (net of year ending)	\$717.78	\$717.78	\$0.00
Total Holdings with accounts	\$22,845,717.78	\$22,845,717.78	\$0.00

Holdings summary

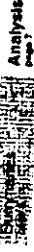
	Value at September 30, 2002	Value at September 20, 2002	Change in Value
Cash	\$22,845,000	\$22,845,000	0.00
Equities	0.00	0.00	0.00
Fixed Income	0.00	0.00	0.00
Total Holdings	\$22,845,000	\$22,845,000	0.00
Accounts Payable (net of year ending)	\$717.78	\$717.78	\$0.00
Total Holdings with accounts	\$22,845,717.78	\$22,845,717.78	\$0.00

Income summary

	Revenues earned	January 1 to September 30
Dividends (Investment Management Fund Income)		963,771.00
Capital Gains (Investment Management Fund Income)		4,726.84
Other Income		0.00
Total Income		\$968,497.84
Realized gains/losses		\$0.00

The Income Summary includes income and expenses for each month. The beginning and ending market values are calculated based on the current market prices of all securities held in the account. The beginning and ending market values are calculated based on the current market prices of all securities held in the account.

FT NORTH-DISTED HOSP GEN SELF-INS
Account number: 530874009 October 1 - September 30, 2009



Analysis
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Only the Asset Allocation analysis includes impact level ratings. The Bond Quality and Liquidity analysis (if applicable) are displayed excluding mutual funds.

Investment objective: Principal Preservation
The strategy seeks to provide a high level of current income while maintaining liquidity and capital stability through investments in high-quality, non-convertible, non-call preferred. Principal recovery is not expected to be in cash.

Asset Allocation

100.0% - Cash equivalents



The Asset Allocation may not be exactly as described in the investment objective due to Other Asset Holdings.

FT NORTH-DISTED HOSP GEN SELF-INS
Account number: 530874000 October 1 - September 30, 2009



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Holdings Detail

Security Name	Quantity	Share Price	Market Value	Accrued Value	Unmatured Interest	Dividend Yield	Dividend Annual Income
Cash equivalents						1.43%	\$4,700.00
WAC GROUP PRIME	276,187.40	\$25,197.41	\$228,182.41		0.00		
CREDIT MARKET FUND	80.000	80.00	6,400.00	883.88	0.00		13.47
OMI FUND					0.00	0.00%	0.00
INCOME CASH	80,122.80	80,122.80	6,412,800.00	80,122.80	0.00	0.00%	0.00
MUNICIPAL CASH	80,122.80	80,122.80	6,412,800.00	80,122.80	0.00	0.00%	0.00
Total Holdings			\$228,091.09	\$28,091.09	\$0.00		\$3,278.13
Accrued Income earned but not yet received							0.00
Total Holdings with accruals							\$3,278.13

Assets identified with an asterisk (*) at the beginning of the Asset Name are held in the Invested Income Portfolio.

Transaction detail continued

Date	Description	Amount	Balance
7/10/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/10/02 TO 8/31/01	\$182.00	\$182.00
7/16/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/16/02 TO 8/31/01	1.18	
7/18/02	PAYROLL SAVINGS PLAN CONTRIBUTION FOR 06/01	(800.00)	
7/19/02	ADMINISTRATIVE FEES COLLECTED THROUGH JULY MONTH END	(618.67)	
8/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/1/02 TO 7/31/02	284.78	
8/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/1/02 TO 7/31/02	1.21	
8/1/02	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH END	(618.67)	
8/31/02	DEPOSIT TO ACCOUNT TRANSFER OF FUNDS FROM CIA 1119698663	\$150,000.00	\$150,000.00
9/30/02	CASH DISBURSEMENT PAID TO BANK ONE PRO OUTPOST OF THE MOUNTAIN FOR TRANSFER TO DIRECT INVESTMENT TRUST FOR THE ACCOUNT OF THE TRANSFER OF FUNDS PER WRITTEN REQUEST	(50,000.00)	

FT MONTH UNITED NOW CORP BELUINS
Account number: 608816807 October 1, September 30, 2002

Summary
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Detail
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Transaction detail continued

Date	Description	Amount	Balance
8/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/02 TO 9/30/02	628.63	
9/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/02 TO 9/30/02	1.19	
9/30/02	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH END	(618.67)	
Ending cash balance 9/30/02			\$99,132.00

No pending funds.

FT MONTH UNITED NOW CORP BELUINS

Transaction detail continued

Date	Description	Amount	Balance
7/10/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/10/02 TO 8/31/01	\$182.00	\$182.00
7/16/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/16/02 TO 8/31/01	1.18	
7/18/02	PAYROLL SAVINGS PLAN CONTRIBUTION FOR 06/01	(800.00)	
7/19/02	ADMINISTRATIVE FEES COLLECTED THROUGH JULY MONTH END	(618.67)	
8/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/1/02 TO 7/31/02	284.78	
8/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 7/1/02 TO 7/31/02	1.21	
8/1/02	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH END	(618.67)	
8/31/02	DEPOSIT TO ACCOUNT TRANSFER OF FUNDS FROM CIA 1119698663	\$150,000.00	\$150,000.00
9/30/02	CASH DISBURSEMENT PAID TO BANK ONE PRO OUTPOST OF THE MOUNTAIN FOR TRANSFER TO DIRECT INVESTMENT TRUST FOR THE ACCOUNT OF THE TRANSFER OF FUNDS PER WRITTEN REQUEST	(50,000.00)	

FT MONTH UNITED NOW CORP BELUINS
Account number: 608816807 October 1, September 30, 2002

Summary
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Detail
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Transaction detail continued

Date	Description	Amount	Balance
8/31/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/02 TO 9/30/02	628.63	
9/30/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INTEREST FROM 8/31/02 TO 9/30/02	1.19	
9/30/02	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH END	(618.67)	
Ending cash balance 9/30/02			\$99,132.00

No pending funds.

FT MONTH UNITED NOW CORP BELUINS

When investments are made in original medical care credits, Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets. Bank One has taken steps to protect investors from fraud and to identify securities. In some cases, Bank One may not be able to identify securities that are not suitable for the account. Bank One will not be held responsible for any loss of principal.

NOTICE TO ALL UNREGISTERED INVESTORS: Effective January 1, 2003, Bank One will be required to register with the state securities regulators in each state in which it offers securities. Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets.

NOTICE TO ALL UNREGISTERED INVESTORS: Effective January 1, 2003, Bank One will be required to register with the state securities regulators in each state in which it offers securities. Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets.

NOTICE TO ALL UNREGISTERED INVESTORS: Effective January 1, 2003, Bank One will be required to register with the state securities regulators in each state in which it offers securities. Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets.

NOTICE TO ALL UNREGISTERED INVESTORS: Effective January 1, 2003, Bank One will be required to register with the state securities regulators in each state in which it offers securities. Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets.

NOTICE TO ALL UNREGISTERED INVESTORS: Effective January 1, 2003, Bank One will be required to register with the state securities regulators in each state in which it offers securities. Bank One will continue to monitor and report on the health of the underlying assets. Bank One will not be held responsible for the performance of the underlying assets.

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FT WORTH OSTED HOSP DEN BELFMS
 Account number: 8318974600 October 1 - September 30, 2002

Summaries
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Holdings summary

Account	Balance on September 30, 2002	Change on September 30, 2002	Balance on September 30, 2002
Equity	\$24,387.85	\$204,651.04	\$229,039.89
Fixed Income	\$12.89	\$0.00	\$12.89
Other	\$0.00	\$0.00	\$0.00
Total Holdings	\$24,387.85	\$204,651.04	\$229,039.89
Aggregate Income earned by US (pre-tax)	\$12.89		
Total Holdings with accruals	\$24,397.85		

Income summary

Income	Balance on September 30, 2002	Change on September 30, 2002
Dividends (domestic)	\$0.00	\$0.00
Interest (domestic)	\$0.00	\$0.00
Other Income	\$0.00	\$0.00
Total Income	\$0.00	\$0.00
Rehabilitated gross (loss)	\$0.00	\$0.00

The income summary includes taxable and non-taxable income for both principal and pooling beneficiaries. Please refer to the Transition guide for an income declaration. These amounts represent approximate income and gains/loss amounts and should not be used for final Income Tax Return Service reporting.

FT WORTH OSTED HOSP DEN BELFMS
 Account number: 8318974600 October 1 - September 30, 2002

Summaries
 page 1

Annual Account Statement

FT WORTH OSTED HOSP DEN BELFMS
 Account number 8318974600
 October 1, 2002 - September 30, 2002

Bank One, N.A.
 FT WORTH MANAGEMENT
 400 EAST WASHINGTON
 FT. WORTH, TX 76102
 www.bankone.com

Your Address is:
 ERNEST & YOUNG LLP
 301 MAIN ST. SUITE 1100
 FORT WORTH, TX 76102-3101

Please refer to the appropriate section of your annual report. We appreciate your continued patronage.
 Please remember to check the Balance sheet (located at the back of your statement) for dependent accounts from Bank One.
 Don't hesitate to contact your advisor if you have any questions, comments or concerns.

Market reconciliation

	Revised/Actual	Actual / 18 September 20
Beginning market value	\$283,281.88	\$28,317.60
Dividends	\$97,384.05	\$97,384.05
Interest	(1,007,716.09)	(636,284.09)
Change in market value	894.32	177.49
Ending market value	\$284,269.27	\$28,399.27

The Market Reconciliation provides a summary of all activity in the account. The Deposits and Disbursements categories may include Non-Cash Transactions such as transfers into the account, share change transactions, asset swaps and other transactions. The Transaction Detail section provides a detailed list of all transactions. The Transaction Summary provides a summary of cash receipts and disbursement transactions.

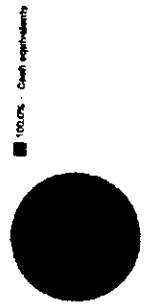
Summaries
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Only the Asset Allocation analysis includes market level holdings. The Bond quality and maturity analysis (if applicable) are displayed excluding mutual funds.

Investment objective: Principal Preservation

This strategy seeks to provide a high level of current income while maintaining equity and principal stability through investments in high-quality, short-term money market securities. Principal stability is not expected to be at risk.

Asset Allocation



The Asset Allocation may not be exactly as described in the investment objective due to Other Asset Holdings.

Summaries
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Transaction summary

Beginning cash balance 10/1/20	\$491,132.86	Actual
Cash deposits	\$0.00	
Dividends (Investment/Dividend Fund Income)	\$0.00	
Interest (Mortgage/Interest Income)	\$0.00	
Other cash receipts	\$0.00	
Total cash receipts	\$0.00	
Cash disbursements	\$0.00	
Cash observations	\$0.00	
Investment expenses	\$0.00	
Total cash disbursements	\$0.00	
Ending cash balance 9/30/20	\$491,132.86	Actual

Transaction detail

Date	Description	Amount	Balance
10/1/02	Beginning cash balance 10/1/02		6001,122.86
10/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 10/01/02	5044.77	6006,167.63
10/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 10/01/02	200,367.04	6206,534.67
10/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 10/01/02	3274.86	6209,809.53
10/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 10/01/02	1.11	6209,810.64
10/1/02	MONTH END FEE COLLECTED THROUGH SEPTEMBER	(416.87)	6209,393.77
10/24/02	CASH DEBIT ASSAULT PAID TO BANK ONE BLD OSTEOMATIC MEDICAL CTR 453 HUNTER IN CHARGE OF TEXAS, INC. TRANSFER OF FUNDS FOR WRITTEN REQUEST	(280,000.00)	6209,113.77
11/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 11/01/02	311.07	6209,424.84
11/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 11/01/02	1.15	6209,426.00
11/1/02	INTEREST FROM 10/01 TO 10/31/02		6209,426.00
11/1/02	ADMINISTRATIVE FEES COLLECTED THROUGH OCTOBER	(416.87)	6209,009.13
11/1/02	MONTH END		6209,009.13

PT WORTH CERTIFIED HIGH GROWTH FUND
 Account number: 838274600 October 1 - September 30, 2002

Transaction detail continued

Date	Description	Amount	Balance
12/28/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/28/02	328.87	6209,338.00
12/28/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/28/02	1.32	6209,339.32
12/1/02	ADMINISTRATIVE FEES COLLECTED THROUGH NOVEMBER	(416.87)	6208,922.45
12/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/01/02	281.10	6209,203.55
12/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/01/02	0.79	6209,204.34
12/1/02	INTEREST FROM 12/01 TO 12/31/02		6209,204.34
11/1/02	ADMINISTRATIVE FEES COLLECTED THROUGH DECEMBER	(116.07)	6209,088.27
11/1/02	TRANSFER TO COVER OVERDRAFT AS OF 10/31/02		6209,088.27
11/1/02	CASH RECEIPT	601,284.08	6810,372.35
11/1/02	TRANSFER TO COVER OVERDRAFT AS OF 10/31/02		6810,372.35
12/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/01/02	24.24	6810,396.59
12/1/02	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE 12/01/02	0.24	6810,396.83
12/1/02	INTEREST FROM 12/01 TO 12/31/02		6810,396.83

PT WORTH CERTIFIED HIGH GROWTH FUND
 Account number: 838274600 October 1 - September 30, 2002

Holdings detail

Very liquid assets	Quantity	Share price	Market value	Current yield	Current price	Current yield
ONE GROUP PRIME MONEY MARKET FUND	28,571,500	1.000	\$28,571,500	0.00%	0.00%	0.00%
ONE GROUP PRIME MONEY MARKET FUND	849,480	1.000	\$849,480	0.00%	0.00%	0.00%
INVESTMENT CASH	6,000,000	1.000	\$6,000,000	0.00%	0.00%	0.00%
Total cash equivalents	35,420,980		\$35,420,980			
Total Holdings			\$35,420,980			

Assets classified with an asterisk (*) in the beginning of the stated name are held in the Investment Partner Portfolio.

Transaction detail continued

Line	Description	Amount	Balance
8000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	18.11	18.11
81000	ADMINISTRATIVE FEES COLLECTED THROUGH AUGUST MONTH	(18.87)	(18.87)
	Ending Cash Balance as of 8/31/00		\$2,832.25

No pending items.

FT NORTH OUSTED HOOP GEN SELF-INS
Account number: 633874000 Date: 08/31/00

Bulletin board

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Although we list various and prices for publicly-traded securities have been received from sources of their prices. Bank One believes in the reliability of the information provided in our financial statements. Certain aspects may not be listed by Bank One and their stock, which may not be listed by Bank One and their irregularly priced securities, derivatives, investments, interests, and other financial products. Bank One's policy is to provide information to its customers in a timely and accurate manner. Bank One's policy is to provide information to its customers in a timely and accurate manner. Bank One's policy is to provide information to its customers in a timely and accurate manner.

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Bank One or its affiliate may receive and record data from the public. Bank One or its affiliate may receive and record data from the public. Bank One or its affiliate may receive and record data from the public. Bank One or its affiliate may receive and record data from the public. Bank One or its affiliate may receive and record data from the public.

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Transaction detail continued

Line	Description	Amount	Balance
31000	ADMINISTRATIVE FEES COLLECTED THROUGH JANUARY MONTH	(18.87)	(18.87)
32000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.11	18.11
33000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.75	0.75
34000	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY MONTH	(18.87)	(18.87)
35000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.78	18.78
36000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.79	0.79
37000	ADMINISTRATIVE FEES COLLECTED THROUGH MARCH MONTH	(18.87)	(18.87)
38000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.46	18.46
39000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.79	0.79
40000	ADMINISTRATIVE FEES COLLECTED THROUGH APRIL MONTH	(18.87)	(18.87)

FT NORTH OUSTED HOOP GEN SELF-INS
Account number: 633874000 Date: 08/31/00

Bulletin board

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Transaction detail continued

Line	Description	Amount	Balance
41000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.24	18.24
42000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.77	0.77
43000	PROBATIONARY TAX RETURN PREP COLLECTED	(18.87)	(18.87)
44000	ADMINISTRATIVE FEES COLLECTED THROUGH MAY MONTH	(18.87)	(18.87)
45000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.13	18.13
46000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.72	0.72
47000	ADMINISTRATIVE FEES COLLECTED THROUGH JUNE MONTH	(18.87)	(18.87)
48000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.08	18.08
49000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MONEY MARKET FUND	0.98	0.98
50000	ADMINISTRATIVE FEES COLLECTED THROUGH JULY MONTH	(18.87)	(18.87)
51000	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	18.72	18.72

FT NORTH OUSTED HOOP GEN SELF-INS

FT WORTH OBTED HOSP GEN BELFINS
Account number: 639674800 October 1 - September 30, 2009

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Annual Account Statement

FT WORTH OBTED HOSP GEN BELFINS
Account number: 639674800
October 1, 2009 - September 30, 2009

SHIR ONE TRUST COMPANY, L.L.C.
TRUST INVESTMENT MANAGEMENT
4000 WOODLAND DRIVE
FT. WORTH, TX 76102
www.shirone.com

Your Advisor is:
ROBERT LANSFORD
(817) 484-4131 or (800) 413-3465

ERNEST & YOUNG LLP
801 MAIN ST. SUITE 1100
FORT WORTH, TX 76102-3181

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FT WORTH OBTED HOSP GEN BELFINS
Account number: 639674800 October 1 - September 30, 2009

Summaries
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Holdings summary

Asset	Value as of September 30, 2009	Value as of September 30, 2008	Change in value
Cash	\$1,117.00	\$1,117.00	\$0.00
Fixed Income	\$13,187.47	\$4,336.27	\$8,851.20
Equity	\$18.52	\$18.52	\$0.00
Total Holdings	\$14,323.00	\$5,471.79	\$8,851.21

Assets (includes interest on all holdings)
Total Holdings with Accruals: \$14,323.00

Income summary

Income	Amount	Period
Dividend Income	\$0.00	10/1/09 - 9/30/09
Interest Income	\$18.52	10/1/09 - 9/30/09
Other Income	\$0.00	10/1/09 - 9/30/09
Total Income	\$18.52	
Realized Gain/Loss	\$0.00	

The income summary includes taxable and non-taxable income for both principal and income beneficiaries. Please refer to the transaction report for a further breakdown. This amount represents approximate income for qualified investors and should not be used for all internal Revenue Service reporting.

Market reconciliation

Beginning market value	\$24,462.77	Ending market value	\$24,173.37
Net change	0.00	Net change	0.00
Dividends	(5,000.00)	Dividends	(5,110.00)
Interest	188.34	Interest	118.15
Other cash receipts	0.00	Other cash receipts	0.00
Change in total market value	\$19,181.47	Change in total market value	\$19,181.47

The Market reconciliation provides a summary of all activity in the account. The Receipts and Disbursements columns may include Non-Cash Transactions such as transfers into the account, Name Change Transactions, Asset Receipts and Withdrawals, and stock split transactions. The Transaction Detail section provides a listing of all transactions. The Transaction summary provides a summary of cash receipts and disbursement transactions.

Summaries

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Only the Asset Allocation analysis includes individual holdings. The current equity and Treasury analyses (if applicable) are displayed according to market levels.

Investment objective: Principal Preservation

This strategy seeks to provide a high level of current income while maintaining liquidity and capital appreciation through investments in high-quality, short-term money market securities. Principal stability is not essential to the strategy.

Asset Allocation

100.0% Cash equivalents



The Asset Allocation may not be exactly as illustrated in the Investment objective due to Other Asset Holdings.

Summaries

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Transaction summary

Beginning cash balance 10/1/03	\$2,462.69	Ending	\$2,462.69
Cash receipts	0.00		0.00
Dividends (non-cash)	0.00		0.00
Interest (cash)	188.34		188.34
Other cash receipts	0.00		0.00
Total cash receipts	\$188.34		\$188.34

Cash disbursements	0.00		0.00
Cash disbursements	0.00		0.00
Administrative expenses	0.00		0.00
Total cash disbursements	\$0.00		\$0.00
Investment transactions	0.00		0.00
Purchases	0.00		0.00
Redemptions	0.00		0.00
Sales and maturities	0.00		0.00
Total Investment transactions	\$0.00		\$0.00
Ending cash balance 9/30/04	\$2,462.69		\$2,462.69

Date	Description	Debit	Credit	Balance
	Beginning cash balance 10/1/03		\$0,000.00	\$0,000.00
	COMBINED PURCHASES FOR THE PERIOD 10/01/03 - 10/30/03 OF ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE \$186.24		\$186.24	\$186.24
	COMBINED SALES FOR THE PERIOD 10/01/03 - 10/30/03 OF ONE GROUP PRIME MONEY MARKET FUND INVESTMENTS AT CARRYING VALUE \$5,960.04			\$5,960.04
10/1/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		\$11.98	
10/1/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		0.39	
10/1/03	ADMINISTRATIVE FEES COLLECTED THROUGH SEPTEMBER MONTH END		(418.87)	
11/03/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		12.23	
11/03/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		0.85	
11/13/03	ADMINISTRATIVE FEES COLLECTED THROUGH OCTOBER MONTH END		(418.87)	
12/03/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		12.02	

FT WORTH HOSTED HOSP OSN SELF-INS
 Account number: 828574500 October 1 - September 30, 2004

Summary
 Analysis
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Date	Description	Debit	Credit	Balance
12/1/03	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		\$0.50	
12/1/03	ADMINISTRATIVE FEES COLLECTED THROUGH NOVEMBER MONTH END		(418.87)	
1/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		12.88	
1/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		0.92	
1/13/04	ADMINISTRATIVE FEES COLLECTED THROUGH DECEMBER MONTH END		(418.87)	
2/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		13.28	
2/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		10.08	
2/13/04	ADMINISTRATIVE FEES COLLECTED THROUGH JANUARY MONTH END		6.61	
3/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		(418.87)	
3/1/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		10.08	
3/1/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND		6.54	

FT WORTH HOSTED HOSP OSN SELF-INS
 Account number: 828574500 October 1 - September 30, 2004

Summary
 Analysis
 Detail
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Very liquid assets	Quantity	Unit price	Market value	Current yield	Current yield %	Current yield %
ONE GROUP PRIME MONEY MARKET FUND	18,377,780	1.000	\$18,377.78	80.00	1.21%	1.21%
ONE GROUP TREASURY ONLY MONEY MARKET FUND	842,880	1.000	842.88	0.00	0.00%	0.00%
INCOME CASH	1,000	17,488.03	17,488.03	0.00	0.00%	0.00%
PRINCIPAL CASH	7,498,050	1.000	7,498,050	0.00	0.00%	0.00%
Total Holdings			\$19,181.47			
Total Holdings with Securities			\$19,181.47			
Total Holdings with Securities			\$19,181.47			

FT WORTH OSTEO HOSP GEN SELF-INS
Account Number: E308574500 October 1 - September 30, 2004

Summaries
Annual Account Statement

Annual Account Statement
FT WORTH OSTEO HOSP GEN SELF-INS
Account Number: E308574500
October 1, 2004 - September 30, 2005

BANK ONE TRUST COMPANY N.A.
TRUST MANAGEMENT
400 ROCKMOUNT
FT. WORTH, TX 76102

Your Advisor Is:
ROBERT LANSFORD
(817) 864-1161 or (800) 485-2990

ERNEST J. YOUNG, L.L.P.
201 MAIN ST. SUITE 1100
FORT WORTH, TX 76102-3116

Thank you for the opportunity to be your financial advisor. We appreciate your confidence in us.
Please remember to check the Status Board (located at the back of your statement) for important messages.
Don't hesitate to contact your advisor if you have any questions, comments or concerns.

FT WORTH OSTEO HOSP GEN SELF-INS
Account Number: E308574500 October 1 - September 30, 2005

Summaries
Holdings summary

Value on 9/30/05	Value on 9/30/04	Change in value
Cash	\$0.00	
Fixed income	\$0.00	
Equity	\$0.00	
Total Holdings	\$0.00	\$0.00
Available (includes pending but not yet received)	\$0.00	
Total Holdings with Available	\$0.00	

Income summary

Income	Administrative Fee	January 1 to September 30
Dividends (includes/does not include)	\$0.00	\$0.00
Interest (includes/does not include)	\$4.33	\$4.33
Other Income	0.00	0.00
Total Income	\$4.33	\$4.33
Realized gain/(loss)	\$134.22	\$134.22
Total Income	\$138.55	\$138.55

The Income summary includes taxable and tax-exempt income as well as capital gains and losses. These amounts represent approximate income and should not be used for individual income tax purposes.

Market reconciliation

Beginning market value	\$18,181.47	Ending market value	\$17,482.74
Net assets	77,482.14	Net assets	77,482.14
Disbursements	(4,946.29)	Disbursements	(4,946.29)
Income	34.22	Income	34.22
Capital gains contributions	0.00	Capital gains contributions	0.00
Change in asset market value	0.00	Change in asset market value	0.00
Ending market value	\$13,269.50	Ending market value	\$13,269.50

The market reconciliation provides a summary of all activity in the account. The beginning and ending market values are provided. The net assets are provided as well as disbursements, and asset market value. The change in asset market value provides an itemized list of all investments. The Transaction summary provides a summary of cash receipt and disbursement transactions.

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The overall market value of your account is either zero or negative.



Summaries
page 8

Transaction summary

Beginning cash balance 10/04	\$7,482.00	Ending cash balance	\$7,482.00
Cash receipts			
Dividends (Investment/Individual Fund Income)	0.00		0.00
Interest (Investment/Individual Fund Income)	24.22		24.22
Other cash receipts	1,014.78		1,014.78
Total cash receipts	\$1,038.99		\$1,038.99
Cash disbursements			
Capital contributions	\$0.00		\$0.00
Administrative expenses	\$0.00		\$0.00
Total cash disbursements	\$0.00		\$0.00
Investment transactions			
Net investment transactions	\$0.00		\$0.00
Total investment transactions	\$0.00		\$0.00
Ending cash balance 9/30/05	\$8.00	Ending cash balance	\$8.00

Transaction detail continued

Date	Description	Amount	Balance
10/17/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	\$1.07	
11/15/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	628.34	628.34
12/01/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	20.99	
12/15/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.15	
12/31/04	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	628.34	628.34
1/09/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
1/23/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	1.00	
1/30/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
2/06/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
2/13/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	

FT WORTH UNITED HOSP DEN SELF INS
Account number: 633574000 Date: 1 - September 30, 2005

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Analysis
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Detail
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Transaction detail continued

Date	Description	Amount	Balance
2/14/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
2/22/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	628.34	628.34
2/28/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
3/07/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
3/14/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
3/21/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
3/28/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
4/04/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
4/11/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
4/18/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
4/25/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
5/02/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
5/09/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
5/16/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
5/23/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
5/30/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
6/06/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
6/13/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
6/20/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
6/27/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
7/04/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
7/11/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
7/18/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
7/25/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
8/01/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
8/08/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
8/15/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
8/22/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
8/29/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
9/05/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
9/12/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
9/19/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
9/26/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
10/03/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
10/10/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
10/17/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47
10/24/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MAY MMT FD	1.00	
10/31/05	CASH RECEIPT OF INTEREST EARNED ON ONE GROUP PRIME MONEY MARKET FUND	25.47	25.47

FT WORTH UNITED HOSP DEN SELF INS

FT WORTH CUSTOD-HOSP GEN SELF-INS
Account Number: 8380574600 October 1, September 30, 2025

FT WORTH CUSTOD-HOSP GEN SELF-INS
Account Number: 8380574600 October 1, September 30, 2025

Summary

Bulletin Board

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Please contact your Phileas advisor if your financial needs or conditions change. When reviewing your fixed equity table, the percentages are rounded to zero when the percentage is a single digit or less than one percent.

When reviewing your Holdings table, the market value listed for each asset may not equal the quantity multiplied by the share price due to rounding. The Market Value column will always provide an accurate figure.

Market values noted in the Market Reconciliation and Transaction Detail are as of the end of the statement period. The market value on the date of the transaction may be different.

Please be aware that the information shown in the Reconciled Cash/Loans column (found in the Transaction Detail section of your statement) and the Unreconciled Cash/Loans in the Asset Listing are based on TAX COEF, even though the assets in your statement may be carried at book value. Please contact your advisor if you have any questions regarding this information or any part of your statement.

This statement is not an official document or income tax reporting document. Market value and price for publicly-traded securities have been obtained from sources believed to be reliable without guarantee of accuracy. Certain values may not be the same as those reported on the statement of assets and liabilities or other third party statements for valuation and transaction information. Certain assets, including but not limited to, non-publicly traded and temporarily trading securities, derivatives, performance insurance, long-term assets, and life insurance policy cash values may have been provided to us by third parties who are not transparent to us, may be carried at cost and is not independently verified. Life insurance values are shown at cash surrender value as most recently reported by you or the insurance company. If the value shown is \$1,000, we have not received a cash surrender value.

Common fund holdings: The most recent audited annual report of the Bank's common fund holdings is available upon request at no charge.

Share law may require that an action for breach of trust based on matters disclosed in this statement be commenced within a certain time period after receipt of this statement. This following statute requires that we file your portfolio: Phileas within a month (Pa. Tit. 70, §207) Michigan within 1 year (MCL 700.7087), Oklahoma, please consult your attorney.

Brokers (including Phileas Funds) are not bank deposits, are FDIC insured, are obligations of or guaranteed by Phileas Chase Bank, N.A. or its affiliates, or any federal or state government, government agency or government sponsored agency. Phileas Chase Bank, N.A. is a member of the FDIC. Phileas Chase Bank, N.A. or its affiliates, including the legal entity providing the statement, may receive fees for providing various services to various market funds. Phileas Funds, its disclosure statements and annual reports for Phileas Funds are always available. Please contact your advisor, or Phileas Distribution Services (800) 430-4111 (www.phileasfunds.com) for further information.

Exhibit "8"

MOTION TO REMAND

PAGE NO. 64

C:\Documents and Settings\admin\My Documents\User Files off Desktop &
Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Ma\Fisher\Fisher v
Chase\Pleadings\MotRemandFINAL2b.wpd

1 IN THE UNITED STATES BANKRUPTCY COURT
 2 FOR THE NORTHERN DISTRICT OF TEXAS
 3 FORT WORTH DIVISION

4 IN RE IN PROCEEDINGS UNDER
 5 FORT WORTH OSTEOPATHIC HOSPITAL, INC. CHAPTER 7
 6 DEBTOR CASE NO. 05-41513-DML-7

8

9

10 ORAL DEPOSITION OF
 11 ROBERT M. LANSFORD
 12 JANUARY 25, 2008

13

14

15 ORAL DEPOSITION OF ROBERT M. LANSFORD, produced as
 16 a witness at the instance of the Creditors, Mildred
 17 Fisher Jackie Fisher, Josh Oville and Yolanda Oville,
 18 and duly sworn was taken in the above-styled and
 19 numbered cause on the 25th day of January, 2008, from
 20 10:12 a.m. to 1:20 p.m. before Melissa Spivey CSR in
 21 and for the State of Texas reported by machine
 22 shorthand at the offices of Barlow Garsek & Simon LLP
 23 3815 Lisbon Street, Suite 100, Fort Worth, Texas, 75107
 24 pursuant to the Federal Rules of Civil Procedure and the
 25 provisions stated on the record or attached hereto.

MELISSA SPIVEY & ASSOCIATES (817) 326-4399

1

2

3 **A P P E A R A N C E S**

4 FOR THE CREDITORS
 5 MR. ST. CLAIR NEWBURN, III
 6 LAW OFFICES OF ST. CLAIR NEWBURN, III, P.C.
 7 701 RIVER RUN ROAD
 8 SUITE 1000
 9 FORT WORTH, TEXAS 76107

10 MR. E. L. ATKINS
 11 ATKINS LAW FIRM
 12 325 SOUTH MESOLITE STREET
 13 SUITE A
 14 ARLINGTON, TEXAS 76010

15 MR. BARRETT W. STETSON
 16 LAW FIRM OF BARRETT W. STETSON
 17 2929 CARLISLE STREET
 18 SUITE 360
 19 DALLAS, TEXAS 75204

20 FOR THE WITNESS
 21 MR. ROBERT A. SIMON
 22 BARLOW GARSEK & SIMON LLP
 23 3815 LISBON STREET
 24 SUITE 100
 25 FORT WORTH, TEXAS 76107

APP. 315

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1

2 **INDEX**

3

4 Appearances **PAGE**
 5 2

6 WITNESS: ROBERT M. LANSFORD

7 EXAMINATION BY MR. ATKINS 5

8 Signature and Charges 112

9

10 **EXHIBITS**

11 **NO. DESCRIPTION PAGE**

12 1 Subpoena 5

13 2 Fort Worth Osteopathic Hospital, Inc. 21
 14 Diana Fort Worth Osteopathic Medical
 15 Center Self-Insurance Plan Trust
 16 Agreement

17 3 Photocopy of Check No. 149232, letter to 26
 18 Robert Lansford from Glenn Milton dated
 19 July 7, 1999 and fax transmission to
 20 Diana from Nancy Argo dated July 7, 1999

21 4 Letter to Robert Lansford from Robert D. 42
 22 Anderson dated October 4, 1999 and fax
 23 transmission to Diana Winton from Bob
 24 Anderson dated October 4, 1999

25 5 \$600,000 disbursement letter to Bob 46
 Lansford from Glenn Milton dated December
 14, 1999 and letter to Glenn Milton from
 Diana Winton dated December 16, 1999

6 Fax Transmission to Diana Winton from 55
 Nancy D. Argo dated 12/22/00, memo to
 Diana Winton/Robert Lansford from Nancy
 D. Argo dated January 2, 2000 and letter
 to Nancy Argo from Susan E. Baird dated
 December 22, 1999

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1 (Exhibit No. 1 marked.)

2 ROBERT M. LANSFORD,

3 having been first duly sworn, testified as follows.

4 EXAMINATION

5 BY MR. ATKINS

6 Q: Good morning, sir.

7 A: Good morning.

8 Q: My name is E. L. Atkins and we're here to take

9 the deposition of Robert Lansford. And that would be

10 you, correct?

11 A: Correct.

12 Q: State your full name please for the reporter.

13 A: Robert M. Lansford.

14 Q: What is your current residence address Mr

15 Lansford?

16 A: 4038 Hidden View Circle, Fort Worth

17 Q: And what is your current business address?

18 A: 400 Timpani Court, Fort Worth

19 Q: Is that a business establishment?

20 A: Yes.

21 Q: What is that?

22 A: JPharynx.

23 Q: What is your business telephone number?

24 A: (817) 864-4151.

25 Q: How long have you been employed with JPharynx?

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1 sir?

2 A. 40 years with JPMorgan and predecessor banks.

3 Q. Okay. And we'll get into that in a little

4 while. But when you say predecessor -- let's go back to

5 1987 when this trust agreement that we're here to talk

6 about today was entered into. By whom were you employed

7 at that time?

8 A. I don't know which bank was involved at that

9 time. I really don't. '87? That could be -- I don't

10 know if -- I don't remember when TAB failed, so it could

11 be Texas American Bank.

12 Q. Okay.

13 A. I don't really recall.

14 Q. The trust agreement says Texas American Bank.

15 A. Okay. Then it was Texas American Bank.

16 Q. So can you help me from that point in time up

17 to JPMorgan? How did we get from Texas American Bank as

18 your employer to JPMorgan as your employer?

19 A. Texas American Bank failed in the '80s. It

20 was taken over by Deposit Guaranty Bank. Deposit

21 Guaranty Bank changed its name to Team Bank. Team Bank

22 added to Bank One, and Bank One and JPMorgan merged.

23 Q. And it now operates under the name JPMorgan?

24 A. Yes.

25 Q. When was the merger of Bank One with JPMorgan?

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1 Do you recall?

2 A. It was in 2002 I believe, and it's still not

3 finalized yet. It's in the process.

4 Q. What is your current position with JPMorgan?

5 A. I'm senior vice president.

6 Q. And as senior vice president, sir, what are

7 your duties just in general?

8 A. I'm a trust advisor, primarily a trust

9 officer. The old title used to be trust officer.

10 Q. And what does that entail?

11 A. Managing accounts.

12 Q. Trust accounts?

13 A. Yes.

14 Q. How long have you held that position with

15 JPMorgan, since Bank One and JPMorgan merged?

16 A. Yes.

17 Q. How long have you held that position with this

18 bank, whatever its title was?

19 A. Since the mid '90s.

20 Q. Maybe I can ask a better question. Let's go

21 back to September of '87. Do you recall when you were

22 with Texas American Bank what your position was with the

23 bank at that time?

24 A. With Texas American Bank, I was senior vice

25 president and trust officer.

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1 funds were to be deposited into?

2 A. Into the Osteopathic Medical Center checking

3 account.

4 Q. And how much were you directed to pay out of

5 the trust to the Osteopathic Hospital checking account?

6 A. \$900,000.

7 Q. What is the second page of Exhibit No. 5? Is

8 that the --

9 A. It's a letter from Glenn Milton.

10 Q. Is that the request to you to take \$900,000

11 out of the trust --

12 A. Yes.

13 Q. -- and deliver it to their checking account?

14 A. Yes.

15 Q. What was it for? Can you tell from the

16 letter?

17 A. It doesn't tell me.

18 Q. You produced these documents. As you looked

19 at them, Mr. Lansford, do you recall this transaction or

20 any specifics of this transaction?

21 A. No, I do not.

22 Q. From your earlier answers, would it be correct

23 for me to conclude that you did not question Mr. Milton

24 as to the purpose of this \$900,000 coming out of the

25 trust?

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1 A. That's correct, I did not question it.

2 Q. Did you feel obligated as the vice

3 president -- senior vice president of TAB to question

4 what this \$900,000 was to be used for?

5 MR. SIMON: Objection, form. This wasn't

6 Texas American Bank anymore. This was Bank One.

7 Q. (BY MR. ATKINS: You may answer.

8 A. Oh, I don't -- at this point, I don't think I

9 questioned it.

10 Q. In your opinion from reading the trust, was

11 this particular means of directing the bank to take

12 \$900,000 out of this plan in conformity with the terms

13 and provisions of the trust agreement?

14 MR. SIMON: Objection. You used the word

15 "opinion." Objection, form. You used the word

16 "opinion." That's not appropriate. You can ask him if

17 that was his understanding.

18 Q. (BY MR. ATKINS: You may answer until he says

19 don't answer me.

20 A. Okay. What was your question again, sir?

21 Q. As the senior vice president and the one in

22 charge of this trust, was it your opinion that this

23 particular means of requesting you to take \$900,000 out

24 of the trust in conformity with the terms of the trust?

25 A. Well, I'm going to say that Mr. Milton was

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1 either instructed by the committee or part of the
 2 committee, which I can't recall. And he instructed us
 3 to transfer money, and we felt that was within the
 4 powers of the instrument.
 5 Q And I'm not putting words in your mouth. Was
 6 part of that, though, based on your statement to me
 7 earlier that this is a revocable trust?
 8 A. Yes.
 9 Q. Well, can we look at Exhibit No. 5 -- any
 10 parts of Exhibit No. 5 and determine where this
 11 \$900,000 -- how this \$900,000 was used?
 12 A. I do not know how it was used.
 13 Q. Let's look at Page 7 and 8 of the trust. I
 14 think it's Section 5.03 and beginning on Page 5. They
 15 list seven activities or seven items that disbursements
 16 from the trust can be used for.
 17 A. Uh-huh. Okay.
 18 Q. Is there anything that we can look at on
 19 Exhibit No. 5 to determine if the use of this \$900,000
 20 fits into the category of either Category 1, 2, 3, 4, 5,
 21 6 or 7?
 22 A. No.
 23 Q. Did the bank have any procedure to verify
 24 whenever requests for disbursements were made and came
 25 to the bank that someone would look at these seven

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1 A. Yes.
 2 Q. And I'll ask you again, did you have anything
 3 that would indicate Nancy Argo had authority to tell you
 4 to take money out of this trust?
 5 A. I don't have anything in writing or anything
 6 in front of me that would tell me that.
 7 Q. And you don't have anything in your file that
 8 would indicate that Texas American Bank questioned this
 9 disbursement out of the plan?
 10 A. No.
 11 Q. Correct?
 12 A. No.
 13 (Exhibit No. 7 marked.)
 14 Q. (BY MR. ATKINS) I show you Exhibit No. 7.
 15 Tell us what Exhibit No. 7 is.
 16 A. First is a letter to -- to me from a Bruce
 17 Edwards to transfer \$600,000 from the trust account to a
 18 master depository account, and then the second page is
 19 the cover sheet for the fax.
 20 Q. Can you determine what the \$600,000 was to be
 21 used for?
 22 A. I cannot.
 23 Q. Do you remember that transaction as we sit
 24 here?
 25 A. I do not.

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D 356574527

Osteopathic Medical Center of Texas

April 1, 2002

Robert Landford
Bank One, Texas
P.O. Box 2060
Ft Worth Texas 76113

Dear Bob:

Please transfer \$600,000 from our Self Insurance Trust Account
Number 8336174500 to our Master Depository Account Number
157609632 today.

Sincerely,

Bruce Edwards

Bruce Edwards
Director of Accounting

LANDFORD
EXHIBIT NO. 7
M. SPIVEY

Osteopathic Medical Center of Texas
1000 Montgomery
Fort Worth, Texas 76107

To: Bank One

Attn: Mona Winton

Date: 7/1/02

Message: _____

Total number of pages including cover sheet (2)

From: Bruce Edwards

Phone: (817)735-3177

Fax: (817)735-3217

1 me?

2 Q. (BY MR. ATKINS) Yes. Did she ever bring that
3 question to your attention?

4 A. No.

5 Q. Do you know if it was her responsibility to
6 check and make sure that whoever signed the written
7 request for disbursements from the plan was on file with
8 verified or -- certified and verified signatures at the
9 bank?

10 A. No. It wasn't her job to do that.

11 Q. Whose job was that?

12 A. Mine.

13 Q. Did you ever do it?

14 A. Yes.

15 Q. And are you telling me that somewhere probably
16 at the bank we're going to find a file of the signatures
17 on file with the bank?

18 A. No. I've told you that you're not going to
19 find that because we did not have that.

20 Q. Then how did you verify signatures, sir?

21 A. I can't answer that. I know some signatures.
22 That's all I can tell you. I know certain signatures
23 so...

24 Q. Do you recognize Nancy Argo's signature?

25 A. No. I recognize Bruce's signature and Bob

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1 A. I can't answer that because I don't know if I
2 ever really dealt with the plan itself.

3 Q. Mr. Laneford, this particular trust that we're
4 talking about is not the only trust that TAB, or now
5 JPMorgan, oversees and administers, is it?

6 A. No, it's not the only one.

7 Q. Doesn't the bank have just general policies
8 and procedures that are implemented and utilized once a
9 trust comes in?

10 A. Yes.

11 Q. And some of those procedures would be to make
12 sure that whatever you do -- whatever TAB does is
13 consistent with the requirements of the trust? Wouldn't
14 that be --

15 A. Yes.

16 Q. Now, somebody somewhere would read the trust
17 agreement and determine what those requirements are.
18 Wouldn't that be standard procedure?

19 A. Yes.

20 Q. Who would do that in the case of Exhibit No.
21 2, this trust that the hospital and TAB -- or that the
22 hospital has set up?

23 A. I would imagine Dick Mitchell did that when it
24 came in.

25 Q. Now, who then would -- strike that.

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1 would anybody then document at the bank the
2 parameters of this trust to make sure that whoever is
3 working on it, secretary, clerical, officer, knows what
4 those parameters are?

5 A. I don't know how to answer that. I really
6 don't understand the question well enough.

7 Q. And I appreciate that. Let me just give you
8 an example, a hypothetical. Let's say a trust comes in
9 to TAB that an owner sets up specifically to create an
10 art gallery only for Remington paintings.

11 A. Okay.

12 Q. And the bank finds a fantastic Renoir that
13 they can buy for a steal for \$3 million and they buy it,
14 but the trust specifically says you can only buy
15 Remington. Now when the trust is set up, somebody
16 would read that to make sure that whoever's working with
17 the trust funds only buys what the trust said to buy --

18 A. Correct.

19 Q. -- correct?

20 A. Correct.

21 Q. And that would be by what, memos, policies?
22 How would that be communicated to all the people
23 handling that particular trust?

24 A. Some kind of a synopsis, administrative check
25 sheet. Something like that would be set up by the

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1 operations department.

2 Q. And that would be set up whether it's a
3 revocable or an irrevocable trust, wouldn't it?

4 A. Right.

5 Q. If the trust comes in and the trustor says,
6 you can only use these funds to pay a certain type of
7 debt, isn't the bank going to make sure everybody
8 handling that trust and dealing with those funds only
9 pays out funds to pay those certain types of debts?

10 A. Should have.

11 Q. This trust says, if I read it correctly, it's
12 to only be used on malpractice claims.

13 A. Okay.

14 Q. Now, what would the bank have in place from
15 the get-go -- from September of '67 until the time that
16 you paid all the money out, what did the bank have in
17 place to make sure that what the bank did was consistent
18 with the requirements of the trust agreement?

19 A. I don't know what that would be.

20 Q. I gather a lot of it was the fact that you
21 knew Mr. Sandelin, you knew these officers and you
22 trusted them. When they said, we need some money, send
23 us \$300,000 and put it over into the operating account
24 that you trusted that as being a valid request and you
25 complied?

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1 A. That is not entirely correct. I know Mr.
2 Sandelin, I trusted them. But if they -- if I was
3 instructed to put \$800,000 into a checking account
4 someone would have told me what it's for. Whether they
5 put it in writing or not, I would have known what it was
6 for. Most of the time I would get a call and say, we
7 have settled this or we've done this and I'm going to
8 send you information to make a disbursement.

9 Q. Is that usually the way the bank did its
10 business with trusts, that they get it verbal?

11 A. It does -- with some accounts, it does. And
12 then you saw one letter here where Diane sent a letter
13 back to verify. When we take instructions over the
14 phone -- and we do. We have a lot of accounts and we
15 take instructions over the phone and we know the people
16 we're talking to -- then we follow up with a letter like
17 this to say, this is what we've done.

18 Q. You have provided me in response to the duces
19 tecum various bank statements and summaries that I think
20 began in October of '98 and go through September of
21 2005.

22 A. Okay.

23 Q. Did you have an opportunity to look at any of
24 them or were they just printed out and sent to counsel
25 to be given to me?

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1 malpractice lawsuits or claims made against the
2 hospital?

3 A. No.

4 Q. None of those data was ever provided to you?

5 A. I never received it, no.

6 Q. Do you know if any of that data was ever
7 delivered to Texas American Bank or its successors?

8 A. I do not know.

9 Q. Well, did you understand that whatever funds
10 were there were intended to cover the lower limit of
11 medical malpractice claims that the hospital would have
12 against it at any given point in time?

13 A. I don't know if I knew that or not. I don't
14 recall.

15 MR. SIMON: Do you want to take a break?

16 MR. ATKINS: Sure.

17 MR. SIMON: I had to have the depositor
18 continue if one of the lawyers is not in the room.

19 MR. ATKINS: Yeah, let's take a short
20 break.

21 (Recess: 11:47-11:55)

22 (Exhibit No. 8 marked)

23 C. (BY MR. ATKINS: Mr. Lansford, let me show you
24 what I've marked as Exhibit No. 8. And I'll represent
25 to you that it's a combination of all of the bank's --

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1 or statements, summaries -- statement of accounts I
2 believe is what they're called that was delivered to me
3 Monday for my review that I made a copy.

4 A. Okay.

5 Q. And I'd like you to look at them and verify
6 that for me, if you would; and I think it's for a period
7 October 1, 2001 through September 2005.

8 A. It's correct as you stated, yeah.

9 Q. Now, do you know by whom those documents in
10 Exhibit B were generated? Did they come from bank
11 records or did they come from accountant records? Where
12 did they come from?

13 A. They came from JPMorgan's operation center.

14 Q. And are they computer printouts of the
15 activities of the Fort Worth Osteopathic Hospital
16 self-insurance plan trust from the periods that we've
17 said, October --

18 A. October of '98 through 2005, yes, they are.

19 Q. Now, let me go back to my earlier question.
20 And you said you'd have to look at the documents to tell
21 me whether they would give us that answer. Can we look
22 at those documents -- can you look at those documents
23 and tell me how much was in the trust as of October 1
24 '98 and how much was in it on the last date in September
25 of 2005?

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1 A. I can.

2 Q. Would you look at them and tell me what those
3 figures are, please?

4 A. On October the 1st of '98, it was a market
5 value of \$4,537,752.41.

6 Q. And fast forward ahead to September of 2005.
7 Can you tell me what the value of the trust was on the
8 last -- at the last date, the September 2005 date? I
9 believe it's September 30, 2005.

10 A. September 30, it was \$17,992,741.

11 Q. Is that approximately the amount that maybe
12 you paid over to the trustee in bankruptcy Mr. Shawn
13 Brown?

14 MR. SIMON: Brown.

15 MR. NEMBERN: Shawn Brown.

16 A. I think it was.

17 MR. SIMON: S-h-a-w-n.

18 Q. (BY MR. ATKINS: And it's your testimony here
19 that there is -- there are no funds -- there is no money
20 in this trust fund?

21 A. Correct. There are no funds.

22 Q. Now, can you -- with your knowledge of these
23 documents of how they're generated and created, would it
24 be correct to say that you can go through them and the
25 additions and subtractions, that is, the deposits and

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1 the withdrawals should add up to the difference between
2 the beginning balance of \$4,637,752.41 and the ending
3 balance of \$17,992,747.
4 A. Yes.
5 Q. When the entries were made, Mr. Lansford, in
6 the bank computers, in the bank records, did the entries
7 indicate which payments were made for medical
8 malpractice claims and which ones were made for
9 something other than medical malpractice claims?
10 A. I can't tell from the transactions.
11 (Exhibit No. 9 marked.)
12 Q. (BY MR. ATKINS) I checked one of the pages
13 out of one of those summaries, Mr. Lansford. It's a
14 transaction detail Page 12 of 15 for April 1, 2002. Let
15 me hand you that as Exhibit No. 9, and you can verify
16 that from the Exhibit No. 8 if you'd like. But if you
17 would focus on the entry of 4/1/02, cash disbursement
18 paid to Bank One, \$600,000. Do you see that?
19 A. Yes.
20 Q. Can you tell from that computer-generated
21 entry where that \$600,000 was deposited?
22 A. Yes. It was deposited into a Bank One
23 checking account.
24 Q. And that's Account No. 1576089832?
25 A. Yes.

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1 Q. What did you understand proper administration
2 and control of the trust property to mean?
3 A. We managed the assets in accordance with the
4 trust agreement.
5 Q. As we sit here, do you believe that JFMorgan
6 and its predecessors did that?
7 A. Yes.
8 Q. As the trust officer, whether you did or
9 didn't, certainly you were obligated to, weren't you?
10 A. Yes.
11 Q. Now, on Page 4, the first complete paragraph
12 says, The hospital shall keep the trustee notified of
13 current membership of the committee, its officers and
14 agents, and shall furnish the trustee a certified
15 signature card for the members of the committee.
16 A. Where are you reading?
17 Q. I'm reading the first sentence of the first
18 complete paragraph on Page 4.
19 A. Okay.
20 Q. The hospital shall, by written notice, keep
21 the trustee notified of current membership of the
22 committee, its officers and agents, and shall furnish
23 the trustee a certified signature card for the members
24 of the committee. Did I read that correctly?
25 A. I don't know if they did or not -- I don't

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1 know if they furnished that or not
2 Q. Did the bank have anything in place to make
3 sure that they did?
4 A. There might -- they might have.
5 Q. What would it be, some type of guideline, some
6 type of directive to tell the bank not to honor a
7 withdrawal or disbursement if it didn't come from a
8 certified signature?
9 A. It could be any of those. I just don't recall
10 us having it.
11 Q. Now, the last sentence of that paragraph is,
12 For all purposes hereunder, the trustee shall be
13 conclusively entitled to rely upon the certified
14 signatures. Did I read that correctly?
15 A. Yes.
16 Q. Now, what did you understand were your
17 obligations if you did not have certified signatures as
18 the basis for the request to take money out of the
19 trust? What was your duty in that -- if you could
20 conclusively rely upon certified signatures, what was
21 your obligation if they weren't certified?
22 A. Verify who was sending the request to us and,
23 you know, verify -- do some verification. What that
24 would be, I don't know, but there would be some kind of
25 verification other than this.

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1 Q. Down to 3 03, about halfway down, the sentence
2 begins, Not in limitation but in amplification -- do
3 you see that?
4 A. Yes.
5 Q. -- of the foregoing, the committee shall have
6 the power to construe the plan, to review periodically
7 the adequacy of funding and of investment performance
8 and communicate its findings to the hospital and the
9 trustee. During the time that you were overseeing the
10 administration of this, did the hospital ever provide
11 you with documents indicating adequacy of funding of the
12 trust?
13 A. I don't recall.
14 Q. I'm sorry?
15 A. I don't recall if they did or not.
16 Q. Well, if they did, wouldn't that be something
17 that you would keep in the regular course of your
18 business?
19 A. I would assume that it would be in files if
20 they provided it to me, yes.
21 Q. And you've made an effort, have you not,
22 before we did this deposition to look and find me
23 everything?
24 A. I did.
25 Q. And you didn't find anything in that regard.

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1 did you?
 2 A. I didn't see that. It wasn't in the file that
 3 I looked at. Now, whether it was something before Texas
 4 American Bank failed and if it was something that it the
 5 move with the tornado, et cetera, you know, it could
 6 have been there. I don't know because I lost a lot of
 7 documents on my desk to the tornado.
 8 Q. So it is your sworn testimony that the hospital
 9 may have provided you periodically adequacy of funding
 10 of the trust but you don't know, and it hasn't been in
 11 the files that you've searched but it may be somewhere?
 12 A. That's correct.
 13 Q. From your understanding of this trust, why
 14 would it be important for the trustee to be communicated
 15 the adequacy of funding of the plan periodically?
 16 A. You know, I don't know why that would be
 17 because that's why I was just reading this instrument.
 18 It doesn't -- it says they shall do that, and I don't
 19 know why it would be important for the trustee. It
 20 seems like it would be more important for the hospital
 21 to know that but not the trustee necessarily.
 22 Q. Did you ever question that that you're now
 23 questioning during the time that you oversaw this?
 24 A. No, because I don't think they ever provided
 25 that to me. If they did, it would have gone in the

1 file. But I'm just saying I don't -- I don't see the
 2 need for the trustee to have that information.
 3 Q. Now, in the very last part of the complete
 4 sentence on that page, Subject to any limitations
 5 imposed on the committee by the board, it shall disburse
 6 all questions relating to the determination of payments,
 7 provided such payment shall be exclusively for the
 8 purposes of the plan as hereinafter provided.
 9 A. Okay.
 10 Q. Did you understand that there was any leeway
 11 or discretion on your part to pay out money from this
 12 plan other than what was directed the funds to be used
 13 for in the body of the plan?
 14 A. Yes. I think we had the leeway that the plan
 15 would change or instructions from the hospital we could
 16 pay those monies out.
 17 Q. And what was your basis for concluding that
 18 you did have that leeway?
 19 A. Because the instrument can be changed in any
 20 way possible, could be revoked, changed, et cetera.
 21 Q. Was Exhibit No. 2 that was signed September
 22 15, 1987 ever revised to your knowledge?
 23 A. Not that I know of, no.
 24 Q. Was it ever amended or supplemented to your
 25 knowledge?

1 A. No.
 2 C. Was there ever anything provided to you in
 3 writing that said you had discretion to pay out money
 4 from this plan other than as was in the printed
 5 provisions of the trust agreement?
 6 A. Not that I recall.
 7 Q. Then tell me I guess based upon your expertise
 8 or whatever, why do you feel -- why do you believe and
 9 why are you telling me that you did have discretion
 10 under certain circumstances to not follow the specific
 11 provisions of the printed document?
 12 A. I followed the instructions of the -- the
 13 instrument says that we're to take instructions from the
 14 committee or their agent. I believe it says that. You
 15 know, I don't memorize -- I didn't memorize the
 16 statement, but I think somewhere it says the trustee
 17 from time to time -- payment of property or Page 7, it
 18 gives us the instructions that we're to follow. And as
 19 long as the money was going at their instructions or to
 20 one of their accounts, we would follow their
 21 instructions.
 22 Q. Okay. So it was your interpretation of the
 23 instrument that if some officer of the hospital told you
 24 to pay out the money, that that satisfied your
 25 requirement under the agreement?

1 A. Not necessarily. If I was instructed by
 2 somebody from the hospital that came through the
 3 committee to pay the money to either an -- to pay to
 4 someone or deposit money into the hospital's account,
 5 then we followed their instructions. We felt like we
 6 were authorized to do that.
 7 Q. Did you consider that it was your obligation
 8 to verify that those directives to withdraw the funds
 9 were not only from someone authorized but they were to
 10 be only for medical malpractice losses?
 11 A. No, I didn't verify that.
 12 Q. So if -- and correct me if I'm wrong -- if you
 13 got an instruction from the vice president of finance of
 14 the hospital in writing to make out a check for \$300,000
 15 and deposit it in our general checking account, you
 16 interpreted -- or you concluded that because of who that
 17 was, that that was in conformity with and in compliance
 18 with the terms of the trust?
 19 A. You know I don't -- you're giving a
 20 generality, and I would assume that somehow some kind of
 21 verification was done. I can't tell you how that was
 22 done, but I either talked to somebody on the phone or
 23 something to verify that this was in accordance with
 24 what they wanted to do.
 25 Q. Does the trust give you that leeway to verify

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1 by telephone what is not in the written directive?

2 A. I think so.

3 Q. Where is that, sir? Where do you have that
4 instruction?

5 A. It's a revocable trust. If it's a revocable
6 trust, the grantor can change it any way they want to
7 and can give me instructions over the phone.

8 Q. That was your understanding?

9 A. Yes.

10 Q. When you were on the board of the hospital, as
11 a CPA reviewing and evaluating their financial
12 statements, was the hospital losing money?

13 MR. SIMON: Objection: form. Be specific
14 as to what time.

15 Q. [BY MR. ATKINS: You can answer

16 MR. SIMON: As of what time period?

17 MR. ATKINS: when he was on the board.

18 MR. SIMON: He was on the board for ten
19 years.

20 Q. [BY MR. ATKINS: During the time that you were
21 on the board, did you see from the finances of the
22 hospital that it began losing money?

23 MR. SIMON: That's a different question,
24 but you may answer the question.

25 A. I think there were times that it was losing
26

Exhibit "9"

MOTION TO REMAND

PAGE NO. 65

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IN RE
FORT WORTH OSTEOPATHIC
HOSPITAL, INC.

CASE NO. 82-4010-100-1
Chapter 7

Plaintiff
JAMES N. BROWN, Plaintiff
Trustee for Park Ridge
Corporation, Plaintiff, et al.
v.
JIMMORAN CHASE BANK, N.A.

ORAL DEPOSITION OF
PENNY EDWARDS
FEBRUARY 12, 1986

ORAL DEPOSITION OF PENELOPE EDWARDS
produced at a witness at the instance of the defendant,
and duly sworn, was taken on the above-captioned case,
numbered case in the 12th day of February, 1986, from
11:00 a.m. to 12:00 p.m. before Elizabeth K. Brown, Clerk,
and for the State of Texas, reported a verbatim copy to
the offices of Rochelle Hutcheson & McCullough, LLP, 307
North St. Paul Street, Suite 4500, Dallas, Texas 75201,
pursuant to the Federal Rules of Civil Procedure and the
provisions of the order of attachment hereto.

A P P E A R A N C E S

FOR THE PLAINTIFF:
Ms. Kerry Ann Miller
ROCHELLE HUTCHESON & MCCULLOUGH, LLP
325 N. St. Paul Street
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Dallas, Texas 75201

FOR THE DEFENDANT:
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JACKSON WALKER, LLP
901 Main Street
Suite 6000
Dallas, Texas 75202

ALSO PRESENT:
Mr. Thad Strobach, Videographer
Mr. E.L. Atkins

Q. And who is she?
A. She was the director of human resources.
Q. Anyone else?
A. No.
Q. Okay. Prior to the bankruptcy, you worked for
the Fort Worth Osteopathic Hospital?
A. Yes.
Q. Okay. For the purposes of this deposition, if
I refer to the hospital, can you and I understand that
what -- I'm talking about the Fort Worth Osteopathic
Hospital?
A. Yes.
Q. Thank you.
What was your job title at the hospital?
A. At the end or --
Q. Let's start with at the end.
A. I was the director of accounting.
Q. Did you hold other titles there?
A. Yes.
Q. What other titles did you hold?
A. When I was first hired I was hired as a staff
accountant and then I was chief accountant and then
accounting manager and then finally director of
accounting.
Q. When did you first go to work for the hospital?

A. June of 1980.
Q. Were you employed there continuously until the
bankruptcy?
A. Yes.
Q. When did you become director of accounting?
A. I'm trying -- I -- I think it was '84 or '85.
Q. As director of accounting, who did you report
to?
A. The CFO.
Q. And who was that?
A. At what period? What time?
Q. Let's start with when you first became director
of accounting.
A. It was Glenn Milton.
Q. At some point in time, did you report reporting
to someone else?
A. When Glenn Milton retired, Gregg Magers became
CFO and I reported to him.
Q. When was that?
A. July of 1980.
Q. Okay. And did you report to Mr. Magers up
until the bankruptcy filing?
A. No. He was terminated in the spring of 1980.
Q. Okay. And in February 1981 or in February 1982,
who did you report to?

started working there. He was already doing it.

Q. Do you have an understanding as to why the hospital used a self-insurance trust for medical malpractice liability as opposed to commercial liability insurance?

A. Yeah, I think I do, yeah.

Q. What is that understanding?

A. We had -- we had to have a trust in order to get commercial insurance. The commercial insurance carriers wanted us to have a reserve sitting there in case we had to pay out claims.

Q. Did you -- as the director of accounting, did you have any involvement with the purchase of insurance for the hospital?

A. No.

Q. I assume as part of your job as director of accounting, you had some knowledge of the hospital's purchase of insurance in terms of the payment of funds?

A. Yes.

Q. Okay. So you in general knew what the hospital was paying for different types of insurance, is that right?

A. Yes.

Q. Do you have an understanding as to how much of the primary liability the self-insurance trust was

designed to be responsible for?

A. Can you -- can you restate that question?

Q. Do you have an understanding of how much of the medical malpractice liability the hospital was responsible for itself, how many dollars?

A. As far as if -- if somebody filed a suit and then what we were responsible for?

Q. Yes.

A. It changed -- it changed over the years and I -- I can't tell you offhand.

Q. As part of your job as director of accounting, were you required to know --

A. No.

Q. -- what the hospital's limits of liability were?

A. No.

Q. Okay. Do you have an understanding as to who the beneficiary of the self-insurance trust was?

A. If you -- what -- well, what I understood was that it was to pay malpractice claims or legal -- legal fees associated with the claim.

Q. Anything else?

A. Not that I'm aware of.

Q. Was that all that was supposed to be paid out of the trust, medical malpractice claims and legal fees

Q. Okay. And that would have been your entry, right, in the general ledger?

A. No. Glenn -- Glenn -- Glenn would have made the entry into the general ledger because he was reconciling the malpractice account.

Q. Okay. Would it show up anywhere else?

A. There would be -- we kept annual journal entries in a book. There should be a journal entry that would show that too.

Q. Okay. What about the financials? Would it show up on the monthly financials?

A. It -- just the difference in the -- the -- of the balance sheet and the cash account.

Q. Okay. Did you prepare the monthly financials that were submitted to the board of the hospital?

A. At that time in '99?

Q. Uh-huh.

A. I pulled everything together and then Glenn did the final financial statements that went to the board.

Q. So in '99, you don't know whether this entry would have been specifically noted on the monthly financials more than just a credit and a debit?

A. No, I don't.

Q. Okay. Whether it would have been disclosed, for instance?

A. No, I don't know.

Q. Did you ever prepare the monthly financials to go to the board?

A. After Glenn left, I did.

Q. Okay. So starting in about 2000, you prepared the monthly financials for the board?

A. Yes.

Q. Would you have noted a transfer like this in the monthly financials?

A. No. I -- we didn't -- we didn't put any footnote in the financials I prepared.

Q. Do you know how Glenn would have transferred to the monthly financials?

A. No, I don't.

Q. Did you review the monthly financials during the time that Glenn was preparing them?

A. Yes.

Q. Okay. But you don't remember looking at this one in particular, July of '99?

A. I -- I looked at those -- the financial statements that we prepared did not -- I started to then, the monthly ones.

Q. So could someone see a bank statement looking at those financials tell that \$1 million was transferred from the trust to the market department?

A. No.

Q. You said after Glass left, you started reconciling the trust account as well; is that correct?

A. Correct.

Q. What did reconciling the trust account involve?

A. Just seeing if there -- if there were any disbursements or -- or cash added to it and then expensing the monthly service fee that they charged.

Q. Okay. In reconciling -- had you been reconciling the trust account when the \$2 million transfer was made to the hospital, would you have had to note that in your reconciliation?

A. Yes.

Q. Who had authority to request transfers from the -- from the self-insurance trust?

A. I don't -- I don't know.

Q. Was there a trust committee at the hospital?

A. Not that I know of.

Q. You don't think you were ever on a trust committee at the hospital?

A. No, I wasn't.

Q. Who was the hospital's excess malpractice liability insurance carrier? Do you know?

A. I can't think of the name offhand.

Q. Who was the hospital's insurance broker?

Argo had requested one to see how to treat that.

Q. Would you look for the -- would you have a copy of the request in your possession to help you reconcile the self-insurance trust?

A. From Nancy Argo?

Q. From anyone.

A. No.

Q. So you would have to actually go to the various people at the hospital to get the information to reconcile that account?

A. Yes.

Q. Okay. Were there very many distributions from the trust? I mean, was it -- because that seems like a pretty arduous process, to have to go individually to each --

A. No --

Q. -- person.

A. -- there were very, very few.

Q. So whenever there was one in a particular month, you would just go to whoever you thought authorized it and make sure it was correct?

A. Yes.

Q. And was that generally Nancy Argo?

A. Nancy, yes.

Q. Anybody else that you can remember going to to

and they cut Medicare payments and we -- I mean, we're like 70 percent Medicare/Medicaid patients, and the other part, to me, the -- the spending got out of hand, the salaries and the people and --

Q. At some point between 2000 and the -- the actual filing of bankruptcy, did you have -- did you believe the hospital would fail?

A. Well, I -- I truly thought somebody was going to buy it. I didn't think it was going to go down, but I knew -- I knew we couldn't keep going the way it was, so --

Q. So it was either going to fail or somebody was going to have to buy you out?

A. Yeah.

Q. And was there an active plan at the hospital seeking a buyer at some point in time?

A. Oh, yeah. We -- we -- they hired, what's their name, Merrill Lynch. They hired Merrill Lynch to prepare a book -- an offering and this -- and well that's -- I don't know 70 or 80 interested parties to try to sell it.

THE WITNESSES: I am going to ask you to

THE WITNESSES: I am going to ask you to

THE WITNESSES: I am going to ask you to

THE WITNESSES: I am going to ask you to

THE WITNESSES: I am going to ask you to

always looking out for the best interests of the hospital?

A. Yes.

Q. When Glass made the decision to transfer \$2 million or whatever amount of money was transferred from the trust to the Depository account in 1999, do you know if he discussed that with Jay Sandelin?

A. I -- I don't know for sure, but I would say he did.

Q. Why would you say he did?

A. Because he -- he always discussed things like that with Sandelin.

Q. Do you think Sandelin, when he was there, was fairly in tune with the financial well-being of the hospital?

A. Well, he -- it's just my opinion, but he was more concerned about the outlying little companies that were set up, about the financial well-being of them than the hospital.

Q. But you think that if Glass had decided to transfer \$2 million from the trust to the Depository account, he would not have discussed that with Jay Sandelin?

A. Oh, yeah, he would, I think.

Q. Would he have done so if he had known that \$2 million?

A. Yes.

Q. Okay. That's a decision you don't think he would make without discussing it with --

A. No.

Q. -- Jay?

Do you know whether he consulted the board in terms of making the decision to transfer money from the trust to the depository account?

A. I have no idea.

Q. So you don't know what -- do you know in general what he took to the board and what he didn't take to the board?

A. No.

Q. Do you know in general what he took to Sandelin and what he didn't take to Sandelin?

A. Not really.

Q. So you don't have a good feel for how big a decision needed to be made before Glenn would talk to Sandelin?

A. No.

Q. Why are you sure that he would have discussed a transfer from the trust to the depository account?

A. He -- he just -- I mean, anything big he would have done that.

Q. And you think that was a big decision?

A. Yes.

Q. Why do you think that's a big decision?

A. I -- I guess because he -- he knew that we needed to have money in that account, more than -- more than we already had.

Q. Who knew that we needed to have money in that account?

A. Glenn.

Q. Glenn knew that the hospital needed to have money in the account?

A. Yes.

Q. Meaning the trust?

A. Correct. Yeah.

Q. And the decision to -- to remove that money from that account was risky for the hospital; is that -- is that what you're saying?

A. Uh-huh. Yeah.

Q. Do you think Glenn would -- that was risky?

A. I -- I assume he would think that.

Q. Take a look at Exhibit 44 please. Do you recognize Exhibit 44?

A. Yes.

Q. What is Exhibit 44?

A. It's the Ernst & Young audited financial statements for the hospital for year end 2000 and '99.

Q. Did you take into account how much cash was on hand to pay claims?

A. No.

Q. So the only thing that -- that was taken into account here was how much should be set aside on a balance sheet reserve basis for purposes of medical malpractice liability?

A. Correct.

Q. No thought was given to how to actually pay those claims?

A. I guess not.

Q. Where did Gregg Magers go when he left the hospital -- when the hospital filed?

A. Just hearing from different people, he went to Arizona, then he went to Georgia and the last I heard, somebody said he was living in Austin.

Q. Okay. What about Glenn Milton? Where does he live now?

A. The same place. He lives in Escondido.

Q. Where does he work?

A. He doesn't.

Q. Is he retired?

A. Yeah.

Q. Do you would talk to Glenn?

A. A very once in a while.

Q. When is the last time you talked to him?

A. E-mail, we send e-mail back and forth. Probably two or three weeks ago.

Q. Have you discussed this case with him?

A. No.

Q. Do you keep up with Nancy Argo?

A. No.

Q. Didn't like her?

A. No, I like her.

Q. You just said no like because you didn't like her.

Do you keep up with anyone else from the hospital?

A. My -- my employees that work for me.

Q. Okay.

A. So --

MR. HAMILTON: Why don't we take about a five-minute break. Let me go over my notes and --

MS. MILLER: Sure.

MR. HAMILTON: -- I think I'm done.

THE VIDEOGRAPHER: Off the record, 12:50

(Returns from 12:50 p.m. to 12:56 p.m.)

THE VIDEOGRAPHER: Same as the previous --

12:56.

MR. HAMILTON: I'll just be witness.

EXAMINATION

BY MS. MILLER:

Q. I've just got something really quick for you.

A. Okay.

Q. A few minutes ago you had testified that you and Gregg Magers had had a conversation and Gregg Magers had said -- had said something to you to the effect of why don't we try putting \$100,000 a week into the trust. Is that a fair statement.

A. Yeah, 100,000 a month.

Q. 100,000 a month?

A. Yes.

Q. Okay. And -- and during this time, during those conversations, was money still coming into the hospital?

A. We -- we had money coming in, but not enough to do that and pay our payroll and expenses.

Q. Okay. And so at that point, you were still keeping up with your payroll, is that correct?

A. Yes.

Q. And you were still keeping up with your expenses?

A. Yes.

Q. So is it -- is it fair to say that -- that there was money to fund the account; it was just being

diverted to pay other source -- other obligations?

MR. HAMILTON: Objection, form.

A. I mean, well, we were having to get the essentials, get the inventory in, so I'd say there wasn't --

Q. Okay.

A. -- any money to fund it.

Q. Okay. But you would say that there was money coming into the hospital?

A. Yes.

Q. And that money was being used to pay accounts payable?

A. Yes.

Q. And payroll?

A. Yes.

Q. And so that money that was coming into the hospital, who -- who was making the choice to put the money that was coming into the hospital towards accounts payable and payroll as opposed to putting it towards the funding of the insurance trust?

A. Gregg Magers.

Q. Okay. So could Gregg Magers have made the decision and gone the other way and said we're going to stop paying our employees, but we're going to put that money in the self-insurance trust?

A. Yes. Yes.

MS. MILLER: D.L.P.

All right. We've got nothing further.

MR. HAMILTON: All right.

THE VIDEOGRAPHER: Off the record, 12:58.
(Proceedings concluded at 12:58 p.m.)

Case No. C20010073

MEDDRED FISHER

VS

JOHN B. PAYNE, D.O., OSTEOPATHIC
MEDICAL CENTER OF TEXAS, et al.
Defendants

IN THE DISTRICT COURT
JOHNSON COUNTY, TEXAS

413th JUDICIAL DISTRICT

FILED
APR 11 2007
AM 9:31
CLERK
JOHNSON COUNTY
TEXAS

AGREED JUDGMENT

On the 2 day of April, 2007, this cause came on to be heard. It was announced to the Court that an agreement had been reached between the parties. ACCORDINGLY, the Court finds that the following judgment is appropriate and should be made and entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenor, Jackie Fisher, Individually and as Administrator and Representative of the Estate of Johnny Fisher, Deceased, Houston Pflizer and Johnny Fisher recover from the Defendants, Fort Worth Osteopathic Hospital, Inc., c/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and no/100 Dollars (\$975,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be enforced only in accordance with bankruptcy law, in Cause No. 05-41513-DML-7, styled "In Re Fort Worth Osteopathic Hospital, Inc., Debtor", in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.



A CERTIFIED COPY
DISTRICT CLERK
APR 11 2007
DAVID B. LLOYD
District Clerk, Johnson
County, Texas
By: [Signature]

JUDGMENT

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this 7 day of June, 2007

APPROVED

[Signature]
E.L. Adams
State Bar No. 01409000
Adkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor Jackie Fisher, Individually
and as Administrator and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

JUDGE PRESIDING

Wayne Clawwater
State Bar No. 04322500
Craw, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2233
Attorney for Defendants, John Laurence, Ste Samuel, R.N.,
Saron Cox, R.N., and Karen Cox, R.N.

JUDGMENT

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EX. 2

Case No. C20010073
Case Entry Number: 05-41513-DML-7
Case Name: FISHER, MEDDRED vs. PAYNE, JOHN B. et al.
Case Date: 04/11/2007
Case Time: 09:31 AM

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incurring same.

SIGNED this _____ day of _____, 2007.

APPROVED

JUDGE PRESIDING

[Signature]
E.L. Adams
State Bar No. 01409000
Adkins Law Firm
325 South Mesquite Street
P.O. Box 157
Arlington, TX 76010
Telephone: 817-261-3346
Telecopier: 817-261-3347
Attorney for Intervenor, Jackie Fisher, Individually
and as Administrator and Representative
of the Estate of Johnny Fisher, Deceased,
Houston Fisher and Johnny Fisher

[Signature]
Wayne Clawwater
State Bar No. 04322500
Craw, Scott, Henderson & Allen, L.L.P.
Attorneys at Law
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2233
Attorney for Defendants, John Laurence, Ste Samuel, R.N.,
Saron Cox, R.N., and Karen Cox, R.N.

JUDGMENT

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EXHIBIT 10

CAUSE NO. C200800560

ESTATE OF JOHNNY FISHER, DEC'D

Plaintiff

v.

J P MORGAN CHASE BANK, N.A.,
GLENN MILTON, JAY SANDLIN, LUCY
NORRIS, RN, and NANCY ARGO, RN

Defendants.

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IN THE DISTRICT COURT

413th JUDICIAL DISTRICT COURT

JOHNSON COUNTY, TEXAS

APPENDIX – PART 7

EXHIBIT O

ESTATE OF JOHNNY FISHER, DEC'D.
Plaintiff

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IN THE DISTRICT COURT

VS.

413TH JUDICIAL DISTRICT

J P MORGAN CHASE BANK,
GLENN MILTON, JAY
SANDLIN, LUCY NORRIS, RN,
and NANCY ARGO,
Defendants

JOHNSON COUNTY, TEXAS

**PLAINTIFF'S WRITTEN RESPONSE TO FIRST SET OF INTERROGATORIES
FROM DEFENDANT, NANCY ARGO**

TO: Susan E. Baird, Attorney, Cotten Schmidt & Abbott, L.L.P., Attorneys, 550 Bailey Avenue, Suite 600, Fort Worth, Texas 76107, telephone 817-338-4500, fax 817-338-4599, attorneys for Defendant, Nancy Argo, via CM RRR no.7010 2780 0001 6034 6375

The Estate of Johnny Fisher, Dec'd, Plaintiff in the above styled case, hereby provides its written responses to Defendant, Nancy Argo's ("Argo") First Set of Interrogatories Directed to Plaintiff, and states:

Interrogatory No. 1: Identify all representations, oral or written, made by Nancy Argo that are referenced in paragraph 23 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 1: Little discovery has been conducted in this lawsuit, at this time. Therefore, this response will be supplemented, as required. At this time, Plaintiff is not aware of any representation made by Nancy Argo as referenced in paragraph 23 of Plaintiff's First Amended Original Petition, except as herein after stated and explained.

During the period from on and after the date that Johnny Fisher died at Fort Worth Osteopathic Hospital, Inc., as a result of the negligence and gross negligence of hospital nurses and other hospital personnel, Fort Worth Osteopathic Hospital, Inc. had, in place, a "Risk Management Plan for Osteopathic Health System of Texas". The plan was implemented and approved by the hospital Board of Directors. The plan was reviewed and updated by the hospital board of directors on a regular basis. An update of the plan was signed and in place, as of February 28, 2001 by Defendant, Jay Sandlin. Oversight and coordination of the plan was

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories, to Plaintiff

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VP Medical Staff Affairs" of the hospital. Responsibilities of the Director of Risk Management Services included management of any self-insured trust activities, as the written plan provided. Day-to-day operation of the plan was in the hands of personnel employed in the Risk Management Department. Defendant, Argo, was a member of the Risk Management Committee. At this time, Plaintiff does not know Argo's official title or the extent of her official duties. A part of the risk management plan was "claims management". Argo's duties, specifically, included claims management, which management included the resolution of hospital malpractice claims. A specific responsibility of the plan, as shown by the written program, approved and in place, was "Management of self-insured trust activities". Argo, from time to time, had direct dealings with the trust officers at Chase Bank, and its predecessors, managing the trust fund, specifically directing that withdrawals from the self-insured trust fund be made.

Defendant, Nancy Argo was actively involved for many years, as a hospital representative through The Hospital's Risk Management Department, in the handling and, at times, the resolution of malpractice cases filed against The Hospital. Defendant, Nancy Argo was actively involved in the management of Plaintiff's malpractice claim against The Hospital. Defendant, Argo was the hospital's risk management employee who provided information to The Hospital's accounting department regarding any questioned appropriations from The Trust. Defendant, Argo provided all information to auditors selected by The Hospital regarding the evaluation of all malpractice claims filed against The Hospital. Defendant, Argo, knew the purpose of the subject trust. She knew and understood the terms of The Trust Agreement. She knew the process for obtaining funds from The Trust. Defendant, Argo, requested and obtained funds from The Trust through the Chase Bank officers who had the sole authority to withdraw funds from The Trust, either by check or transfer documents. Robert Lansford, an officer of Chase Bank, has confirmed withdrawals from The Trust account, requested by Defendant, Nancy Argo. Defendant, Argo knew why it was important that the terms of The Trust Agreement be followed and the consequences which The Hospital might face if it were disclosed that The Trust did not have or maintain the funds sufficient to satisfy pending malpractice claims.

During the time that the Fisher claim was pending against The Hospital, Defendant, Nancy Argo knew that the representations contained in The Hospital's Responses to Requests for Disclosure regarding the status of the subject trust were false. Plaintiff believes that Defendant, Argo, supplied those responses and representations to The Hospital's defense counsel in the malpractice lawsuit, who filed them with the court. Defendant, Argo, knew that funds had been appropriated from The Trust prior to and during the time the Fisher Estate claim was pending against The Hospital, and that some of those funds had not been used for purposes authorized under The Trust Agreement. She knew that Chase Bank was agreeing to withdraw funds from The Trust, either by check or by transfer documents, knowing that the requirements of The Trust Agreement were not being followed in those withdrawals. She also knew that replenishing funds had not been deposited back into The Trust, as the Trust Agreement required. She knew that the trust fund was being depleted of its assets for purposes not authorized by The Trust Agreement.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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Defendant, Argo, knew that The Hospital's CEO's, Glenn Milton and Greg Mager and the CEO, Jay Sandelin, had neither authorized nor required the deposit of funds back into The Trust, to replenish withdrawals and that there were not sufficient funds and assets in The Trust to satisfy the pending malpractice claims against The Hospital, including Plaintiff's claim.

Argo knew, as one active in the Risk Management Department of The Hospital, that the Fisher Claim had merit, and that it had been assigned a potential value in excess of \$900,000.00. Defendant, Argo, also knew, from her experience in The Hospital's risk management program, that disclosures filed with the courts in malpractice lawsuits against the hospital, were required to be revised when new and relevant information was available to the disclosing party. Defendant, Argo, was one of the hospital's representative in the Fisher malpractice lawsuit who provided the representation that there were specific funds available in The Trust to satisfy any judgment the Plaintiff might obtain. She knew that representation and disclosure was false.

Therefore, Defendant, Argo, as The Hospital's selected representative in the Fisher malpractice lawsuit, knew that The Trust did not have funds sufficient to satisfy any judgment Plaintiff might obtain, because she knew that improper withdrawals and transfers had been made from The Trust, and that the representation that sufficient funds were available was a false representation, which was believed and relied upon by Plaintiff as being true..

Interrogatory No. 2.: Identify all representations, oral or written, made by Nancy Argo that are referenced in paragraph 40 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 2: See Plaintiff's response to Interrogatory No. 1, which is adopted and incorporated herein, for all purposes. In further response, Plaintiff is not aware of any representation made by Defendant, Argo, to Plaintiff that The Trust Fund was the property of The Hospital, or that the funds in The Trust were funds owned by The Hospital.

Interrogatory No. 3: Identify each act of Nancy Argo that constituted part of the civil conspiracy referenced in paragraph 42 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 3: Plaintiff adopts and incorporates into this response Plaintiff's response to Interrogatory No. 1.

Additionally, Defendant, Argo, while she was a member of the Hospital's Risk Management Committee of Fort Worth Osteopathic Hospital, Inc., did not require that withdrawals from the subject trust be made in the proper manner. Defendant, Argo, as the risk management employee, had the obligation to assure that the self-insured plan of claims management be operated properly. She knew that The Hospital had elected to have a self-insured program, rather than first-level liability insurance coverage, and that program required sufficient funds in the trust to resolve existing claims against The Hospital. Defendant, Argo knew, the

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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program was not being operated in compliance with the terms of the Trust Agreement, and did nothing to correct those errors and require that those sufficient funds be deposited into The Trust. Defendant, Argo, knew that large amounts of money were being removed from The Trust and she concealed and did not disclose those appropriations to appropriate persons and entities. Defendant, Argo, did not disclose to Plaintiff and Plaintiff's representatives and to other claimants alleging hospital malpractice, improper withdrawals from the subject trust, who would have brought these misappropriations to the attention of the Board of Directors, the courts, and others. She was a party, actively concealing these misappropriations from scrutiny. Defendant, Argo, knew that deposits were not made to the subject trust, sufficient to replenish the trust, after withdrawals were made. Defendant, Argo, did not disclose to Plaintiff and Plaintiff's representatives, and other hospital malpractice claimants, that the subject trust fund did not maintain sufficient funds to resolve hospital malpractice claims. Defendant, Argo, knew that the representation and the disclosure to the trial court that there were sufficient funds in the subject trust fund to satisfy and resolve any judgment that the Plaintiff might recover in the Plaintiff's hospital malpractice lawsuit, was not true. Defendant, Argo, knew that Chase Bank was not requiring that withdrawals from the trust fund only be for purposes authorized by the terms of the trust agreement, but did not disclose those improprieties to Plaintiff's representatives, to the trial court in the Plaintiff's hospital malpractice lawsuit. Plaintiff has been provided documents which evidence that Defendant, Argo, knew improper withdrawals were made from the subject trust and used for improper purposes and not replenished, as the trust agreement provided, including correspondence between Defendant, Argo, and Susan Baird.

Specifically, Defendant, Argo knew that \$450,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about September 3, 2002, and appropriated for uses inconsistent with the requirements of the trust agreement.

Argo knew that \$450,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about August 30, 2002, and appropriated for uses inconsistent with the requirements of the trust agreement.

Argo knew that \$200,000.00 was withdrawn from the trust fund by Chase Bank or its predecessor, Bank One, Texas, on or about October 24, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement.

Argo knew that \$375,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about January 17, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement.

Argo knew that funds were never placed in the trust fund to replenish the trust, as required. Defendant, Argo, concealed these improper appropriations from Plaintiff. Plaintiff believes that Defendant, Argo, concealed these appropriations from the hospital's attorney in Plaintiff's hospital malpractice lawsuit. Plaintiff believes that Defendant, Argo, concealed these appropriations from other victims of hospital malpractice. Additional documents which Plaintiff believes will contain and provide evidence of this conduct and support this contention and

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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conclusion are in the possession of Shawn Brown, Chapter 7 Trustee in Bankruptcy for Fort Worth Osteopathic Hospital, Inc.. These documents are not in the possession or control of Plaintiff. This response will be supplemented, as required.

Interrogatory No. 4: Identify all documents that reflect any action taken by Nancy Argo pertinent to your claims in this lawsuit.

Initial Response to Interrogatory No. 4: Documents that reflect action taken by Defendant, Nancy Argo and that is "pertinent" to Plaintiff's claim against her is very broad. Therefore, Plaintiff identifies any and all documents which evidence the misappropriations of funds from the subject trust. Plaintiff also identifies any and all documents that were filed in connection with the adversary action filed by the Chapter 7 Trustee, Shawn Brown against JPMorgan Chase Bank, NA regarding the mishandling of the subject trust by Chase Bank, and in which Plaintiff intervened, as a beneficiary of The Trust. Plaintiff will identify any and all documents that Plaintiff is now aware of, which remotely support or are pertinent to Plaintiff's conspiracy claims against Defendant, Argo. Plaintiff also identifies all sworn statements and testimony given by hospital representatives and Chase Bank representatives, regarding the activities of The Trust while Plaintiff's malpractice claim was pending. Many of those documents evidence and support, in part, Plaintiff's contention that Plaintiff became a beneficiary of the subject trust when it obtained its judgment against Fort Worth Osteopathic Hospital, Inc. in the underlying hospital malpractice lawsuit and are, therefore, "pertinent" to Plaintiff's claims against Defendant, Argo.

Specifically, some of these documents, which Plaintiff is now aware of, which are, directly or indirectly "pertinent" to the claims against Nancy Argo, include the following:

1. Portions of Medicare Provider Reimbursement Manual.
2. Cover sheet, Fort Worth Osteopathic Hospital, Inc. Dec sheet for excess coverage liability policy of insurance, in effect at the time the claim asserted against the hospital in the Fisher medical malpractice claim was made.
3. Current Time and charges of Law Office of E.L. Atkins, in connection with this lawsuit. This, of course, will change as the case progresses and will be supplemented.
4. Fort Worth Osteopathic Hospital, Inc.'s disclosures to the parties and to the court in the Fisher medical malpractice claim.
5. Certified copy of Trustee's Motion pursuant to Federal Rule of Bankruptcy Procedure

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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9010 to Approve Compromise and Settlement Agreement Between Trustee and JPMorgan Chase Bank, NA

6. Certified copy of Letter Opinion of Dennis Michael Lynn, U.S. Bankruptcy Judge, U.S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, dated December 16, 2008, in Case No. 05-41513, styled "In re Fort Worth Osteopathic Hospital, Inc.," Adversary no. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A."
7. Certified copy of Memorandum Opinion, signed April 15, 2009, U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division, D. Michael Lynn, Presiding, Bankruptcy Case No. 05-41523-DML, styled, "In re Fort Worth Osteopathic Hospital, Inc.," Adversary No. 08-04168-DML, Adversary Styled, "Estate of Johnny Fisher, Dec'd, Plaintiff v. JPMorgan Chase Bank, N.A., et al"
8. Certified copy of Memorandum Order, signed by Jane J. Boyle, United States District Judge, September 23, 2009, United States District Court, Northern District of Texas, Dallas Division, in Civil Action No. 3:09-CV-00748-B, styled "Estate of Johnny Fisher, Dec'd vs. JPMorgan Chase Bank, N.A., et al."
9. Certified copy of Letter Opinion of Dennis Michael Lynn, U.S. Bankruptcy Judge, U.S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, dated May 31, 2007, in Adversary case No. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A.", in connection with the bankruptcy case No. 05-41523-DML, styled "In re Fort Worth Osteopathic Hospital, Inc."
10. Certified copy of Notice of Dismissal of Intervention dated May 12, 2008, in the bankruptcy case No. 05-41523-DML, styled "In re Fort Worth Osteopathic Hospital, Inc.", Adversary case No. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A."
11. Certified copy of Order on Defendant's Motion to Dismiss in Case No. 05-41513-DML-7, styled "In re: Fort Worth Osteopathic Hospital, Inc.", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. vs JPMorgan Chase Bank, N.A."
12. Certified copy of Transcript of Proceedings, Motion to Compromise Controversy, October 9, 2008, Before the Honorable D. Michael Lynn, United States Bankruptcy Judge, for the Northern District of Texas, Fort Worth Division

Plaintiff's Written Response to Defendant Nancy Argo's First Set of Interrogatories to Plaintiff

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13. Certified copy of Transcript of Proceedings, Motion to Compromise Controversy, October 30, 2008. Before the Honorable D. Michael Lynn, United States Bankruptcy Judge, Northern District of Texas, Fort Worth Division
14. Certified copy of Objections of Non-Party to Proposed Settlement Agreement and Order
15. Copy of "Fort Worth Osteopathic Hospital, Inc., d b/a Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement", dated September 15, 1987 and filed in U.S. Bankruptcy Court in the Adversary proceeding no. , Shawn Brown, Trustee vs JPMorgan Chase Bank, in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division
16. Certified copy of Agreed Judgment entered in Cause No. C200100173, styled "Mildred Fisher vs John B. Payne, D.O., Osteopathic Medical Center of Texas, et al", in the 413th District Court of Johnson County, Texas
17. Conformed and file-marked copy of Order Appointing Successor Representative in Cause No. P200017096, styled " In Re Estate of Johnny Fisher, Deceased", in the Probate Court, Court No. 2, Johnson County, Texas
18. File-marked copy of Motion to Approve and Ratify Attorney-Client Contract, filed in Cause No. P200017096, styled "In re: Estate of Johnny Fisher, Dec'd.", in the Probate Court No. 2, Johnson County, Texas, along with exhibits, including First Amended Contract of Employment of E.L. Atkins, Agreed Judgment in Cause No. C200100173, styled "Mildred Fisher vs John B. Payne, D.O., et al", in the 413th District Court, Johnson County, Texas, Order Granting Motion to Approve and Implement Compromise and Settlement of Tort Claims by Jackie Fisher, et al, Plaintiff's First Amended Original Petition and Claim of Estate, filed in Case No. C2000800560, styled "Estate of Johnny Fisher, Dec'd vs JPMorgan Chase Bank, et al", in the 413th District Court, Johnson County, Texas, with attachments.
19. Conformed and file-marked copy of Order Approving and Ratifying Attorney-Client Contract in Cause No. P200017096, styled "In Re Estate of Johnny Fisher, Deceased", in the Probate Court, Court No. 2, Johnson County, Texas
20. Notice of Claim, dated August 24, 2000 from The Estate of Johnny Fisher, Deceased served upon various persons and entities, including Fort Worth Osteopathic Hospital, Inc.
21. Certified copy of Certificate of Death of Johnny Fisher

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A: Rsp Interr Argo.wpd

22. Copy of Autopsy Report regarding Johnny Fisher, Deceased, prepared by Lufkin Pathology Laboratory, James R. Bruce, M.D., Director
23. Waiver and Release of Confidentiality Agreement, with attachments, signed by Shawn Brown, Trustee, Fort Worth Osteopathic Hospital, Inc., Debtor/Bankrupt, dated July 22, 2005
24. Copy of Transcript of Hearing on Motion to Dismiss Adversary Proceeding, filed by Defendant, JPMorgan Chase Bank, NA, in Bankruptcy Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", in related Adversary No. 07-4016, styled "Shawn Brown vs JPMorgan Chase Bank, NA"
25. Copy of transcript of oral deposition of Robert M. Lansford, taken January 25, 2006, with attached exhibits (13 exhibits are attached to the deposition transcript. Additional copies of the Lansford Deposition exhibits are also attached; an additional copy of Exhibit 8, which is the bank summary sheets of the Trust Account activity is not reduced in size, for convenience and reference purposes). This deposition was taken in connection with the Motion to Lift Stay, filed by The Estate of Johnny Fisher, Deceased, in connection with the bankruptcy Case No. 05-41513-DML-7, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor"
26. Copy of transcript of oral video deposition of Bruce Edwards, taken February 12, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. V. JPMorgan Chase Bank, N.A.", in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)
27. Copy of transcript of oral deposition of Robert Lansford, taken February 5, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. V. JPMorgan Chase Bank, N.A.", in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)
28. Copy of transcript of oral deposition of Jay Sandelin, taken February 13, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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Osteopathic Hospital, Inc. v. JPMorgan Chase Bank, N.A., in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)

29. Risk Management Plan for Osteopathic Health System of Texas, dated February 28, 2001, Chairman, board of Directors, Jay E. Sandelin.
30. Copy of letter from Glenn Milton to Robert Lansford dated July 1, 1999, regarding the self-insured trust fund that is the subject of this litigation.
31. Copy of fax transmission to Diana from Nancy C. Argo, dated July 1, 1999, regarding check from the self-insured trust fund that is the subject of this litigation.
32. Copy of letter from Robert D. Anderson, Sr. VP, Fort Worth Osteopathic Hospital, Inc. to Robert Lansford, dated October 4, 1999, regarding the self-insured trust fund that is the subject of this litigation.
33. Copy of fax transmission to Diana Winton from Bob Anderson regarding self-insured trust fund that is the subject of this litigation.
34. Copy of letter from Glenn Milton to Bob Lansford, dated December 14, 1999, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
35. Copy of letter from Diana Winton to Glenn Milton, dated December 16, 1999, confirming transfer of funds from self-insured trust fund that is the subject of this litigation.
36. Copy of fax transmission from Nancy C. Argo to Diana Winton, dated January 3, 2000, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
37. Copy of memo to Diana Winton Robert Lansford Office from Nancy Argo, dated January 3, 2000, regarding transfer of funds from self-insured trust fund.
38. Copy of letter from Susan E. Baird to Nancy Argo, dated December 22, 1999, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
39. Copy of fax transmission from Risk Management, Osteopathic Medical Center of Texas to Diana Winton, dated 1-3 2000 regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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40. Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated April 1, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
41. Copy of fax cover sheet from Bruce Edwards to Diana Winton, dated 4/1/02, of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated April 1, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
42. Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated September 3, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
43. Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated October 24, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
44. Copy of letter from Glenn Milton, Sr. VP, Osteopathic Medical Center of Texas to Team Bank, Attn: Dick Mitchell, dated September 14, 1992, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.
45. Copy of letter from Jay Sandelin, Chairman, Osteopathic Medical Center of Texas to Robert Lansford, Bank One, Texas, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.
46. Copy of fax transmission cover sheet from Bruce Edwards to Bob Lansford, of letter from Jay Sandelin, Chairman, Osteopathic Medical Center of Texas to Robert Lansford, Bank One, Texas, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.
47. Copy of letter from Bruce Edwards, Director of Accounting to Robert Lansford, Bank One, Texas, dated August 30, 2002, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.
48. Copy of letter from Glenn Milton, Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Team Bank, Corporate Trust Department, dated October 22, 1991, regarding self-insured trust fund that is the subject of this litigation.
49. Copy of letter from Glenn Milton, Sr. Vice President, Osteopathic Medical Center of

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A: Rsp Interr Argo.wpd

- Texas to Dick Mitchell, TEAM Bank, Corporate Trust Department, dated October 1, 1992, regarding self-insured trust fund that is the subject of this litigation.
50. Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 1, 1993, regarding self-insured trust fund that is the subject of this litigation.
 51. Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 3, 1994, regarding self-insured trust fund that is the subject of this litigation.
 52. Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 9, 1995, regarding self-insured trust fund that is the subject of this litigation.
 53. Copy of letter from Glenn Milton, Sr. Vice President, Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One Texas NA, Corporate Trust Department, dated October 1, 1998, regarding self-insured trust fund that is the subject of this litigation.
 54. Financial Statements and Other Financial Information, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 1999 and 1998, with Report of Independent Auditors.
 55. Financial Statements, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 2001 and 2000.
 56. Financial Statements, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 2002 and 2001, "Discussion Draft".
 57. 2000 Actuarial Analysis of Hospital Professional Liability, prepared for Osteopathic Medical Center of Texas, Milliman & Robertson, Inc., Actuaries and Consultants.
 58. Osteopathic Medical Center of Texas, Actuarial Analysis of Hospital Professional Liability Self-Insurance Trust at 12/31/2002.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories, to Plaintiff

A: Rsp Interr Argo.wpd

59. Business Minutes, January 18, 2000, Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas, Jay Sandelin, Chairman.
60. Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, December 18, 2001.
61. Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, September 17, 2002.
62. Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, October 15, 2002.
63. Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, November 19, 2002.
64. Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, November 18, 2003.
65. Demand for payment of Plaintiff's judgment obtained against Fort Worth Osteopathic Hospital, Inc.

Copies of these documents have been, or are being supplied by Plaintiff to all defendants in this lawsuit, although many of the documents are in the possession of one or more of the defendants.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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Interrogatory No. 5: Identify each misappropriation of funds authorized or participated in by Nancy Argo, including date, place, time, participates, amounts of money misappropriated, the disposition of the misappropriated funds, and all documents pertinent thereto.

Initial Response to Interrogatory No. 5: Plaintiff states that copies of bank statements generated in connection with the subject trust fund relate improper withdrawals from the trust from on and after 1988 which Defendant, Nancy Argo knew had been authorized by one or more hospital representative, and those withdrawals were not replaced with additional funds, to maintain sufficient funds in The Trust, as required by the Trust Agreement. The extent of Argo's participation in these withdrawals is not known, at this time. These improper appropriations include, in part, the following appropriations of trust funds:

Argo knew that \$450,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about September 3, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement. Defendant, Argo knew that this withdrawal resulted in The Trust having insufficient funds and assets to resolving Plaintiff's pending malpractice claim.

Argo knew that \$450,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about August 30, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement. Defendant, Argo knew that this withdrawal resulted in The Trust having insufficient funds and assets to resolving Plaintiff's pending malpractice claim.

Argo knew that \$200,000.00 was withdrawn from the trust fund by Chase Bank or its predecessor, Bank One, Texas, on or about October 24, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement. Defendant, Argo knew that this withdrawal resulted in The Trust having insufficient funds and assets to resolving Plaintiff's pending malpractice claim.

Argo knew that \$375,000.00 was withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about January 17, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement. Defendant, Argo knew that this withdrawal resulted in The Trust having insufficient funds and assets to resolving Plaintiff's pending malpractice claim.

Further discovery is necessary to determine additional withdrawals and appropriations of trust funds that were improper, as well as the hospital's failure or refusal to replenish the trust, after disbursements were made while Defendant, Argo, was associated with the hospital's Risk Management Department. This response will be supplemented, as required.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A: Rsp Inter Argo.wpd

Interrogatory No. 6: Identify each act of concealment or misappropriation of funds in which Nancy Argo participated, including date, place, time, participants, nature of the concealment and documents reflecting the concealment.

Initial Response to Interrogatory No. 6: Plaintiff identifies and incorporates into this answer the transactions identified in response to Interrogatory No. 5., herein above. Additionally, Plaintiff states that each opportunity that Defendant, Argo, had to advise officials of Medicare, Medicare Intermediaries, and their representatives, representatives of excess liability insurance carriers, and claimants who filed medical malpractice claims against the hospital constitutes an act of concealment. Plaintiff does not know how often that occurred. Each withdrawal of trust funds for purposes inconsistent with the provisions of the subject trust agreement constitute an act of misappropriation. Defendant, Argo, was involved in, or was aware of, several of those improper transactions. Because she was actively involved in the risk management department's operation, she knew that the subject trust was misused; that funds were withdrawn for purposes inconsistent with the terms of the trust agreement, and funds to replenish the trust were not made, leaving the trust fund seriously under funded. Defendant, Argo, knew the trust was under funded, and misused, but did not disclose those facts to Plaintiff, or to the 413th District Court, during the course of Plaintiff's underlying malpractice lawsuit. Defendant, Argo knew the representations contained in the disclosure responses of The Hospital in the Fisher malpractice lawsuit were supplied to The Hospital's attorney by Defendant, Argo and that she knew those representations were false.

Plaintiff believes that there are other documents which will evidence Defendant, Argo's knowledge of and concealment of improper activities related to the management of The Trust and the improper appropriations and handling of Trust Funds, which documents are in the possession of Shawn Brown, Chapter 7 Trustee for the bankrupt, FWOII, and are not in the possession or control of Plaintiff. This response will be supplemented, as required.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Argo.wpd

Interrogatory No. 7. Identify when and how Plaintiff was advised by Shawn Brown that there were only a few thousand dollars in the Trust Fund when he seized it as alleged in paragraph 27a of Plaintiff's First Amended Original Petition.

Initial Response to Interrogatory No. 7: Plaintiff does not recall when Plaintiff was advised by Shawn Brown that there were only a few thousand dollars in the Trust Fund when he seized it as alleged in paragraph 27a of Plaintiff's First Amended Original Petition. Plaintiff believes that Plaintiff's counsel learned of the amount that had been in the trust fund when Plaintiff's counsel took the deposition of Robert Lansford in January, 2006. Plaintiff believes that Mr. Brown stated that the account had less than \$20,000.00 when the hospital filed for bankruptcy protection, in a telephone conversation with Plaintiff's counsel either shortly before or after Mr. Lansford's deposition in January, 2006. Plaintiff believes that Mr. Brown may have also stated that shortly before the judgment that Plaintiff obtained against Fort Worth Osteopathic Hospital, Inc., was entered.

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A: Rsp Interr Argo.wpd

Interrogatory No. 8. Identify all documents that indicate that Nancy Argo was an officer or director of Fort Worth Osteopathic Hospital, as alleged in paragraph 55c. of Plaintiff's First Amended Original Petition.

Initial Response to Interrogatory No. 8: Plaintiff has been provided several letters or documents of transmittal, which are signed by Nancy Argo, regarding withdrawals from the subject trust, in which she is identified as a representative of the Risk Management department of Fort Worth Osteopathic Hospital, Inc. At this time, Plaintiff does not know whether Defendant, Argo's relationship with the Risk Management Plan of the hospital is as an officer of the hospital. Plaintiff does not believe, at this time, that Defendant, Argo, was a director of the hospital.

Respectfully submitted,
LAW OFFICE OF E.L. ATKINS a/k/a
ATKINS LAW FIRM
325 South Mesquite Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346
(817) 261-3347 Fax
atkinslawfirm@shcplobal.net

and

MACLEAN & BOULWARE
Attorneys at Law
11 Main Street
Cleburne, Texas 76033
(817) 645-3700
(817) 645-3788 Fax

By: 

E. L. Atkins

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

A: Rsp Interr Argo.wpd

Verification

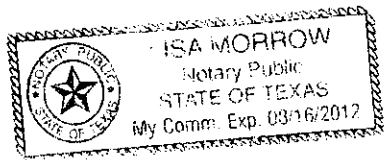
Before me, on this date, personally appeared Houston Allan Fisher, who, upon his oath, states that he has read the above and foregoing responses to Interrogatories and that said responses are true and correct.

Houston Allan Fisher
Houston Allan Fisher, Administrator

SUBSCRIBED AND SWORN TO, BEFORE ME, the undersigned authority, this 11 day of May, 2011; to certify which, witness my hand and seal of authority.

Isa Morrow
Notary Public

Commission expires: 3/16/12



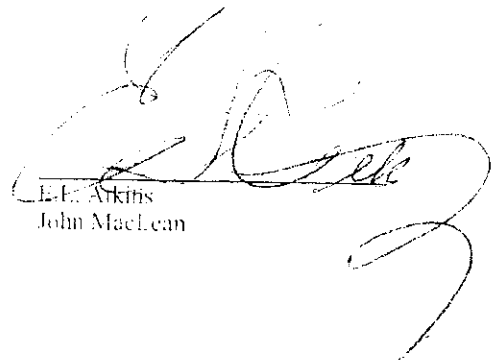
CERTIFICATE OF SERVICE

This is to certify that on this the ____ day of _____, 2011, a true and correct copy of the above and foregoing pleading, Plaintiff's Response to Defendant, Nancy Argo's First Set of Interrogatories has been served upon the following, as required by law:

Robert G. Richardson
Albon O. Head, Jr.
Jeffrey G. Hamilton
Heather M. Forrest
Jackson Walker L.L.P.
Attorneys
901 Main St.
Suite 6000
Dallas, TX 75202
Attorneys for JP Morgan Chase Bank, N.A.,
via CM RRR no. 7010 2780 0001 6034 5378

Susan E. Baird
Cotten Schmidt & Abbott, L.L.P.
Attorneys 550 Bailey Ave.
Suite 600
Fort Worth, TX 76107
Attorneys for Nancy Argo, Defendant
via CM RRR no. 7010 2780 0001 6034 6375

William L. Kirkman
Susanna Johnson
Bowland & Kirkman
Attorneys
201 Main St.
Suite 1400
Fort Worth, TX 76102
Attorneys for Nancy Argo and Glenn Milton, Defendants
via CM RRR no. 7010 2780 0001 6034 6368



E. E. Atkins
John MacLean

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff

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LIBRARY\CLIENT FILES\Med-Mal\Fisher-Fisher v Chase Bank Written Discovery Interrogatories Rsp
Interr Argo.wpd

EXHIBIT P

Case No. C2000800560

ESTATE OF JOHNNY FISHER, DEC'D, * IN THE DISTRICT COURT
Plaintiff *
*
VS. * 413TH JUDICIAL DISTRICT
*
J P MORGAN CHASE BANK, *
GLENN MILTON, JAY *
SANDLIN, LUCY NORRIS, RN, *
and NANCY ARGO, *
Defendants * JOHNSON COUNTY, TEXAS

**PLAINTIFF'S WRITTEN RESPONSE TO FIRST SET OF INTERROGATORIES
FROM DEFENDANT, JAY SANDELIN**

**TO: William L. Kirkman and Susanna Johnson, Attorneys, *Bourland & Kirkman*,
Attorneys, 201 Main St., Suite 1400, Fort Worth, Texas 76102, attorneys for
Defendant, JAY SANDELIN, via CM RRR no. 7010 2780 0001 6034 6412**

The Estate of Johnny Fisher, Dec'd, Plaintiff in the above styled case, hereby provides its written responses to Defendant, Jay Sandelin's ("Sandelin") First Set of Interrogatories Directed to Plaintiff, and states:

INITIAL RESPONSES

Interrogatory No. 1: Identify all representations, oral or written, made by Jay Sandelin that are referenced in paragraph 23 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 1: Plaintiff is not aware of any representation, oral or written, made directly to Plaintiffs by Jay Sandelin as referenced in paragraph 23 of Plaintiff's First Amended Original Petition, unless testimony given by Defendant, Sandelin, is considered made directly to Plaintiff or Plaintiff's representatives.

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase Bank\Written
Discovery\Interrogatories\Responses to Ds Interrogatories\Rsp Interr Sandelin.wpd

Judicial District Court, Johnson County, Texas was false. As The Hospital's CEO, Defendant, Sandelin authorized those false representations to be made, and never objected to them. Plaintiff does not know, at this time, whether Mr. Sandelin actually provided those representations to the attorneys for the hospital, or whether those representations were provided by Defendant, Nancy Argo, with Defendant, Sandelin's approval. However, Plaintiff believes that Mr. Sandelin, as the CEO of the hospital during the period that the Underlying Lawsuit was pending, knew of those representations and knew them to be false.

Interrogatory No. 2.: Identify all representations, oral or written, made by Jay Sandelin that are referenced in paragraph 40 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 2: Plaintiff incorporates its answers to Interrogatory No. 1, above, into this answer.

Defendant, Sandelin has represented in his deposition testimony given on February 13, 2008, in connection with the bankruptcy of The Hospital, that he believed that the subject trust fund was the property of Fort Worth Osteopathic Hospital, Inc. and that trust funds could be withdrawn from the trust for any purpose. Defendant, Sandelin's deposition testimony is incorporated into this answer by reference.

Defendant, Sandelin signed the subject trust agreement; he was aware of its provisions and the requirements for removal of trust funds from the trust. He knew those representations made in his deposition were false when they were made; however, for Defendant, Sandelin to testify otherwise, would be to admit that he knew trust funds had been stolen from the trust while he was CEO of The Hospital.

Interrogatory No. 3: Identify each act of Jay Sandelin that constituted part of the civil conspiracy referenced in paragraph 42 of Plaintiff's First Amended Original Petition in this lawsuit.

Initial Response to Interrogatory No. 3: Paragraph 42 of the First Amended Original Petition is a general allegation regarding the claims made in the pleading. The allegation is based, in part, upon the fact that Defendant, Sandelin, as the CEO of Fort Worth

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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Osteopathic Hospital, Inc., knew, or should have known of each and every illegal withdrawal from the self-insured trust fund and that he did not act to prevent those illegal withdrawals.

During the pendency of the underlying lawsuit, until a court-ordered mediation session in February, 2005, hospital representatives represented that the self-insured trust fund had millions of dollars in it to satisfy any judgment that Plaintiff might obtain in the lawsuit, and that it also had, in place, an excess liability insurance policy. That policy also falsely evidenced the funds in the trust. At this time, based upon the information obtained from Robert Lansford, from Bruce Edwards and from Jay Sandelin, in their depositions given in connection with the bankruptcy of The Hospital, the trust did not have trust funds, as represented. The Hospital did not advise the excess liability insurance carrier of illegal withdrawals from the trust, or that sufficient funds were not being maintained in the trust, as the insurance policy and the trust agreement required.

Defendant, Sandelin knew and participated in the efforts and the plan by the Hospital officers and representatives, and Chase Bank trust officers, to remove large sums of money from the subject trust fund and use those funds for illegal purposes.

Based upon the deposition testimony of Robert Lansford, Chase Bank Trust Officer, assigned to manage the Trust, Mr. Bruce Edwards, The Hospital's account and Defendant Sandelin, Plaintiff states that it is reasonable to conclude that Mr. Sandelin was involved in the "aiding, encouraging and approving" of the illegal plan to appropriate large amounts of trust funds for illegal purposes. Defendant, Sandelin knew of these illegal appropriations. A copy of each of those depositions have been provided to Defendant, Sandelin.

Mr. Sandelin knew the terms and provision of the trust agreement, and that payments made for anything other than expenses related to hospital malpractice claims, as the trust provided, was an illegal use of trust funds. Bruce Edwards has testified, under oath, that trust funds were withdrawn and used for the payment of general operating expenses of the hospital and he believed that these misdirected withdrawals were not reported to Medicare officials.

Many documents which Plaintiff believes will contain and provide evidence of Defendant, Sandelin's participation in this conspiracy to illegally remove and

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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misappropriate trust funds are in the possession of Shawn Brown, Trustee in Bankruptcy for Fort Worth Osteopathic Hospital, Inc.. These documents are not in the possession or control of Plaintiff.

In further response, Defendant, Nancy Argo, while she was a member of the Hospital's Risk Management Committee of Fort Worth Osteopathic Hospital, Inc., did not require that withdrawals from the subject trust be made in the proper manner and did not disclose illegal withdrawals from the subject trust to various malpractice claimants, including Plaintiff and Plaintiff's representatives. Defendant, Sandelin, as The Hospital's CEO, knew Defendant, Argo's duties in connection with the handling of Plaintiff's malpractice claim, and he knew that deposits were not being made to the subject trust, sufficient to replenish the trust, after withdrawals were made or authorized by Defendant, Argo, specifically sufficient to satisfy Plaintiff's malpractice claim. Defendant, Sandelin knew that Defendant, Argo did not disclose to Plaintiff and Plaintiff's representatives, and other hospital malpractice claimants, that the subject trust fund did not maintain sufficient funds to resolve hospital malpractice claims. Defendant, Sandelin knew, or should have known, that Chase Bank was not requiring that withdrawals from the trust fund only be for authorized purposes, but did not disclose those improprieties to Plaintiff's representatives or to the trial court in the Plaintiff's hospital malpractice lawsuit. At this time, Plaintiff is aware of the following overt acts of specific illegal withdrawals and uses of trust funds in which Defendant, Sandelin, participated:

\$1,000,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, in 1999, at the direction of Defendant, Milton, to bank accounts controlled by The Hospital officers and personnel, then misappropriated.

\$450,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about September 3, 2002, and misappropriated.

\$450,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about August 30, 2002, and misappropriated.

\$200,000.00 was withdrawn from the trust fund by Chase Bank or its predecessor, Bank One, Texas, on or about October 24, 2002, and misappropriated for uses

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

inconsistent with the requirements of the trust agreement.

\$375,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about January 17, 2002, and misappropriated.

\$1,475,000.00 was withdrawn from the trust fund and misappropriated for use by the hospital.

Bank statements regarding The Trust show that illegal appropriations and diversions of trust funds were never re-placed, to maintain a trust fund amount sufficient to satisfy hospital malpractice claims.

Sandelin concealed these misappropriations and illegal use of trust funds from Plaintiff. Plaintiff believes that Sandelin also concealed these misappropriations from the hospital's attorney in Plaintiff's hospital malpractice lawsuit. Plaintiff also believes that Sandelin concealed these misappropriations from other victims of hospital malpractice.

Interrogatory No. 4: Explain in detail why Jay Sandelin is liable for any of the damages you seek to recover in this lawsuit.

Initial Response to Interrogatory No. 4: This interrogatory is vague.

In an abundance of caution, Plaintiff incorporates its responses to Interrogatories No. 3 and No. 6.

Additionally, Plaintiff states that Plaintiff is a beneficiary of the subject trust, for the reasons as set forth in Plaintiff's pleadings, and as can be clearly seen from the Trust Agreement. Chase Bank is the trustee of the subject trust. Legal title to the trust was in Chase Bank. Beneficial title was in the victims of hospital malpractice, with established claims. Plaintiff's right to payment of its malpractice claim accrued when Plaintiff obtained its judgment against The Hospital in June, 2007, establishing that Plaintiff was, in fact, a victim of hospital malpractice and that its damages were \$975,000.00. Until that judgment was obtained, The Hospital had continuously denied that Plaintiff had a malpractice claim against The Hospital

Through the joint and combined efforts of Chase Bank and Defendant, Sandelin,

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

large sums of money were illegally taken from The Trust. Had the Trust been maintained and managed, legally, there would have been sufficient funds available to satisfy Plaintiff's judgment. Therefore, the basis of Plaintiff's conspiracy claim against Defendant, Sandelin, is the damage resulting to Plaintiff from the illegal removal and use of trust funds established for victims of hospital malpractice.

Plaintiff states that Defendant, Sandelin's allowing, or directing, that funds from the subject trust be withdrawn and used for purposes other than as mandated in the trust agreement, not disclosing, or requiring the disclosure of those withdrawals in a timely fashion to Plaintiff, as a beneficiary of the trust, and failing to require that the trust be maintained according to its terms and provisions, resulted in the trust being inadequately funded was his contribution to the conspiracy. This conduct, which includes active requests for illegal withdrawals from the trust fund, as testified to by Robert Lansford and Bruce Edwards, as well as the failure to prevent others from obtaining illegal withdrawals from the trust fund, is conduct that is "pertinent to Plaintiff's claims made in this lawsuit".

Defendant, Sandelin, knew that the plan, or object, of the conspiracy was to illegally divert and convert trust funds from the subject trust into various general operating bank accounts of The Hospital and other entities associated with The Hospital, to be used in the general operation of The Hospital and its affiliates. Defendant, Sandelin did not object when those trust funds were misappropriated.

If Plaintiff's allegations in this lawsuit are accurate - that the trust fund was to be used only as the trust agreement dictated, that the beneficiaries of the trust were victims of hospital malpractice, and not the hospital, and that hospital personnel, with the help of Chase Bank trust officers, illegally removed those funds from the trust in violation of the trust agreement - then the trust funds were, in effect, stolen from the trust, and used as the officials of the hospital in control of hospital funds, including Defendant, Sandelin, directed.

Interrogatory No. 5: Identify all documents that reflect any action taken by Jay Sandelin pertinent to your claims in this lawsuit.

Initial Response to Interrogatory No. 5: This interrogatory is very broad and its

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

meaning is not clear. Plaintiff is not sure whether the phrase "pertinent to your claims in this lawsuit" refers to the claims against only Defendant, Sandelin, or against all Defendants. Plaintiff will answer this interrogatory, assuming that the interrogatory refers only to the claims against Defendant, Sandelin.

Plaintiff's claims against Defendant, Sandelin. The claims against Defendant, Sandelin are claims of civil conspiracy. Plaintiff claims that Defendant, Sandelin, conspired with Chase Bank, as the Trustee of the subject trust, to illegally convert large sums of trust funds in a trust that was established for victims of hospital malpractice, which included Plaintiff. Plaintiff alleges that Defendant, Sandelin knew that such funds were being illegally diverted from the trust, and that replenishing funds were not, and would not be deposited into the trust fund. The object, or purpose of the conspiracy was for hospital personnel to request that Chase Bank remove trust funds from the trust bank account and illegally use those funds for purposes contrary to the requirements of the trust agreement. The Trust Bank trust officer, who had sole control over the trust funds and the trust bank accounts, agreed to transfer trust funds from the trust accounts, with no questions asked, even though, at times, one of the trust officers was a member of the hospital's board of directors. Through this plan, hundreds of thousands, if not millions of dollars of trust funds were illegally removed from the trust fund and not available for victims of hospital malpractice, who were beneficiaries of the trust. Plaintiff claims that, had the trust been operated properly and Chase Bank Trust Officers refused to divest the trust of its funds, except to pay amounts allowed by the trust agreement, there would have been sufficient trust funds to satisfy Plaintiff's judgment in June, 2007.

Documents that reflect any action taken by Jay Sandelin pertinent to Plaintiff's claims in this lawsuit. Copies of bank statements generated in connection with the subject trust fund and that have been provided to Plaintiff evidence illegal withdrawals from the trust from on and after 1988. Documents that are pertinent to Plaintiff's claims against Defendant, Sandelin, include correspondence between Chase Bank trust officers and personnel and Fort Worth Osteopathic Hospital, Inc. personnel, which evidence illegal transfers from the subject trust fund. Additionally, the Trust Agreement that is the subject of this lawsuit is pertinent to Plaintiff's claims against Defendant, Sandelin. Additionally, various documents that were used, or generated in connection with the adversary proceeding brought by the Hospital's bankruptcy trustee against Chase Bank are pertinent to the claims against Defendant, Sandelin. Certain documents generated in connection with the underlying malpractice case against the hospital are pertinent to the

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

claims against Defendant, Sandelin. In an abundance of caution, some of the documents, which are, or may be, pertinent to the claims against Defendant, Sandelin in this lawsuit, include the following:

Portions of Medicare Provider Reimbursement Manual.

Cover sheet, Fort Worth Osteopathic Hospital, Inc. Dec sheet for excess coverage liability policy of insurance, in effect at the time the claim asserted against the hospital in the Fisher medical malpractice claim was made.

Current Time and charges of Law Office of E.L. Atkins, in connection with this lawsuit. This, of course, will change as the case progresses and will be supplemented.

Fort Worth Osteopathic Hospital, Inc.'s disclosures to the parties and to the court in the Fisher medical malpractice claim.

Certified copy of Trustee's Motion pursuant to Federal Rule of Bankruptcy Procedure 9010 to Approve Compromise and Settlement Agreement Between Trustee and JPMorgan Chase Bank, NA

Certified copy of Letter Opinion of Dennis Michael Lynn, U.S. Bankruptcy Judge, U.S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, dated December 16, 2008, in Case No. 05-41513, styled "In re Fort Worth Osteopathic Hospital, Inc.", Adversary no. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A."

Certified copy of Memorandum Opinion, signed April 15, 2009, U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division, D. Michael Lynn, Presiding, Bankruptcy Case No. 05-41523-DML, styled, "In re Fort Worth Osteopathic Hospital, Inc.," Adversary No. 08-04168-DML, Adversary Styled, "Estate of Johnny Fisher, Dec'd, Plaintiff v. JPMorgan Chase Bank, N.A., et al"

Certified copy of Memorandum Order, signed by Jane J. Boyle, United States District Judge, September 23, 2009, United States District Court, Northern District of Texas, Dallas Division, in Civil Action No. 3:09-CV-00748-B, styled "Estate of Johnny Fisher, Dec'd vs. JPMorgan Chase Bank, N.A., et al."

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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Certified copy of Letter Opinion of Dennis Michael Lynn, U.S. Bankruptcy Judge, U.S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, dated May 31, 2007, in Adversary case No. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A.", in connection with the bankruptcy case No. 05-41523-DML, styled "In re Fort Worth Osteopathic Hospital, Inc."

Certified copy of Notice of Dismissal of Intervention dated May 12, 2008, in the bankruptcy case No. 05-41523-DML, styled "In re Fort Worth Osteopathic Hospital, Inc.", Adversary case No. 07-04016, styled "Shawn Brown, Trustee v. JPMorgan Chase Bank, N.A."

Certified copy of Order on Defendant's Motion to Dismiss in Case No. 05-41513-DML-7, styled "In re: Fort Worth Osteopathic Hospital, Inc.", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. vs JPMorgan Chase Bank, N.A."

Certified copy of Transcript of Proceedings, Motion to Compromise Controversy, October 9, 2008, Before the Honorable D. Michael Lynn, United States Bankruptcy Judge, for the Northern District of Texas, Fort Worth Division

Certified copy of Transcript of Proceedings, Motion to Compromise Controversy, October 30, 2008, Before the Honorable D. Michael Lynn, United States Bankruptcy Judge, Northern District of Texas, Fort Worth Division

Certified copy of Objections of Non-Party to Proposed Settlement Agreement and Order

Copy of "Fort Worth Osteopathic Hospital, Inc., d/b/a Fort Worth Osteopathic Medical Center Self-Insurance Plan Trust Agreement", dated September 15, 1987 and filed in U.S. Bankruptcy Court in the Adversary proceeding no. , Shawn Brown, Trustee vs JPMorgan Chase Bank, in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division

Certified copy of Agreed Judgment entered in Cause No. C200100173, styled "Mildred Fisher vs John B. Payne, D.O., Osteopathic Medical Center of Texas, et al", in the 413th District Court of Johnson County, Texas

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

Conformed and file-marked copy of Order Appointing Successor Representative in Cause No. P200017096, styled " In Re Estate of Johnny Fisher, Deceased", in the Probate Court, Court No. 2, Johnson County, Texas

File-marked copy of Motion to Approve and Ratify Attorney-Client Contract, filed in Cause No. P200017096, styled "In re: Estate of Johnny Fisher, Dec'd.", in the Probate Court No. 2, Johnson County, Texas, along with exhibits, including First Amended Contract of Employment of E.L. Atkins, Agreed Judgment in Cause No. C200100173, styled "Mildred Fisher vs John B. Payne, D.O., et al", in the 413th District Court, Johnson County, Texas, Order Granting Motion to Approve and Implement Compromise and Settlement of Tort Claims by Jackie Fisher, et al, Plaintiff's First Amended Original Petition and Claim of Estate, filed in Case No. C2000800560, styled "Estate of Johnny Fisher, Dec'd vs. JPMorgan Chase Bank, et al", in the 413th District Court, Johnson County, Texas, with attachments,

Conformed and file-marked copy of Order Approving and Ratifying Attorney-Client Contract in Cause No. P200017096, styled "In Re Estate of Johnny Fisher, Deceased", in the Probate Court, Court No. 2, Johnson County, Texas

Notice of Claim, dated August 24, 2000 from The Estate of Johnny Fisher, Deceased served upon various persons and entities, including Fort Worth Osteopathic Hospital, Inc.

Certified copy of Certificate of Death of Johnny Fisher

Copy of Autopsy Report regarding Johnny Fisher, Deceased, prepared by Lufkin Pathology Laboratory, James R. Bruce, M.D., Director

Waiver and Release of Confidentiality Agreement, with attachments, signed by Shawn Brown, Trustee, Fort Worth Osteopathic Hospital, Inc., Debtor/Bankrupt, dated July 22, 2005

Copy of Transcript of Hearing on Motion to Dismiss Adversary Proceeding, filed by Defendant, JPMorgan Chase Bank, NA, in Bankruptcy Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", in related Adversary No. 07-4016, styled "Shawn Brown vs JPMorgan Chase Bank, NA"

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

Copy of transcript of oral deposition of Robert M. Lansford, taken January 25, 2006, with attached exhibits (13 exhibits are attached to the deposition transcript. Additional copies of the Lansford Deposition exhibits are also attached; an additional copy of Exhibit 8, which is the bank summary sheets of the Trust Account activity is not reduced in size, for convenience and reference purposes). This deposition was taken in connection with the Motion to Lift Stay, filed by The Estate of Johnny Fisher, Deceased, in connection with the bankruptcy Case No. 05-41513-DML-7, "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor"

Copy of transcript of oral video deposition of Bruce Edwards, taken February 12, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. V. JPMorgan Chase Bank, N.A.", in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)

Copy of transcript of oral deposition of Robert Lansford, taken February 5, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. V. JPMorgan Chase Bank, N.A.", in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)

Copy of transcript of oral deposition of Jay Sandelin, taken February 13, 2008, in Case No. 05-41513-DML-7, styled "In Re: Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shawn K. Brown, Chapter 7 Trustee for Fort Worth Osteopathic Hospital, Inc. V. JPMorgan Chase Bank, N.A.", in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (no exhibits attached)

Risk Management Plan for Osteopathic Health System of Texas, dated February 28, 2001, Chairman, board of Directors, Jay E. Sandelin.

Copy of letter from Glenn Milton to Robert Lansford dated July 1, 1999, regarding the self-insured trust fund that is the subject of this litigation.

Copy of fax transmission to Diana from Nancy C. Argo, dated July 1, 1999, regarding

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

check from the self-insured trust fund that is the subject of this litigation.

Copy of letter from Robert D. Anderson, Sr. VP, Fort Worth Osteopathic Hospital, Inc. to Robert Lansford, dated October 4, 1999, regarding the self-insured trust fund that is the subject of this litigation.

Copy of fax transmission to Diana Winton from Bob Anderson regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton to Bob Lansford, dated December 14, 1999, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of letter from Diana Winton to Glenn Milton, dated December 16, 1999, confirming transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of fax transmission from Nancy C. Argo to Diana Winton, dated January 3, 2000, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of memo to Diana Winton/Robert Lansford Office from Nancy Argo, dated January 3, 2000, regarding transfer of funds from self-insured trust fund.

Copy of letter from Susan E. Baird to Nancy Argo, dated December 22, 1999, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of fax transmission from Risk Management, Osteopathic Medical Center of Texas to Diana Winton, dated 1-3-2000 regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated April 1, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of fax cover sheet from Bruce Edwards to Diana Winton, dated 4/1/02, of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated April 1, 2002, regarding transfer of funds from self-insured trust

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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fund that is the subject of this litigation.

Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated September 3, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of letter from Bruce Edwards, Director of Accounting, Osteopathic Medical Center of Texas to Robert Lansford, dated October 24, 2002, regarding transfer of funds from self-insured trust fund that is the subject of this litigation..

Copy of letter from Glenn Milton, Sr. VP, Osteopathic Medical Center of Texas to Team Bank, Attn: Dick Mitchell, dated September 14, 1992, regarding transfer of funds from self-insured trust fund that is the subject of this litigation.

Copy of letter from Jay Sandelin, Chairman, Osteopathic Medical Center of Texas to Robert Lansford, Bank One, Texas, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.

Copy of fax transmission cover sheet from Bruce Edwards to Bob Lansford, of letter from Jay Sandelin, Chairman, Osteopathic Medical Center of Texas to Robert Lansford, Bank One, Texas, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.

Copy of letter from Bruce Edwards, Director of Accounting to Robert Lansford, Bank One, Texas, dated August 30, 2002, regarding transfer of funds to self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Team Bank, Corporate Trust Department, dated October 22, 1991, regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Sr. Vice President, Osteopathic Medical Center of Texas to Dick Mitchell, TEAM Bank, Corporate Trust Department, dated October 1, 1992, regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

A:\Rsp Interr Sandelin.wpd

Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 1, 1993, regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 3, 1994, regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Sr. Vice President of Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One, Texas NA, Corporate Trust Department, dated October 9, 1995, regarding self-insured trust fund that is the subject of this litigation.

Copy of letter from Glenn Milton, Sr. Vice President, Finance, Osteopathic Medical Center of Texas to Dick Mitchell, Bank One Texas NA, Corporate Trust Department, dated October 1, 1998, regarding self-insured trust fund that is the subject of this litigation.

Financial Statements and Other Financial Information, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 1999 and 1998, with Report of Independent Auditors.

Financial Statements, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 2001 and 2000.

Financial Statements, Fort Worth Osteopathic Hospital, Inc., Years ended September 30, 2002 and 2001, "Discussion Draft".

2000 Actuarial Analysis of Hospital Professional Liability, prepared for Osteopathic Medical Center of Texas, Milliman & Robertson, Inc., Actuaries and Consultants.

Osteopathic Medical Center of Texas, Actuarial Analysis of Hospital Professional Liability Self-Insurance Trust at 12/31/2002.

Business Minutes, January 18, 2000, Fort Worth Osteopathic Hospital, Inc., d.b.a.

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Osteopathic Medical Center of Texas, Jay Sandelin, Chairman.

Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, December 18, 2001.

Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, September 17, 2002.

Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, October 15, 2002.

Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, November 19, 2002.

Fort Worth Osteopathic Hospital, Inc., d/b/a Osteopathic Medical Center of Texas Board of Directors Meeting, November 18, 2003.

Demand for payment of Plaintiff's judgment obtained against Fort Worth Osteopathic Hospital, Inc.

Plaintiff states that the documents, listed above, have been previously provided to Defendant's attorneys. The copies provided were reduced in size, and copied on both sides of pages, to conserve space. However, the originals, or copies, from which the reduced-size copies were made are in Plaintiff's attorney's possession and are available for further inspection at Plaintiffs' counsel, E.L. Atkins' offices in Arlington, Texas, if desired. Many are court documents and, although they have been provided by Plaintiffs, they are equally available to all Defendants. The trust officer at Chase Bank who oversaw the trust fund, Robert Lansford, produced various documents at his deposition in January, 2006. Those documents are attached, as exhibits, to his deposition, and have been produced to Defendant, Sandelin and his attorneys. Various financial statements and records have also been produced, and are identified, herein. Mr. Lansford stated that withdrawals from the trust were authorized by Mr. Sandelin, without proper documentation. Bruce Edwards has testified that funds were ordered to be withdrawn from the trust fund, and used for hospital purchases and for general operating expenses of The Hospital and its affiliates. The only trust bank statements available, at this time, are the ones produced by Robert Lansford at his depositions. Plaintiff incorporates Mr.

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Lansford's depositions testimony given January , 2006 and on February 5, 2008 and the deposition testimony of Bruce Edwards, given on February 12, 2008 into this answer.

Interrogatory No. 6: Identify each misappropriation of funds authorized or participated in by Jay Sandelin, including date, place, time, participates, amounts of money misappropriated, the disposition of the misappropriated funds, and all documents pertinent thereto.

Initial Response to Interrogatory No. 6: Plaintiff states that copies of bank statements generated in connection with the subject trust fund relate illegal withdrawals from the trust from on and after 1988 evidence overt acts in which Defendant, Sandelin participated. Defendant, Sandelin was CEO of the hospital, during this period, and was aware of these illegal transfers. Illegal transfers and misappropriations of trust funds, in which Defendant, Sandelin participated include the following:

Sandelin knew that \$1,000,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, in 1999, at the direction of Defendant, Milton, to bank accounts controlled by The Hospital officers and personnel, then misappropriated.

Sandelin knew that \$450,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about September 3, 2002, and misappropriated.

Sandelin knew that \$450,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about August 30, 2002, and misappropriated.

Sandelin knew that \$200,000.00 was withdrawn from the trust fund by Chase Bank or its predecessor, Bank One, Texas, on or about October 24, 2002, and misappropriated for uses inconsistent with the requirements of the trust agreement.

Sandelin knew that \$375,000.00 was illegally withdrawn from the trust fund by Chase Bank, or its predecessor, Bank One, Texas, on or about January 17, 2002, and

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misappropriated.

Sandelin knew that \$1,475,000.00 was withdrawn from the trust fund and misappropriated for use by the hospital.

Sandelin also knew that these illegal appropriations and diversions of trust funds were never re-placed with equal funds, sufficient to resolve pending hospital malpractice claims.

Sandelin concealed these misappropriations from Plaintiff. Plaintiff believes that Sandelin concealed these misappropriations from the hospital's attorney in Plaintiff's hospital malpractice lawsuit. Plaintiff believes that Sandelin concealed these misappropriations from other victims of hospital malpractice.

Interrogatory No. 7: Identify each act of concealment of misappropriation of funds authorized or participated in by Jay Sandelin, including date, place, time, participants, amounts of money misappropriated, the disposition of the misappropriated funds, and all documents pertinent thereto.

Initial Response to Interrogatory No. 7: Plaintiff incorporates its answers to Interrogatories No. 6., herein above. Plaintiff is not aware of all misappropriations. Defendant, Sandelin was a participant in the civil conspiracy and plan to illegally divest the Trust of its trust funds, to the extent that Defendant, Sandelin, was involved in those illegal withdrawals and transfers of trust funds, and had a responsibility to disclose them, based upon his position with the hospital, whether retired or not, has not been determined. Many, if not most of the documents which Plaintiff believes will evidence those activities are in the possession of Shawn Brown, Trustee for the bankrupt, FWOH, and are not in the possession or control of Plaintiff. Virtually no discovery has been conducted, at this time. Therefore, this response will be supplemented, as required. Plaintiff believes that other documents responsive to this interrogatory are in the possession of Shawn Brown and Chase Bank. Chase Bank has refused to provide any documents.

Respectfully submitted,
LAW OFFICE OF E.L. ATKINS a/k/a

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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By: 

E. L. Atkins

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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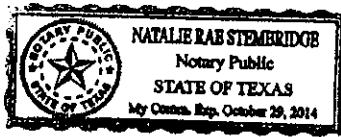
Verification

Before me, on this date, personally appeared Houston Allan Fisher, who, upon his oath, states that he has read the above and foregoing responses to The First Set of Interrogatories propounded by Defendant, Jay Sandelin to Plaintiff, and that said responses are true and correct.

Houston Allan Fisher
Houston Allan Fisher, Administrator

SUBSCRIBED AND SWORN TO, BEFORE ME, the undersigned authority, this 23 day of May, 2011; to certify which, witness my hand and seal of authority.

Natalie RAB Stemberidge
Notary Public



Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

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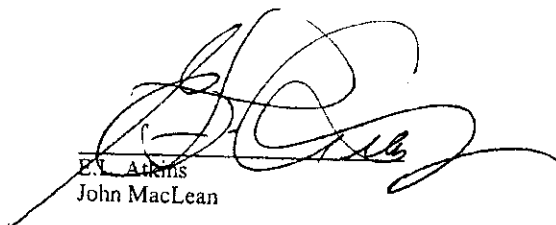
CERTIFICATE OF SERVICE

This is to certify that on this the 23 day of May, 2011, a true and correct copy of the above and foregoing pleading, **Plaintiff's Initial Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff**, has been served upon the following, as required by law:

Robert G. Richardson
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Jeffrey G. Hamilton
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Jackson Walker L.L.P.
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E.V. Atkins
John MacLean

Plaintiff's Written Response to Defendant, Jay Sandelin's First Set of Interrogatories to Plaintiff

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS
LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase Bank\Written
Discovery\Interrogatories\Responses to Ds Interrogatories\Rsp Interr Sandelin.wpd

Johnson District

ELECTRONIC FILING MANAGER

Court Information

Clerk: **Lain, Bonnie**

Attorney & Filer Information

Attorney Name: Hamilton, Jeffrey
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Filer Name: Hamilton, Jeffrey
Filer ID: jhamilton1
Filer Email: jhamilton@jw.com
Filer Type: 00793886
Filing Type and Fee Changes Allowed? Yes

Filing Information

Filing Status: Confirmation
Filer Submission Date/Time: Friday, June 24, 2011 2:25 PM
Trace Number: ED126J016373004
Court Assignment: 413th District Court
Hearing Date:
Court Type: District
Case/Cause Number: C200800560
Style/Case Name: Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, N.A., Glenn Milton, Jay Sandlin, Lucy Norris, Rn, and Nancy Argo, RN
Filing Type: MOTION FOR JUDGMENT
Sealed Document: No
Special Instructions:

Comments to the Filer:

Additional Comments:

Respondents

Name: JPMorgan Chase Bank, N.A.

Delivery Method:

Address:

Counseled by: Hamilton, Jeffrey

Filing Parties

Name	Roles
Hamilton, Jeffrey	Filer - Filing Attorney - Defendant Counsel

Respondent Attorneys

Name	Roles
Hamilton, Jeffrey	Filer - Filing Attorney - Defendant Counsel

Payment Information

Payment Method: Credit Card - MasterCard, Account # ***4679, Expiration Date - 02/29/2012**

Filing Fees

Johnson District eFiling Fee	\$2.00
MOTION FOR JUDGMENT	\$0.00
Filing Fee Total:	\$2.00
Grand Total:	\$2.00

Document Information

Number of Documents 8

Filing Document

File Name: JPMCFisherMotionforSummaryJudgmentJohnsonCountySui...

Document Description:

Attachments

File Name: Appendix Part 1.pdf

Document Description:

File Name: Appendix Part 2.pdf

Document Description:

File Name: Appendix Part 3.pdf

Document Description:

File Name: Appendix Part 4.pdf

Document Description:

File Name: Appendix Part 5.pdf

Document Description:

File Name: Appendix Part 6.pdf

Document Description:

File Name: Appendix Part 7.pdf

Document Description: