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	8 § 8	
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. ("<u>JPMC</u>") 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:

- Plaintiff 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).

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. <u>PROCEDURAL BACKGROUND</u>

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. 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."

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. ("<u>Fisher Settlement Motion</u>"). 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. 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." 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. 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. 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

More particularly, the Plaintiff argues that it was a beneficiary of the Trust or, in 29. 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.

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

- In Texas no particular words are required to create a trust, but a beneficiary must 30. 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.
- In McNally the land first dedicated for use as a cemetery was originally 31. 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 Heath & 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*.

- 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." 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. 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. 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..." The court went on to clarify that "the beneficiary must be identified with reasonable certainty." The court then held that, on the facts of this case, there was no express trust. The court then held that, on the facts of this case, there was no express trust.
- 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. 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. 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.

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." 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. 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. 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." 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," **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. Settlors 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. 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. 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." 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...." 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. 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.

Brown because adequate funds were required to be retained in the Trust account to satisfy the Estate's judgment when the Trust was revoked. Plaintiff is incorrect. Brown, as Trustee of the Hospital's bankruptcy case had full authority to terminate the Trust. 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. In addition, "[t]he discovery rule expressly mandates the party to exercise reasonable diligence to discover facts of negligence or omission." 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).

 $^{^{71}}$ Ld

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

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." A copy of the Trust Agreement was attached to the disclosures. 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).

[&]quot; 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 beaches 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

William L. Kirkman Susanna Johnson Bourland & Kirkman 201 Main Street Suite 1400

Fort Worth, TX 76102

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

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	§	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.	8	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, DO, 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

William L. Kirkman Susanna Johnson Bourland & Kirkman 201 Main Street, Suite 1400 Fort Worth, TX 76102 John MacLean MacLean & Boulware 11 Main Street Cleburne, TX 76033

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	§	
	Š	
v.	Š	413 th JUDICIAL DISTRICT COURT
	§	
J P MORGAN CHASE BANK, N.A.,	§	
GLENN MILTON, JAY SANDLIN, LUCY	Š	
NORRIS, RN, and NANCY ARGO, RN	Š	
	§	
Defendants.	Š	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.
 - D. May 13, 2005, correspondence from Shawn Brown to Robert Lansford.
 - E. Memorandum of Settlement.
- 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.
- 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.
- 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

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

Notary Public - State of Texas

MY COMMISSION EXPIRES:

8-12-13

TERRI K. SALTER
Notary Public, State of Texas
My Commission Expires
August 12, 2013

EXHIBIT A

FORT WORTH OSTEOPATHIC HOSPITAL, INC. D/8/A FORT WORTH OSTEOPATHIC MEDICAL CENTER SELP-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 AHERICAN BANK, of Fort Worth, Texas, a national banking corporation organized and existing under the laws of the United States ("Trustees").

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 Hedical Provider Reimbursement Nanual promulgated by the United States Department of Health and Suman 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 Rospital, 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 malpractics and general patient liability because of the non-availability or exhapitant

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 actuarily 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 Madicare reimbursement, and designed so as to exempt such trust from tax pursuant to the applicable __ provisions of the Internal Revenue Code.

NOW, THEREFORE, the Bospital 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 phrames 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 Rospital.
- 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 Rospital to the Trustee for the fund.
- 1.05 Fund shall mean the trust fund created in accordance with with the Plan.
- <u>1.06 Rospital</u> -shall wean Port Worth Osteopathic Rospital, Inc. d/b/a Fort Worth Osteopathic Medical Center, Fort Worth, Tarrant County, Taxas.
- 1.07 Medicare Manual shall mean the Medicare Provider
 Reimbursement Manual promulgated by the Social Security Administration

4 4

of the Department of Bealth 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.

 $\frac{1.10~{
m Trust}}{
m Trust}$ — shall mean this trust agreement between the Hospital and the Trustee and all amendments thereto.

1.12 Trustee - shell mean Texas American Bank Fort Morth.

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 raceipt 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 sarnings therefrom, shall constitute the trust property. Said sum has been determined by Harsh a McLellan of Chicago, Illinois to be reasonably required as a actuarily 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

2.01 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 cerd 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 administerial or discretionary, as the Committee may deem expedient and appropriate. The Committee shall act by majority vote. Its mambers shall serve without compensation.
- 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

-4

4. T

1 1 1

.

by the Trustee shell 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.

- 3.84 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 Pian and shall be preserved in the custody of such secretary.
- 3.05 Indemnification of Administrative Committee. The Bospital 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 accusary 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

4 343

:5

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 Realth, 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 S - TRUST FUND AND TRUSTEE

5.61 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 hersinafter required by the laws of the State of Texas, except that any loans to or investments and chligations, 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

12

4

ني

. R

**

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 Mospital 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 Trustse 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 incomm or corpus of the trust property to such persons and in such manner and in such amounts as the Committee or an agent thereof is 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 maipractice 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 helf 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:

_7~

- Expenses for administering the claims management program;
- (2) Expenses of establishing this Trust and the Trust Fund;
 - (3) Legal expenses:

•

- [4] Actuariel 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 Hospical, if risk management is performed by the frustee; 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) Fayment 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 Bospital'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 Bospital shall from time to time designate, including such persons as may be required by the Nedicare regulations, shall be sllowed 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 \$ 12,3

7 176

7E

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 ancunt 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

:

* **

k 23 :

service to the Bospital 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 Lisbility. Neither any sember of the Committee, the Board, the Bospital, 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

- 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 grented 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 Trustes, and stock in the Trustes, 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

1.2里5

er 514 3

6 11

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, banktuptcy or other procedure or proceedings affecting any property of the trust.
- (6) To serve without making and filing inventory and eppraisement, without filing any annual or other return to any court and without giving bond; but the Trustee shall furnish to the Rospital such financial statements as are otherwise required by this agreement.
- ff) 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 Bospital 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,

- T

表版。

152

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 Hedicare 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) Opon 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 - AISCELLANEOUS

- 8.01 Beadings. The headings and sub-headings in this agreement have been inserted for conveniencs 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 femine 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

역 · 역활

À 🍁 .

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, IRC. D/B/A PORT WORTH OSTEOPATHIC HEDICAL CENTER

By: My Fandelin Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAY BANK

Robert M. Lenstord

Benior Vice President and Trust Officer

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

"净.

4

K_TIBIRKS

Contemporansously 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 Hillian Dollars (\$1,000,000.00).

APP. 19

+n**≠** 1974,

4

.

EXHIBIT B

CAUSE NO. <u>C200/00/73</u>

8

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. IN THE DISTRICT COURT

JOHNSON COUNTY, TEXAS

MUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Š

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.

Plaintiff's Original Petition
Wilded Majoractics/Fisher, JohnnylPLEADINGS/ORIGINAL PET.wpd

Page 1

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., in 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. <u>VENUE</u>

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 I 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 filling 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;
- Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
- Failing to prescribe a proper course of treatment;
- Failing to properly diagnose Johnny Fisher's condition;
- 5. Failing to refer Johnny Fisher to a specialist;
- Failing to timely treat Johnny Fisher;
- 7. Failing to order diagnostic testing;
- Failing to interpret diagnostic testing;
- Failing to regard diagnostic testing;
- Performing an unnecessary surgery;
- Negligently performing surgery;
- 12. Failing to provide Johnny Fisher adequate facilities;
- Failing to provide adequate follow-up care;
- 14. Failing to supervise employees and agents; and
- Failing to act as a reasonable hospital.

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

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

- Negligent hiring;
- Negligent supervision;
- 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;
- Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
- Failing to prescribe a proper course of treatment;
- 4. Failing to properly diagnose Johnny Fisher's condition;
- Failing to refer Johnny Fisher to a specialist;
- 6. Failing to timely treat Johnny Fisher;
- Failing to order diagnostic testing;
- Failing to interpret diagnostic testing;
- Failing to regard diagnostic testing;
- Performing an unnecessary surgery;
- Negligently performing surgery;

Plaintiff's Original Petition	_
W Wed MalpracecelFisher, JohnnyVPLEADINGSVORIGINAL PET w	

- Failing to provide Johnny Fisher adequate facilities;
- 13. Failing to provide adequate follow-up care; and
- 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;
- Failing to provide Johnny Fisher medical care and treatment that met the reasonable standard of medical care;
- Failing to prescribe a proper course of treatment;
- Failing to properly diagnose Johnny Fisher's condition;
- Failing to refer Johnny Fisher to a specialist;
- 6. Failing to timely treat Johnny Fisher;
- Failing to order diagnostic testing;
- 8. Failing to interpret diagnostic testing;
- Failing to regard diagnostic testing;
- 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

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:

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

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

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:

- Judgment jointly and severally against Defendants for damages in an amount in excess of the minimum jurisdictional limits of the Court;
- 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
- 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: 817-335-7

Phone : 817-335-7140 Metro : 817-654-4395

Fax 817-921-9740

EXHIBIT C

Cause No. C200100173

MILDRED FISHER	•	IN THE DISTRICT COURT
	•	IN THE BISTRICT COOK!
Vs	•	JOHNSON COUNTY, TEXAS
**	:	
JOHN B PAYNE, D.O., OSTEOPATHIC	:	
MEDICAL CENTER OF TEXAS	•	
N P CASH, R.N., SUE SAMUEL, R.N.,	•	
Y PATE, CRT, and SUZANNE SHENK, DO	•	æ _₄ *
Defendants	•	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/w/a Johanne Fisher), JACKIE FISHER, Individually, JOHNNY FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make that claim and file that PLEA AND PETITION IN INTERVENTION on behalf of the ESTATE OF JOHNNY FISHER, DEC'D, and on behalf of the named undividuals, 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 thus claim, show unto that Honorable Court as follows:

NATURE OF CLAIM

I This is a claim brought by the Administrative of the Estate of the Decedent for damages for the recovery of expenses incurred by the Estate, for loss earnings of the Decedent, for Decedent's pain and sufforing 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 4590 (Vernoa), and other statutes and at common

Plantoffs" Plan and Pattion in Intervention Colom Plantage Original Pastion (eds.)



Euless, Terrant County, Texas 76040.

- b FORT WORTH OSTEOPATHIC HOSPITAL, INC. d/h/a OSTEOPATHIC MEDICAL CENTER OFTEXAS, ("OMCT"), a hospital and corporation authorized to transact business in Texas OMCT may be served with citation by serving its registered agent, Yolanda Cervarics, who is located at 1000 Montgomery Street, Port Worth, Tartant County, Texas 76107.
- e SUZANNE SHENK., D.O., who may be served with citation at 3500 Carry Bowne Blvd., Port Worth, Terrant County, Texas 76107;
- N P CASH, RN (Spi?), who may be served with culation at OMCT, 1000 Montgomery Street, Fort Worth, Tareast County, Taxes 76107,
- SUE SAMUHL, R. N., «IV» Sussin 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, Turrent County, Texas 76107.

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

FACTUAL SUMMARY

Johnny Fisher (DOB November 27, 1957, DOD, October 1, 1999, SS# 466-23-4693, weight approximately 204 lbs. height approximately 3'9"), was first seen and evaluated by JOHN B PAYNE, D O, a neurosurgeon, on or about March 26, 1999 with the compliant of moderate neck pein and arm pain. He reported an on-libe-job injury sometime in January, 1999. DR. PAYNE recommended steroid injection, cervical collar and non-descript physical thorapy. Mr. Fisher returned to DR. FAYNE in May, 1999 relating no improvement. EMG/NCV was interpreted as left. C5 radiculopathy. Past history revealed prior cervical discectiony of C1-6 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 apaces are said to be well preserved without other abnormality. The patient's standard cervical

law The claims broughs berein michide all wrongful death claims and survival claims pursuant to TEX CIV PRAC & REM CODE ANN sec 71 002, at seq (Vernon), and TEX CIV PRAC & REM CODE ANN sec 71 021, at seq (Vernon)

JURISDICTION AND VENUE

This is a claim by end 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 Administrative of the Estate to whom Letters of Administration have been issued. One of the Defendants, Sue Samuel, RN, africa Sozial Hadley Sumuel is a resident of Johnson County, Texas, residing at 2501 Nicole Dr., Burteson, Johnson County, Texas 76028. This Court, therefore, has periodiction and venue of this case pursuant of TEX, CIV PRAC & REM CODE, see 15 001 et say, methoding see 15.002 and 15 005 (Vernon).

PARTIES

- 3 The Claimants and Plaintiffs in this lawant are
 - JACKIB FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D.
 - 5 IACKIE FISHER, individually and as beer and Distributes of the ESTATE OF JOHNNY FISHER, DEC'D.
 - IOHNNY FISHER, individually and as hour and Distributes of the ESTATE OF JOHNNY FISHER, DEC"D.
 - HOUSTON FISHER, individually and as beer and Distributes of the ESTATE OF HONNY FISHER, DECTD.

Each and all of the Plantiffs named heroin, as well as Mildred Fisher, are residents of fobuson County, Texas

- 4 The Defendants in this claim are
 - a FOHN B PAYNE, DO, who may be served with citation at 313 Westpark Way,

Pleamin' Pies and Poblish in Jaserventon Falm/Pleasing/Original Particle jude

2

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 impressions section which indicates bilisteral uncovertabral joint bony hypertrophy at C3-4 and C4-5 levels. However, there was no reported significant assiral foraminal standars ideatified. These were interpreted by DR PAYNE as revealing significant nerve root compression at C5. DR PAYNE recommended surgary with plating. A second opinion recommending against surgary at the time was obtained. DR PAYNE then obtained the opinion of a third neurosergeon, supporting DR PAYNE'S decision to operate. Although later records indicate that in MRI scan had been curried out on this patient which showed an abnormality at C4-5, bRI 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 deleated and a reprinted report is dated October 7, 1999 one week after Mr. Fistier's death

6 Johnny Fisher was admitted to OMCT, Port Worth, Texas, on September 22, 1999 for a cervical C4-5 discoctomy and interbody fusion with placing. 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 compliant of moderate nock pain, arm pain and restrictions in the amount of weight be could lift. Past Medical History included an mutry to the stomach due to a shotgain blast and prior cervical fusion, above-referenced. The nursing admission record indicates only that he was using oye 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, ficent disease, veneral disease, syncope, dizziness, or stroker.

- Mr. Fisher was admitted to OPS #6 at 1112 hours on September 22, 1999 and taken to the operative state at 1142 for an America Corvical Discoclosity and Fusion, Sone Bank Bone and Planng The procedure began at 1415 and ended at 1652. A Philadelphia cuitar was placed around his neck after the surgical procedure. DR. PAYNE describes his procedure and the perioperative report reflects the potient's condition during surgery
- The patient was sent from surgery to the Post Apesthesia Care Unit (PACU) at 1702 that transferred to the pediatric area for his recovery time! PACU autsing records indicate that Mr Fisher awake from annethense complaining of left arm numbers and neck pain approximately fortyfive (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%) hours. Oxygen was administered. During this time, he was given Demorol 12 Sing IVP at 1733 hours for shivering and again at 1750 hours for complaint of soreness and numbers. He was given Phenorgan 12mg IVP at 1755 hours for no documented reason. It is later documented that he was alert and oriented X 3, tolerating are chips but that 2 times complained of aumboess to his left upper extremities, without change from before surgery. There is documentation of the heart monitor being to NSR without eccopy 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 30'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 zigns 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 (little (1750)

Plantel'S' Plea and Peiston to Ign

pain and was again medicated with Stadol ling SIVP per nurses notes as well as Valion ling po (ordered TV in physician orders and per med sheet) to support Stadel, per documentation is the nurses notes. At 0745 hours, Mr. Fisher was medicated with Percocci (2) po per med sheet and his acheduled pain med Oxycontin 40mg po was given at 0600, fifteen minutes later. At 1200 hours Percocet tabs 2 were crushed, contra package unsert 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 bethroom at which time he, again, complained of distances. He was then assisted back to bed. There is no documented assessment regarding his complaint of dizziness or of continued state of confission and disponentation. There is no essenament of the repeated compliants of left ann numbers. A complete neurological assessment was not performed. And, despite his condition, he was not transferred to ICU

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 completed of general stiffness and weakness and continuing pain. Again, there is no assessment regarding his complaints. At 1945 hours, he was given Percocct tabs 2 po, again crushed, because of difficulty swallowing per documentation in surses notes only. One (1) hour and forty-five (45) minutes later, Oxycostin 40 mg was given at 2130 hours as his scheduled pain modication. At 2200 hours, it is documented that he was skeeping 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 alcoping, 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

Mr. Fisher was transferred from PACU to Podistries at 1835 hours on September 22, 1999, arriving on the pediatrics floor at 1830 hours from PACU, par records. There is no record that he was maintained on oxygen while in pediatrics and $O_{\rm s}$ sat even ceased being checked, despris the fact that the patient's O_2 set continued to decrease. Vital signs, recorded twice in pediatrics on the 22^{-6} reflect: T 98 6, F 86, R 20, BP 147/85 and T 98 4, F 80, R 20, BP 138/82 At 2150 hours, Mr. Fisher complained of pain and was mechcated with Stadol, Img, STVP. It is documented that he was offered Percocat tabs 2 but refused because his throat was into 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 complemed of pain and was medicated with Stadel Irag SIVP which was documented in the nurses notes, but was not documented on the med sheet. At 0345 hours, at is ented on med shout he was medicated with Percocut tebs 2 po and Stadol img SIVP, but and in Nurses Notes that they were given at 0400 hours. At 0600 hours, Mr. Fisher explained of muscle spaires and was medicated with Plexoni 10 mg po which is documented both on the med short and in the narses 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 compliant of pain The medication is not identified, however, Oxycontin 40mg po was ordered as a scheduled med at 0800 hours and was documented as being given at 0800 hours than marked out. Oxyconius is also doesmented 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 misses notes, was again given Demerol 25mg, which was not on the med sheet and was not ordered. At 1410 hours, it is and on the mod sheet that Stadol Img IV was given. At 2000 hours, the schoduled peak medication, Oxyconim 40mg was given; however, Stadol Img IV was also given, per med sheet documentation and nurses notes. On September 24, 1999 at 0300, Mr. Fisher again complained of

nells' Plea and Palphon is inva

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 dysphagus. 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 unitesponence by the nursing staff. There is no documentation in the nurses notes, only in DR. PAYNE's durcharge summary, that he was found "on the floor". Mr Fisher was found by the physician to be of poor coloration, had morpalpable pulses, and was investograve to all stimula-He was placed on a crash cart mountor and a sinus rhythm with premature serial and proveniricular contractions was noted. He was given I amp of Narcan to rule out anxigence (narcotic) overflose 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 65. In addition, arternal 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 \$ 00 a.m. disclosed that the patient had a potassium of 7.4 and a creatining of 4.7, however, Mr. Fisher was not transferred to the Intensive Care Unit tal on hour later at approximately 9 00 a.m. The patient was consulted by manacous specialities and intravenous fluids and metabolic corrections were subsequantly 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 madequate fluid maintenance, as well as having narrotte induced somnolence and hypotension

- Numerous complications followed. Mr Fisher was well documented to go into fall blown amits renal fulture due to acute tubular nacrosus (shock lodney) essociated with severe inchesses hepatrits and belateral pulmonary chast x-ray findings consustest with acute respiratory distress syndrome (ARDS) Nephrology consult was not obtained until September 25, 1999, (postoperative day three [3]) Dialysis was delayed, per records initial evaluation suggested the possibility of a palmonary embokum 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 paintonary vasculature. The patient's neurological status attarkedly deterrorated over the next several hours. Documentation indicated that the petient was dizzy, confused and discrement since shortly after surgery as per the family and documented by nursing notes and an internal medicine consult on September 25, 1999
- Despite Mr. Fisher's claucal picture following surgery suggestive of vascular manificancy and vertebrobastic 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 thelamus finitial CT scanning showed no notable mass effect, however, over the ansuring several days, mass effect rapidly progressed in the posterior fosse. Per records, no low dosage heparin was ordered or administered at any time following the complaints suggestive of aftertal occlusion and ischemia. Mr Pisher developed a right to left shift of the fourth ventricle with compromise of the brain stem and obstructive hydrocophalus. Ventricular carbeters were placed to alleviate his come, without success. He developed progressively increased brain stem signs and brain death. His care was munated by fulfilling all the criteria of bruin death and he was taken off the respirator. Death is pronounced at 2045 on September 30, 1999, per records

uffs' Plea and Pete

the source of his pain asse sed or diagnosed. No neurological assessment was made post-surgery until Mr. Finher was evaluated by Dr. Meintonh on September 26, 1999, despite clear neurological deficits. Rather, he was given excessive narcolics and sedatives, resulting in progressive medequate fluid intake, redation, hypostasion, 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 change this period did any nurse do an appropriate assessment of the patient or quastron why he was having so much unusual pain or altered behavior. The nurses only continued administering pais 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 cerebeilum and basel gangine on the right, which took place intraoperatively ¹ Early and appropriate assessment of the patient's neurological status

STADOL 1MG IV	0015	PER NURSES NOTES
PERCOCET (2) PO	8345	PER MED SHEET & NN
STADOL ING IV	8345	CEN MED CHEET S VAN
FLEXORIL IOMS PO	DBOR	PER MED SHEET & NH
7 MED	0600	PER MED SHEET & NA
DXYCONTIN 40MG PO	0800	PER NN - PT MEDICATED
DXYCONTIN 40MG PO	1000	PER HED SHEET-X-OUT
DEMEROL 294G ?		PER MED SHEET
STADOL TIME IV	1400	PER NURSES NOTES
	1410	PER MED SHEET
STADOL IMG N	2000	PER MED SHEET & NA
OXYCONTIN 48MG PO	2900	PER MED SMEET
	BEPTEMBER 34,	1906
VALIUM 5MG IV	0300	PER MED SHEET & NN
STADOL 1 MG IV	0300	-EN MED SHEET & MM
STADOL IMG IV	0430	PER MURSES MOTES
PSROOCET (2) PQ	0745	PER MED SHEET
DXYCONTIN 46 MG PO	0800	PER MED SHEET
PERCOCET (2) PO (CRUSHED)	1200	PER MED SHEET
PERCOCET (2) PO (CRUSHED)	1945	PER NURSES NOTES
OXYODN'IN 40MG PO		PER NURSES NOTES
COLUMN TO THE PLANT OF THE PARTY OF THE PART	2130	PER MED SHEET

The pasent was mentiosing pre-milant symptoms during the first several postoparative days with complaints, disciness waskinses confusion, disciness waskinses confusion, discinent, assembly humbress opephage, hypesthesis is was as

uctaffa' Pies and Pathino in Intervi hatPlandselOngiaid Petrios jode

ed breast cancer and related mastectomy and chemotherapy, two (2) step-daughters, (1) stepson, two (2) natural-born sons, JOHNNY FISHER and HOUSTON FISHER, and has elderly mother, Mildred Fisher. At the time of his death, Mr. Fisher was gamfully carpleyed by Tranty Materials. Inc. and carning between \$40,000 00 and \$50,000 00, assaully. He had systematically received currectors raises during has many years of employment with Transty Materials, Inc. and was an employee in good standing at the time of his untimely death CLAIMS OF CONDUCT BELOW

Mr. Pisher is servived by im wife, JACKIH FISHER, age 54, who is recovering from

APPLICABLE STANDARDS OF CARE

15 First, there is little documentation that the patient needed surgery at the C4-3 level as indicated by the lack of significant findings reported on imaging studies. There is a consult report recommending agents 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 compliants of the patient following this type surgery. He received considerable sedance and narrotic medication. A summary of the opinios administered, per the records, reveals aignificant designs of narcotics contrary to DR. PAYNE's erronsous clause that the patient "did not appear over medicased" (which was dictated after-the-fact). The peticest was nover appropriately assessed after the surgery nor was

PAIN A	EDICATIONS GIVEN \$-23-53 THRU \$-24	*

DRUG HAME	TIME	DOCUMENTATION
DEMEROL 12,5MG N	6735	PER PACU NOTES
DEMEROL 12,5MG IV	1750	PER PACU NOTES
PHENERGAN 12MG IV	1765	PER PACU NOTES
BTADOL 1MG IV	2180	PER MED SHEET

SEPTEMBER 23, 1644

Placettis' Ples and Pen

10

would have lead to early recognition, herely and appropriate diagnosite testing and treatment of the source of the problem - vertebral artery occlusion

There were also serious errors caused by madequately following this patient. The record indicates that although the pences was to be discharged on September 25, 1999, DR. PAYIVE was no longer available and actually was either unavailable or out of sown. Despite a significant chinical picture of unusual post-surgical complications suggestive of vertebral artery unery, appropriate ._ assessment and evaluation of the petient 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 induces regery 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 abandon ment and a lack of adequate continuity of care during his postoperative state and during his detailorating condition which followed. Appropriate neurological assessment postoperatively and proper documentation of the patient's neurological deficits should have been sensity 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

confirming, unrecolved neck pels. The presence of marked change on the CT scen of the cancellation per September 28, 1908 is endeavos that the stroke week in histopression by at least several days for it to be always week of the CT scen. An acute infect social not be a worker by standard CT scanning if he shows had one a few hours or up to 1-2 days before his chircle consisten warmined counting. The is further evidence to the the into poster had a stroke interaperseively and start his nacrological deserterisms was most probably of the interapersent of the stroke and that would be a start in nacrological deserterisms was most probably progression of the stroke and that would be a start in nacrological deserterisms was most probably progression of the stroke and that would be a start in marked to be more scene to give the days and control of the stroke and the stroke in a stroke in the stroke of the control of the days and the stroke of the days and the stroke of the days and the stroke of the stroke of the stroke of the stroke of the days and the stroke of the stroke of the days and the stroke of the days and the stroke of the stroke of the days and the stroke of the days and the stroke of the stroke of the days and the days and the stroke of the days and day or to the co

- 18. An autopsy was performed on Mr Fisher's body on October 1-2, 1999 Medial arternal substituted dissections of the left vertebral artery is found in the correctl region both above and below the disc removal area. There is no perior history of vertebral ertery discusse or trauma. The patient of the vertebral artery signary as observed at suppry reveals that it occurred several days prior to death, consistent with the time of the discactomy; and, the condution of the liver at the time of suppry it further proof of hypotenision and shock, following carebellar inflaror several days prior to death. The patient's right cerebellar and right bessil gaugiton inflarction and the vertebral ertery lesson were, clearly, a result of surgical injury of the vertebral artery during the patient's operation is which cervical discactomy with plating and operative intervention was taking place. This is a protected artery. The probability of this event otherwise occurring in this young, healthy seen with no history of vasculer discase, or other notable risk factors is virtually non-existent.
- 19. Further, an reasonable medical probability, timely diagnostic testing, including arteriogram and/or angrography, 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 hydrocephalias following his cerebellar stroke and shaft to the fourth ventracle due to increasing mass effect of the cerebellium on the brain stem and fourth ventracle due to increasing mass effect of the cerebellium on the brain stem and fourth ventracle was not complete and only belied one part of the petient's problem. The parient was clearly dying of states effect from the cerebellar stroke and a true left saving approach, at that time, would have been consideration of partial resection of the right cerebellar hemisphers to provide decompression of the brainstem as a heroic life saving procedure. Thus does not appear to have aver 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

Pleasant Flow and Petition at Intervenier Pater Pleasing Community Parties

Ľ

evaluate, diagnose and trest venebral artery agury and occlusion, and inflicting nurcotic

- 23 The specific acts and/or omissions committed by the named physician(s), to will FOHN B PAYNE, D.O., and SUZANNE SHENK, D.O., their agents, servents, employees and representatives, which conduct was unreasonable and fell below applicable Standards of Care and constitutes negligence include the following
 - fatiure to order appropriate non-stargical care for the paramit's problems prior to the elective surgery;
 - b advising that the cervical disc surgery at C4-5 was accessary and appropriate at the time, when it was not, considering the diagnostic tests and overall clumes! picture of the patient on September 21 - 22, 1999 pinot to the surgery;
 - performing unnacessary convical 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, sature and condition of the vertebrobustiler arterizes and veins at or near the operative site, by tests such as MRI, MRA, Dopples seedgraphy, or angiography;
 - 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 surgoon performing the cervical date surgery with plating in a carriers manner, by damaging and traumatizing the left vertebral artery during the operance procedure.
 - g failure to provide timely and proper orders for nursing personnal who would be assigned to provide nursing core to Johnny Fisher following the cervical disc surgery,
 - failure to order proper facilities for the care of this patient following the cervical disc surgery with placing, including requesting, then demanding, if accessary, that this patient not be placed in a pediatrics ward for post-surgical recovery,
 - 1 failure to order, require and demand that sufficiently trained and experienced personnel be saughed for the care of this patient following the cervical disc sangery with plating.

remonable, careful and prodont, professional registered nurses and other hospital personnel under similar circumstances are trained and expected to give. Johanny Fisher was sent to a podiatoric ward following this dangerous cervical discontinent with plating and placed in the hands of insufficiently trained personnel. Assessments are incomplete and, in some cases, non-instant. Documentation on the medication about are maccurate, all pain medications given are not documented on the medication sheets. It is difficult, if not impossible, for a physician or neither training Mr. Fisher so accurately know what medications were given and in what quantities to Mr. Fisher without reviewing all of the nursuing notes, medication sheets and other records in his chart, because of incomplete charing.

- 21 The correleilar infarct was avoidable. Mr Fisher suffered a careballist infarct sometime in the early morning hours of September 25, 1999, as a result of continuing viscular insufficiency caused by occlusion, anessysm, pseudo ancuryen, and submitmed dissection of the verticinal artesy. The signs and symptoms were clear and the effects of occlusion were alow in developing, sillowing opportunity to ben! The occlusion and equiling insufficiency were diagnosable and treatable with low IV designs of hepsim 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 constanted 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 Pisher'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, arguebly, indicated at the time, sa performing the surgery in a manner that was not reasonable and exceful, and in the failure so torsely and properly assess,

Plane(%' Pics and Pestion in Satervanner February Ongold Person July

ţ.

- failure to failow and monitor the panent following the surgery in a reasonable and careful manner;
- k. failure to order appropriate dragnostic tests following the surgery performed on September 22, 1999 to determine the nature and condition of the versiterclassitar arteries and veine at or near the operative site, by tests such as MRI, MRA, Doppler sonography, or anguography,
- fullure to order, perform or authorize timely and reasonable pain assessment or pain management.
- failure to order, perform or authorize timely and reasonable nourological assessment and management,
- failure to appropriately assess, evaluate, diagnose, masage and treat neurological complaints,
- o ordering, authorizing, directing and allowing excessive narcotic pain medications to be administered, overdosing this patient on narcoticis;
- p failure to provide tiesely and reasonable kidney dialysis to the patient,
- r intent to prevent tamely kidney dralysis of this patient; and,
- a untent to conceal the cause of the patient's corebellar inflict,

 NEGLIGENCE HOSPITAL AND HOSPITAL PRESONNEL
- The specific acts and/or omissions committed by OMCT and its admissionative, neursing and non-mursing personnal mechanical Defendants, OMCT and individual OMCT personnal, N.P. Cash, R.N., V. Pate, CRT, and Sue Semuel, R.N., 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 construses negligence include the following
 - assisting the surgeon performing the correct disc surgery with plating in a careless manner, by dismaging and traumstizing the left vertebral aftery during the operative procedure,

- b fasture to provide timely and proper administrative orders, directives, policies, percedures and guidelines for hospital auxising personnel who would be satigated to provide auxising care to Johany Fisher following the satigary;
- fluiture to provide, order and/or authorize appropriate post-surgical recovery facilities for this patient,
- d. faring to follow and monitor the patient, including timely and reasonable mixing collaboration and misrvention,
- authorizing, silowing 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 basis before and after the corvical disc surgery with plating.
- g ordering, directing, allowing and sequesting to the transfer of this patient to a Pediatrics ward following cervical disc surgery with plating, where he was placed under the care of surrang personnel not adequately and properly trained for treating post-surgery patients who may develop neurological or post-surgical complications.
- providing cursing cars to the patient by hospital cursing personnel not sufficiently trained or experienced.
- failure to provide appropriately trained and experienced hospital personnel to care for this petient following the carvical due surgery with plating;
- j having and staintsining growly deficient hospital policy and procedure, standards, protocol and guidelines regarding post-nearcourgery recovery care of this patient, control of narcoke administration, pain assassment, neurology assessment, timely nursing collaboration and intervention and monitoring of patient care with reheving, on-call physicians, and others,
- k. failure to appropriately assess and manage neurological complaints,
- i fiziare to appropriately assess and manage complaints of pain,
- failure to maintain the patient on oxygen as appropriate,
- n improper documentation of narrobes and other pain medications administered,
- facture to previde timely and reasonable hidney dealysis to the patient,
- p intent to prevent timely kidney dialysis, and,

Plantoffs' Pies and Petition in Intervention Fabrilliening/Onergy Period reac

17

PREMISES CONSIDERED, Plaintiffs and Claimants pray that citation be usued 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 ATRINS AND ASSOCIATES 323 South Mesquite Street Arbington, Texas 76010 (817) 261-346 (Mestro) (817) 261-347 (Fax)

State Bur No 01409000

Phillip J Mitcheil Estate Attorney State Bar No 00797941 q intent to conceal the cause of the patient's corebellar infanct,

PROXIMATE CAUSE

25 As a direct and foresseable result of the angligent condust of the mened persons and enthals, hereunabove enumerated, Johanny Fisher anguished and suffered a scodless, senseless, avoidable and preventable injury to the vertebral artery which was left entreated, loading to combellar infarct, multi-system failure and death.

GROSS NEGLECT

26 The conduct as berein detailed of the named persons and entiries coordinates more than ordinary negligence. Their acts and othersions constitute makes and gross neglect as defined by law for which pursuive damages are and should be assessed.

DAMAGER

27 The elements of damages are those allowed by standary and common law to the ESTATE OF JOHNNY FISHER, his hears and the standary 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 ments.

DISCOVERY CONTROL PLAN

29 Plaintiffs and Clauments request an Order from the Court placing this case in Level 3, pursuant to TEX. R CIV P 190 4

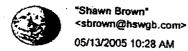
JURY TRIAL

30 Planniffs and Claumants request a jury mail and horswith pay jury fee with the filing of these petraces

Pleastills' Plan and Petition in Intervention Pulse Vincing Original Position and

18

EXHIBIT D



To: <bob.lansford@jpmorgan.com>

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

n n

bnc certificate of mailing meeting of creditors.pdf

EXHIBIT E

MEMORANDUM OF SETTLEMENT

C-200/00/73 Re:

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. McMullon on the date herein below indicated. In accordance with their understanding, the parties agree:

	1. The sum of \$180,000 (the "Settlement Payments") 5 hall be poid on behalf of Defendants Octopathon Marine of 5 hall be
	Poid on behalf of Defendants Osteopathar Medical Centre of Texas,
_	Sharm Orn RN, Karen Cox, RN, Suc Samuel RN, and Token
2	Laurence Collective not I EN Suc Samuel, RN and
•	have been asserted by Direct have been asserted and
3.	
4	
Ŧ	The state of the s
a Par	
EMWS	
7	
haveners 6.	A LI THE THE PARTY OF THE PARTY
EX.	that were assured on that wild define and canacid at the
- october	and the act of the could be asserted to
€ \\ 7.	Plaintiffel el 11
a constr	model to the state of the state
7 ===	asserted by Dir. (11)
8.	The same of a saint percenture
	the weeks from the that he had for
٥	different Carrier L
9.	the bankruptu (met
	Revolument 2 Revolument of American
	The perfect that he wild
	7
mainta	in confid wither agree that, except as they may have
in con	The parties further agree that, except as they may hereafter agree in writing, to ection with the dispute resolution process, as provided by the 32.
Dispute	Passitution P dispute resolution process, as provided by all 200
Vernon	Resolution Procedures Act. (Tex. Civ. Prac. & Rem. Code Ann. Sections 154.073
-77 1	stry to this dispute. This settlement includes list the day of called as witness
	not to pursue any pending mations afreement
	are early

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 Touch
2 .	clams accepted in the Fisher of all
3.	an the Collowing terms: Final Judgment will be entered as a put
4	The sum of \$975,000.00
5	General visitated claim in the
6.	Stayed from enforcement other than through the general wares
7.	Court the back reptage
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 subposensed or called as witness by any party to this dispute.

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 day of	April, 2007 at Fullery Texas
Parties and/or Representative	Counsel
Parties and of Representative	Counsel
Parking Fisher Parkies and/or Representative	Counsel
Shan & Brown, Truster Parties and/or Representative	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 A. Warth, Texas

Parties and/or Representative

Destroy and AM, Sham OAR, RN,

Kean (ox, RN, Schu Lawana

The Parties and/or Representative

Action of The State of T

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	8 8	
Defendants.	§ §	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.	\$ \$ \$	CASE NO. 05-41513-DML-7
dba OSTEOPATHIC MEDICAL CENTER OF TEXAS	§ §	CHAPTER 7
DEBTOR	§ §	

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).
- 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 COURTAPPROVED 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	§ §	CASE NO. 05-41513-DML-7
CENTER OF TEXAS	9 §	CHAPTER 7
DEBTOR	§ §	

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

ORDER APPROVING MOTION TO APPROVE AND IMPLEMENT SETTLEMENT AGREEMENT - Page 1 of 2

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

JOHNSON COUNTY, TO ASSIST TO LEGAN

JOHNSON COUNTY, TO ASSIST TO LEGAN

413th JUDICIAL DISTRICT

A 13th JUDICIAL DISTRICT

Cause No. C200100173

MILDRED FISHER

VS.

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

AGREED JUDGMENT

On the Z 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 Intervenors, 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

F: VATKINS LIBRARY/CLIENT FILES/Mod-Mal/Fisher/PLEADING/Judgm

PAGE 03

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

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 Orr, R.N., and Karen Cox, R.N.,

JUDGMENT

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\PLEADING\Uudgment.wpd

8172613347

E L ATKINS LAW

PAGE 84

04/12/2007 14:38

7136501720

CRUSE SCOTT HENDERSO

PAGE 03/84

04/12/2027 10:48

8172613347

E L ATKINS LAW

PAGE 65

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.

APPROYED

JUDGE PRESIDING

B.L. Atlains

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 Johnay Fisher, Deceased,

Houston Fisher and Johnny Fisher

Wayne Classater

State Bar No.04328500

Crust, Scott, Henderson & Allen, L.L.P.

Attomeys at Law

2777 Allen Parkway, 7º Floor

Houston, Texas 77019-2133

Attorney for Defendants, John Laurence, Suo Samuel, R.N.,

Sharon Orr, R.N., and Karen Cox, R.N.,

JUDGMENT ..

F: LATKINS LIBRARY CLIENT FILES Med-Man Figher PLEADING Under cott with

Linguist of the second second

OHNSON CO

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,	ш	
	#	
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

F'ATKINS LIBRARY/CLIENT FILES/Med-Mai/OMCT Bankruptcy/UP Morgan/Chase Adversary 07-4016/Pleadings/Motion to Intervene wpd

Page 1

OFIGINAL

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

F \ATKINS LIBRARY\CLIENT FILES\Mod-MaNOMCT Bankruptcy\IP MorganChase Adversary 07-4016\Pleadings\Motion to Intervene wpd

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

F \ATKINS LIBRARY\CLIENT FILES\Med-MaNOMCT Bankruptcy\IP MorganChase Adversary 07-4016\Pleadings\Motion to intervene wpd

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

F \ATKINS LIBRARY\CLIENT FILES\Med-Ma\OMCT Bankruptcy\JP MorganChase Adversary 07-4016\Pleadings\Motion to Intervene.wpd

11 Main Street

Cleburno, Texas 76033

(817) \$\text{\$\text{\$\text{\$\text{\$\text{\$}}\text{\$\text{\$}}\text{\$\text{\$}\text{\$\text{\$}}\text{\$\text{\$}\text{\$\text{\$}}\text{\$\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$}\text{\$\text{\$}

(817)645-37/88 M

Bv:

E. L. Atkins

TSB #01409000

John MacLean

TXB #12764000

Motion to Intervene

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\text{NOMCT Bankruptcy\IP MorganChase Adversary 07-4016\text{Pleadings\Motion to Intervene.wpd}

CERTIFICATE OF SERVICE

This is to certify that on this the 25 day 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 000 Z 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

F VATKINS LIBRARY/CLIENT FILES/Med-Man/OMCT Bankruptcy/JP Morgan/Chase Adversary 07-4016/Pleadings/Motion to Intervene.wpd

Exhibits

Motion to Intervene

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\text{NOMCT Bankruptcy\IP MorganChase Adversary 07-40 i 6\text{Pleadings\Motion to Intervene wpd}

Cause No. C200100173

MILDRED FISHER

VS

JOHNSON COUNTY, TEXAS

PLEA AND PETITION IN INTERVENTION

TO THIS HONORABLE COURT

COMES NOW JACKIE FISHER, ADMINISTRATRIX of the ESTATE OF DORDRY FISHER, DEC'D (a/a/a Johanne Fisher), JACKIE FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make the cleam and file that FLEA 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, ("OMCIT"), N.P. CASR, R.N., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNE SHENK, D.O., and others asseed hereir, and is support of this cleam, show with this Honorable Court as follows.

NATURE OF CLASM

I This is a claim brought by the Administrators 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 dastit, and for damages allowed by law to the statutory beneficiaries of Johnny Puher, Deceased. The claims associed hierars are brought pursuant to TEX REV CIV STAT ANN art 4590 (Vernos), and other statuters and at common

Plantings' Plan and Position in Jean-readout future Planting Company Persons puts

COPY

Exicas, Tarrest County, Texas 76040.

- b FORT WORTH OSTEOPATHIC HOSPITAL, DIC d/b/s OSTEOPATHIC MEDICAL CENTER OFTEXAS, ("ObtCT"), a bospital and corporation authorised to transact business in Texas ObdCT may be served with subtice by serving to replaced agent, Yelanda, Carvalage, who is located at 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107;
- SUZANNE SHEME, D.O., who may be served with criation at 3500 Camp Bowle Bivd., Fort Worth, Tarrier County, Texas 76107;
- N. P. CASH, R.N. (Spi?), who may be served with control at OMCT, 1000 Montgomery Street, Fort Worth, Tarrest County, Taxes 76107.
- SUP SAMUEL, R. N., a/t/s Suzza Hadley Sentucl, who may be served with capacin at 2301 Noote Dr., Sucional, Johnson County, Texas 76028,
- f V PATE, CRT, who may be served with citation of OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Texas 76107.

Plantoffs request that cutation be sessed and served upon each named Defendant forthwish and in the manner as required by law

FACTUAL SUMMARY

5 Johany Fisher (DOB Nevember 27, 1957, DOD, October 1, 1999, SSF 466-23-4693, weight approximately 204 lbs. height approximately 579"), was first seen and evaluated by KOHN 8 PAYNE, D.O., a neurosurgeon, on or about March 26, 1999 with the complaint of moderate neck pairs and arm pain. He reported an on-the-job injury sometime in January, 1999. DR. PAYNE recommended steroid ugection, cervical collar and non-descript physical therapy. Mr. Fisher recommended steroid ugection, cervical onlar and non-descript physical therapy. Mr. Fisher recommended to DR. PAYNE in May, 1999 relating no improvement. EMG/NCV was interpreted as left. C5 redictiopathy. Past bistory revealed prior cervical discessiony of C1-6 and C5-7 in 1991 or 1992. On May 11, 1999, Mr. Fisher underwent a cervical myelograms with CT follow up, as well as AP and lateral cervical spine a rays. Routhing x-rays abow bony fusion at C5-6 and C6-7. Other disc spaces are said to be well preserved without other shoromality. The patient's standard cervical disc spaces are said to be well preserved.

law The claims brought berein inchese all wrongful death claims and survival claims pursuant to TEX CIV PRAC & REM CODE ANN sec 71 002, at seq (Vernors), and TEX. CIV PRAC & REM CODE ANN sec 71 021, at seq (Vernors)

JUNESDICTION AND VENUE

Thus is a claim by and on behalf of the ESTATE OF JOHNNY FISHER, DEC'D to addressishation of the ESTATE OF JOHNNY FISHER, DEC'D to punching in the Probase Court of Johnson County, Texas. JACKIE FISHER has qualified and in the Administrative of the Estate to whom Letters of Administration have been issued. One of the Defendants, Sun Sammel, RN, after Sunna Hadley Sammel is a resident of Johnson County, Texas, rending at 2501 Nicole Dr., Burteson, Johnson County, Texas 76028. The Court, therefore, has persident on and venue of this case pursuant of TEX. CIV PRAC & REM CODE, see 15 001 at 267, including sec 15.002 and 15 005 (Vernoci).

PARTIES

- 3 The Classicatic and Plantiffs in this lawner are
 - JACKLE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DBC*D,
 - IACKIE FISHER, individually and as bent and Distributes of the ESTATE OF IOHNINY FISHER, DEC"D.
 - OHNNY FISHER, individually and as her und Distributes of the ESTATE OF JOHNNY FISHER, DEC'D.
 - HOUSTON FISHER, Individually and as beer and Distributes of the ESTATE OF IOHNNY FISHER, DEC'D.

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

- 4 The Defendance in this claim are
 - AOHN B. PAYNE, D.O., who staty be served with criation at 313 Westpark Way,

Figure 75 Plan and Postcon in Instrument Fisher/Finding/Original Postcon jude

reyelogram with follow-up radiology away Omerpaque showed no abnormably. The CT suan follow-up describes no abnormality at the C4-5 level other than under the impressions action which understee bilateral uncovertabral joint bony hypertrophy at C3-4 and C4-5 levels. However, there was necessarily accounted significant nervel foreranal sencets identified. These were interpreted by DR PAYNE as revealing significant nervel root compression at C5. DR, PAYNE recommended surgary with planting. A second opinion recommending against surgery at the time was obtained. DR. PAYNE then obtained the opinion recommending against surgery at the time was obtained. DR. PAYNE then obtained the opinion of a third neurosurgeous, supporting DR, PAYNE'S decrision to operate. Although later records indicate that in MRI scan had been carried out on the palient which showed an abnormality at C4-5. MRI comparison was not made with the revelogram as indicated in a the report. None of the outpatient studies, as listed above, indicate my notable abnormality at C4-5. The CT post-myelogram report and any reference to the C4-5 lovel under "impression" has been deleted and a reprinted report is dated October 7, 1999 one week after Mr. Fusion's death.

6 Johany Futier was admitted to OMCT, Fort Worth, Texas, on September 22, 1999 for a cervical C4-5 discontinuity and interbody fusion with planny. According to the Europy and Physical by DR PAYNE, dated September 22, 1999, Johany Fisher's stated health was unartreachable with the exception of his complaint of moderate nock part, arm pain and restrictions in the amount of weight he could lift. Past Medical History socialed an injury to the stomach due to a shorgum 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 corweal fusion. Specifically, there was no history of hypertension, diebetes, pulmonery disease, liver disease, heart disease, veneral disease, syncope, dezinose, or stroke

Plantiff' Plan and Patrice of Intervention

Planto (fo' Plea and Postion to Intervention Figure Pleasant Criment Parties sedo

- 7. Mr Fisher was admirted to OPS 66 at 1112 hours on September 22, 1999 and taken to the operative duste at 1342 for an Anterior Carvical Discussionary and Fusion, Bone Bask Bone and Planing. The procedure began at 1415 and ended at 1632. A Philadelphia notifier was planed around his nock after the amagical procedure. DR. PAYNE describes his procedure and the perioperative report reflects the penedr's condision during surgery.
- 8 The patient was sent from surgery to the Post Americans: Care Usut (PACU) at 1702 then stansferred to the pediatric area for his recovery since! PACU suring records indicate that Mr Fisher awoke from armsthesia consplaining of left arm examiness and nock pain approximately fortyfive (45) musules after the surgery and was medicated according to the order sheet provided by DR. PAYNE thereby following his operation. Complete operatiogical assessment was not performed. Mr. Fusher was in PACU for approximately one and non-builf (1 N) hours. Oxygen was administered. During this time, he was given Demorol 12 Sing IVP at 1735 hours for shavering and again at 1750 hours for compless of sermoss and members. He was given Phenogram 12mg IVP at 1755 bours for no documented reason. It is faster documentally that he was elect and counted XJ, tolerating we chips but that 2 mines compliance of municipase to his left appear extremities, without change from before surgery. There is documentation of the heart measurer basing in NSR without ecropy and branthing being even and valabored. His blood pressure ranged in the 170/80-90 until 1800 hours when it dropped to 150's/60-70 zange. His pulse rate ranged in the 50's-60's range until 1730 hours when it rose to the BO's-PO's range. The document at blood pressure and increase in pulse rate occurred after he received the Domerol and Phonergan. These recorded with argus were asympthousely different from pre-surgery readings, documented es. P 61, S. 20, BP 102/59. There was no further associated or documentation. There is no documentation that any of the physicians ere made aware of his vital signs at that (1750)

Planta (C) Plan and Printers on Intervention Patent Plantage Congress Patents and

paid and was again medicated with Studoi Ing SCVP per maines notes as well as Values Sing po (ordered IV in physician orders and per sted shoot) to support Studol, per documentation in the survest notes. At 0745 hours, Mr. Fulter was medicated with Parcpeet (2) po per med sheet and his advertised pain and Onycoson 40mg po was given at 0800, fifteen navaues later. At 1200 hours Percocust tabs 2 were created, ensure peckage trainf and directives, and given to Mr. Flaker because he complained of pain and was mables to swallow. At 1700 hours, Mr. Flaker was assested to the bethroom at which time be, again, complained of distances. He was then assisted back to bed. There is no documented assessment reporting his complaint of distances or electronic state of confission and discremention. There is no assessment of the repeated complaints of left arm numbers. A pemplete neurological assessment was not performed. And, despite his condition, he was not transformed to ICU.

10 Mr. Fisher was transferred to medical floor 4N, Rosen 410, at 1800 hours on September 24, 1999. On arrival to Rosen 410 at recorded 1900 hears, he complained of general staffness and weakness and continuing pain. Again, there is no ansessment regarding his complaints. At 1945 hours, he was given Percocot tabs 2 po, again crushed, because of difficulty swalleving per documents soot an surset notes only. One (1) hour and forty-five (45) minutes later, Oxyconha 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 "pr. was sleeping, arouses when name called," his skin was pale, 8RP, voiding without problems, V/3 stable. No other aspectament was made as so patient bring pale. He was found sarresponsive six (6) hours later with no assessment or check during this (6) hour period.

Mr. Fisher was transferred from PACTU to Podiatrics at 1835 hours on September 22, 1999, artiving on the pedistrion floor at 1850 hours from PACU, per records. There as no record that he was returned on oxygen while at perhatron and $O_{\rm p}$ set even consed being checked, draptin the fact that the putient's O_2 and continued to decrease. Valual signs, recorded twice in pediatrics on the 22^{ct} reflect; T 96 6, P 86, R 20, BP 147/85 and T 98 4, P 30, R 20, RP 138/82 At 2100 hours, Mr Fisher complemed of pure and was markeated with Statiol, long, STVP. It is documented that he was offered Percocut into 2 but refused because his threat was the sore and didn't think he could swallow them. Studiol was documented at 2150 hours on Med Sheet. At 0015 hours on September 23, 1999, he again complement of pass and was medicated with Stadel long SIVF which was decentremed us the nerses notes, but was not documented on the good shoot. At 0345 hours, at a titles on med sheet he was medicated with Percocet take 2 po and Stadol Img SIVP, but aind in Nurses Notes that they were given at 0400 bours. At 0506 hours, Mr. Pishee complianted of muscle speaces and was medicated with Plesconi 10 mg po which is documented both on the conductors and in the source notes. After coursing from a-ray, Mr. Fither was requesting pain evadorazion and, at 0800 hours, it is documented that he was again medicated for complesse of past The medication is not identified, however, Oxycontin 40mg po was ordered as a scheduled read at 0800 hours and was documented as being given as 0800 hours than merked out. Oxyconius is also documented as being given at 1000 hours the morning of September 23, 1999. Mr. Father again requested pain medication at 1400 hours and per documentation in states notes, was again given Descent 23mg, which was not on the med shoot and was not ordered. At 1410 hours, it is mated on the med shoot that Stadol Ling IV was given. As 2000 bours, the athedisted pain medication, Oxyoonish 40mg was given; Isonever, Stadol 1mg (V vine else gives, per med skeer erruthon and nurses notes. On September 24, 1999 at 0300, bit: Fisher again complained of

Planetally Plan and Paudon at Pranyament

It DR. PAYNE's postoperative daily follow-up stationers that on September 23, 1999 and Suptember 24, 1999 (post-operative day one [1] and post-operative day two [2]), Mr. Fisher was also complaining of dysphages. His vital again were normal, except for a temperature of 100 degrees on September 23, 1999, and "slowly unpreving". The time indicated on the September 24, 1999 ress acts is 1430 house. In the surty 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 operative by the marking staff. There is no decumentation in the nurses notice, only in DR. PAYNE's discharge summery, that he was found "on the floor". Mr. Pisher was found by the physician to be of poor coloration, had compelpable pulses, and was unresponsive to all stimula. He was placed on a creat cart measure and a sinus rhydron with promoture strict and promoture ventricular constrictions was noted. He was given I map of Narcan to rule out analysise (nercotic) overdose and the petient was responsive almost immediately thereafter, with complaints of conflusion, disornegization and severe pain. His blood pressure was documented at 99/70. Oxygen saturation before was 85. In addition, aronal blood gases showed a ph of 7.1, which changes are consistent with metabolic acidous and respiratory hypoxia, but there is no notation thereof in the records. Follow-up bloodwork as approximately \$ 00 a, m, disclosed that the patient had a potantium of 7.4 and a creatinine of 4.7, however, Mr. Fisher was not transferred to the Intentive Core Unit until on hour later at approximately 9 00 a.m. The patient was computed by marrierous specialities and satravenous fluxis and metabolic corrections were subsequently undertaken. It was indicated laser in the morning of September 25, 1999 that the patient complained of thirst but seemed. otherwise appropriate. The general conscious of his evaluation, at that posse, was that he had become volume contracted due to madequate Ould permanence, as well as heving purcatic induced somnolence and hypotension

- 12 Nucreous complications followed. Mr. Fisher was well documented to go rato full blown active renal fitting due to acute tobular necross (shock triding) seconated with severe inclusive beputzte and bilateral pulmonary chest x-ray findings consistent with acute respiratory statement syndrome (ARDS) Nephrology countit was not obtained until September 25, 1999. (postoperative day three [1]). Dislysus was delayed, per records. Instal evaluation suggested the possibility of a pulmonary embolism by achoesculogram and other testing, however, a CT scan of the chest specifically curved out wife spiral CT inchanges and contrast on September 26, 1999 excluded any filling defices in the palmonary vanculature. The patient's manufagoni status markedly deteriorated over the next several hours. Documentation indicated that the patient was dizzy, confined and deconstand stop shortly after surgery as per the fluxity and documented by occusing notes and on minmal anotherse consult on September 25, 1999
- 13 Despris Mr. Fisher's clusted picture following margery magnetive of vascular insufficiency and vertebrobaniar actory scheme, a CT scen of the brain was not performed until June 26, 1999 (post-up day four [4]) which disclosed an induction of the right corebellum and right theliums finanti CT scanning showed as notable muts effect, however, over the ensuring several days, must edifect rapidly progressed to the posterior flues. For records, no low dossige haperin was entered or administered at any time following the complaints suggestive of actional occlusion and inchemia. Mr. Pisher developed a right to left shift of the fourth veatricle with compromise of the brain stem and obstructive hydrocophalus. Ventrouler catheters were placed to alleviate his come, without success. He developed progressively mixtessed brain marn signs and brain death. His care was invarianced by fulfilling all the criteria of brain death and he was taken off the respirator. Death to pronounced at 2045 on September 30, 1999, per records

the source of his pass assessed or diagnosed. No neurological assessment was made post-surgery until Mr. Finher was evaluated by Dr. Malatosh on September 26, 1999, despets along unumlogical deficits. Rather, he was given excessive sarcotics and sedanwas, resulting in progressive inselequate flund intake, sedabon, hypoteneson, hypoten and eventually shock. It is evident that Mr. Fisher was to a segarificant amount of pain and confusion during the period September 22, 1999 to September 25, 1999. Not one time during this period did any mirror de an appropriate assessment of the patient or question why he was having no much unusual pain or absend behavior. The nurses only continued administrang pass medications which administrations were not documented accurately, further preventing or complicating appropriate assessment. The physicism (treating or on-exit) was not notafied that Mr. Fisher was complaining of so much past, per records

NEGLIGENCE - PHYSICIANS

16 indisputably, the patient had a stroke of the corobelium and basel ganglis on the right, which look place manoperatively $^{\rm R}$. Early and appropriate assessment of the patient's neurological status

ETACOL 1MG IV PERCOCET (2) PO	6015	PER NURSES MOTES
PERCOCAT (A PO	6346	PER MED SHEET & NO
STADOL 1MG IV	834 6	PER MED SHEET & NA
PLESCORIL IGNICI PO	9600	PER MED SHEET & NN
?MED	3606	PER NH - PT MEDICATES
DXYCONTIN 40MG PO	DBCB	LEW MAINT MEDICALET
OXIVCONTIN 40MG PO	1800	PER HED SHEET X-OUT
DEMEROL 25MO 1	1400	FER MED SHEET
STADOL ING IV	1410	PER MURSES NOTES
STADOL IMG N		PER MED SHEET
OXYCONTIN 40MG PO	3000	PER MED SHEET & NH
CATCOMIN CONT.	2000	PER MED SHEET
	GEFTMARER 34, 1900	
VALIUM SMO N	8308	PCB 4446 C
BTADOL 1 MG IV	0300	PER MED SHEET & HM
STADOL 1MG N	P 20	PER HURSES NOTES
PGRODCET (2) PO	0745	PER MED SHEET
OXYCONTH 49 MG PO	9860	PER MED SHEET
PERCOCET (2) PO (CRUSHEE	n 1200	PER MED SHEET
PERCOCET (2) PO (CRUSHEE	3 1200	PER MURSES NOTES
DXYCONTIN 40MG PD		PER NURSEA NOTES
CALLOCAL IN ARREST IND	\$130	PER LIFT AMP ET

est symptome during the first spec

11

toffs" Plea and Peptron in Star

14 Mr. Fisher is stavered by his wife, JACKIE FISHER, age 54, who is recovering from diagnosed breast cancer and related mastactomy and chemotherapy, two (2) step-daughters, (1) stepacts, two (2) antural-born some, JOHNAY FISHER and HOUSTON FISHER, and has elderly mother, Mildred Finber At the tame of his death, Mr. Fisher was gainfully surplayed by Transy Materials. for, and carning between \$40,000 00 and \$50,000 00, annually. He had systematically received connectous recover channel has meany years of employment with Trinsty Materials, Inc. and was no employee in good structure at the time of his instimaly 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 and by the lack of significant findings reported as imaging studies. There is a consult report recommending agence the surgery, to which DR, PAYNE strengty protested. Second, postoperative status unmediately following the surgery is very poorly decemented by both physicians and nursing staff other than indicating that he had some postoperative pass, however, he slowly began to demonstrate signs and symptoms not consistent with the most complaints of the patient following this type surgery. He received considerable suchtive and microtic medication. A summery of the openies administrated, per the records, reveals arguificant dosages of narcotics contrary to DR. FAYNE's excusous cleans that the patent "distinct appear over medicated" (which res decimied after-the-fact). The persons was never appropriately assessed after the surgery nor was

FARI MUNICATIONS	GR/8# 8-33-49	Tieffil Subsen

ORLIG HAME	TIME	OCCUMENTATION
DEMERCE 12.8MG N DEMERCE 12.8MG N PHEMERGAN 12MG N ETADOL 1MG N	6736 6750 1796 2138	PER PHÓL HOTES PER PACU HOTES PER PACU HOTES PER MED SHEET

would have lead to early recognitions, havely east appropriate diagnostic testing and treatment of the strette of the problem - vertebral artery occiusion

17 There were also serious arrors caused by anadoquately following this perion. The report ns that although the patient was to be disobarged on September 25, 1999, DR. PAYNE was no longer available and actually was either unavailable or out of town. Despite a significant chancel perture of unusual post-surpeal complications suggestive of vertebral artery separy, appropriate ... exament and evaluation of the patient was not carried out in PACU, in Pediatrics or on the dical floor. Contrary to statements in DR. PAYNE's discharge summary, notation is made by covering neurosurgery that they had never been southed of the patient's presence in the hospital or of his committee. This is grounly below standard for a patient experiencing tha type surgery. These breaches greatly compromised the patient's safety and management because of patient shandon ment and a lack of adequate continuity of care ducing his postoperative state and during his deteriorating condition which followed. Appropriate seurological assessment postapuratively and proper documentation of the patient's neurological deficits should have been sensity performed by DR PAYNE throughout the enture hospital stay to monitor any adverse effects of the surgery on the patient's brain and spinel cord, much less his general systemic medical condition. Failure to recognize the patient's neurological injuries contributed to his tragic neurological problems, and, an hurn, remai failure, has ARDS, other consequences and complications and, ultimasely, has death

continuents, serescohed mock pain. The preserves of mainted change September 28, 1968 is revidence that the sortion relat at less present seed on the CT sean. An abuse infinited costable of the ne worke by an a flow hours or up to 1-2 days before the chinest constitute reversed at their hand or the control of the control of the seed of the three published of the create and that seed of the settled control proposation of the create and that seed of the settled control proposation of the control of the seed of the feet and an antical of proposation of the control of the seed of the feet proposation of the medical control of the seed of the feet proposation of the medical seed of the seed of the seed of the seed of the 23, 1998 but did not did not seed to the seed of the seed of the commenced to exist in subserved or the seed of the commenced to exist in subserved or the seed of the seed er of merical change on the CT scar of the carebellian participated on votes in fact presention by a liquid convent days for the best-desirated as the seventh by plantated CT scarring. If the striat medicance has excurred only the seventh by plantated CT scarring. If the striat metamon has been comprised the seventh by plantated contribute. This is Auditor metamon has been the first included destruction was usually regardly by the striate sevenths on the metablest destruction was usually regardly by the striate sevenths on the metablest destruction was usually regardly by the striate sevenths on the metablest destruction on suitary striated by the striate sevenths of the metablest destruction on suitary striated by the striate of the metablest destruction of the metablest destruction of the metablest destruction of the metablest destruction of the striated des

ail's' Ples and Petrtion or inte

- 18. An autopsy was performed on Mr. Flaher's body on October 1-2, 1999. Blocked strend substituted dissections of the left vertebral artery is found in the convent region both above and below the disc rossoval area. There is no prior history of vertebral streny disease or traums. The source of the vertebral artery injury as observed at autopsy reveals that it accounted several days prior to death, consistent with the some of the discartinety; seed, the conduction of the liver at the time of sustopsy is further proof of hypometrion and shock, fullowing combeller infarot several days prior to death. The patient's right cereboller and right been ganglion infarction and the vertebral severy leanes were, clearly, a result of surgical liquity of the vertebral severy decrease the patient's operation is which cervical decortionsy with planing and operative intervention was taking place. That is a protected active. The probability of this event otherwise occurring in this young, healthy ment with no history of viscular discasses, or other notable cost, factors in virtually not-existent.
- 19. Further, in reasonable medical probability, ternely diagnostic insting, including arteragerum endice angiography, following the surgery would have revealed vertebral artery occhrision, allowed appropriate treatment and probably prevented the stroke and would certeinly have prevented death. Therefore, relieving the developing observative hydrocephalus following his combellar stroke and that to the fourth ventracle due to increasing mass effect of the earchellum on the brain state and fourth ventracle was not complete and only helped one peri of the pulsant's problem. The partent was clearly dying of mass effect from the excelular shocke and a true life saving approach, at that hime, would have been consideration of partial resection of the right carebellar beautisphere to provide docompression of the brainstein as a heroscilite saving percenture. This does not appear to larve ever been considered at any time derring the patient's care.
- 20 The care preveded to Johnsy Fisher by OAACT and its personnel during this time frame (Supermber 22, 1999 to Supersber 25, 1999) as grossly below the applicable standards of care which

Plantiffy Plan and Passion at Intervention Partiffeeding/Ongood Portant park

ŧ

weakents, diagnose and least vertebral actory expury and ecolusion, and inflacting narconic intoncestors.

- 23 The specific acts and/or organises committed by the named physician(s), to wal JOHON B PAYNE, D.O., and SUZANNE SHENK, D.O., they agents, servents, employees and representatives, which conduct were unreasonable and fall below applicable Standards of Our and constitutes augitymes include the following.
 - failure to order appropriate non-surgical care for the patient's problems prior to the electric surgery;
 - b mivrating libet the cervical data surgery at C4-5 was assumery and appropriate at the base, when it was set, considering the diagnosize tests and overall clusted proture of the patient on September 21 – 22, 1999 prior to the surgery;
 - performing wasnessery ourview dies ourgery at C4-5 with plaining.
 - d finiture to order and obtain appropriate diagnostic tents prior to the surgery performand on September 27, 1999 to determine the fecution, nature and condution of the virished-banks returns and visits at or nate the operative sets, by tents such as MRJ, MRA, Doppler succeptupity, or angeography;
 - performing the cervical data margery with planting in a careless manner, by damaging and transmitteing the left vertabral artery during the operative procedure;
 - f assuming the surgious performing the convexed disc surgion with plaining in a careicus manner, by demaging and insumatizing the left variabral artery during the operative procedure,
 - g failure to provide enterly and proper orders for nursing personnel who would be attegred to provide nursing care to Johnny Fisher following the carvical disc surgery,
 - k. fasher to order proper facelebes for the care of this patient following the cervical disc surgery with plating, including requesting, then dones iden, if ascessary, that this patient not be placed as a pediatrics ward for poet-surgical recovery,
 - failure to order, require and demand that sufficiently brained and expanenced prinornel be assigned for the care of this patient following the convictions until plating.

reasonable, careful and product, professional registered surpes and other hospital personnel under standar excussionness are tenseed and expected to give. Johany Falter was sent to a padestruct word following this design out acressed descenting with plating and placed in the heads of street/ficeasily trained personnel. Assessments are encomplete and, in some cases, non-masteri. Decimination on the medication wheels are encourage, all pass medications gives are not deciminated on the medication wheels it is difficult, if not impossible, for a physician or were kreating left Patter to accurately know what institutions were given and in what quantities to Mr. Pinter without reviewing all of the nursing noses, medication sheets and other records in his chart, because of accordings that charts.

- 21 The occubeller inflirst was evoidable. Mr. Fisher sufficient a comballer inflirst ionistime in the acity meriung hours of September 25, 1999, as a result of continuing vesselier assufficiency caused by occinence, anomyers, peecdo anexyses, and substituted describes of the vertebral entery. The signs and symptomic were clear and the effects of occliences were slow in developing, allowing opportunity to hand. The occionism and remaining intelligency were diagnosable and irretable with law IV designs of heperas for the arrival distinguish substitutes the improvement and complises viacular recovery, preventing influed. However, such post-surgical circ was set given and the viacular insufficiency continued until inflect was diagnosed on September 26, 1999. Even thereafter, the viacular matufficiency was not addressed by any of the correspond and a continued to the point of lexist death.
- 32 Mr Pisher's death was, therefore, the report of negligenous, a conduct that was unreasonable and below the standards of care applicable to the above-named builds care providers, as performing a pargical procedure that was not, arganbly, undecased as the time, in performing the pergery as a manner that was not reasonable and careful, and in the fulture to tupoly and properly assets.

Pinnin(f)* Pics and Petition in Inservation Faint/Sentral/Organi Person Jude

14

- failure to follow and mounter the patient following the surgery on a reasonable and careful menner;
- k flahre to order appropriate diagnostic tests following the surgery performed on September 22, 1999 to determine the asture and condition of the versibrobanilar armires and veine in or near the operative side, by tests such as MRI, MRA, Doppler sonography, or augmography,
- failure so order, perforce or exchoruse treely sed ressouble past assessment or past
 nontractingersoot.
- na Sarkere to order, perform or authorize timely and ressonable neurological assessment and chanagestized,
- failure to appropriately assess, evaluate, diagnose, manage and treat neurological compliants,
- ordorag, authorizing, directing and allowing exocusive navious poin needscations to be administered, averdoring this public on navious;
- p dulure to provide tunely and reasonable kidney dialysis to the patient,
- r intent to prevent terrely kelway draftes of this potions; and,
- I then to conceal the cause of the passent's corebellar subsci.

 NEGLIGENCE HOSPITAL AND HOSPITAL PERSONNEL.
- The specific acts and/or omissions contracted by OMCT and its administrative, nursing and non-marking personnel including Defendants, OMCT and individual OMCT personnel, N P Cash, R N, V Paic, CRT, and Sue Semuel, 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 annexemble, felt below applicable Standards of Carc and constitutes negligence include the following
 - assisting the surgeon performing the curvical disc surgery with plating as a caraless manner, by damaging and traumations the left vertebral energy during the operative procedure,

- b finiture to prevends tunsely and proper administrative orders, directives, polymen, precedents and gualantees for hospital surveng personnel who would be samped to provide manage care to Johnny Fasher following the surgery;
- fluture to provide, order and/or authorize appropriate post-surgical recovery flustures for this patient.
- Galure to follow and monitor the painest, including timely and resonable surging collaboration and intervention.
- surborzeng, ellowing or administering improper quantities of narcolic medicanes,
- failure of heaptist surries to intervene and collaborate with treating physicians to incommend, provide, order and obtain creely diagnostic tests before and after the cervical due surgery with plaining.
- g ordering, directing, allowing end nonunering to the transfer of this pintons to a Podestrice ward following corrucal data surgery with plaining, where he was placed under the care of surrang personnel not adequately and properly trained for treating post-assessmenty patients who may develop neurological or post-surgeed completeneous.
- providing oursing citrs to the patient by hospital curring personnel not sufficiently trained or experienced.
- States to provide appropriately itsued and experienced borpust personnel to care for this patient following the cervical due purgery with plants;
- beying and maintaining grossly deficient hospital policy and procedure, standards, promocol and guidelines regarding post-nearosurgery recovery care of this petines, control of mercole administration, past measurement, neurology assessment, canaly surving odiaboration and approvement and summitteing of patient cure with rehewing, on-call physicists, and others,
- k. fashere to appropriately assess and cranage asserological complaints,
- fasture to appropriately assess and manage complemes of past,
- za. fashira to maisteso the patient on cizygen as appropriate,
- improper documentations of resention and other pain modications administrated,
- finiture to previde tienely and reasonable inderly dialysis to the patient,
- p intent to prevent tunoly kidney distyris, and,

Placeters 'Plea and Pittable at Interventions Fallet (Feeding/Original Pastiers July

1

PREMISES CONSIDERED, Planniffs and Claimants pray that crained be sented and served upon the Defendants according to law, that this case he set for mai, each upon trial, judgment be entered for Plantiffs and Claimants command with these pleachage and including pre-judgment and post-judgment someous as allowed by law

Respectfully submitted,

LAW OFFICES OF E L ATRINS AND ASSOCIATES 325 South Mesquin Street Arthrees, Texas 70010 (817) 261–7547 (Fax)

State Ber No 01409006

Phillip J Mitchell Estate Altorriey State Bar No 00797941 4 intent to consess! the cause of the petient's combellar referet.

PROXIMATE CAUSE

As a direct and formsomble result of the negligible conduct of the mented persons and entities, lacemenhous enumerated, Johanny Figher angusphed and sufficed a according, sessesses, evolution and proventable raquey to the vertebrait artsey which was left motrosted, leading to ourshelder infarct, modit-system failure and closely.

GROSS NEGLECT

26 The conduct as because demaind of the natural persons and embias constitutes more than ordinary negligence. Their sets and consistons constitutes realize and gross neglect as defined by leve for which penative demains are and chould be assessed.

DAMAGES

27 The elements of damages are those allowed by statutory and common low to the ESTATE OF JOHNNY FISHER, his been and the statistical boundlessness. Plaintiffs are also entitled to and stack putative damages as provided and allowed by law.

CONDITIONS PRECEDENT

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

DISCOVERY CONTROL PLAN

29 Plausiffs and Classiants request an Order from the Court placing this case in Level 3, passures to TEX. R CIV P 190 4

JURY TRIAL

30 Plannoffs and Claimeants request a jury trial and becough pay jury fee with the filing of this petrace

Plantiff. His and Painter or Enterminent Feberation Compani Patrice and

18

Placestifts' Pies and Petston to Inspression Falcestifeading/Original Passion just

Cause No. C200100173 MILDRED FISHER IN THE DISTRICT COURT JOHNSON COUNTY, TEXAS THE THE PARTY OF T ٧s JOHN B PAYNE, D.O., OSTEOPATHIC MEDICAL CENTER OF TEXAS, et al Dokadants 4134 UDICIAL ESTACT AGREED JUDGMENT 14.5 On the _____ day of April 2007, this cause same on to be heard. It was anno that an agramment had been resched between the parties. ACCORDINGLY, the Court flade that the following judgment is appropriate and should be innde and emered IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Intervenors, Jacks Fisher, individually and as Administrating and Representative of the Estate of Johnsy Fisher, Deceased, Houston Fisher and Johany Fisher recover from the Defendant, Fort Worth Oster Hospital, Inc., dA/a Osmopulae Medical Center of Texas the sum of Nine Hundred Seventy-Five Thousand and mo/100 Dollars (\$975,000 00) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment may be caforced only at accordance with bankrupscy law, in Casse No. 05-41513-Db/L-7, styled "In Re Fort Worth Ostoopetine Hospital, Inc., Debtar", In the United States Bankruptcy Court for the CLEAN Northern Dustrict of Yexas, Fort Worth Dry SISTEME COPY TO SISTEME JUDIOMENT 6 F VATKINS LIBRARY/CLIENT FILES/Mod-Marphs 64/12/2007 14 36 7L36801774 84/12/2827 18 48 8173613347 E L ATKING LAU IT IS PURTIFIED ORDERED, ADMINISTRA AND DESCRIPTION that all costs of the Creat are noted agreent the party enterroug paster 52000ED day ____ day e.f __ AFOGE PASSIDING Stein Ber No Addition Law PA FAS Script Me F O Box 157 nagroo, TX 76010 sphoner \$17-251-3346 Rt7-161-3347 Wygo Captus

Wygo Captus

Suits Ber Ro 03/22004

Cross Sooth Homiserom & Allen, L.L.P.

Attoristys & Law

2777 Allen Parkway, 7º Floor

Houston, Yems 77019-2135

Allerney for Dottphatez, John Lawseco,

Sharon Otr, R.N., and Karus Cox, R.N.,

on, San Sansaci, J. M.

F VATRING LIBRARY CLIENT FILES Wed-MUNT when PLEAD EXCUSED AND AND ADDRESS WHO

NOGLEKT

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of the Court are taxed against the party incluting sums SIGNED this _____ day of ______ 2007 APPROYED. ET Ailcon Sinte Bar No. 01409000 Arbut Law Firm 325 South Mesquist Stre PO Box 157 Arbrignon, TX 76010 Telephone \$17-261-3346 Telecopter \$17-261-3347 Attorney for intervenors, Jackse Fisher, Individually and as Administratory and Representative of the Estate of Johnny Fusion, Decem-House Perker and Johnny Fusion Weyne Clawator State Bar No 04328500 Cruse Scott Henderson & All Attorneys at Line 2777 Allen Parkway, 7" Floor Houston, Texas 77019-2133
Attorney for Defendants, John Laurence,
Sharon Orr, R.N., and Karen Cox, R.N., C. Sue Samuel, R.N. NUDGMENT F VATKINS LIBRARYICLIENT PILESWind-Mahfriber/PLEADIN/GVudgment and 2



ENTERED

The following constitutes the rule

Signed May 25, 2007

United Steam Benkruptcy Jed

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

IN RE

FORT WORTH OSTEOPATHIC HOSPITAL INC dia OSTEOPATHIC MEDICAL CENTER OF TEXAS

CASE NO 05-41513-OML-1

CHAPTER 7

ORDER GRANTING MOTION TO APPROVE AND INFLEMENT COMPROMISE AND SETTLEMENT OF TOET CLAIMS BY JACKIE FISHER, BY AL

Carrie on for consideration the Mission to Approve and Employees Comp est Agreement of Tort Clauma by Jackse Fisher, at al. (the "Motone") filed by Shewe K. on, Chapter 7 Trustee in the reformand bankruptcy case. After considering the Motion and the Trusteer's corresponse of no objections, the Court is of the opinion dust the Compressive and ferment. Agreement is to the best interests of the estate, it is the

ta lippoving mother to lippova and description of transfer of the contraction of the cont

ORDERER, that the Matton to Approve and Implement Comproverse and Settlement Agreement as beecky GRANTED and the Trustee as audiostand to take such stops and actions detailed as the Meson to are accessary to carry out the secres of the agreement.

End of Order

Y8 ОВТПИВU2

SHAWN K. SROWN
STATE BAR NO. 80170990
HAMES SCABBOROUGH WRIGHT
GREBERG & SRUBULOW
1401 Sick Street, Suit 4750
Dollar, Texas 75302
C149 541-4508 (minghone)
(214) 744-2415 (fincamie)
shruw@hawsh-aom

ATTORNEYS FOR SHAWN IL BROWN, CHAPTER 7 TRUSTEE

PORT WHITE INTERNATION INTERTAL, 18C 8/8/A PORT WHITE SOFTENAMEN MINISTER, CHIEFEA RECT-CHIEFLANCE WINE THEIR ADMINISTRA

THIS THREE ADMINISTRY, decode the Link day of September, 1987 by and between Point Model corrections for Model and existency tender the lows of the State of Tours, having its principal place of between its fore Shorth, Terran Cownly, Tours ("Samplina") and "Ministration Indian of feet Shorth, Terran Cownly, Tours ("Samplina") and "Ministration Indian County Tours, and indian instruction in administration of the Shorth Tours, and indian instruction amount of the Shorth Tours, and the Section States ("Trusteet County Indian Indian

olivers said

this knet agreement is to origines the hyperment between the Propint and the Teneron with respect to the <u>Materialization of a</u> elif-inverses plan food execute by the Sepital purposes to the Madeel Province Relativesement meanst possespectally the Selital Madeel Superment of Selita and Damas Dervines, Seals? Society Madeel Superment of Selita and Damas Dervines, Seals? Society Madeel Superment and

1407344 .

- (b) The Bospital more and operator a 200 imaged and Sumplial and stinded facilities in Part Worth, Toront County, These
- (b) Samples the ascellant claims and foce history of the Samplesia, the names sees and qualifility of processional limitity Communes his bases, a marine of increasing uncertainty and assessor in remont years
- (v) Property of this concern, the despital assure as extensive shelp and Exvice to be made of the various situratelives prolimin to provide becomminal and dependent operated on us the Sampital against antiprocess slability along.
- (a) After societies of all the data arising from much study and review, the Supplish has determined that it is much resemble and profess to beliefals a total solf-immunust program with the cotabilishment of a remove does not be unif-coronally at his city loss manifeling from collected and general patient (ideality becomes of the promoveralisative as subscripting

of the Department of South and Human Services.

infl Fire + shall make the Mempital's solf-impureson plan with temport to analyzanies limitity claims

Life_Figs. Tags; " shall mean depromper 25, 1887 shrough september 18, 3908 so the first view roor and beginning devotor 1, 1900 a flow year shall mean a 12-month ported thereafter

h.id frost - shell mose this trust agreement between the Scopinal and the fredton and all amendments thereton 1-11 froston - pholl mose freigh scopinse dank force morth

ar amp substitute or encounter Truston or Trustons

<u>ARTICLE 1 - CONTRICTION</u>

The manpital hereby conveys and deliver to Trusten, in trees, to he bald out ablaticiated in averagence with the Loren of that appeared to he bald out all enteriors of the trees, which is a category one feeth or unities a saturated burste (the reseign of which to administrated by the Trusten), which was of passent passent passent to the trees of the saturation of the contract of the saturation of the satu

ARTICLS 1 - ADMINISTRATIVE COMMITTEE

• • •

3 81 imprisoner and form of Drille - The Committee shall consider at three (3) he fire (8) individuals or chall be doned by the Shard from time to them. The Search shall have the right to remove not pursues not manner of the Committee at any time A number new resignation to the Committee at the time the committee and beard, if a conveniently well-see configuration to the Committee and beard, if

rmst of nemorecial incursors, the massical manufaced that it would be in the host inacress of the despital and nemority under jet marries and the incursor of another incursors o

ial Two Despital Assisse than seek self-feeding plan by implemental Charups o trust designed in two meses so to consider symmetric thereto to qualify for intelegen reinforcement, and enabled to as to to campe mean trust from the purposer to the applicable provisions of the Interest Excels Seek

main, trainformer, the Despited and Transact de Autually devenues

ARTHUR 1 - DECEMBER OF THE

"9.41" (F

* (% * {*

ï

he thind herbin, release otherwise defined or enquired by the context, the following words and physics chall have the months indicated, \$1.02_demant = shall mad an antany, improve ampage of

bence am<u>archaers</u> to the Field of medical enterestion and meants <u>Liability interaces</u>, Independent of any directs or features Channies emerging or emergic by the Americal and employed by pander corridor with respect to the plans and the bund

Lift | State - shall mean the Search of Sirertons of the Suspital | 18 Complete - shall mean the commisses witch shall administer the plan as possible in Expirit 1.

the Thursday left the load. " shell seems payments by the Sospilal to

with the Pild - Mall mass the true feed except its amendance with

<u>A.S. Americal</u> - whell more Port Worth Decoposite Respital, Jas. 4/b/n Port Worth Ontospothia Heddel Camber, Part Worth, Thewast County, Tasta

1 17 <u>Andices Hannel</u> - shall meet the Andicesm Purvious Sejahurosweek Manuel preseducted by the Social Demosity Assistantian

apparated by the tours.

The Songital shall by written notice, keep the Truscos applicad of ourseast ambeedulp of the Committee, its officers and agence, and shall furnish the Truscos a socialise signaluse used for the emabers of the Committee Per all purposes becomes, the Truscos shall be seeminaterly socialed to raisy upon news servicine vigantures.

3 Al <u>Organization of Administrative Countries</u> The Countries shall slock a Shalman and movementy from some its explore to a small slock a Shalman and movementy for the effective protection on any appoint parameter does a movement for the offerties and may delayable to note beginned at on one of more numbers of the Countries only powers and matter, who more considerable of discretization, a discretization, and the Countries and particular and appropriate. The Countries shall see by anjustry rote, Its symbors shall serve without componentials.

J.61 frome of inhibitative Condition. On denotive shall be governed by the based with caspers to the central of the social intention of the Fine was shall provide in with all process one inhibitations occusions to weakle it to property camp and the office of the fine was sentenced and the foregoing the fine in inhibitation, but in multiflustion at the foregoing, the Campittee shall been the power to construct the Pine, on continue performance and camenations list of findings on the Supplied and the Trease, and to take used it deathers a the despited and the Trease, and to take used it deathers are take used to take used it deathers are the proper in deathers and the continue to take used to take used to take used the findings to the deather take used to take use

ing the Truspes shall be needs input and in assentance with the written parties of the Chamitans or tax oral pasted Space. The decicion of the Chamitans upon all netters within the sampe of the swapedly shall be lied and blacing upon all parties as tak Liestraneas. The Chamitans shall have the passy but not the addition to employ farms manne assert in an healf of the Trust. Any much inscendent assembly half is empowered to direct the Frances with temporar to prescited investments.

. . .

, '-

:

٠...

. ...

- 3.64 <u>Reports of Aspiniostrative Committees</u>. The occreancy of the Consistes small recorn or desses he to reserved all here and decorminations of the Demistac and all mask removels, depasher with much other documents on any he reconsure for the administration and the Pian and shell be preserved in the namenty of mask hospitally
- 3 05 Industriation of Administrative Semilates The Scopies' could industry and seve cach rember of the Combinate Annaless from the offices and management of the case, existing one opaques of some manher is bis official expensive, accept as the extent ones manher is bis official expensive, accept as the extent ones could be obtained to be assumed to be assumed to be assumed to be supplied to the case of arms or accept of accept or ac
- 2 86 Ricontinuous. The Canalates shell savise the Greene use love to the Treates such instructions as the Transce may regular to administer the Trans.

The Consistent and the Streptes theil be entitled to suly upon all smales, releasines, east-likeates, and reports Serviched by an extenty or by on absuration, physician, on unborney salested or approach by the Streptes or the Committee, The Committees the Desire of the Services of the

STREET 1 - THEFT PLAN

4.41. The mospital, efter meting a this and complete investigation

beid by the Trustoe and bedame a part of the Erust Jond. John Problems Andi be meetdared and used for the purpose of companing and subablishing adequate from levels by himpital's lemegrane settings. The Pressee shall be under an days as discuss whether the himset of any assaulthation in the trans company from these time meet by the sensitive in himset of any assaulthation in the trans company from the point and the trans company of the Plan or the Holdson reputations or as andreed or to collect payment of any contacting these

1.33 firmst from the Trust Trusters

(n) The Trustees from bins he blow, upon wanting of written direction from the ledaviduel by infividuals designated by the Committee or Scopital to an ort, theil make payment from the inc or seems of the breat property to such justiced and to cust minner end in work assumed as the Countyton of an apart thorsef in such existing shall direct team such existen direction about Derrity t that the payment to related to the Plan, and in Jug one or more of the purposes specified tele- The Treater shall make payment solely upon the direction of the Committee and shall not be toquired to inquire laws the jurpose or one be liable for the propriety at any much payment. Proposes about he note from the trust property bely for molposetive leases of the Muspital weether even leases secur free toridagts or claims arising after September 15, 1987, providing came are not invoced under the Large of any provincely held decourseful Hability taxapade palicy and may be more for the following expenses to the artest that such are culated in the sulf-leastonce gian of the Sensingle

and analysis of ito circumstances, organization and epocation, has determined that is in consecution and product for is to minut and implement a pick of anti-insurance against emigranties leader. The Ernet property shall smootlests the Food to which the prepares of the Flan are exerted unt. Die bespitti represents to the typoton stat of part of the Plat is intense to Militable mitule palopoer so henjatelion of me obsess no alesalan that with memperature southful to descention weather majoranties Simbility suists, and the tenus and seet thorses, and to minimise the frequency and servetty thorse? The Bangical intends that the plan be countigated and existence if secondary with the rated and regulations adopted or implemented from blue to them by the Soited States Supervisors of South, Advention and Wolfers, South Descrip Administration, or any agent thermof an executor therete, generales relativements to the Occupital Dec payments ands in memoration with the Pist. The Snepital secures Sall and only responsibility. for samplicace with the Medisors regulations. All representations and westerie beguin with support to the Plan shall be downed to be three of the Samplant,

APTICLA 9 - TOUT (1919 AND THE THE

5.6) Trail-Trail, the Trusture shall held, sample, administrat, and office opping all reasonable muta and supmost of the scholateralism of anid frunt or reserving a dead for the sepacat theoret; the Trusture shall formed and reinvest the times the intercepted by the restriction, ements and properties as any in membersial by the seamerstood by discontains thereto all resolutions investments by discontains must be seamerstood by discontains and the seamerstood by the

 $\ensuremath{\mathcal{U}}$. Supposes for administrating the claims measurement progress:

(3) Emphases of cotabilishing this Trust and the Trust

P) and :

٠.

(II LAGAL AMPARME)

(1) Astrovial deponds:

(5) Coor relating to two negativities for the manufact of exacts incurrence personney, it purchased by the Processes

(d) Enganous Luvelynd with the neighborids of this Trees and the truck pengagry by the Juneses;

- 17) Gust of administrated by rise adequated program of the Samplack, if risk measurement is performed by the Trusser provided, however, that this adequates which see to mountain to depase hope the Trustee and early or obligation to administrately risk measurement program of the Samplesi.
- (b) Peymant for any of the forceming purposes their be decided proper pryment to be hald from the trust property. It is intended that viall separate true the trust preserve whill be to considingly with the dedicary regulations, but the Traces and if not be light in any may for the Gouplant's Salice to namely theoreties.
- 5 to provide the truster shell keep servers and desciled tandance of all consigns, investments and disturbed with respect to the trust property. Each press or parametes the supplies that free trust are like the descipate, lerinding each pursuent to any or capticed by the Auritant required and the best required by the Auritant required the theory of second relating to the breat property laptor requests are any grandancies that derive bestone hours of the Trustan

Michie 66 days wither the class of each li-ments paried unding on dependent 36 of each year, the Truttee Shall dollows o financial statement and accounting operations must information as the Resolts! shall from time in time reasonably request; imjuding but not

thaited to, the fellowing tedermanion

. 7

- (a) The balance of the treat property or the baglaning of that Plac Hear;
- (b) Differt period spacetibutions;
- is) The deposet and nature of final payments, including a construct accounting for uteins management, logal acpeanes, status gaid, bed before similar items; and

161 The trust proposity balance at the end of the clas tear Suncidenceding any ediposion on report wishin 90 days effor the aimse of cosh 13-mants period. Sensitive shall reader such expectal recording the humes found on communical such information as despital shall reasonably request from time to time.

He this opposed aboli he completed for any recommending a binn law, or if the frances shall readen at he somewho the frantier healt within 42 days of such tempiration, resignation or pussed date, shall its filed statement and account for the puried from the last provious opposeding to the date of such tempiration, readentation or temporal.

3 65 Instantion of Treates The Printse may realise from this trust at any time by giving 60 days' written notice to the mark. Open nucle resignation because of function, the Trusten shall render on the Mangian as measure of its administration at the Fund curring the period fallowing that surrect by lin lost encous comparing one shall perform all note accountant to trustee and deliver the assets of the Fund to its surrection and the Fund to its measure of the Fund to its measure of the Fund to its measure from the .

3.00 Engine, of Erectur. The Seaso any remove the Trustee or or time spea the delivery of 60 days 'writtee sective as the Trustee for the oroth of sech command, the Trustee shell be under the days days so sechant and trustee; and deliver the sentent of the Post tempts assessment and provided in the Ease of the Trustee's designation

3.00 Official and Discusses Trustee. Trustee beeck sensed has been selected by the Board on the Beard that Trustee is the been qualified and readily available finencial institution whom

anarios to the Respital in the post has proved description. It is consumptioned that Trustee and Respital will associate that growers in the trusteering in the trusteering of this Trust conserving as any time, the that destil designate and apprint a qualifical excepting trustee of this Trust and unset apprint a qualifical excepting trustee of this Trust and unset becomes trusteen what here sell the rights and power herein paniers upon the original trustee.

. . !

i

40 find[15] methor any names of the Cambitles, the Smarty, the Samptini, the semmey are the Trustee shall be limble for any breach of responsibility on the part of persons other man itself, we shall be limble for the one man, estation [15]. Yours or for which is in ground Deplicing.

MITTLE 6 - POSSES OF TRAFFIE

- 6.01 Enumerical Property The Trusted or may numerous Trusted shall see the sentential without order of mr regars to any sours or officer to america the fallenting powers in such reconcilion can may be a marked to the signaturation and in the copy given and granded sold grover, authorities, privilege and immediate previous favored or the trained Stance and Stance for Tance for the property of the
- (i) To rosain, only, lower or eviscont is my stante, brants, neutrities, aptions as either praperty, including consoniument branch branch branch branch continue to the freeze, which is commed pasper, mesonary or expendent without crossent place for the canonics of this distriction, order to the order continue extent of using sectionsy sacre, previous, however, that he team may be used from the series preparity to the immuject or to any precess replace to the despited within the section of the sections repulsations.
- (2) To soll, sunheate, or externise dispose of any property of any time hold or required becomise at public at private tale, for soll or on lume, vitbook can normally of unset approved

-10-

er severelsonene

, ¹.

2 -

- (3) To register any shoot, band or other security in the mass of a necisson, with me unknown disciprate of any Cloudary reciprionsals, but tocurate recents shall be maintained abouting that seed property in a synat asses:
- [6] To larger in corrificates of deposit and assemble learned by Touries.
- iff to vote in person or by your all stocks or other securities, so grace prezion, peneral or limited, and to agree or take may other source in report to any recognitation, margar, communication, declinator or actuar penedates or promotion of interior penedates or promotion of the trust
- (6) To sorre without weiting and filing investory and appreliments, without filing any annual or outer return to any ment and orthout gloing band; but the Trumboo shall decade to the Peoplish most financial restronate on the abhorving required by this narrance.
- [7] Fracto is relieved from my responsibility of directlying incomments of sold trust fluid. Recent, it is necknoticted that fractos between to seek the highest rank of fromm communicate with a solud investment policy.
- 4.83 Comparation The Scapital is outbaried to per the Trustee temperation for the devices rendered. Gaig comparation that the devices rendered. Gaig comparation that the based on what is remembly not gratematic, the comparation that the comparation of the services rendered by the Trustee Legalite with the emperience of the services rendered by the Trustee Legalite with the emperience of payments on distribution of the services rendered by the Trustee Legalite.

ARTICLE 7 - MERCHET AND THREE MATTER

7.81 The Soupital, through the Seard, what here the right and power at any time and from kine to also by instrument in writing delivered to the Drusses to mand; in whole or in part, say as all of the powerlant of the Fire and truet agreement; ownered, however.

-11-

that the define, powers and liabilities of the Trustee bereader shall mak be substantially increased we deserted without its comment.

- 7.62. **Imprinties.** The Suspital aspects this Flow to be operational indeficient, but of accountry, it reserved one right has temperature the Flow is any time by sation of the baced enamericance in writing be the Treatmen. If the Empiral revenue this agreement are terminated the Flow, then then receipt at writing social theorems, the Treatmen shall military.
- (1) teads and administer in accordance with this approximate soon parties of the treat property or the Benjine shell sentily to the treats has been detected by an excessly an expected by the additions required that is a summanary reserve hand for future personne of the Plan until such time as the Benjini shell sacrify to the Treatmen that has followed not contactly has sentential that are compress are an longer especially whereapon the Treatmen shall deliver the belance of the treat property to the Benjinial or
- [2] Open uncelfission to the Trustes by the imagital that work proposed to quaditions with the mediates empirelises, the Trustee shall delines the belonce of the trust present on the Benglini

AFTECES 3 - ASSCRICAMENTS

- 1.71 dendropy. The beadings and sub-modifup in this agreement have been innered for corrections of extremes may and ary so be ignored to any assertantion of the previous forces?
- 8 FT <u>Construction</u>. This agreement shall be construed in accordance such the laws of the State of Tenno. In the construction of this tyronoment, the according shall include the lewise and the simpular the plant in off accordance where which propriet would be appropriate.
- d.03 Severchilty Should any provision of this agreement be deemed in visiting of any low, such provision shall be deemed until

-12-

I so <u>Seminorary</u> this personnes say to reverted in mittals contamperate, seek of mine shell be received for all purposes of an original, and meansurports shell constitute but see and the temp learnment.

If tituing implement, the parties have pessed this accounts to be exceeded by their buly suchested editionen, to be effective on the date first above versions

PART MONTH COTTONATORS MONTTAL, LAS

m. Grander

40087789

-

by a Count My The As Comment of the State of

EXECUTE IN SECTION CIPIES, SACE COPY OF MAKE MALL OF PERSONS TO

DEPART .

Description of the second seco

Attachment

Motion to Intervene
F. MTKINS LIBRARY/CLIENT FILES/Med-Mal/OMCT Bankruptcy/JP MorganChase Adversary 07-4016/Pleadings/Motion to Intervene wpd

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	#	Case 140. 03-41313-DIVIL-/
OF TEXAS	#	
*********	*****	****
Shawn K. Brown,	#	
Ch. 7 Trustee	#	
for Fort Worth Osteopathic Hospital, Inc.	#	
The strong time Hospital, Inc.	#	
VS.		0 2 0 0 0 0 0 0
•	#	Case No. 07-04016
ID Morgan Chan B. 1 N.	#	
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

OFIGINAC

F.\ATKINS LIBRARY\CLIENT FILES\Med-MaNOMCT Bankruptcy\JP MorganChase Adversary 07-4016\Pleadings\Plea in Intervention wpd

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

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\NOMCT Bankruptcy\JP MorganChasc Adversary 07-4016\Pleadings\Plea in Intervention wpd

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
Page No. 3

F WTKINS LIBRARY/CLIENT FILES/Med-MaNOMCT Bankruptcy/JP Morgan/Chase Adversary 07-4016/Pleadings/Plea in Intervention wpd

improprieties, including patient fraud.

After FWOH filed for bankruptcy, Intervenors 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 Intervenors' claims, Lansford was a Director of FWOH.

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

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 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 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)

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 4

F\ATKINS LIBRARY\CLIENT FILES\Med-Ma\NOMCT Bankruptcy\JP MorganChase Adversary 07-4016\Pleadings\Plea in Intervention.wpd

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 uner 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.

Plea in Intervention

Fisher, et al, Intervenors

Brown, Tr'ee vs. Chase Bank

Adversary Proceeding Case No. 07-04016

Page No. 5

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\NOMCT Bankruptcy\IP MorganChase Adversary 07-4016\Plendings\Plea in Intervention wpd

Chase also concealed from Intervenors and from the state district court in which Intervenors' 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 Intervenors' 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 Intervenors' counsel in January, 2004, as above noted.

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.

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:

- 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 Intervenors' claim;
- 2. Disbursed Trust Fund property without proper authorization;
- Disbursed Trust Fund property simply on the telephone-call directives of officers, employees and/or representatives of FWOH;
- Failed to require on-going actuarial studies of The Trust Fund, to assure proper and adequate funding of The Trust Fund for satisfaction of Intervenors' claim;

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 6

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mai\OMCT Bankruptcy\IP MorganChase Adversary 07-4016\Pleadings\Plea in Intervention wpd

- 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;
- 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;
- 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,

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 7

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\OMCT Bankruptcy\IP MorganChase Adversary 07-4016\Pleadings\Plea in Intervention wpd

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.

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 8

F:\ATKINS LIBRARY\CLIENT FILES\Med-Ma\\OMCT Bankruptcy\IP MorganChase Adversary 07-4016\Pleadings\Plea in Intervention wpd

PREMISES CONSIDERED, Intervenors pray that, upon final hearing, Intervenors recover from Chase any and all damages and any other relief consistent with these pleadings, the law and to which Intervenors 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

11 Main Street

Cleburne, Texas 78033

(817)643 (3700

(817)645-3788-0

Rv

E. L. Atkins

TSB #01409000

John MacLean

TXB #12764000

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 9

F.ATKINS LIBRARY/CLIENT FILES/Med-Mai/OMCT Bankruptcy/IP Morgan/Chase Adversary 07-4016/Pleadings/Plea in Intervention wpd

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
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.

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.

E. L. Atkins/ John MacLean

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 10

F.\ATKINS LIBRARY\CLIENT FILES\Mod-Ma\OMCT Bankruptcy\UP MorganChase Adversary 07-4016\Pleadingi\Plea in Intervention wpd

Exhibits

Plea in Intervention
Fisher, et al, Intervenors
Brown, Tr'ee vs. Chase Bank
Adversary Proceeding Case No. 07-04016
Page No. 11

F.VATKINS LIBRARY/CLIENT FILES/Med-Mai/OMCT Bankruptcy/JP Morgan/Chase Adversary 07-4016/Pleadings/Plea in Intervention.wpd

Cause No. C200700173

MILDRED FISHER

IN THE DISTRICT COURT

FORINSON COUNTY, TEXAS

FOR B PAYNE, D.O., OSTEOPATHIC

MEDICAL CENTER OF TEXAS,

N.F. CASH, R.N., SUE SAMUEL, R.N.,

V. PATE, CR.T., and SUZANNE SHENK, D.O.,

Defendance

249° JUDICIAL DISTRICT

PLEA AND PETETION IN INTERVENTION

TO THE HONORABLE COURT

COMES NOW JACKLE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D (a/c/a Johnne Futier), JACKLE FISHER, Individually, JOHNNY FISHER, Individually and HOUSTON FISHER, make that clean and file that PLEA AND PETITION IN INTERVENTION on behalf of the ESTATE OF JOHNNY FISHER, DEC'D, and on behalf of the neered individuals, against JOHN B PAYNE, D.O.; CISTEOPATHIC MEDICAL CENTER OF TEXAS, ("OMCT"), N. P. CASH, R.Y., SUE SAMUEL, R.N., V. PATE, CRT, and SUZANNIE SHENK, D.O.; and others canned herein, and in support of this clean, show unto this Honorable Court of this clean, show unto this Honorable

NATURE OF CLAIM

I This is a claim brought by the Administrators of the Erists of the Decedent for damages for the recovery of expenses severed by the Sistate, for lost essenings of the Decedent, for Decedent's pain and suffering from the date of signry to the date of sizah, and for damages allowed by law to the sizaktory beneficiance of Johnny Fisher, Decembed. The classes expected berton are brought pursuant to TEX REV CIV STAT ANN art 4390 (Vernoe), and other statutes and at common

Plantalls' Fice and Pobbos in Intervention Probabilisation/Creme Person and COPY

Butess, Tarrant County, Texas 76040.

- b PORT WORTH OSTEOPATHIC HOSPITAL, DNC d/b/s OSTEOPATHIC MEDICAL CENTER OFTEXAS, ("OMCT"), a hospital and corporation authorised to transect beamons in Texta. OMCT may be served with cutation by serving strugisted agent, Yolanda Centralsed, who is located at 1000 Montgomery Street, Fort Worth, Textnet County, Texts 76(107).
- SUZANNE SHENK., D.O., who may be served with citation at 3500 Camp Bowne Bird., Fart Worth, Tartent County, Texas 76107;
- d N. P. CASH, R.N. (SpP), who may be served with custion at OMCT, 1000 Montgomery Street, Port Worth, Terrane County, Texas 76107,
- SUE SAMUEL, R. N., a/k/a Sugget Hadley Sermed, who may be served with citation at 2301 Nicole Dr., Burleson, Johnson County, Taxas 76028,
- f V PATE, CRT, who may be served with citation at OMCT, 1000 Montgomery Street, Fort Worth, Tarrant County, Taxas 76107.

Plants fit request that citation he staved and served upon each named Defendant forthwith and in the manner as restained by law

FACTUAL SUMMARY

Johnny Faher (DOB November 27, 1957, DOD, October 1, 1999, SSE 466-23-4693, weight approximately 204 fbs. height, approximately 59°), was first scen and evaluated by ACHN B PAYNE, D.O., a secretargroup, on or about March 26, 1999 with the complaint of moderate neck pain and arm pass. He reported an ose-the job mjury sometime in January, 1999. DR PAYNE recommended second syection, occurred collar and non-descript physical therapy. Mr. Fisher returned to DR PAYNE is May, 1999 relating no improvement. EMG/NCV was interpreted as left. C5 rediculopathy. Past businey revealed prior cervical dispectoring 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 wall as AP and laters? cervical space x-reys. Routing x-rays above bony fusion at C3-6 and C6-7. Other desc spaces are said to be well preserved without other shaormality. The patent's standard cervical

Lew The claums brought herein suclude all evrought death claums and survival clause pursuant to TEX CIV PRAC & REM CODE ANN sec 71 002, of seq (Venton), and TEX CIV PRAC & REM. CODE ANN sec 71 021, of seq (Venton)

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 punding as the Probate Court of Johnson County, Texas. JACKIE FISHER has qualified and is the Administrative of the Estate to whose Lotters of Administration have been asseted. One of the Defendants, See Samuel, RN, eV/4. Susan Hadley Samuel as a resident of Johnson County, Texas, enading at 2501 Nacola Dr., Burlason, Johnson County, Texas 76028. This Court, therefore, has purisdection and various of this case pursuance of TEX. CTV. PRAC. & REM CODE, sec. 15.001 or seq. including sec. 15.002 and 15.005 (Vernon).

PARTIES

- 3 The Claimants and Pinsatiffs in this lewant are.
 - IACKIE FISHER, ADMINISTRATRIX of the ESTATE OF JOHNNY FISHER, DEC'D,
 - JACKIB FISHER, individually and as bear and Destributes of the ESTATE OF JOHNNY FISHER, DEC'D.
 - JOHNNY FISHER, Individually and as last and Databases of the SSTATE OF JOHNNY FISHER, DEC'D.
 - d. HOUSTON PISHER, factividually and as few and Distributes of the ESTATE OF FOHNNY FISHER, DEC'D.

Each and all of the Plantal's massed berrin, as well as Midded Fusher, are residents of Johason County, Texas

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

Pinantife Plen and Februar in Interresting Febru-Plesting/Original Perform jude

inyelogram with follow-up radiology using Comupaque showed no abnormality. The CT scan follow-up describes no abnormality at the C4-5 level other than under the impressions section which understae bilatural unconvertebral joint body hypertrophy at C3-4 and C4-5 levels. However, there was no reported significant neural foraccanal abnormal identified. These were softrpressed by DR PAYNE as revealing sagnificant nerve root compression at C5. DR PAYNE recommended surgery with plating. A second operator recommending against surgery at the time was obstaced. DR. PAYNE then obtained the operator of a third neurosurgeon, supporting DR. PAYNE'S decision to operate. Although later records understa that an MRI scan had been carried out on this patient which showed an abnormality at C4-5, MRJ comparison was not made with the myelogram as indicated in the report. Notes of the outpetiont 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 desed October 7, 1999 one week after Mr. Pisher's death

formy Fisher was admitted to OMCT, Part Worth, Taxas, on September 22, 1999 for a curvical C4-5 discontently and interbody fusion with plating. According to the History and Physical by DR PAYNE, dated September 22, 1999, Johnay Fisher's stated health was unmarriable with the exception of his complaint of moderate neck pain, arm pain and restrictions in the amount of weight he could life. Past Madical History included as injury to the summach date to a shotgun blast and prior cervical fusion, above-referenced. The numing administrate record indicates only that he was using eye drops for glaucoma and had otherwise been well other than for the minimised remote abdominal gun shot wound in 1977 and the previously described cervical fusion. Specifically, there was no history of hypertension, dishetes, pulmonary disease, liver disease, heart disease, veneral disease, tymoope, dizzinasa, or shoke.

Pissaolis' Plus and Patrios in Intervening Published Statement Person Jode

Planetoffit. Plea and Persings on Settlementer

APP. 88

- 12. Numerous complications followed. Mr Finher was well documented to go into full blown scale renal fishers doe to scale substances (shock loading) associated with severe scheme bepatities and bilateral pulsionery check x-ray fladings consented with acuts respiratory discrete syndrome (ARD3) Nephrology consult was not obtained until September 25, 1999. (post-operative day three [3]) Dishyus was defayed, per records instal evaluation suggested the possibility of a pulmonary embolism by echocardiograms and other testing, however, a CT none of the cheat specifically cartied out with spiral CT techniques and contract on September 26, 1999 succluded any filling defects in the polymonary vasculature. The patient's asserological status marfoodly detarrorated over the next several hours. Decumentation indicated that the patient was dizzy, confused and discribed since shortly after surgery as per the family and documented by nursing noter and an inserial medicine bound to a September 23, 1999.
- Despite Mr Paler's classed pacture following surgery suggestive of viscular smallfocuscy and vertebrobasiler entery ischesize, 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 occabilities and right theirwid. Initial CT scanaing showed no notable mass effect, however, over the seasuing several days, sease affect rapidly progressed in the posterior fosts. Per records, no low dosage hoperus was ordered or administered at any time following the complaints suggestive of arterial occlasion and inchemia. Mr Pisher developed a right to left shift of the fructa vestricle with compromise of the brain seam and obstructive hydrocephalus. Ventricular catheliers were placed to alleviate his come, without success. He developed progressively increased brain seam signs and brain death. His care was incriminated by fulfilling all the oritime of brain death and he was taken off the respirator. Death is pronousced at 2045 on September 30, 1999, per records.

Plaunicts' Flor and Pottion or Intervention Patent Personal Common and

the source of his pean assessed or diagnosed. No seweological assessment was made post-surgery until Mr. Pisher was evaluated by Dr. Molntosh on September 26, 1999, despite clear neurological deflorts. Rather, he was given excessive nercodes and nederives, resulting in progressive anadequate fluid intake, seducon, hypotenson, hypoten and eventually abook. It is evalent that Mr. Pisher was in a significant amount of pass and confluide during the period September 22, 1999 to September 25, 1999. Not one time during this period dot may seems do an appropriate assessment of the pintent or question why he was having so much unusual pass or altered behavior. The surroes only continued administrance 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 complicating of so trutch pass, per records

NECLIGENCE - PHYSICIANS

16 Indisputably, the patient had a stroke of the corobolium and basel gaugita on the right, which took place unknoperatively.³ Early and appropriate exast sment of the patient's neurological status.

STADOL ING N	9015	COM 14 10
PERCOCET (2) PG	6349	FER MURSES NOTES
STADOL ING N	8345	PER MED SHEET & NA
PLEXORS, 18MG PG	0000	PER MED SHEET & HM
7 MED	0000	PER MED SHEET & JUN
CXCYCOHTTM 40MO PO		PER NN - PT MEDICATED
OXYCONTH 40M3 PD	0600	PER MED MISET JUDIT
	1900	PER MED SHEET
DEMEROL 2546 *	1403	PER HURSES NOTES
STADOL 1MG IV	1410	PER MED SHEET
STADOL IMO N	2000	TEN SELL STREET
OXYEONTIN AGING PO	2000	PER MED SHEET & HM
		PER MED SHEET
	SEPTEMBER 24 1994	
VALIDAM SMG IV	0000	
STADOL 1 MG IV	COO	PER MED BHEST & NH
STADOL 1MG IV	0430	PER NURSES HOTES
PERCOCET (2) PO	6743	PER MED BHEET
DXYCONTIN 45 MG PG		PER MED SHEET
PERCOCET (2) PO (CRUSHED)	CARDO	PER MED BHEET
DESCORE (E) FO (CHUSHEII)	1200	PER HURSES MOTES
PERCOCET (2) PO (CRUSHED)	194\$	PER NURSES NOTES
DXVCONTIN 40MG PO	2130	PER MED SHEET

The perioni value manufacture pre-intensi symptoma thuring the limit several postoperative days with complaints of neurosa dischinists: weathness, confession characteristy numberses, dynamique, ingentiones as well as

Places(S) Pies and Praction in Intervention Futbor/Fording/Original Passage soft

..

I.4 Mr. Puber is survived by his wife, IACKER FISHER, age 54, who is recovering from diagnosed breast cancer and related reasonable and chemotherapy, two (2) step-daughters, (1) step-son, two-(2) natural-horn sons, ECHP/NY FISHER and NCUSTON FISHER, and his elderly mother, Mildred Puber. At the time of less death, Mr. Fisher was gainfully employed by Trinsty Masserals, line and earning between \$40,000 00 and \$50,000 00, annually. He had systematically received memoring between \$40,000 00 and \$50,000 00, annually. He had systematically received memoring his name years of employment with Trinsty Masserals, fac. and was an employee in good stauching at the tune of his asstancely death.

CLAIMS OF CONDUCT BELOW APPLICABLE STANDARDS OF CARE

1.5 Purst, there is listle documentation that the parent needed surgery at the C4-5 level as indicated by the lack of signeficant findings reported on imaging simbs. There is a consult report recommending against the surgery, to which OR PAYNE strongly protested. Second, postoperative status unundessety following the surgery is very peerly documented by both physicians and mixing staff other than indicating that he had some postoperative past, however, it is slowly began to demonstrate signs and symptoms not committee with the usual complaints of the patient following this type surgery. He received considerable sedative and narrotic neclication. A summary of the opiates administered, per the records, reveals riginational document of assumption concerny to DR. PAYNE's erroseous cleans that the patient, did not appear over medicated "(which was discusted efter-the-fact.)." The patient was naver appropriately assessed after the surgery nor was

AM MEDICATIONS GIVEN 9-22-96		
The second services and second	I MILL SANGE	

Opposite Name	JME.	COLUMNIATION
DEMEROL 12 SMG IV	1756	PER PACU NOTES
DEMEROL 12 SMG IV	1756	PER PACU NOTES
PHENERGAN 13MG IV	1758	PER MCU NOTES
STADOL 1MG IV	2130	PER MED SHEET

SEPTEMBER 23, 1960

Pleased Plan and Politics in Distriction Patient Fleet Ing Company Papilon path

1

would have lead to early recognition, timely and appropriate diagnostic leating and westment of the source of the problem - vertobral artery occlusion

17. There were also serious errors caused by madequately following this patient. The record undscame that michough the patrent was to be descharged on September 25, 1999, DR. PAYNE was no longer available and actually was other massailable or out of form. Despite a regulicant chascal re of unusual post-rurgical complications suggestive of variables every stylery, appropriate easessment and evaluation of the pulses was not carried out in PACU, in Parliatrics or on the medical Scor Contrary to statuments in DR. FAYNE's discharge summery, aniation is made by covering memorarigery that they had never been notified of the patient's presence to the hospital or of his conclusion. This is grossly below standard for a patient experiencing this type surgery. These breaches greatly compromised the patient's malely and management because of peacest abunded and a tack 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 deficie abould have been sensity performed by DR. PAYNE throughout the entire hospital stay to mounter any adverse effects of the surgery on the patient's brain and spinal cord, much less his general systemic medical condition. Fathers to recognize the patient's neurological injuries contributed to his tragic neurological problems, and, ra turn, renal failure, his ARDS, other consequences and complications and, alternately, his death.

12

- b Baker to prevale turnely and proper admensarence orders, duratives, polanes, procedures and guedelates for hospital maxing personnel who would be steaged to provide maxing cure to Johnsty Picher following the surgery,
- flakare to provide, order and/or authorize appropriate post-surgical recovery fluctures for this patient,
- d fasters to follow and mounter the potent, molecular, tensity and commontale surpray collaboration and intervention,
- authorizing, allowing or administering improper quantities of narcobe medication, overdosing this potient on narcobes.
- f. Strices of hospital nurses to intervene and cellaborate with treating physicians in recommend, provide, order and obtain himsely degineate tests before and after the cervical desc surgery with plating;
- g ordering, directing, allowing and acquiniting to the transfer of this patient to a Pediatrics ward following corriod date surgery with plating, where he was placed under the care of carsung personnel not adoptionally and properly trained for reasting post-acceptancy persons who may develop acturological or post-sergical complicationing.
- b providing marking care to the patient by hospital marking personnel not sufficiently intend or experienced.
- t. Subset to provide appropriately treated and expensesed incepted personnel to care for this patient following the convent due surgery with plaining.
- j having and maintaining grossly disfineme hospital policy and procedure, imadards, protocol and guadalman regarding post-neurosurgery recovery care of this patient, control of neurosurgery recovery care of this patient, control of neurosurgery recovery care of this patient, control of neurosurgery recovery care of this patient, impely musuage collaboration and district and monitoring of patient care with rehevang, on-call physicisms, and others,
- it. Salture to appropriately excess and manage sourological complemes,
- fusions to appropriately masers and manage compliants of pain,
- on failure to manageme the patient on oxygen as appropriate,
- a suproper documentation of sarcotics and other pean medications administrated.
- o fethers to provide tunely and reasonable indivey distysts to the patient,
- p intent to prevent timely kidney dialysis, and,

Plantiffs' Plea and Passon as Impression Separational Original Pattern pole

17

PREMISES CONSIDERED, Plantiffs and Claurants pray that citation be issued and served upon the Defendants according to law, that this case be set for irral, sad, upon trial, judgment be entered for Plantiffs and Claurants consistent with these plantings and methoding pre-judgment and post-judgment interest as allowed by law.

Respectfully submitted,

LAW OFFICES OF B L. ATKINS AND ASSOCIATES 125 South Mesquise Street Arlington, Torus 76010 (817) 261,346 (Metro) (817) 261,346 (Metro)

State Bar No 01409000

Phillip / Mitchell Esian Antorney State Bar No. 00797941 4 uncont to concess the cause of the patient's comballer suffect;

PROXIMATE CAUSE

25 As a direct and foreseeable result of the negligible conduct of the maned persons and entities, becamebove enumerated, Johanny Piaher sugarated and suffered a needless, sesseless, avoidable and prevantable unjury to the vertebral artery which was left untrasted, leading to caraballar influct, multi-system failure and death.

GROSS NEGLECT

26 The conduct as herein detailed of the numed persons and entailed constitution more than ordinary negligeace. Their acts and onumenous constitute malion and gross neglect as defined by law for which punitive damages are and should be assessed.

DAMACE

27 The circurcus of desnages are those allowed by statutory and common lew to the ESTATE OF JOHINNY FISHER, his heart and the statutory beneficiaries. Plausatis are also excitled to and sack punitive demages as provided and allowed by law.

CONDITIONS PRECEDENT

28 All conditions precedent have been met or will be prior to Irial on the ments

DISCOVERY CONTROL PLAN

29 Pleasattfs and Claimarts request an Order from the Court planning this case in Level 3, partners to TEX. R. CTV P 196 4

JURY TRIAL

30 Plantoffs and Claumants response a pacy treal and herewith pay pary the with the filling of the

Phonolic Pleased Proton at Interventors Futuri Proceed Original Process judg

t R

Cause No. C200100173 MILDRED FISHER IN THE DISTRICT COURT JOHNSON COUNTY, TEXAS ٧s JOIN 8 PAYNE, D.D., OSTEOPATRIC MEDICAL CENTER OF TEXAS, at al Colombusts 413th FUDITIAL RESIDENT AGREED JUDGMENT On the __day of April, 2007, this cause came on to be heard. It was gree that are 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 Intervenors, Jackson Pisher, Individually and at Administrative and Representative of the Estate of Johnny Pisher, Deceased, Kouston Fisher and Johnny Pather recover from the Defendant, Fort World Ostcopedine Hospitol, Inc., d/b/s Osmopathic Medical Center of Texas the sem of Nine Hundred Sevesty-Five Thousand and an/100 Dollars (\$975,000 00) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that thus judgme it may be enforced only in accordance with bankruptcy law, in Camer No. 05-41513-DML-7, styled "In Re-Forr Worth Ostoopathic Hospital, Inc., Debter", in the United States Bankruptcy Court for the Northern District of Texas, Fost Worth Divis CRUBE SCOTT NEWDERSON E L ATKING LAM PAGE 96 IT IS FURTHER DEDERED, ADJUDITED AND DECREED that all costs of the Court are traced agreement that purely recovering proper. STONED that _____ they cat __ ADGE PLESIDING State Ber No. Alkins Law F 325 South M P O Box 157 Arlungton, TX 76018 Telephoner \$17-261-3346 sc; \$17-161-1347

JUDGMENT F WITKING LIBRARYCLIENT FILESUMOD-MANFIEDOVPLEADIR 84/12/2807 14 30 7136501728 94/12/2027 16 48 6177513347 Wayne Clafford
State Say No Security
Creek, Social Headerson & Alie
Amounts on the Security
Amounts of the Security
Amounts of the Security
Security of the Security
Security of the Security
Security of the Security Security
Security of the Security Security
Security of the Security Security
Security Security Security
Security Security
Security Security Security
Security Security
Security Security
Security Security Security
Security Security Security Security
Security Security Security Security Security
Security Security

Cruss, Scott Honderson & Allen, E.E.P. Amostlys at Law 2717 Allen Patiewsy, P. Floor Honston, Totae 77019-2123 Attousy & Dollandero, John Listennos, Ottaron Co., R.N., and Karen Co., R.N.,

F VATKING LURRARY/CLUENT FILES/Wed-Manfight PLEADING Independent wood

JUDQMENT

IT IS FURTHER ORDERED. ADJUDGED AND DECREED that all costs of the Court are laxed against the party incurring some

SKINED this ____ day of ______ 2007

Atlan Law Flow 325 South Mo PO Box 157 Artington, TX 76010 Telephone 817-261-3346 Telecopter 817-261-3347

and as Administrators and Reposi of the Satate of Johany Puther, Houston Fisher and Johany Fish

Weyne Clawator
State Bas No 04328300
Crass Stoss Henderson & Allan L.L.P.
Attorneys & Law
2777 Allan Parkway, 7* Floor
Rousson, Taxas 77019-2133
Attorney for Defendance, John Laurence,
Sharon Orr, R.N., and Karen Cor, R.N.

TUDGMENT

F WITKINS (JBRARY/CLIENT PILES/Med-Maly ishor/PLEADING/Judgment wpd

ENTERED

Signed May 25, 2007

in the united states bankrupicy court for the northern district of texas fort worth division

IN RE

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

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

Carrie on for consideration the Metion to Approve and Implement Compression and Sottlement Agreement of Tort Claums by Jackie Fisher, et al. (the "Motion") filed by Sizzen K. , Chapter 7 Truston in the referenced bankruptey case. After considering the Monon and the Triesec's certificate of no objections, the Court is of the opinion that the Consprenies and one Agreement is in the best interests of the estime, it is therefore

GREEK APPROVING MOTION TO APPROVE AND IMPLEMENT SETYLAMENT AGREEMBYC. Pup I of 2

SOUTH MORNE COTTON AND THE SOUTH AND SOUTH THE CANAL SOUTH THE CONTRACT OF THE SOUTH AND SOUTH THE SOUTH T

tile CHRYL MOMENTHY, decad the 19th day of September, 19th up and believes 79th MATH DETENDENTIAL SECTION, THE , a non-presit composation evanuated and abstract modes the laws of the Nigols of Trans. harder its principal place of business in Pers Meth., Turrent Camery, Teach ("Margital") and Willed Amprical Name, of Part Mayth, Turner, a maximal handling composation expensions and existing under the laws of the United Strates ("Thronous")

WITTER STATE

This trust appropriat is to believes the appropriat between the "Seaplinal and the Transce with craneous to the <u>desinitarities of j</u>

#12**Linearonus plus found unaked by the Samplack purposed to the
Torical Travilers believe; maked the samplace by the Smitch Travilers believe States Department of South and Samplace, South Department
Medgaletteries

WEIZH

- (A) The Receival owner and apprecias a 24% hundred bed Southlinh and soluted Equilibries in Surt Worth, Tourant Sounty, Toron
- (b) Despite the simultons stains and Loca history of the Reptics, the annest deat and artificiality of proteopleasal kindility information has beenne a matter of immending uncertainty and manager in process pages.
- (All Decemb of this conseque, the Depplish assess on excessive along and toriou as he made of the regions alternatives available he provide unumnical and dependable protection to the deciminal applies majorantes liability white.
- (d) After soniyels of oil the data arising from puph study and review, the Rompital has descented that it is easy enhanced to the property to melantic a beni politicatures program with the establishment of a reserve four and the celd-management and the risk lane membring from uniprocessor and general pation liability becomes of the nan-qualisatity or admentition.

of the Department of South and Busse Services,

1 05 Pigg * Shill mean the hempital's self-impersons plan with temperatus Timplity elecus

1.09. Pipe Tony - shall mann deptomber 16, 1997 through September 30, 1998 of the Start Pius foor and September 20, 1986 a Plob Pour shall mean a 12-mean puriod beareafter.

Leit trust - shall mean this trust agreement between the despital and the Trustee and all amendments thereto

1 il Tratto - phelà bosa Trata american hash fort morth or ony Désablata de expensent Trustos de Trustoso ANTECES A - CONTREMENTAN

The Smajital benchy meaning and deliver an Tranton, in brant, as he hald not administered in assembleme with the Excess of this agreement the sum of money not forth an exhibit a detended hereta agreement the sum of money not forth an exhibit a decembed hereta (the precipit of which is commonly not provided but of frames agreement to the Tranton), which has after any supports of any first these tables to delictered by the Revolution the truggs the same and marriage therefore, whill constitute the crygs progesty. That sum has here demonstrated by marriage a networkly branched by the transfer of the property of the same and the truggs progesty. The first way the truggs of the true property of the true property of the true property of the true of the true property of the true of hereinstein and make it is the branch and maken it becomes the forth

MITICAL 1 - AMERICANIES MINISTER

3.81 <u>ADMINISTRAL and THER OF OFFICE</u> - The Committee (half) consists of Three (3) to five (3) individuals so shall be hased by the beard from time to time. The Board shall have the right to reserve any number of the Committee on any cibe A mander may resign as any time by written consignation as any committee and board. If a recessive is the Committee and board is

max of consequent innersons, the needital consisses that It would be in the best learness of the Semplani and constaint which is exceent to application as an encountry count bodie, exceent to application on an encountry count bodie, caniques to country by monital to "pail (nevery against the fattist invited of management to provide at the monital and secure, it reported. Assembled in the monital and secure, or resolved as animorable invited animorable invited to the monital invited country of the monital animoral supposes of called the management of called the monital invited to the monital animoral supposes of called the called th

(a) The Empiral decires that each solf-familing plan be implessed through a trush decired in such season on to maste assessin thereto be qualify for hadders relaterance, and despread por to teason such branch for the pure

man, sumpress, the Section and Process do setmelly seventue and agree to follows.

ARTICLE 1 - OFFICIORS OF TRACE

Le used harries, exists scharters datined or required by the context, the following words and physical shall have the mention inticates:

I'S Attenty - whall two on arroway, itemsance company or border competizated to the first of medical majoration and manages <u>limitity lowerpoon</u> independent of may direct or instruct Channial conversals or others by the Empited and amployed to render parviso with respect to the plan and the Cond.

1.02 junts - shall mose the teard of Dispersors of the Ecopital

1.03 Committee - shall mean the countrys which shall administer
the plan as provided to Reticio 5.

the tracket for the track of the track of the Second of the Second of the track of

4 46 Descript "obati mase Part Worth Sotospethie Sampital, Inc.
6/h/s Fort Morth Description Andies! Conter, Park Morth, Torrack
Constr., Forum

1 97 <u>Sediete Homes</u> - chall sope the Sediment Procise Sninburnment Hamas principated by the Seal's Descript Administration

inted per 1st belacoppe

7

The Beginsh shell, by written motion, toop the frusten socialist of energy tendership of the Condition, its officers and spenty, and shell furnish the Twaters a certificial signature eard for the unabors of the Committee Per til perpases beronder, the Trutco shell be descimiled; ortified to only upon such specified sheathers

2.07 <u>Premarkation of Annalysis regions Complising.</u> The Committee shall diver a dhafamen and overcatory from among the manhors. It may appoint question from acceptant for the effective performance of the deliver had may designate as much appointed on the new or more numbers of the Committees much proves and delive, whenher administration and depressionary, as the Committees may done capability and appropriate. The Committee shall next by adjusting value. Its accepted while derivant intends emissionalism.

1.07 Severa of Administrative Committee. The Committee chail he percense by the Search with respect to the control of the columnistration of the Star was shall provide its with all proves and instructions somemony to coable is to graparly carry one like detice in that respect, and all proves conforms upon is by the Pion. Not in Indication, but in manifelection at the decepting, the Committee shall have the privar to manifelection in the decepting, the Committee shall have the privar to manifelect the Disc. he carious preferences and warmenforms its findings to the Shapital and the Trusce. and as a transfer it findings to the Shapital and the Trusce. and as a transfer it mann normanity of remot any confinituative order to determine all questions graphs obtained the Pion of Shapital and Committee by two dears, it shall desire all questions graphs of the determination of proposite from the Pion. provides inche present Shapit or confiningly, for the proposes of the Pion provides in the present Shapit or confiningly.

APP. 92

lisited on, the following information:

- (a) The belance of the treat property on the beginning of the Page Yang
 - (b) Current period contributions:
- (a) The convent and nearest of finel payments, including a expenses homeosting for minimum enoughnees, input expenses, claims padd, and achoe station tenns; and
- [4] Who trust property balance at two and of the Pius Year Secrimbehoding pay shlipscion to report winds; 40 days after the close of each 13-menth species, Trumbre Shall receive year traperts reporting the Trust End and containing new introvestion as manying shall resembly request Jame vizer by view.
- If this agreement whell to tentionated that may resume during a firm loor, of if the Drocues chall states on he tentered, the Tructue shall, within 40 days of much tententian, resignation or manufaction, vanish (in first) extensionant and attenues for the partial from the last partial community to the partial from the last partial community to the days of each tentialist, resignation or community.
- 3 for <u>Institution of Treatms</u>. The Process may coning immediate threat ab may since by giring 50 mays' vertices contain to the fourt. Upon about resignation becoming afforeirs, the Treatmen about resignation becoming afforeirs, the Treatmen about resident to the bospital on account of lice administration of the Pand during the period fallowing than assumed by the last menual accounting and mails perform all mate necessary so transfer and deliver the measure of the Pand to the december treatment.
- 3.66 Emparts of Trustees the beard say remove the Process at any time upon the delivery of 46 days' vetters notice to the Trustees. In the create of each removal, the Trustees that; be under the emma and transfer and deliver the bedeet of the Pand on its processor as provided in the made at the Studies's resignation.
- 4.07 <u>Original and Supergray Truston</u>. Thruston beruix house has been palacted by the Shard on the besis than Trustor in the year qualified and readily antichia Stangaini (sprintist whom

service to the Brental in the past has passed neutricis) (I is manumelated that Troutes and respital will sentiam this agreement instifuters. Reversey, in the event, of a venney in the trusterphip of this trace ownering at any time, ten ments shall serigate and appellat a published enumerar Trustee of this truce, may much necessary Trustee shall have all the rights and prever herein necessary trustee thail never all the rights and prever herein necessary trustee.

፥

3.00 Limitity. Stather any number of the Comittee, the tearty was inspired, the access not the Trustee shall be listle for any breach of responsibility on the best of parama exter than limit, but that he listle for its own case, and mining the Tolks or down with it is gowenly and fight.

MITTELS 1 - POSSES OF TRAFFILE

- 6.01 <u>Streams tod process</u>. The Treates of any seasons trustee coall here the nesharity viciness order at or report to any sours we difficult in uncertain the fallowing proces in such transmission commercial and any training truster that elements and if a locky pives and granted makes placed, authorities, provides and importation are previoud in the love of the United States and States for the process of the
- (1) to relate, only, toront or rejector to my stants, bands, securities, online or ether property. Including commutants through three conditioned by the Trustes, and seems to the Trustes, which is Seemed proper, secentary or competitive trimes organishisting for the execution of this discretion, recope that of wolny certary cores provided, blowway, that he learns any her make the trust property to the Seeplest or one parket my least to benefital within the exacting of the destiness requirement.
- (I) To mail, menhaspe, or otherwise dispose of any property on any time hald or required becomes at public or griwse whis, for each or on those, without als necessity of court oppored.

or mireralessesses

٠,٠

7

· .

- (3) To register any stant, mand or other occurity in the time of a mariner, with or vitimest distingues of any Classifier coletimeship, but concerns connect enable to maintained storing that each preparty in a types poort.
- [4] To invest in contification of deposit and accounts issued by Styatus
- (9) to veta in payton or by poney all attacks or other accordates, to great prodice, pencent on limited, and be sprea or take any other nation to request be may recognization, ecopys, concelliation, businesses or other preseduce or proceedings affecting any property of the Treat.
- (4) Do saves without welling and filling investment and appreliances, without Siling any annual or other cuture to any owner and without garing boads but the Treatmen shall furnish to the board and filescoid statements as any otherwise required by this agreements.
- (0) Traine is relieved from any companiality of diversitying investments of only train food. Deposely it is entemplied that Traines agreet to cock the highest take of trees becommendated with a named investment policy.
- 4 87 CHEMICALING. The Monopiles is authorized to Day the Treatme reasonable componenties for the persion rendered. But treatment with the based on what is reasonably and outstanties that the based on what is reasonably and componenties which is notified type or nature in the anamonity shaped for accordance to static type or nature. In the anamonity and shall believe on organization of the perture rentared by the Treatme tagether with the experience of populate or dicharacterists.

AFTICLE) - MEMBERS AND TERMINATION

7 0). The Semplini, through the board, shall have the right and power at any like and from the to like by instrument to writing delivered be the Trustice to smead. In whole or in part, one of all of the poweriness of the Pira and that personnel powerine.

that the ductor, powers and Elobilities of the Transon herrodder shall muc be definitionically impressed or described victions its ophnomes.

- 7.63 <u>Terminating</u> The Dopins opposes this Place to be constrained indefinitely, but of absorbity, is prawron the sight to be minima the Plan as any Elso by Addison of the blood unmonisated an ortical to the Truston [2 the Bospiks produce that a spreamont of a seminates the Flow, they upon possible of vriton codes thereof, the Truston that I olibert
- (i) breads and administer in commerces with this agramment such purches of the Crisis property as the despital shall suchify to the Trustee has been determined by an extract all required by the addition requisitions as a necessary Teneror true for Fature prisons of the Plan small does time or the morphist abult worstly so the Trustee that as independent netwery has decreasioned that such payment has been not set tourness are no larger establish, wherever the Trustee shall delired the believe of the Limit property to the Samples of
- (2) Open curelification to the Truscop by the despitablish that much payment is condiciont vita the mediace regulations, the Truston should deliver the belonce of the trust property to the Ampalani.

MERCIA + - AMERICANISM

- 8.81 <u>Sandrage</u> the handlagh and non-handlage in this agreement have been lessened for determined of reference only and ore to be (quared to any construction of the provisions bereat
- 6 63 <u>Construction</u>. This agreement what he construction assermance with the laws of the date of Texas. In the construction of this agreement, the associate whall samples the from and the singular the placed in off opens where over analogs whole he communicate.
- 6 03 <u>semprobility</u> Board any provinter of this agreement be downed in Finistics of any law, such provinter that he downed west

-62-

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	§ § 8	
NORRIS, RN, and NANCY ARGO, RN	§	
Defendants.	§ §	JOHNSON COUNTY, TEXAS

APPENDIX - PART 3

EXHIBIT J

ESTATE OF JOHNNY FISHER, DEC'D,
Plaintiff

VS.

413TH JUDICIAL DESTRECT COURT

TO THE DISTRICT COURT

A 113TH JUDICIAL DESTRECT COURT

A 113TH JUDICIAL

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 <u>TEX_PROBATE CODE ANN_SEC_233A (Vernon)</u>.

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.

First Amended Original Petition

Page No. 1



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". 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. 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.

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

First Amended Original Petition

^{§ 5,} TEX. PROBATE CODE

^{§ 233}A, TEXAS PROBATE CODE

^{§§ 5, 5}A and 5B, and 233A, TEXAS PROBATE CODE.

⁴ Id

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

First Amended Original Petition

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

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)

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.

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 <u>TEX. PROBATE CODE ANN. Sec. 233A</u> (Vernon) and pursuant to <u>TEX. CIV. PAC. & REM. CODE Sec. 15.002</u>, 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. 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.
- 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

First Amended Original Petition

Page No. 4

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. The Notice of Removal was not filed with any state court in Johnson County, Texas, as required by law and as represented by Chase Bank.

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

First Amended Original Petition

Notice of Removal

[&]quot; 28 U.S.C. § 1446 (d)

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.

Order of Remand, dated September 23, 2009

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. 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.

First Amended Original Petition

Order Denying Motion to Reconsider, dated April 15, 2010

The Hospital's bankruptcy is pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, <u>Case No. 05-41513-DML</u>, 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

First Amended Original Petition

Page No. 7

\$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"	
First Amend	ed Original Petition	

- 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.
 - 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 "I"	
First Amende	ed Original Petition	

Page No. 9

 $C: \label{local-continuous} C: \label{local-continuous}$

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
----	--

First Amended Original Petition

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.
- 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.
- 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.
- I. 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.

First Amended Original Petition

Page No. 11

- 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

First	Amended	Original	Petition
		Augman	1 cmuoli

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

First Amended Original Petition

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.
- 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:

First Amended Original Petition

Page No. 14

- 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 <u>Medicare Provider Reimbursement Manual</u> 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

First Amended Original Petition

Page No. 15

^{§ 71.021,} TEX. CIV. PRAC. & REM. CODE ANN. (VERNON) "Survival of Cause of Action"

¹² 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 <u>not</u> 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 <u>Medicare Provider Reimbursement Manual</u> 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 esatate. Paragraphs 43 thirough 46 are replete with rerferences 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 [1th Dist.] 1969, writ ref'd, n.r.e.); Ogden and Johnson v. Bosse, 86 Tex. 336, 344, 24 S.W. 798 (1894)

- Exhibit "3"
- Exhibit "3"

First Amended Original Petition

Page No. 16

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;
 - 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;

First Amended Original Petition

Page No. 17

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 Banik, N.A., Adversary Proceeding No. 07-04016

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 it 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:

First Amended Original Petition

Page No. 18

glace estable
30. वेद व्याप्त के
acean color
La e Sales Const-
. Indocediums
ideal Profession St. 189
Year of the second seco
ega viçeni ilde
in a constant fair in the cons
and it considerates the considerates and the consid
is desirable and a second seco
is the earth and
i in extension to the control of the
O O O O O O O O O O O O O O O O O O O
SATURAL MARKAGA
A STATE OF THE STA

		
	· ·	
	2	
	No.	
	*	ř
	· ·	
		;
	Y and the state of	,
		1
		į
		į
		į
		Ĺ
		A. Mary
		ć
		6.14
		1
		į.
		ALC: N
		5000
		Section 1
		į

- 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.
- I. each knew the amount assigned to Plaintiff's medical malpractice claim and that

First Amended Original Petition

Page No. 19

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.
- 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

First Amended Original Petition

Page No. 20

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase Bank\Pleadings\FirstAmendedOriginalPetitionFishervChase 2 .wpd

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

First Amended Original Petition

Page No. 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)

64.	Plaintiff seeks	pre-judgment	interest, as	allowed by law.
-----	-----------------	--------------	--------------	-----------------

Written Discovery Attached to Pleading

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.

Remainder of this page intentionally left blank

First Amended Original Petition

Page No. 22

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
325 South Mesquite Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346
(214) 354-8803 (Cell)
(817) 261-3347 Fax
atkinslawfirm@sbcglobal.net

and

MACLEAN & BOULWARE

Attorneys at Law

11 Main Street

Cleburne, Texax 7

. `

E. L. Atkins

TSB # 01409000

John MacLean

TSB #12764000

First Amended Original Petition

Page No. 23

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase Bank\Pleadings\FirstAmendedOriginalPetitionFishervChase 2 .wpd

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 Ruman 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 Rospital 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

APP. 118

157

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 actuarily 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 Medicars 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 Rospital.
- 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 Bospital to the Trustee for the fund.
- $1.05~{\mbox{Fund}}$ shall mean the trust fund created in accordance with 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 <u>Medicare Manual</u> shall mean the Medicare Provider
 Reimbursement Manual promulgated by the Social Security Administration

中槽。

of the Department of Health and Human Services.

 $\frac{1.08\ \text{Plan}}{1.08}$ — 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 Trustae), 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 Harsh & McLellan of Chicago, Illinois to be reasonably required as a actuarily adequate or sound fund reserve for such liability losses incurred and accrued against the Rospital 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

- j- ,..

. .

1.5

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 administerial 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

~ 4 –

二极 \$

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 <u>Indemnification of Administrative Committee</u>. 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 <u>Miscellaneous</u>. 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

177

101

7 19 1

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 Realth, 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 Bospital.

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 Rospital shall be prohibited. All income or revenue realized from said investments, including but not limited to, rebates, interest, dividends, etc. shall be retained and

150

1. 48 C

1 - 13 =

2:14-5

125

. Transferê

中国

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 Medicars. Upon termination of the Plan from the Medicars 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 Hanual.

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 Mospital 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:

- 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 Bospital'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 finencial statement and accounting containing such information as the Rospital shall from time to time reasonably request, including but not THE R

: 14 s. (-

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 Bospital 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

1 1 1 1 1

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 <u>Liability</u>. Neither any member of the Committee, the Board, the Rospital, 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

- 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 Hedicare 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

113 %

- .-1.

. . .

35.

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 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.
- 6.02 <u>Compensation</u>. 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 Bospital; 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 Beadings. 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 <u>Construction</u>. 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 femine 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

題と

THE S

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: My Mulling Chairman of the Board of Directors

ACCEPTED:

TEXAS AMERICAN BANK

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 Bospital conveys and delivers to the Trustee pursuant to Section 2 hereof, the sum of One Million Dollars (\$1,000,000.00).

Cause No. C200100173

MILDRED FISHER

IN THE DISTRICT COURT

VS.

JOHNSON COUNTY, TEXAS

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

Defendants.

413th JUDICIA

AGREED JUDGMENT

On the 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 Intervenors, 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

DAVID R. LLOYD District Clerk Johnson County Texas

JUDGMENT

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\PLEADING Judgment.wpd

- Exhibit #2

APP. 132

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

SIGNED this ______, 2007.

/// **}**

APPROV

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 Orr, R.N., and Karen Cox, R.N.,

JUDGMENT

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\PLEADING\Judgment.wpd

CRUSE SCOTT HE

PAGE 03/04

94/12/2827 10:48

81726.

E L ATKINS LAW

JUDGE PRESIDING

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.

سين المراجعة سيد وه أنه أكد أنها

State Bar No. 01409000

Askins Law Firm

325 South Mesquite Street

P.O. Box 157

Arlington, TX 76010 Telephone: \$17-261-3346 Telecopier: \$17-261-3347

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 Orr, R.N., and Karen Cox, R.N.,

JUDGMENT

F:\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\PLEADING\Udgment.wpd

2

NO. C200100173

MILDRED FISHER, ET AL

§ IN THE DISTRICT COURT OF

VS.

§ JOHNSON COUNTY, TEXAS

§ MEDICAL CENTER OF TEXAS,
N. P. CASH, R.N., SUE SAMUEL, R.N.,
V. PATE, CRT, and SUZANNE SHENK, D.O.

§ 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: Intervenors, 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 Administratinx 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)

Jana Odan

Lane Odom

Texas Bar No. 15202600

1 Cel_

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 Intervenors' counsel by certified mail, return receipt requested, and upon all other counsel of record by regular U. S. Mail, on the the day of March, 2002.

- (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. Bancruptcy Judge

Telephone: (517) 333-6020 Facsimile: (517) 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 Dailas, 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 cerefully 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, 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.

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. Wilhams, 490 U.S. 319 (U.S. 1989).

I note that Defendant turned over to Plaintiff monies held at the petition date. I do not at this time know

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 Shelden, 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 shocs 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 law, it may be that the settlor has standing to suc 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, 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.

The agreement provides that Texas law applies. (Agreement §8 02)

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 cf 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 submit⁵ 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.

Sincelely

O. Michael Lynn

DML:bt

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:

Cart 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, Decid, 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:

CT 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:

Image 50P

SIGNED: PER: ADDRESS:

C T Corporation System Beatrice Casarez 350 North St Paul Street

Suite 2900

TELEPHONE:

Dallas, TX 75201 214-932-3601

Page 1 of 1 / MN

information displayed on this transmittal is for CT Corporation's record kusping purposes only indisprovided to the recipient for quick reference. This information does not constitute Hegal 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 tere pts confirm receipt of package only, not

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 - PART 4

EXHIBIT K

Case No. C2000800560

ESTATE OF JOHNNY FISHER, DEC'D,
Plaintiff

VS.

* 413TH JUDICIAL DISTRICT

* DP MORGAN CHASE BANK,
GLENN MILTON, JAY SANDELIN,
LUCY NORRIS, RN, and
NANCY ARGO, RN
Defendants

* 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

Second Amended Original Petition

Page No. 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)

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". It is a claim in tort that is based upon various causes of action. 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.
- 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

^{§ 5,} TEX. PROBATE CODE

^{§ 233}A, TEXAS PROBATE CODE

^{§§ 5, 5}A and 5B, and 233A, TEXAS PROBATE CODE.

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

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 <u>TEX. PROBATE CODE ANN. Sec. 233A</u> (Vernon) and pursuant to <u>TEX. CIV. PRAC. & REM. CODE Sec. 15.002, et seq (Vernon).</u>

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-

Second Amended Original Petition

Page No. 3

^{*} TEX. CIV. PRAC. & REM. CODE ANN, § 15.002 (1), et seq

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

Second Amended Original Petition

Page No. 4

 $A: \label{lem:second-mended-original} A: \label{lem:second-mended-original-origina$

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. The Hospital has filed Chapter 7 bankruptcy¹¹ and Shawn Brown is the appointed Chapter7 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

attached to prior petitions filed by Plaintiff, and identified therein as Exhibit "2"

United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, <u>Case No. 05-41513-DML</u>, Hon. D. Michael Lynn, presiding.

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 "!"

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

Second Amended Original Petition

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.
 - 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.
 - 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.

Second Amended Original Petition

- 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

Second Amended Original Petition

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

Second Amended Original Petition

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

Second Amended Original Petition

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."
- 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 <u>Medicare Provider Reimbursement Manual</u> defines the hospital as the "provider" and not the "beneficiary" of The Trust.
 - The <u>Medicare Provider Reimbursement Manual</u> 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

^{§ 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
- 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 esatate. Paragraphs 43 thirough 46 are replete with rerferences 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 [1th Dist.] 1969, writ ref'd, n.r.e.); Ogden and Johnson v. Bosse, 86 Tex. 336, 344, 24 S.W. 798 (1894)

Second Amended Original Petition

provisions. A reading of The Trust and the <u>Medicare Provider Reimbursement Manual</u> 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;

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 Banik, N.A., Adversary Proceeding No. 07-04016 (attached to prior petitions filed herein by Plaintiff and identified therein as Exhibit "4")

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 it 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;
- 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.
- 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

Second Amended Original Petition

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

Second Amended Original Petition

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

Second Amended Original Petition

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.
 - 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

Second Amended Original Petition

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

Second Amended Original Petition

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

Kinzhach 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.
- Defendant, Sandelin was The Hospital's CEO, for periods on and after October 1, 1999 54. 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. Cohett-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

Second Amended Original Petition

Proximate Cause of Damages

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)

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,

LAW OFFICE OF E.L. ATKINS

325 South Mesquite Street

Mailing Address:
P.O. Box 157

Arlington, Texas 76004

(817) 261-3346

(214) 354-8803 (Cell)

(817) 261-3347 Fax

atkinslawfirm@sbcglobal.net

and

MACLEAN & BOULWARE

Attorneys at Law 11 Main Street

Clehurne, Texas 76033

(817)645/200/

3y:__/_____

É. L. Atkins, TSB # 01409000 John MacLean, TSB #12764000

Second Amended Original Petition

CERTIFICATE OF SERVICE

This is to certify that on this the day 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

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 0780 0000 2690 4349

William L. Kirkman
Susanna Johnson
Bourland & Kirkman
Attorneys
201 Main St.
Suite 1400
Fort Worth, TX 76102
Attorneys for Glenn Milton and Lucy Norris, Defendants
via CM RRR no. 7010 6780 0000 2690 4356

E.L. Atkins John MacLean

Second Amended Original Petition

EXHIBIT L







Search

Home Medicare Medicald SCHIP

About CMS Regulations & Guidance Research, Statistics, Data & Systems

Outreach & Edu

CMS Home > Regulations and Guidance > Manuals > Paper-Based Manuals

Manuals

Overview Future Updates to the IOM Internet-Only Manuals (IOMs)

Paper-Based Manuals

Paper-Based Manuals

Paper-based manuals' are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internetonly manual (IOM) or retired from the manual. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active Paper-Based Manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Select From The Following Options:

Show all Items

•	Show	only	(select	one	or	more	options):
---	------	------	---------	-----	----	------	-----------

Show only items whose last modified date is within the past

Show only Items containing the following word

Show Items

There are 16 items in this list.

Sort by: Publication # Ascend	ding → Go View Results in Excel →			
Publication # ▲	Title ▲ ▼			
06	Coverage Issues Manual			
09	The Outpatient Physical Therapy/CORF			
10	The Hospital Manual			
11	The Home Health Agency Manual			
12	The Skilled Nursing Facility Manual			
13	The Intermediary Manual			
14	The Carriers Manual APP. 170			
15-1	The Provider Reimbursement Manual - Part			
15-2	The Provider Reimbursement Manual - Part			
1 /00.				

2

19

The Peer Review Organization Manual

1 2 Next > Last »

View Items Per Page: 10 ▼ Go

Data Last Updated: 08/03/2007 Help with File Formats and Plug-Ins

Submit Feedback

Department of Health & Human Services | Medicare.gov | USA.gov Web Policies & Important Links | Privacy Policy | Freedom of Information Act | No Fear Act Centers for Medicare & Medicaid Services, 7500 Security Boulevard Baltimore, MD 21244

www3







Centers for Medicare & Medicaid Services

Search

44 . 24 . .

Medicare Medicaid SCHIP About CMS Regulations & Guidance Research, Statistics, Data & Systems Outreach & Edu

Strange Wall Brown Stranger CMS Home > Regulations and Guidance > Manuals > Paper-Based Manuals

Manuals

Overview

Future Updates to the IOM

Internet-Only Manuals (IOMs)

Paper-Based Manuals

Paper-Based Manuals

Details for 15-1

Return to List

Shown below are the details for the item you selected from the list.

Publication

15-1

Title

The Provider Reimbursement Manual - Part 1

Downloads

Chapter 1 -- Depreciation

Chapter 2 -- Interest Expense

Chapter 3 -- Bad Debts, Charity, and Courtesy Allowances

Chapter 4 -- Cost of Educational Activities

Chapter 5 -- Research Costs

Chapter 6 -- Grants, Gifts and Income From Endowments

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

APP. 172

1

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

Chapter 27 -- ESRD Services and Supplies

Chapter 28 -- Prospective Payments

Chapter 29 -- Provider Payment Determination And Appeals

Chapter 30 -- NON-PPS Hospitals and Distinct Part Units

Related Links Inside CMS

There are no Related Links Inside CMS Related Links Outside CMS

There are no Related Links Outside CMS

Last Modified Date: 09/08/2005 Help with File Formats and Plug-Ins

Department of Health & Human Services | Medicare.gov | USA.gov Web Policies & Important Links | Privacy Policy | Freedom of Information Act | No Fear Act Centers for Medicare & Medicald Services, 7500 Security Boulevard Baltimore, MD 21244

Ewww

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 <u>Conditions Applicable to Self-Insurance</u>.--

A. <u>Definition of Self-Insurance</u>.—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. <u>Self-Insurance Fund.</u>—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. <u>General Legal Responsibility</u>.--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 §2162.8. Any rebates, dividends, etc., to the provider from the fund will be used to reduce 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 appropriate regional office.
- 4. <u>Termination.</u>—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. <u>Income Earned.</u>—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. <u>Soundness of the Fund.</u>—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 ejects 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.

* 413TH JUDICIAL DISTRET

*

J P MORGAN CHASE BANK,

GLENN MILTON, JAY SANDLIN,

LUCY NORRIS, RN, and

NANCY ARGO,

Defendants

* JOHNSON COUNTY, TEXAS

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 - Al! Defendants.

C:\Documents and Settings\Owner\My Documents\L. Atkins Files\Law Files\FisherEstatevChase etal\Written Discovery\Disclosures\Pls Rsp to RFD Initial Rsp.wpd

Page 1

COPY

<u>Initial Response</u>: At this time, Plaintiff believes that the correct name of the parties are, as follows:

<u>Plaintiff</u>: The Estate of Johnny Fisher, Deceased, by and through its duly appointed Administrator. Houston Allan Fisher.

<u>Defendants:</u> 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.

C:\Documents and Settings\Owner\My Documents\El. Atkins Files\Law Files\FisherEstatevChase etaf\Written Discovery\Disclosures\Pls Rsn to RFD Initial Rsp.wpd

- a. <u>Legal Theories for Plaintiff's Claim of Breach of Fiduciary Duties asserted against Defendant, JPMorgan Chase Bank, N.A.</u>
 - 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

- 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)
- Nii. 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. Renzau*, 81 S.W.3d 381 (Tex. App. Beaumont 2002, pet. denied);

Plaintiff's Response to Requests for Disclosure - All Defendants.

- b. Factual Bases for Plaintiff's Claim of Breach of Fiduciary Duty by Chase Bank.

 Little or no discovery has been conducted ast 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.
 - 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 personal 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.

- (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.

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.
 - (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

^{\$ 71.021,} TEX. CIV. PRAC. & REM. CODE ANN. (VERNON) "Survival of Cause of Action"

Plaintiff's Response to Requests for Disclosure - All Defendants.

C:\Documents and Settings\Owner\My Documents\EL Atkins Files\Law Files\FisherEstatevChase ctaf\Written Discovery\Disclosures\Pls Rsp to RFD Initial Rsp.wpd

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 <u>Medicare Provider Reimbursement Manual</u>.
 - (a) The Medicare Provider Reimbursement Manual defines
 The Hospital as the "provider" and not the "beneficiary" of
 The Trust.
 - (b) The <u>Medicare Provider Reimbursement Manual</u> 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)

2

- (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
- 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? Trustee, For Fort Woprth Osteopathic Hospital, Inc., Plaintiff, vs. JP Morgan 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 <u>Motion to Dismiss</u> are replete with references to duties owed and allegedly breached; however, the heneficiaries are identified as the malpractice victims, and not the Debtor. Fort Worth Osteopothic Hospital. Inc.

Plaintiff's Response to Requests for Disclosure - All Defendants.

C:\Documents and Settings\Owner\My Documents\E1. Atkins Files\L2w Files\FisherEstatevChase etaf\Written Discovery\Disclosures\Pls Rsp to RFD Initial Rsp.wpd

- 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 <u>not</u> 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.
 - 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;

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.

- (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).
- 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).
- 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 W1. 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. Jenkens & 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") 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 b7y law to have been acquired. Flack v. First National Bank of Dalhart. 148 Tex. 495, 226 S.W.2d 628 (1950)

- (1) Notice is not synonymous with knowledge, as a person may be held to have notice of something about which he has no knowledge. *ld*.
- (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. <u>Factual Bases for the allegation of Civil Conspiracy</u>. 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.
 - 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.
 - Requirements for the establishment and operation of the subject trust, that are contained in the <u>Medicare Provider Reimbursement Manual</u> 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 <u>Medicare Provider</u>

Plaintiff's Response to Requests for Disclosure - All Defendants.

<u>Reimbursement Manual</u> 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.

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.

<u>Disclosure No. e - the name, address, and telephone number of persons having knowledge</u> of relevant facts, and a brief statement of each identified person's connection with the case.

Response to Request for Disclosure et

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.

C:\Documents and Settings\Owner\My Documents\F1. Atkins Files\Law Files\FisherEstatevChase etal\Written Discovery\Disclosures\Pls Rsp to RFD Initial Rsp,wpd

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.

C:\Documents and Settings\Owner\My Documents\EL Atkins Files\Law Files\FisherEstatevChase etaf\Written Discovery\Discfosures\Pis Rsp to RFD Initial Rsp.wpd

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.

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 Ostcopathic 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 selfinsured 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.

C:\Documents and Settings:\Owner\My Documents\EL Atkins Files\Law Files\EisherEstates Chase etal\Written Discovery\Disclosures\Pis Rsp to RFD Initial Rsp.wpd

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 $F(4)(\Lambda)$:

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.

C:\Documents and Settings\Owner\My Documents\El Atkins Files\Law Files\FisherEstatesChase etaf\Written Discovery\Disclosures\Pls Rsp to RFD Initial Rsp.wpd

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 <u>Adversary No. 07-04016</u>, 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 <u>Adversary No. 07-04016</u>, 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.

C:\Documents and Settings\Owner\My Documents\EL Atkins Files\Law Files\FisherfstatevChase etal\Written Discovery\Disclosures\Pls Rsp to RFO Initial Rsp.wpd

Resonance to Request for Visclosum:

mas! Response:

and the common the state of the second substitute of the substitution of the substitut

Disclosure No. I. the name, address, and telephone number of any person who must be designated as a responsible third porty

Response to Require for Dividence:

Initial Response: We made to not an accordance from a come one by designment as a reserve of the

third party, at this time.

ZZZZZOFEKE OF E.L. ATKINS AZKU ATKINS LAW FIRM

US Louis Mergain Street

更不是BOX 150

or ingless. Ferres 1988-

1981年1981年3月4日

16171761-3347 - Fax

with the law formule should be the

1000

计可以无限 義 微块拓美强军

人物对抗性 超过分说

- Meia Strock

Cognaphia Team TODA

PRESENTENT OF

10 1045-3788 - Can

Prainciff's Response to Registring for Charlesson and The Countries

t i Novamenn und Seitiege Volge i Stylland ist och der Carre der Varetsiefaerte grad iber einstüblich de Bisserer Winderneis Volldigt i IST hill ist op is di

CERTIFIC ATE OF SERVICE

This is to recife that the trib is limited from the following the first order and there is one also the tribular to the following pleading. Flatouff's initial Resonance is suggested disclosure for left Internations, but because in the following as required by her

Robert & Richardson

Amon & Head, h

Astron & Hamilton

Benther of Farm (

Anchom Walker & C

Antonia (

Mark of the So

Mark

Susab & Baird
Connect Schmidt of About 17 Con
Assorbitys
550 Bailey Ave.
Notice 500
Con Worth, TX 20100
Advitorys for Mancy sorge (sefendag)
who CM HRR ass. The professional applies

Withins L. Enteress
Susame Johnson
Franchand & Kirkener
Astronomy
The Male St.
C. Sushing
Franchand The Tailon
Astronomy for Glerin #44500 was Lucy Norms. Trebendance

Thank ME REER 80, 7810 7870 6998 9776 8757

Andrewska i est

This Hell keeps to be Removed to Divide the Control Engineer

Collections at a sold in series (I) a new Mar Berramon and a private Mexical and in New Association and a self Found These arm Markey was the Report RAM letters Foundation

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 – PART 5

EXHIBIT N

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

In re:	#	
7077	#	
FORT WORTH OSTEOPATHIC	#	
HOSPITAL, INC. D/B/A	#	Case No. 05-41513-DML-7
OSTEOPATHIC MEDICAL CENTER	#	5.00 (05.41313-DWIL-7
OF TEXAS	#	
**********	*****	******
Estate of Johnny Fisher, Dec'd,.	#	
Plaintiff	#	<u>,4</u>
V\$	#	Adversary No. 08-4168-DML
	#	TWO GO TION DIVIL
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

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

PAGE NO. 2

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

PAGE NO. 3

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

PAGE NO. 4

following, alternative bases:

- REMOVAL, PURSUANT TO <u>28 U.S.C. SEC. 1334</u>, <u>28 U.S.C. SEC. 1452</u> AND <u>28 U.S.C. SEC. 1367</u>, ALLEGING THAT THE CLAIM IS ONE ARISING IN OR RELATED TO CASES UNDER <u>TITLE 11</u>; AND, ALTERNATIVELY,
- REMOVAL PURSUANT TO <u>28 U.S.C. SEC.</u> <u>1332</u> AND <u>28 U.S.C. SEC.</u> <u>1441</u>, ALLEGING DIVERSITY OF CITIZENSHIP AND IMPROPER JOINDER OF RESIDENT DEFENDANTS.

BASIS FOR REMOVAL NUMBER ONE:

• REMOVAL, PURSUANT TO <u>28 U.S.C. SEC. 1334</u>, <u>28 U.S.C. SEC. 1452</u> AND <u>28 U.S.C. SEC. 1367</u>, ALLEGING THAT THE CLAIM IS ONE ARISING IN OR RELATED TO CASES UNDER <u>TITLE 11</u>.

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

MOTION TO REMAND

PAGE NO. 5

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

MOTION TO REMAND

PAGE NO. 6

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. III., 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. III., 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

MOTION TO REMAND

PAGE NO. 7

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. Bkrtcy., 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

MOTION TO REMAND

PAGE NO. 8.

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

MOTION TO REMAND

PAGE NO. 9

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

MOTION TO REMAND

PAGE NO. 10

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

MOTION TO REMAND

PAGE NO. 11

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

MOTION TO REMAND

PAGE NO. 12

interests at stake.

BASIS FOR REMOVAL NUMBER TWO:

REMOVAL PURSUANT TO <u>28 U.S.C. SEC.</u> <u>1332</u> AND <u>28 U.S.C. SEC.</u> <u>1441</u>, 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.

MOTION TO REMAND

PAGE NO. 13

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.

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])

MOTION TO REMAND

PAGE NO. 14

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 -

MOTION TO REMAND

PAGE NO. 15

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

MOTION TO REMAND

PAGE NO. 16

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 F2d 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

MOTION TO REMAND

PAGE NO. 17

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

MOTION TO REMAND

PAGE NO. 18

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)

MOTION TO REMAND

PAGE NO. 19

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. <u>Tex. Prop. Code Sec. 114.001. "Liability of Trustee to Beneficiary"</u>

The beneficiary of a trust, revocable or otherwise, is "a <u>person for whose benefit</u> property is held in trust, regardless of the nature of the interest." <u>Sec. 111.004(2) Tex. Prop.</u>

<u>Code</u> [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

MOTION TO REMAND

PAGE NO. 20

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:

MOTION TO REMAND

PAGE NO. 21

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

MOTION TO REMAND

PAGE NO. 22

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 I 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

MOTION TO REMAND

PAGE NO. 23

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;

MOTION TO REMAND

PAGE NO. 24

- 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

MOTION TO REMAND

PAGE NO. 25

comprehensive general liability, as well as workers' compensation insurance incidents. <u>Medicare Provider Reimbursement Manual, sec. 2162.7 D</u> [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 "inbeing" when the trust was established. Except in the case of rare and seldom seen spendthrift

MOTION TO REMAND

PAGE NO. 26

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 Snuhbing*, 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

MOTION TO REMAND

PAGE NO. 27

Osteopathic Hospital, Inc. 287 B.R. 706 (Bkrtcy. 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

MOTION TO REMAND

PAGE NO. 28

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

MOTION TO REMAND

PAGE NO. 29

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

MOTION TO REMAND

PAGE NO. 30

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.

MOTION TO REMAND

PAGE NO. 31

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)

MOTION TO REMAND

PAGE NO. 32

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. Jenkens & 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

MOTION TO REMAND

PAGE NO. 33

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. Jenkens & 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

MOTION TO REMAND

PAGE NO. 33

confirmed by the Director of Accounting, Bruce Edwards. <u>Edwards Deposition, Exhibit "9"</u>, page 104, lines 3-4 The <u>Medicare Provider Reimbursement Manual</u> provides, in part:

- 1. <u>General Legal Responsibility</u>. The fiduciary agreement must include the appropriate legal responsibilities and obligations required by State laws.
- 2. <u>Control of Fund</u>. 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

MOTION TO REMAND

PAGE NO. 34

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

MOTION TO REMAND

PAGE NO. 35

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

MOTION TO REMAND

PAGE NO. 36

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,

MOTION TO REMAND

PAGE NO. 37

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

MOTION TO REMAND

PAGE NO. 38

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.

MOTION TO REMAND

PAGE NO. 39

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

MOTION TO REMAND

PAGE NO. 40

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

MOTION TO REMAND

PAGE NO. 41

file and did not demand them. <u>Lansford Deposition</u>, <u>Exhibit "8"</u>, 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. <u>Lansford Deposition</u>, <u>Exhibit "8"</u>, 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-

MOTION TO REMAND

PAGE NO. 42

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

MOTION TO REMAND

PAGE NO. 43

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 (215, 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:

MOTION TO REMAND

PAGE NO. 44

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

MOTION TO REMAND

PAGE NO. 45

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

MOTION TO REMAND

PAGE NO. 46

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, <u>Exhibit "7"</u>, 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. <u>"Termination"</u>. <u>Medicare Provider</u>

MOTION TO REMAND

PAGE NO. 47

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)

MOTION TO REMAND

PAGE NO. 48

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.

MOTION TO REMAND

PAGE NO. 49

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.

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

MACLEAN & BOULWARE
Attorneys at Law

11 Main Street

Cleburne, Texas 76033

(817)645-\$700 (817)645-37**38** (FAX

B. L. Atkins

TSB #01409000

John MacLean TXB #12764000

MOTION TO REMAND

PAGE NO. 50

CERTIFICATE OF SERVICE

This is to certify that on this the 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:

Robert G. Richardson
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. 7008 1140 0002 0617 1738

John MacLean

MOTION TO REMAND

PAGE NO. 51

References

Statutes and Rules

28 U.S.C. Sec. 157 (b) (2) (O)

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 seg (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)

Tex. Prop. Code Sec. 114.001. "Liability of Trustee to Beneficiary"

Tex. Prop. Code Sec. 115.001 (1) and (5), "Prop. Jurisdiction"

Tex. R. Civ. Proc. 192,3 (f)

Tex. R. Civ. Proc. 194,2 (g)

Medicare Provider Reimbursement Manual, sec. 2162.7 D

Medicare Provider Reimbursement Manual, Sec. 2162.9 A

Medicare Provider Reimbursement Manual, sec. 2162.9 C

Treatises

Black's Law Dictionary, at page 1546 (8th ed. 2004)

Bogert, Trusts and Estates § 592 at 410-11 (2d ed. 1980 & Supp. 1988); § 862 n. 10 (2d ed. 1982 & Supp. 1988)

4 Corbin on Contracts sec. 779C (1951)

Section 212, comment e, of the Restatement (Second) of Trusts

III Scott, The Law of Trusts § 205.1 at 1673 (3d ed. 1967)

1 Williston on Contracts, sec. 356

MOTION TO REMAND

PAGE NO. 52

Cases

Alpert v. Riley, 01-06-00605-CV (Tex. App.- Houston [1st Dist.] 10-23-2008) Archer v. Griffith, 390 S.W.2d 735, 739 (Tex. 1964)

B., Inc. v. Miller Brewing Co., 663 F.2d 545, 549 (5th Cir. 1981)

Baker v. Highland and Pustelak v. Van-Denberghe, Nos. 84-1067 and 84-1068, slip op.

Bkrtcy., E.D. Mi. Jan. 1985)

Bentley v. Bunton, 94 S.W.3d 561, 619 (Tex. 2002)

Brandt v. Grounds, 687 F.2d 895, 898 (7th Cir. 1982)

Burden v. General Dynamics Corp., 60 F.3d 213, 216 (5th Cir. 1995)

Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999)

Butner v. United States, 440 U.S. 48 (1979)

Canadian Transport Co. v. Irving Trust Co., 548 F.2d 53, 55 (2d Cir. 1977)

Caplin v. Marine Midland Grace Trust Co. of New York, 406 U.S. 416, 92 S. Ct. 1678, 32 L. Ed. 2d 195 (1972)

Carriere v. Sears, Roebuck & Co., 893 F.2d 98 (5th Cir 1990)

Chesapeake & O.R. Co. v. Cockrell, 232 U.S. 146, 152 (1914)

Citizens Ins. v. Daccach, 217 S.W.3d 430 (Tex. 2007)

Corpus Christi Bank & Trust v. Smith, 525 S.W.2d 501, 503-4 (Tex. 1975)

Dudley v. Community Public Service Co., 108 F.2d 119, 123 (5th Cir. 1939)

Duzich v. Advantage Finance Corp., 395 F.3d 527, 530 (5th Cir. 2004).

Energy Service Co. v. Superior Snubbing, 236 S.W.3d 190, 194 (Tex. 2007)

Estate of Stetson, 463 Pa. 64, 83-84, 345 A.2d 679, 690 (1975)

Florida Dept. of Ins. v. Chase Bank of Texas, N.A., 274 F. 3d 924 (5th Cir. 2001)

Fort Myers Memorial Gardens, Inc. v. Barnett Banks Trust Co., 474 So.2d 1215, 1218 (Fla. App. 2d Dist. 1985)

Gore Design Completions, Ltd. v. Hartford Fire Ins. Co., No. 08-50042, 2008 U.S. App.

MOTION TO REMAND

PAGE NO. 53

LEXIS 16481, *6-*7 (5th Cir. Aug. 4, 2008)

Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305 (5th Cir. 2002) Griggs v. State Farm Lloyds, 181 F.3d 694, 698 (5th Cir. 1999)

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))

Hinojosa v. Guidant Corp., 2005 WL 2177212, at 4 (S.D. Tex., Sept. 7. 2005) Houston v. Edgeworth (In re Edgeworth), 993 F.2d 51, 55 (5th Cir. 1993) Hornbuckle v. State Farm Lloyds, 385 F.3d 538, 542 (5th Cir. 2004)

In re Burr Wolff, LP (S.D. Tex. [Hous. Div.], Bankruptcy No. 06-37073-H3, 10-10-2007) In re Esiate of Berger, 174 S.W.3d 845, 848 (Tex. App.-Waco 2005, no pet.) In re Fort Worth Osteopathic Hospital, Inc. 287 B.R. 706 (Bkrtcy. N.D. Tex. 2008) In Re Hardwicke Companies, Inc. (S.D. N.Y. 1985) In Re Mercer's Enterprises, Inc., 387 B.R. 681 (Bkcy Ct. E.D. N.C. 2008)

Jones v. Blume, 196 S.W.3d 440, 447 (Tex. App.- Dallas 2006, pet. denied)

Kastner v. Jenkens & Gilchrist, P.C., 231 S.W.3d 571, 580 (Tex. App.-Dallas 2007, no pet.) Keating v. Shell Chemical Co., 610 F2d 328, 333 (5th Cir. 1980)

Keck, Mahin, et al v. Nat. Union Fire Ins. Co of Pittsburgh, P.A., et al 20 S.W.3d 692, 695 (Tex. 2000);

Kelley-Coppedge, Inc. v. Highlands Ins. Co., 980 S.W.2d 462, 464 (Tex. 1998) Kinzbach Tool Co. v. Corbett-Wallace Corp., 138 Tex. 565, 160 S.W.2d 509, 514 (Tex. 1942)

Knox v. Ball, 191 S.W.2d 17, 21 (Tex. 1945)

Kratzer v. Capital Marine Supply, Inc., 645 F.2d 477, 483 (5th Cir. 1981)

Landry v. Exxon Pipeline Co., 260 B.R. 769 (MD La 2001)
Lundy v. Masson, 260 S.W.3d 482 (Tex. App. - Houston [14th Dist.] 2008, pet. denied)

Matter of McRae Fire Protection, Inc., 49 B.R. 773 (E.D. Mich S.D., May, 1985) McDonald v. Abbott Laboratories, 408 F.3d 177, 183 (5th Cir. 2005) Meyer v. Cathey, 167 S.W.3d 327, 330 (Tex. 2005)

MOTION TO REMAND

PAGE NO. 54

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

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)

O/E Systems, Inc. v. Inacom Corporation, 179 F. Supp. 2d 363, 367 (D. Del. 2002) Oilfield Operations, Inc. v. Official Unsecured Creditor's Committee (In re Equinox Oil Co., Inc., 300 F. 3d 614, 618 (5th Cir. 2003)

Parks v. New York Times Co., 308 F.2d 474, 476 (5th Cir. 1962)

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) Punts v. Wilson, 137 S.W.3d 889, 891 (Tex. App.- Texarkana 2004, no pet.)

Re Alabama Fuel Sales Co., 45 B.R. 365 (N.D. Ala 1985)

Re American Energy, Inc., 50 B.R. 175 (BC DC ND 1985)

Re Bob Lee Beauty Supply Co., 56 B.R. 17 (BC ND Ala 1985)

Re Illinois-California Express, Inc., 50 B.R. 232 (B.C. DC Colo 1985)

Re Sweeney, 49, B.R.1008 (N.D. III., 1985)

Re Tom Carter Enterprises, Inc., 44 B.R. 605 (C.D. Cal 1984)

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.)

Seven G. Ranching Co. v. Stewart Title & Trust, 128 Ariz. 590, 592, 627 P.2d 1088, 1090 (1981)

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)

Slay v. Burnett Trust, 187 S.W.2d 377, 387-88 (Tex. 1945)

Smallwood v. Ill. Cent. R.R. Co., 385 F.3d 568, 573 (5th Cir. 2004)

Smith v. Petsmart, Inc., No.06-60497, 2008 WL 2062257, at *2 (S.D. Tex., May 15, 2008) State Farm Mutual Ins. Co. v. Ollis, 768 S.W.2d 722, 723 (Tex. 1989)

Tex. Commerce Bank, N.A. v. Grizzle, 96 S.W.3d 240, 249 (Tex. 2002) Thompson v. Columbia/HCA Healthcare, 125 F. 3d 899 (5th Cir. 1997)

MOTION TO REMAND

PAGE NO. 55

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mat\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

Tomlin v. Ceres Corp., 507 F.2d 642, 648 n. 2 (5th Cir. 1975)

Transamerican Leasing Co. v. Three Bears, Inc., 586 S.W.2d 472, 476 (Tex. 1979)

Travis v. Irby, 26 F.3d 644 (5th Cir. 2003)

United States Life Ins. Co. v. Mechanics & Farmers Bank, 685 F.2d 887, 895-97 (4th Cir. 1982)

UNR Industries, Inc. v. Continental Insurance Co., 623 F. Supp. 1319 (N.D. Ill., 1985) U.S. ex Rel. Bledsoe v. Community Health Sys., 342 F.3d 634 (6th Cir. 2003)

Whitfield v. Lindemann, 853 F. 2d 1298, 1304 (5th Cir. 1988)

Exhibits

Exhibit "!" - 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

MOTION TO REMAND

PAGE NO. 56

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

Exhibit "1"

MOTION TO REMAND

PAGE NO. 57

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

Date No. P20001 7096

DNRE: ⇔ ري، ∸	IN THE PROBATE COURT	
•	COURT NO 2	
ESTATE OF IOHINNY FISHER, DEC'D,	1 OJENSON COUNTY, TEXAS	s
希尔斯勒·哈姆斯斯斯 中市 计数字字符单 外外 新拉拉	建设付款的 医乳腺性 医乳腺性 医乳腺性 医乳腺性 医乳腺性	
ESTATE OF JOHN'NY PISHER, DEC'D, Plaintiff	IN THE PROBATE COURT	
¥s.	COURT NO. 1	
JP MORGAN CHASE BANK, N.A., GLENN MILTON, IAY SANDLIN, LUCY	*	
NORRIS, RN. and NANCY AROO, RN. Defendance	* JOHNSON COUNTY, TEXAS	;

ORIGINAL PETITION AND CLAIM OF ESTATE

TO THE HONORABLE PROBATE COURT:

CO THE PARTY OF TH This chies it brought by the Sitate of Johnny Fisher, Deceased, (horeafter THE ESTATE") in the above styled and numbered Probate Proceeding parsiant in the P previsions of the Texas Probate Code.

Jurisdiction and Venue

This claim is a matter apportuning to an estate or incident to an estate. Sec. 4. TEX. PROB. CODE: This is a chairs in cont brought by THE ESTATE based upon various causes of action, beceafter not forth. All or a significant portion of the causes of action herein set forth

Clair	,	
ų	No	1



Original Invidence TUAL2 was Collegeneeth and Secting interiority Decementalizer Fried off Dealtop & No atmost Description Fried to LIBRARY CLIPPT FILES Med-MarPither of Endorges Checkfloring and Dings of Arthroposter Dealth who

- Lucy Nortis, RN. 1900 Montgomery St., For. Worth, Texas 76107, and,
- Nancy C. Argo, RN. whose present address is unknown at this time. IF Margan Chase Bank, N.A. is heroin referred to, at times, as "CHASE BANK".

Nature of Claim

THE ESTATE owns a judgment ("The Judgment") against Fort Worth Ostropathic Hospital, Inc. ("FWOH" or "The Hospital") in a medical mulpractice claim filed in Johnson County, Texas. As a result of efforts to collect The Judgmens, 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. Lassiford, a CPA, thereafter, ar times, "Lansford") established for one specific purpose of paying PWOH's medical malpractice claims had been improperly managed and funds, which had been placed in the trust account to be neld in reserve for the payment of THE ESTATE's medical multiractice claim had been wrongfully disposed of by CHASE, with the end of Defendence Gleen Militon, Tay Sandin, Lincy Norris, RM, and, Nancy C. Argo, RN, each and all of whom were agents, servaints officers, employees indiodirectors of FWOH. A copy of the trust agreement, entitled "Fort Worth Ostropathic Hospital. Ira., 4/1/a Fort Warth Osteopathic Medical Center Sett Insurance Plan Trust Agreement, is stacked parein and marked Exhibit "I". The trust agreement is, at times herein, referred to is "The Trust", or "The Trust Agreement". The final manufactory pursuant to The Trust Agreement is, at times, referred to as "The Trust Pond". This is a claim for breach of fiduciary duty by the

Page No. 3

Oright United Chameters and Commission of the Commission of the Commission and Commission of the Commi

occurred in Johnson County, Texas. The claim, upon which the judgment was obtained was faled m and tried wholly in Johnson County, Texas in Cause No. 02001(6)73, styled Mildred Fisher, Plaintiff vs. John B. Payte, Ostropathic Medical Center of Texas, et al. in the 4134 Judicial District Court, Hon William C. Bosworth presiding. The conspiracy and agreement to conceal the improper conduct and conceal due true status of a self-insured trust fund from Judge Bosworth and from the 413th District Court of Johnson County, Texas, which form the basis, in whole or in part, of the causes of action herein set forth, accounted, in part, and were published and filled in the 413° District Court, Johnson Courty, Texas: Therafore, this Court has jurachesion and venue over this sait is 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 are appropriate order be so entered

The Estate of Johnny Fisher, Deceased, the administration of which is pending in this Court. Plaintiff is never referred to, at times, as "THE ESTATE"

Defendance:

- 1P Morgan Chase Bank, N A., 400 Throckmorton, Fort Worth, Texas;
- Glans Milton, 1000 Montgomery St., Fort Worth, Texas 76107;
- Jay Sandlin, whose address is 7408 Emisbrook Lann, Fon Worth, Texas 26179;

Caum Page No. 2

Origitation Charleman L. upd
C. Doument and Settingstation; May Document Mart Price of Ecology & Noticed (Decktop) ATKING
LIBRARY COLIENT FILES Med-Nairf Idea wiff Morgan Conscipled (april 1984) April 1984
When the College of the Conscipled Conscipled (april 1984) April 1984
When the College of the Conscipled (april 1984) April 1984
When the College of the College of the Conscipled (april 1984) April 1984
When the College of the College

Trastee, CHASE BANK and for conspiracy to areach a fiduciary duty, resulting in demage to THE ESTATE, as boneficiary of the subject arest, hereinafter defined a xl described. THE ESTATS seeks compensatory damages, exemplary damages, attorney fees and any and all other damages ablowed by law against each and every Defendant, jointly and soverally,

Factual Background

THE ESTATE is a judgment creditor of FWOH. THE ESTATE owns The Judgment as a result of a medical malpractice elsem filed against FWOH in 2001, for damages from injuries sustained by Johnny Fisher leospital patient, remitting in his death to October 1, 1999. The ludgment was signed and entered June 7, 2007 by Hon. William C. Busworth, District Endge. 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 "1".

On numerous occasions, and continuously after the medical malpractice lawsuit was filed by THE ESTATE, Defendants represented to the 413° District Court in Johnson County in documents filed with the case, to THE ESTATE and to others, in general, that FWOH had a selfmagrance trust plan and fund expublished, to lieu of primary medical malpractice insurance, in the or suited agency coverage system as expects to the system of \$4,000,000 and a specific and the system of \$4,000,000 and the system of \$4,000,000 and \$4,000, \$25,000,000,00 to satisfy any preignment THE ESTATE anglet outsign to the Naveuri. A copy of one of the on-going representations made to Judge Bosworth regarding the self-instered fund in lieu of insurance is attached to this pleading and marked Exhibit "3". CHASE BANK was the

Cla:m

Page No. 4

Grights Filter (Castel MAL) upd C'Excapeets des Sceingeleithis May Occurrentell, et Tiles of Decincy & Notebook Decking NATIONS LIBRARY TURNET FILES Med Anald where v.H. Morgan Grand Plandings On Pedicina Charlis HALL upo

Claim

quesce of the self-insered trust and trust fund. (Exhibit "2") CHASE BANK selected Lansford to manage the efficir 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-mel claims and lawswits. The Trust clearly states that the beneficiaries are those baving med-mal claims against FWOH. The Hospital assigned \$900,000.00, to be reserved for the payment of THE ESTATE'S med mal claim and, pursuant to the provisions of The Trust Agreement, are to be maintained uptil THE ESTATE'S claim in resolved. The Hospital specifically represented that The Trust Fued was an indomnity 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

> Sec. 111.004 (2) Tex. Prop. Code (Vermon); Knox v. Ball, 161 3 W.2d 17, 21 (Tex. 1945). A third party may recover on a confirst made between other parties it in parties intended to mecure some benefit to that fluid party; and if the contracting parties intended to mecure some benefit to that fluid party; and if the contract for the third party is senset. If it is qualify as or 1943). A third party may recover on a contract made between outer per ampairs interested in secure some benefit to their flantly, and if the contracting parties intered into the contract for the shirt party's benefit of the contracting per per secure of the secure of

Clum Page No. 5

OrightoffsårnChaseEPHAL2.wpd
CyDocumentalUser Files off Desktop & Notebook/DesktopiATK/I
LIBRARY/CYLENT FELES/Mod-MeliFisher or AF Mortgan Chasel/Planting#s/Prights-ChaseF(NAL MCFINAL 2 was

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", staims

> Payment shall be made from The Trust property only for maturactice latter of the Hospital pera. 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 direction of an Administrative Committee. Payment shall be made only for majoractice losses of The Hospital, for expenses for administering the claims management program, expenses of establishing the Trust and trust fund, legal expenses, actuanal expenses, costs relating to the acquisition for the Hospital of excess insurance coverage, expenses involved with the maintenance of the ourst 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 arsements with respect to the trust property. The trustee was required to deliver a financial statement to The Bospital at the close of each 12 month period, ending on September 30, of each year, as The Trust Agreement required.

There is nothing to The Trist Agreement that provides that The Tristee is not obligated

Claim Page No. 7

OrigifetFshreChastFINALL.upd

Ought in Michael (MALL spo Calbustaness and Schingstodersikly Documents List File; off Deskop & Nousbrok Deskupk (TKINS LIBRARY CLIDY FRESSMed Man Fisher v 12 Miegus Chesty Phoemps Confession Library Date (1994)

remoburse for payments made to satisfy the judgment. (Exhibit "3") The Fund was, therefore, " for the benefit of THE ESTATE, in the event THE BSTATE 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 salf-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 ented 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 limit 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 <u>chall</u> have legal title to The Trust property and <u>shall</u> be responsible for the proper administration and control thereof, as hereinafter sei forth. [emphasis added]

The purpose of The Trust Agreement is to

... self-meure against the initial levels of malpracuce liability

Claim Page No. 6

OrigPetPshrvCkasaFINAL2.wpd C: Decembers and Settingstature My Documents/User Files off Desistop & Notebook Week applations to LIBRARY/CLIENT FILES/Med-MainFinks or JP Morgan Classificating for the Chapfinks L. aug.

to pay a judgmant obtained in a malpractice claim/lowspit, 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 prodontly or to exercise independent radgment authority, when that is appropriate

After THE ESTATE was advised by Mr. Brown that there were not sufficient funds a The Trust Fund, THE ESTATE, then, through further discovery determined that, in fact, the selfinsured trust and trust finid were created by FWOH to satisfy requirements of Medicare and the United States Social Security Administration which required that the hospital either maintain primary hability insurance to protect The Hospital in connection with medical malpractice claim, or establish a self-insured trust fund, to keu of malpractice insurance, on specific terms required and approved by Medicare, which included the requirement that The Hospital continually maintain finds 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 m 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 mainteined at the level of \$4,000,000.00 by The Hospital. The Hospital represented to the 443th District Court, to Medicare representatives, to excess liability insurance carriers, and to other creditors of The Hospital, including THE PSTATE, that the self-insured trust fluid did, in fact, maintain a balmice of \$4,000,000.00 to resolve any pending medical malpractice claims. The failure to uspintain this balance could

Claim

Page No. B

OrigPwPehryChaseFDAL2 wpd
CADocument and SettingAndra.com/v Decimients/User Files off Desktop & FlorebusinDesktophaTKINS
LIBRAR.VYCLIENT FILESUMed-MatVisher v IP Morgan ChasePleadings/OrigPvPsta vClaseFDAL2 wpd

result in The Hospita, being denied Medicare payments, or return of medical payments made, and cancellation of excess liability insurance, which would also be a violation of Medicare miss. If the fund was not maintained, as required, The Hospital could be closed because Medica payments were a significant source of hospital income

Until CHASE BANK and Defendants, Glenn Militon, Jay Sandka, Lucy Horris, RN, and Name's C. Argo, RN, each and all began their course of action to depicte the trust of its finds and starts and not require repleasablement of those withdrawals, and concess those depletions from Medicare, The Hospand's execus liability insurance carriers, the 413 h District Court and THE ESTATE, there were sufficient funds in The Trust Fund to satisfy THE ESTATE blains and the resulting judgment.

Claim

The Factual Background, herein above, is incorporated into these claims, by reference. THE ESTATE ecoles ingrein, to securer damages, componentary and exemplary, and for attorney fees from the named Defendants for breach of Educiery duty by the Trustee, CHASE BANK and for conspirator by Defendants. Glean Miltour, Jay Sandlin, Lucy Norria, RN, and, Nancy C. Argo, RN, each and all, in siding and abetting, encouraging are approxing the improper management of The Trust by CHASE BANK.

Whitfletd v. Linconteins, 853 F. 2d 1284, 1244 (5th Cir. 1888); Florida Dept of Iss. v. Chase Seat of Texas, M.A., 274 F. 3d 924 (5th Cir. 7881) But for the wounglet conduct of the Determants, there would tave been sufficient funds in The Trust Fernd to as tinky The Judgment.

Claim

Page No. 9

Crightener/Charle FNALI and
C Doornests and See agreemented of Doornests Diet Files of Deskeap & Newbooks Desisop ATK(N)
LISRARYCLIENT FILESWARD-MATTRIBLET FIRE SHAREST Charles Files Single Part File Fore FINAL sup-

At all times relevant to the claims stude beroin, Defendants, Glenn Milton, Jay Sendin, Lucy Norris, RN and Nancy C. Argo, RN, were, each and all, agents, servants, representatives, officers and/or directors of FWOH

Defendants, Glean Militors, Jay Sandlin, Lucy Norms, RN and Nancy C. Argo, RN, each and all, knew that CHASE BANK was not complying with the torust and provisions of The Trust Agreement and allowed it to do so, thyway Defendants, Glenn Milton, Jay Sandlin, Lacy Norma, RN and Nancy C. Argo, RN, each and 48, asded CFIASE 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 Mediofficials, and from officers and representatives of excess medical liability inputance carriers, as well as from THE ESTATE and the Court, that funds were not only being wantefully removed from the must, but were not being replemished, as required. Defendants, Glenn Milton, Jay Sandlin, Lucy Norms, RN and Nastey C. Arge, RN, each and all, suited CHASE BANK in the breach of its Sciences distres."

Consultace

Defendants, Glenn Milton, Jay Sandim, Lucy Norms, RN and Nancy C. Argo, RN, each and all, had a duty to assure that the self-inspred from agreement was operated according to Medicare laws and regulations and to reveal and not concess, any intersignment or operation of the

Claim Page No. 11

OngPediator Date (PFNAL2 wpd C*Decements are Springstoke (PM). Date entertibles: Files off Online & Notebooks (Instead, ATI/Ib) LBRARY CLIENT FILES MARRARD (Inter-) IF Morgan Chart First Suggestion (Post FIRAL2 wpd

Breach of Fiduciary Daty

CHASE BANK was Trustee of the solf-insured sust agreement (The Trust). THE ESTATE was an unnamed beneficiary of The Trust.2 A "beneficiary" of a must is defined as "a person for whose brancht property is held in trust, regardless of the interest." Sec. 111 004 (2) TEX. PROP. CODE. The trust funds were held in trust for the med-mal claimants. nor The Hospital. The Trust was a revocable trust, but was never sewiked. THE ESTATE has established that he revocation, modification or amendment of The Trust Agreement, as showe on Exhibit "I" was ever made in writing, which was required. Sec. 1/2.051. TEX. PROP. CODE As long as the saff-insured trust agreement was in place and the trust was not revoked, CHASE BANK had a fiduciary dury to THE ESTATE, as a beneficiary whose claim had been assigned a value of \$900,000.00 and funds reserved for each, to manage The Trust and its funds in compliance with the terms of The Trust Agreement. CHASE BANK'I delies under The Trust Agreement are clear. CHASE BANK ower THE ESTATE a fiduciary duty to mainten sufficient finds in The Trust Fund as required by The Trust Agreement. CHASE BANK had a duty to comply with the terms and pre-visions of The Trust Agreement

CHASE BANK breached its figuriary duty to THE ESTATE and depleted the trait and its funds of more than \$4,000,900.00 during most of the time that THE ESTATE's medical algustrics claim was pending in the 433th Judicial District Court of Johnson County, Texas.

Supra, at technolo 1

Claire Page No 10

DrigPytFalmvChaseFfNAL2.wpd

C Volumentes and Seningstadementaly Comments User Filter uff Deaktop & Notebook/Deaktop/ATK/PS LIBRARY/CLIPNT FILES/Med Ata/Fisher v IP Morgan Class/Plandings/Deagle-Fisher/Charles-wold

irus: by the trustice, CHASE BANK, that was improper and the duty of good facts and fair dealing to assure that the self-insured these agreement was operated in the matner intended. Defendants, Glenn Milion, Jay Sandim, Lucy Nerris, RN and Nancy C. Argo, RN, care and all, treached their duties in these regards. Defendants Otson Milton, Jay Sandin, Lucy North, RN and Nancy C. Atgo, RN, each and all, conspired with CHASE BANK. The purpose of that computator was to deplete the crust of its funds and use those funds in the furtherance of hespital business, and, at the same time, to correcal the depleting and unlawful attragement and use of trust funds from the social security administration and officials of Medicare, from various excess liability insurance ers, from the 413th Judicial Disorie: 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 beavily upon Medicare funds for its survival.

Defendants, Olean 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 unlewful conduct to the Social Security Administration and Medicare officials, the oxidess hability insurance carmers, THE ESTATE or the 413" Judicial Distinct Court of Johnson County, Taxas 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 fitteds, in reserve, to satisfy The Judgment, to less than \$20,000.00 Punds, necessary to satisfy THE ESTATE's claims were not maintained, as coquired. Defencents: Glenn Milier, Jay San Jin, Lucy Norris, RN and Nancy C. Argo. RN

C sin: Page No. 12

Original Strongham (FirlAL2, 195).
C. Documents and Sections Anthony of the Documents of Sections of Anthony of ATTAINS LIBRALLY CLICATE PLASS Most Manifestor - To Margar Concentration of Exchange Section - Characteristic - To Margar Concentration of Exchange Section - Characteristic - To Margar Concentration of Exchange Section - Characteristic - To Margar Concentration of Exchange Section - Characteristic - To Margar Concentration of Exchange Section - Characteristic - To Margar Concentration - Concentr

Kinzbech Tool Co., Inc. v. Cobolt-Wallace Corp., 138 Tex. 85, 180 S.W.2d 505, 514

lonew the unusual to be unsustained 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 unproper use from Medicare officials, the Court THE ESTATE or exceasilished; but far the consequence in the improper use from Medicare officials, the Court THE ESTATE or exceasilished; but far the consequency and the agreement between CHASE BANK and Defendance, Glean Milton, Jay Sandlio, Lucy Norria, RN and Neity C. Argo, RN to commit such unitarity access. Defendance, Glean Milton, Jay Sandlio, Lucy Norria, RN and Nancy C. Argo, RN, knowingly participated in CHASE BANK'S breath of its Schoolary duties and are, therefore, each and all joint text feature with CHASE BANK.

Presimate Cause of Damages

THE ESTATE elloges that, at an itures material to the claims made by THE ESTATE in the uncertying malpractice laward, FWOH bac faceds sufficient to fined and maintain The Trust and satisfy THE ESTATE' claims. Therefore, had The Trust beer, properly managed by CHASE BANK, there would have been fands in this self-incured fund, in Law of liability insurance, to satisfy The fudgment and, but for the Doferdants' wrongful conduct and comprisely, berein sources of, there are not sufficient funds in the trust to satisfy The fudgment. Defendants' wrongful conduct is a premimate cause of THE ESTATE's damages, belief commented and sough! THE ESTATE states that the damages are not determined, at this time.

5 Ministeld v. Lindermann, 851 F. 2d 1282, 1394 (2° Ch. 1988); Florida Ospt. of Inc. v. Chase Bank of Taxon, N.A., 274 F. 3d 824 (5° Ch. 2801)

Clasm Page No. 13

Originalishmichene FNAL2 wyd CUDoormans and Stringskondowky Doormaniki ser inter off Deskrop & Meleback/Deskrop/ATKINS UBERALYCLERHT FILESMad-ManFisher v IT Menga, CosecProscorps/Originalishmichene FMAL2...wp

POST MORTE DELEMANTIC MERCELL, 190. D/E/A FORT MORTE OSTEOPHER TRUICAL CENTRE EXECUTED PROFESSION FROM TRUICAL CENTRE

INIS TREET ACREDICATE, doind the light day of depicable. Lyst

Op and behaves note where commonated momental, led., a nan-profit

comments in organized and outlanting under the laws of the State of

Texas, beying John principal place of meanings in Pack North, Terent

Concil, Texas ("Mompical") and Thill outland when, of Pack Worth,

Could, a national besting componision expended and existing endow

the loss of the United States "Trumbers".

MINE .

This crist appearant do to evidence the expression of a despital had the fructor with respect to the electrostation of a mif-insurance plan fund creates by the hospital parasine to the Guidel Previder Asindersmann Einsal provingeted by the Oniced Mistel Copperture of Bookh and fusion Services, Social Sessibly Asindersaica.

PECITALS

- (a) The Bospits: cohe and operator : 263 mundred two massissi and related Comitteen is food Busto, Income Geometry, Jamas.
- (b) Descine the sameliant claims and loss mistary of the Empiral, the annual most and artillublish of professional displicy insurance his became a matter of intrastate uncertainty and section to income years.
- (e) Backer of this emerge, the temples council or establishment of the factors statement on evaluation of the factors statement on evaluation or extended recognizes and dependable proteories to the Hospital aparent majoractics 1.ability claims.
- id) after analysis of all the data string from such alleys and rector. The Regular has decreated that it is used faceomable and product to majerate a much majerate program with the establishments of a naverse fund and the suff-measurable of the risk lose valuable from earlysables of opening the such control patient lightly because of one research patient lightly because of one research patient.

Ринуег

PREMISES CONSIDERED, THE ESTATE prays that citation he issued and served upon each of the named Defendants, as provided for by law, that this maner he 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 to which THE ESTATE shows itself jurily entitled, at law or in equity.

Respectfully schemized,
LAW OFFICES OF EL ATKINS AND
ASSOCIATES
225 South Meaquice Street
P.O. Box 157
Actington, Torons 76010-0004
(817) 261-3346 METRC
(214) 254-8860 (Calf)
(817) 261-3347 PAX
Arkington/fund@aboglobal.net

and

MACLEAN & BOULWARE
Attorneys at Live
1) Main Sheet
Cleburne, Texas 76033
(317)645-3700
(317)645-3700

TSB # 01405668
John MacLena
TSB # 12764600

Claims Page No. 14

Originative Chapet (NAL2 layed Constraints) of Destina & Manches (National Constraints) of Destina & Manches (National Constraints) of Destina & Manches & M

court of commercial insurance, one respitate serviced size it would be in the beat interest of the despital and community value is terver to establish a saff-funded gize, on or setucily round beats, dangered to enable too despital to "malt insure" against on initial levels of indirection limbility insured at the dangered and treave if countries commercial insurance coverage from the limbility in access of self-insured limits.

to: the Momental dealers save much sold-fending plan be implemented through a trust designed in such meners as no emble payments thereans to cuplify the medicare exhibutespace, and designed as as to extende such trust from two persents to the applicable provisions of the irremal Assesse Code.

PCN. TERREPORE, the Hempital and Trumper do assumbly occument and agree or Sallows:

APPRICES 1 - DESIGNATION OF PERSON

As used borein, unlass sharp so datished at required by the context, the following words and parenet would have the meaning indicated:

11.01 Activity - shall mean acture, laterance company or Desher experienced in the first of medical exteriors and general limitive incurares, independent of try direct or indirect disented sometable or cantrol by the forgital and angloyed to condet services with respect to the pion and the Qual.

1.82 Source - world mean the beard of directors of the Rospitsi,
1.85 Committee - shall peak the admittee which shall admittee
the pion as provided in Article 3

1:24 Contributions " shall near negrance by the Scapital so the Traces for the Lund."

Traces for the Lund.

With the Plan. - shall mean the truck time creates in accordance with

1.88 hearings which resm fort Parth Detempethic Mospital, Inc. Crava fort North Cotsopathic Andical Crates, Fort Moseth, Ferrant County, Cotas.

2.01 <u>Priints Hands;</u> - athil mean the Amblesta Provider Reimbursamment Habbal promylated by the Social Sameriey Ambisiscouries

- 3 -

e*·1

of the Department of Health and Human Services.

 $\frac{1.95}{1.95}$ Figs - shell mean the Mongritzl's calf-inverses planwith respect to Asipractice distility claims.

1.56 Plat Year - chall mean reptember 16, 1987 through September 26, 1888 as the Circh Plen Year and Depinning Outsber 1, 1988 a Plan Yost Shall rean a 17-month ported thereafter.

\$18.20ut - shell maps this trust agrammant between the Scapital and the Trustwo and all amendments thereby.

1.11 Trustes - shell ness Taxes American Each Part North.
or any substitute or sercessor Trustes or Instance.

The mospital hereby squeeze and delivery to Trustee, to armst, to be held and educativations in accordance with the trust of him agreement the eue of manny set forth on distilit A debacked hereby two results and the same agreement the eue of manny set forth on distilit A debacked hereby fire results and the same agreement the eue of the same agreement and agreement with such assistant manny or property on any firm time to time to editate by the mospital to the Trustee, leading the isome and surnives therefrom, shall constitute the front the isome and surnives therefrom, shall constitute the front Chicago, Illinois to be transmably remained by Arch & Medalice of Chicago, Illinois to be transmably remained as actuarity adoptate or paum from the transmably remained and control of same and the first the mospital tor ton year commencing september 16, 1947 and expiring imposmber 10, 1948. The Trustee shall have legal title to the trust property and shall be responsible to the

PRINCIPL 3 - PRINCESSATIAN COMMISSION

2.81 <u>Commissions and Term of Organs</u> — The Commisses shall commisse of three [3] CO (100 [3] Locividuate as shall be based by the beard from time to time. The Goard shall have the right to remark shy member of the Commisses to any time, A member say member at the Commisses to the Commisses and Sacrel [12] and the View by written rangement to be Commissed and Sacrel [13] a vectice in the Commisses and Sacrel [13].

nation of the Committee or ten designated agent. The decision of the Committee agent which the scope of lid authority shall be fired and binding upon all persies to this implement. The Committee shall have the open but set the collection to employ largement access) and whalf of the Trust. Any such investment access) and on whalf of the Trust. Any such investment access) shall be supported to direct the trustee with compact to prmitted investments.

- 2.64 <u>Records of Edelinistrative Committee</u>. The secretary of the Committee shall count on the sure to be troupfed all note and described count of the Committee and all such reserved, tagether with auch time documents as may be percently for the absoluteration of the Pion and shall be preserved in the country of such sucretary.
- 3.85 <u>Interpretarion of Administration Committee</u>. The Bospital stall indeposity and nave used mouther of the Committee burnings from the affects and consequences of the acts, oscialises and Consect of Sach Remove to his official expector, sweeps to the attent that alter official and consequences that I result from the arts or excissions of such amples it had faith.
- T.EE <u>Minoritatory</u>. The Committee shall movies the Tructee and serve to the Tructee such instructions we the Tructee may require to administer the Truct.

The Committee and the Mospital shall be entitled to rely upon all tables, valuations, excellineases, and reports furnished by acscussy or by an excumnant, physician, as abstrancy salected or expressed by the Seepical or the Committee. The Committee, tha Pospital, the editoria, and the Trueses shall not be deemed improduct or subject to fisellity by reason of cabing or refraining free anaction in reliance upon the advice or applicant of any such actuary, ecommittee; physician, or attorney.

ARTICLE 4 - TAUST ELAS

(.a). The Mospital, after earling a tust and complete investigation

sponinted by the Board.

The Rospital shell, by written notion, test the treates motified of extrant summership of the Committee, its efficers and agency, and shell structes the reveales to careful algorithe card for the members of the Committee. For all purposes hereardly, the Trusten thail be conclusively entitled to roly upon such corrilled migratures.

- 1.02 Organization of Administrative Committee. The Committee that along a content and recordary from mong its amounts. It say uponint aparts it deman secondary for the bilantime particular and of its ducies and say obliques to such appelature or to see or more memoris of the Committee pust parent and outlog, whether administrative or defect demandary, as the Committee may does expedient and appropriate. The Committee shall act by andority upts. Its supposes shall derive visibles empmangation.
- 3.01 powers of Administrative Compation. The Demaittee Seal) be covered by the Board with respect in the secental of the administration of the Pien who small process is also as all powers and intraction of the Pien who small process in all powers and six marked secondary to exhable it to properly carry mot its dutied in their example, and all process maniered span it my the Pien. Not an limitation, but is amplification of the Europeing, the Committee shall have the power to escatest the Figure performance and communicate its firefungs at the Stoppical and the Tractor, and in this steps it demo remeasury to remedy any administrative account and communicate its firefungs at the Stoppical and the Tractor, and in this steps it demo remeasury to remedy any administrative account and on decembing all questions than whall crise under the Pien. This process are being in the determination of payments from the Puen processed much payment shall be earliested for the Sun as heretative provided. All disbutements

and analysis of its discussioness, organizations and operation, has determined that is for responsels and product and (it to odopt and implements a plan of wide-insurance against analyzetice limplement a plan of wide-insurance against analyzetice limplements. The trust property shall constitute the rund through which the purposes of the Plan are carried are. The Respital Impression to the Plan for plan if totaled to maintain or doubt to the policies that or particular and cish emangement sociality to determine whither majorantice liability exists, and the cause new cost themsol, and to minimize the frequency and sewarity thereof. The Respital intends that the Plan has exhaulted and maintained in smoortenen with the relax—and repolations adopted or implemented free that its time by the Patents mentalism, adopted an exhaulted and woldars. Sacial Security Administration, or may agent thereof or superance thereto, overpring resolutions to the Sachital day sold responsibility for compliance with the Response (ult and sold responsibility for compliance with the Response constable, all representations and resistate hears in with response to the Papa shall be deemed by the cost of the Impairies with the Response to the Papa shall be deemed by the cost of the cost to the cost of the Impairies with the Response to the Papa shall be deemed by the cost of the cost to the cost of the cost

ARTICLE 5 - PROST FROM AND TRANSFER

1.4: Trust field. The Trustee shall boild, manage, administration and ester septing all residenable could and expenses as the indivisionation of main Trust or reserving a fund (or the payment theoret, the Trustae shall levest and televest the trust forms in factors-producting associations, exacts and properties as may be authorized by the statutes and leves of the individual states applicable to rational banks exacts in their powers and requisitions inseed theremoner, and any emandments transvers. All requirements respecting investments by identifies one or bereshafter required or the land of the State of Totals accept cast any leads to or lossements and obligations, securities on properties of Kompited shall be problighted. All incomes or trusted could be readined and invisited to, reduces, interest, dividends, sto, and he retained and

-5-

8.0

1. 1

hald by the tructed due heroes a cert of the brust fund. Such latered (suche shall be considered and used for the purposes of designating and designating associated fund lateral by Singulating Lamenance activity. The typosomy small be under no duty to determine themsence activity of my contribution to the trust property from themse the product of my contribution to the trust property from the time and my the Scopins) is in accordance with the Flow or the additions requisitions are to extend any time for the contributions.

3.01 <u>Termination for Heilanns</u>, ipan insumination of the Planfrom the heditare program, the Societa thell obtain form the actuary a descrination of the morphage of the Solines of the pungru of the data of cort inguisation in order to determine the mount, 18 may, to be offers bester the Euspital's allowable most to peresidenced by Medicare if the fund to attending, so defined in the Rediffers Hemmal.

5.61 Person from the Trust Property.

11; The Transac from time to time, ugon receipt of orlines direction from the individual or individuals dastiguated by the Committee or Committee to so art, stati help become from the increase or current of the trust preparty to such persons and is such vanger and in such emports as the Committee of St Americ Charact is such willby shall direct, tash mash exitesy direction shall cartifu that the payment is related to the Plan, and is nor one or more of the purposes specified maint. The Involve Shall care payers; solely appe the digestion of the Committee and shall not be required to Impairs into the purpose or out to liable for the property of any with payment. Persons again to more from the truck freparay only For malpractice losses of the facility whether such lumbas occur from Lamidants or wholes arising after Reptuber 25, 1997, providing ame are not consider take takes of try prestmisty held themerolat limbility immorance policy and may be pade for the fullowing expenses an the ertwet Erst such are related to the self-importance plan of the Sospirel:

limited to, the following information,

- $\{14\}$. The Delance of the trust property at the beginning of their plan kerty
 - 45) Correct period contributions:
- ic) The debent and neture of final payments, including a separate accounting for clime singularity local opposes, clause paid, and other similar (time) and
- (d) The trust property between at the and of the view meet, modelizationing any obligation to expect trible is doys picts. the mines of each 12-month parton, Triubba 6x311 states such reaction regarding the trust time and monotoling such integration on hospital that! resembling request from time to view.

If this between skill no transpand for any master decise a Plan Ther. of II the Tractae shall region or be recovered, the Trustae shall, within 48 days of such termination, resignation or theorem date, substitute its final establishment and necessary for one purised from the lass previate Secondary to the date of such termination, configuration at rescore.

3.03 <u>Newsportion of Typhos</u>. The Tructed may resign from this crust at any time by giving 10 days' Unition notice to the Board. Open such resugnation because at Exempting aftersize, the frustee shall remain to the Enables, at examine or the refinitesion of the Fand outside the period following that comment by its labs arevel accounting and sail perform all attm accessary to transfer and deliver the member of the Punk to its automater by some

3.64 Embryol of Prices. The Sorid may compare the Propose at any time spec the dativity of 68 days, victual notice to the Trustee. In the exect of such concest the Trustee shall be under the same dask to section and transfer and collows the same shall be proposed to the same time same and to the same shall be proposed to the case of the Trustee's religionation.

3.27 <u>Gildins and Striphon fronts.</u> Trustee beckin asset bes none selected by the Board on the boale cast Trustee is the Board on the boale cast Trustee is the Board quilified and readily assistable financial institution whose

- (il Expense Eng seministries the minima menogramme
- (2) Supersum of establishing this Trust and the Trust Fund:
 - [31 Cogal superson:
 - [4] Actuagial expenses:
- (5) Costs twicting on the acquisition for the amountain of extest acquisitum coverage, 68 peculayed by the freeten;
- 16) Expense toyolors with the acidements of this Truck and the tract property by the Trucken;
- (7) Out of administering any risk management program of the Manajial, if risk management is performed by the frames, provided; benefits, that take supprograph whill not be manalismed to impose upon the Trustee any daily on collection on administer by cisk annegiment program of one accepted.
- (a) Payment for any of the foregoing purposes shill be denoted graper sayment to be post from the level podparcy. It is istended that all payments from the trush property shall be in accordance will the heddenic regulations, but the trysums shall not be limit in any way for the mentical's failure to comply theresian.
- 5.44 <u>Incommis.</u> The pruning shall been presents and detected accounts of all receipts, juvatement and disorderance with temporal prices at the Sequent parameter and the property and act of the property. Such parameters are parameters as may be acted from that it is no signate, and all the allowed to review. Import and such it the bould of stommet relating to the trees property and such it the bould of stommet relating to the trees property of the respect of any resource to the current business have at the Industry.

Within 50 days after the pions of mean Li-menth princ ording on September 30 of such year, the Transac stell, deligner a limental substance and accounting contabiling each information on the Respital about from time to like responsibly request. Including but not

sarvice to the Rospital in the pass man proved honeficial. (c is contemplated that tyluses and Bropital will consiste this deprement triationism, movement, in the beset of a wanney (a the intercessing of this Trues necessing as say like, use there shall designate and apparent a qualified successful thereas of this Trues. Any successing Trueses shall here all the rights and powers treated uncessang Trueses shall here all the rights and powers treated uncessang Trueses shall here all the rights and powers treated upon the criginal Trueses.

1-31 <u>tradition</u>. Method any arrant of the function, the beand, the Acaptan, the potatry our the Trunce and it is limited for any preach of Respectibility or the part of preaches either than tradit, but shall be trade for the own boils, cellminum in had a leith or for which is is groundy angigent.

STICKE 5 - POWERS OF TRACTER

- 6.(1) <u>Robertotes powers</u>. The fractor on may pocessed Trustee that I tave the Authority eithout cross at an expose the any comer or attended to energies the fallowing powers in such countries to energies the fallowing powers in such countries making as may be fact and equitable under the preventences and is below; given and greated said powers, suchnericans, privileges and inscribing as provided in the love of the United States and State of Taxas for peace exercising trust dunctions and the requirection insues the peace exercising trust dunctions and the requirection issues for the powers shall implied, but set be livited up, the following, to site.
- (i) to retain, pell, igness as retrieved to any stands, become, negarities, pulsons or other property, including remem trust funds assemblished by the frustee, and asset in the frustee, which is decade proper, represent at expedient without composability for the excepts of this distriction, appeal that of saling cominary comes provided, however, that no lover may be made from the trust graphs to the Respitation of the Respitation of the Respitation.
- (3) To bell, exphanes, it election dispose of map peoperty at may that held or received between a public or proving able, for cash or or terms, without the honesalty of court approved.

-10-

er erbert (seetst.

- (1) To register any stock, best or other security in the name if a topinna, with or without discussors of any fiductary relationating, but occurred toraxed shall be sainted opening than nuch property in a trust again.
- (4) In invest is excilinates of deposit and economic formed by Investor.
- (8) to your in garmen or by pions 13 armen or other sections, in green progress, poncern or limited, and to oppe or late only other petion. It impared on any recognitization, earger, manufaction, benchingute, or other procedure in presentings afforting any property of the fruit.
- (I) To serve victors beking and filling jevenionly and opportunement, victors filling only normal or other rotten to any wart and victoric guides bonds out the Treatme sholl Armina to the Stanical such themseld statements as are otherwise required by whis actualogs.
- 49) frances is cultared from any purpossibility of diversifying investments of each trues lind. Moreover, it is contamplated that Truetee expose in seet who highest rate of receive communication with a second investment policy.
- 6.02 CEREMINISTE. The humpical is mitherined to may the Treatmn examable compensation for the servine restained. End empoweration shall be bitted on what is Pannonably and exaministy thisped for merimon of a shallar type or estate it the seminative and weat) include an avaluation of the servines resourced by has thomate impound with the experience of payments me disherements under this Freek Approximent.

THE CONTRACT OF THE PARTIES

7.01. The finepital, through its Souré, shall have the right and power at may time and dron time to time by instrument in writing delivered to the Erudice by amond, in whale or in back, any or all of the previations of the First and truet agreements provided, however,

to the upberg required by 150 and all provisions of this agreeners ofther than that held will appli common in forms and effect.

8.6. CHARGETERING. This agreement may be conserved in solviple counterprist, such of which shall be rejected for all purposes as an original; and tunk counterpasts aball constitute but and the case instrument.

in writte transfer, the parties have caused this agreement to be blemmad by those duly outbacking efficiers, to be affective an the days direct above velocue.

> PORT PORTE CETTE MINES, PORTETAL, INC. D/B/S PORT NORTH ORIGINATES MEDICAL

ays Acht.

25 Jacob 110
Chaliman at the mosts of Mesestors

ACCEPTED :

ATTEMS ANDROCKED FARE

Secies vice president and trust different

CITCOTED SE AUGUSTELS COSTELS, EACH IDES OF MEION SMALL SE DESNED TO BE AN CRISCIPAL.

-45-

ever the Nectus, powers and clabilities of the Trustee becauses at all one be superantially increased or decreases eithers the community.

- J.03. <u>Tormittion</u>. The Americal expects this plac to be controled implicitally, but of accessing, it reserves the right to continue the place at any circ by earlies of the Source communicated in writing on the Tructum. If the despital transmit this terminal programmes the plan, can major procipe of writter maken topics, the Practice and Ladders.
- (i) Buttin use odminious in sourcomes vita this approximate hush parties of one cross property or the hospical small caretify to the fruorus has been determined by the scalency as required by the scalence requisitions as a secondary source track for future by the scalence requisitions as a secondary source track for future property of the Julian and Lawrence property of the Julian and Lawrence and the continuous that a respect to the future that property are majored that preserves are an imager mesonary, adaptuped the Frances scaling failure are majored of the trace geoporty in the Imager and a secondary of the property of the Imager and the first geoporty in the Imager and the first geoporty in the Imager and the first geoporty.
- (2) Upon certification to the transpo by the dampted that seet payment is consistent with the hadden's requirties, the Trustee shell deliver the believe of the times property to the Reseated.

ARTICLE 1 - 129CELLARBOUR

- 8.91 <u>Statistics</u>. The headings and sup-mandings is this agreement have been interpret for communication of reference only and are up by lybored (c. may communication of the provisions revolt).
- 1.82 <u>Construction</u>. This agreement shall be constructed in accordance with the laws of the Store of Petas. In the construction of this agreement, who unaculate shall recipie the Impies and the singular two planels in all cases where every possings would be expropulate.
- 4.01 <u>Requestify</u>. Should any provision of tall Advenues he comment as violation of any law, such (cortain that, be decade vote

SMIPH:

Constitutions well wise the samewild and delivery of the foregoing fewer Agraeman. the Rospital Tourceys and sellyward to the Trustee pursuent is Section 1 Acres the east of the Stiller Bollars (\$2.85.000.000.sel).

Cruse No. C200100173

MILDRED PISHER IN THE DESTRICT COURT JUHNSON COUNTY, TEXAS Έ JOHN B. PAYNE, D.O., OSTROPATHIC MEDICAL CENTER OF TEXAS, et al. 复 WALLAND OF STANKS 4:3th TIDHCIAL CUSTRICTS Derendane 茎 AGREED JUDGMENT

ed to the Court that an agreement had been reached herween the parties. ACCORDINGLY, the Court finds that the following judgiaent is appropriate and thould be made and entered-

IT IS THEREPORE ORDERED, ADJUDOED AND DECREED that beginned, Jackie Figher, Individually and as Administrately and Representative of the Basta of Johany Fisher, December, Houseon Fisher and Johnny Fisher recover from the Defendant, Fort Worth Ostnopublic Hospital, Inc., d'bis Ostespathic Medical Center of Texas the sum of Nane Hundred Seventy-Five Thousand and not100 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 Fa: Fort Worth Ostsopathic Hospital, Inc., Debtor', In the United States Bankruptcy Court for the Northern District of Torcas, Fort Worth Division, CLEAR

(A)

JUDGMENT

FATKINS LIBRARY CLIENT FILES MICH MATERIA OF LEADING UNIT

A CERTIFIER COPY OF BUSINESS OF THE PROPERTY O Ontrict Dark testere AA e.

Ø.2

- 84/12/2007 14:38 7:465m19t# 84/12/2027 (8:48 £17284334)

CRUES, SOUTH HEHDERSO E L ATKING SAM

ILDGE PRESIDENCE

63.04 PLOT IN

IT IS FURTHER ORDERED, ALL TUDGED AND DECREED that his control of the Court op ten ed against the party incurring carse.

STONED OF __ day of ____ 2007

State Ber No. 014 Ashra Law Pers. 12.5 South Mesonite 9: ver P.O. Box 157

Arlington, TX 74010 Telephone: \$17-261-3346 Telecopius: \$17-261-3347

Amounts for historicas, Jackie Risker, Individually and in Administration and Representative of the Boute of Johann Picher, Decembed, Houston, Fisher and Johanny Fisher.

Man Camp Wayne Classice Some Ber No.64328500 Cruse, Scott. Handerson & Ali Attemptys at Lass 2771 Alban Patkensy, ¹⁸ Floor Bousten, Tamas 77019-2153 on 4.28em 1.2.5 Ametery for Defendings, John Laurence Shares On, R.H., and Karar, Cox, R.F., e, See Samuel, R.N.,

T DOMENT

PATENS LERARYVE IENT FILESANDA HINE SON Y LEADING WEIGHT ROCK

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

WORDS TO THE TOTAL THE TOT

EL Aska State Bar No. 01409030 Atkins Law Firm 325 South Mesquite Street PO. Box 157 Arlington, TX 76010 Telephone: 817-261-5346 Telecopier: 817-261-3347 Amounty for Intervenors, Jacie Fisher, Individually and as Administrative and Representative of the Estate of Johnny Fisher, Deceased, Houston Fisher and Johnny Fisher.

Wayne Clawater State Bar No.04328580 Cruse, Scott, Henderson & Allen, LLF. Attomicys at Law 2777 Allen Parkway, 7th Flore Houston, Texas 77019-2133 Anomey for Defendants, John Laurence, Sue Samuel, F.N., Sharon On, R.N., and Karen Cox, R.N.,

TUDGMENT

F. WIKINS LIBRARY CLIENT FILES Med-Malifiabet PLEAD DIG Hid gracut, world

APP. 264

NO 0200100173

MILDRED FISHER, ET AL

VS.

IN THE DISTRICT COURT OF

JOHNSON COUNTY "EXAS

JOHN 5. PAYNE, 0.0., OSTEOPATHIC \$ \$ MEDICAL CENTER OF TEXAS.

N. P. CASH. R.N., SUE SAMUEL, R.N. \$ V PATE, CRT. BIRG SUZANNE SHENK, D.O. \$

24€ " JUDICIAL DISTRICT

DEFENDANT OSTEOFATHIC MEDICAL CENTER OF TEXAS' SECOND SUPPLEMENTAL RESPONSE TO INTERVENORS' LACRIE FISHER, INDIVIDUALLY AND AS ADMINISTRATEIX OF THE ESTATE OF JOHANY FISHER, DEC'D., JOHNNY FISHER AND HOUSTON FISHER'S REQUEST FOR DISOLOSURE

Intervenors, by and through their stiorney of record, E. L. Affens, 325 S. Mesquite Street, Artington, Taxas 76910.

COMES NOW Osteodistric Medical Center of Texas | one of the Defandants herein, and files its Second Supplemental Response to Jacks Fisher, Individually and as Administrators of the

Estate of Johany Fisher Cocid., Johnny Fisher and Houston Feher's Request for Disclosure REQUEST FOR DISCLOSURE A: The correct names of the parties to the lewsuit.

RESPONSE: Defendant has no record of any registered russe in its employ by the name of "N. P. Cash." Observirs, the parties have been correctly named to Defendent's knowledge.

REQUEST FOR DISCLOSURE B: The name address, and telephone number of any colontial parties.

RESPONSE: None

REQUEST FOR DISCLOSURE C: The legs libeories and in general, the factual bases of the responding party's claims or defenses (the responding party in need not marchal all evidence that may be offered at feet).

<u>QESPONSE</u>. Defendant comends that neither it, nor any of its employees, breached the applicable standard of care with respect to their medical treatment of the Decodent, and that no act or omission on the part of Cefendart, or any of its employees, was a proximate cause of the death of Cecedent or any resulting demages to Plaintiffs.

REQUEST FOR DISCLOSURE 0: The amount and any method of calculating accrommod

RESPONSE: Not appreat to

1.3

Respectfully supraised.

GODDMAN, ODOM, LACY, FLOYD & BERRY, LLP 301 Commerce Sheet, Suite 3131 Fort Worth, Touge, 76137 817/338-9468 817/358-8494 (tax)

By: Lane Odorn Texas Bar No. 15202920

ATTORNEYS FOR DEFENDANT OSTEOFATHIC MEDICAL CENTER OF TEXAS

CERTIFICATE OF SERVICE

I haveby certify that a time and correct copy of the above and foregoing document was served apon intervenors' counsel by certified mail, washn requested, and upon all other counsel of record by regular U. S. Mest, on the <u>[15]</u> day of March, 2002.

ZU

- the general substance of the expert's mental impressions and opinions and a brief summery of the basis for them, or if the expert is not retained by, amployed by, or otherwise subject to the control of the responding party, documents reflecting such information;

 If the expert is reasoned by, employed by, or otherwise subject to the control of the responding party. (3)
- - all documents, langible things, reports, models, or data complications that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony, and
 - The expert's current Masume and biolography

RESPONSE: No experts have been retained at this time.

REQUEST FOR DISCLOBURE G: Any indertrifty and indusing agreements described in Rule 192.3(6).

BESPONSE: Detendant maintains a self-insured trust with finite of \$2,000,000,000 per procurrence. \$4,000,000.00 aggregate. Excess coverage is provided through Nuksel Assurance with limits of \$20,000,000.00,000,000 A copy of this welf-insured trust agreement and indications page of the excess insurence policy are effected to this Response to Request by Disclosure.

REQUEST FOR DISCLOSURE H: Any settlement agreements described in Rule 192.3(g).

REQUEST FOR DISCLOSURE I: Any witness statements described in Rule 192.3(h).

RESPONSE: None, other than the palient's medical records may contain such statements."

REQUESTFOR DISCLOBURE 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 pills that are nessorably resided to the rejuries or demages asserted or, in less thereof, an exthemistion operating the disclosure of such medical records and bits.

RESPONSE: Not experience

REQUEBT FOR DISCLOSURE K: In a suit alleging physical and mental highly and damages from the observerce that is the subject of the case, as medical records and bills observed by the reconding party by virtue of an authoritation furnished by the recuesting party.

<u>RESPONSE</u> Defondant assumes that Rightiffs are in possession of the Osteopathic Medical Content of Texas chart relating to the incisant in question. If not, Defondant will make at its hospital chart available for imagestion and cooping at a multiply agreeable line. As for other medical modular that may be obtained by virtue of an authorization, this request with be supplemented assuming that Defendant obtains any responsive information.

Defendant Company of Made the Center of Texas Section Supplemental Response to Improvement Request for Databases 2000

Exhibit "2"

MOTION TO REMAND

PAGE NO. 58

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher Chase\Pleadings\MotRemandFINAL2b.wpd

FORT WORTH OSTECHATRIC BORFICAL, INC. D/S/J FORT WORTH OSTED-PARKING MEDICAL CONTEX SELF-INDICALCE FLAS THEST ACCOUNTS

THIS TROOT ACREMENT, dated the 19th day of Reptember, \$347 by hid between PORT MORTS obtended to EMPITAL, JMC., a mon-prefix comparation organized and existing under the laws of the State of Total-Jastes its principal place of excesses in Port Merth, Tattani Commity, Totale ("Repital") and TEXAS AMESICAS BANK, of four Merth, Totale, a notional banking comparation organized and existing under the laws of the Saleud States ("Transber").

921101046778

This trust screenanc is to evidence the agramman between the "
Mempital and the trustee with respect to the administration of a
self-informance plan fund constend by the tempical pursuant to the
Medical Provider Radiopursonne Hannel procedured by the Goffand
States Department of guilth and domain Souviens, Janiel Recority
Administration.

MICTINIA .

- (2) The Respital mass and operator = 765 rundred bed Sampling and relevant Combination in Fork Serth, Tarrata County, Incas.
- (b) Despite the annullent close and loss history of the Tempfeel, he ennesh east and emigratility of professional liability insurance has beause a nation of inecessing uncertainty and emicern for recent pages.
- (c) horouge of this concern, the Tempikal exceed an extensive stelp and Evriew to be used of the veries Altermatives evaluate to provide nementical and dependable protection to the Tempital explore majoraction [660110] plains.
- (d) After enjoyer of all the date arising from much study and mixture, the Respitel has described that it is most chancelle and product is maintain a rural self-insurance amongs on the tenth of the entablishment of a reserve band and the main-nomemorian of the risk loss resulting from anipesation and general patient liability because of the mean-residentials or semestation.

64.

of the Department of States and Human Sorvices

1.06 Plan - shall been the Hespital's salf-insurance plan with respect to majoractics fishbits claims.

1.69 Plan Year - shall mean deptember 16, 1961 through September 18, 1968 as the first plan their and deploying Ostober 1. 1986 a Plan Feet Shall mean a 12-penth purfoid thereafter.

1.18 Trust - whell mean this trust egreement between the Sacollel and the Trustee and all amendments thereto.

1.21 Tristen - shell men Texas American Sent Fort Horthor try sudstituin of Successor Trustee or Tresteen

ARTICLE 1 - CONTREMITORS

The Hospital hereby conveys and deliners to Equator, in treat, to be hald and administrated in memorance with the cayes of this operance the cus of homes are forth on Shifuid A schaded hereo fibe recepts of which is administrated by the Trusteel, wish but at mosty together with mich additional money or property in any free-time to time be callinated by the mempital as the Trustee, including the increase are assenting therefrom, shell ensurtate the trust property. Said suc has here factorized by there a metalim of Chicago, tilinais to pe reasonably required as a actuarily administrate or sound find temere for such limitality leases incurred and accross agains; the Boystein job, 1911. The Trustey shell have legal title to the trust property and shell no empossible for the proper administration and control teneses as burningfor ask forth.

PARTICUL 1 - ADMINISTRATIVE CONVENTED

1.81 <u>Appelatorate and Term of Sifies</u> - The Committee shall consist of three (in the jump 15) individuals as shall be maded by the Board from time in time. The sound shall have the right to remore any member of the Committee at any time. A support may range as any time by written consistent on the Committee and Board. (If a recently if the Committee should coour, a supressor shall be

cost of denominated fractions, the marginal consisted that it would be in the best lutries of the Sempital and comments which it harves to establish a pelf-funder plan, on an actuarily cound heads, designed to enable the Scopical to "self insers" meason the initial levels of aniprovises limiting incurred as the Bengital and owners, if requires, commercial insertance overseast from two limiting incurred on the Bengital and owners, of self-insersed limits.

(e) The MogBital desires that much sale-feeding plan be implemented through a great designed in much manner as to saubte personnt thereon to coalify for Sealester existences, and designane at to except such trust from tax pursuant to the applicable provisions of the Intermal Manner Code.

NOP. THEFFFORE, the flampiral and freezes de ambuelly seconds:

ARTICLE 1 - SEPERITION OF TERMS

As read herein, unless echarates delimed or required by the massion, the fellowing words and phrence shell have the meshing indicates.

LIGH ACCOUNT - shall make as actuary, instrance company or habiter experienced in the field of modified satisfaction and passent liability insurance, independent of any direct or indirect financial enverable or control by the finantial and employed to conder service with respect to the blan and the Euro.

1.71 Soury - shall mean the Sourd of Offerture of the Rospital,
1.31 Committee - Shall mean the committee which shall administer
the plan or provided in Article).

1.04 Contributions - shall mean personne by the Despited to the Trustee for the Edid. 1.35 Fund - chall much the trust fund created in semectance with with the Time.

1.04 Hoppital -shell mean Port burth Ostospachic Sospical, tac.
6/b/s Port North Ostospachic Hedical Cancer, Peri North, Tayrapt
Douncy, Taxas.

i.87 <u>Redictre Hkrysl</u> - chall mean the medicars previder Aximbursament Massel promuliated by the Gorial Security Administration

Espainted by the board

The hospital phal), by written notice, long the tracter notifies of ourpart numbership of the Committee, its efficient and agents, and shall fernish the Trusten a nortified eignstore each for the number of the Committee, for all purpless becoming, the Trusten shall be concluded up and the committee of the trusten shall be concluded up attitled to rely upon such overifies algorithms.

1-02 <u>Organization of Adojdnicisative Completes</u>. The Completes shall alver a manifest and saccestry from among its owners. It may appoint agents it down anomalory for the offertive performance of the delive and may direct to such appoint or to has at more ambited of the Completes such powers and fating, machine administration of the Completes such powers and fating, machine administration of discretelymacy, as the Completes may down expedient and appropriate. The Completes shall see by majority union. Its measure shall serve withhold componentation.

7.03 Squeez of Administrative Consistes. The Committee shall be governed by the Saard with compact to the source of the shall foresteen of the Saard with compact to the source of the shall foresteen excessary to enable it to properly party out its decimal from the newspare, and all powers conferred upon it by the Plan, Not in lamination, but in amplification of the foregoing, the Committee shall have the power to concerns the Plan, to review periodically one adequacy of funding and of investment performance and communicate its fineings to the Respiral and the Timason, and no committee its fineings to the Respiral and the Timason, and to take teaps it domin measure the summary any official receive the Mar. Authorities all questions take and lating under the Mar. Authorities all questions repaid to the Committee by the more its about decide all questions relating to the determination of perpendiction the Parts, procedus such payments that it because the processor of the Parts, procedus such payments whill be evaluately for the purposes of the Plan as institutions procedus. All disher-measures

by the Trainer small be made upon and in semerable with the wellton notice of the committee of the temperature of the temperature. The describe of the Committee spin all meeters within the emps of fill outbertly shall be find and binding upon all parties to this instrument. The Committee shall have the power sut set the obligation to employ investment comman on behalf of the Train. Any such investment command that is approved to direct the Irmste with except to beginning that it is approved to direct the Irmste with except to

3.04 <u>Appared of Administrative Compilers.</u> The Americany of the Committee shall record me cause he be consided all mins and Salarance of the Dominian and this such treasment at the Dominian and this such treasment are used to tecomment or the Dominian and the Salarance of the Plan and shall be groweryed, in the opening of Auth Descriptor.

3.63 Irdunification of Abstalarative Emmattee. The Resultational Indomatry and days seen number of the Committee harming from the titlets and mobsequence of the mate, optioned and opening of the party maker in his official capacity, essent to the extent Channes of the Affanta and consequences shall youth from the title or entrained from the title or entrained from the title or entrained from the bad formation in the first the title or entrained from the title or entrained to the first the title of the title or entrained to the first the title or entrained to the first the title or entrained to the title of the title or entrained to the title of the title of the title or entrained to the title of the title of the title or entrained to the title of the title or entrained to the title of the

her <u>Hispolitaneous</u>. The Compitted shall movine the Transan has immed us the Trunted such Lectionations as the Trunted may require to education the Trunt.

The Desmittee and the Hompital shall be entitled to rely upon MA: tablem, voluntions, contridicates, and toperts furnished by me watering of by an entocontable, psychiatan, or bitterbay selected or approved by the Hompital or the Countine. The Condition the English, Sto cificates, and ten Tractor shall not be decimed toperates a subject to limitify by common of indices to refrinting from English for the twisted upon the advice or opinion of any over astumery, accounter, physician, of stoorway.

- - . . .

PELICIE 4 - TEST SIVE

4.91. The Hompital. after making a full and complete irrestigation

main by the frustee and Degons a park of the Inset fund, Such received frome shall be considered one used for the purposes of determining and metallishing adopter find level by Missislaira increases satisfy. The Trustee shall be under no duty he determine whether the amount of any operationation to the crust parametry from time to the amount of any operationation to the crust parametry from the identity of the state of the crust parametry from the defeater profitations or to deforce or to collect payable of any contributions.

. .

5.01 <u>Depairables for Reviews</u>. Or a karmination of the Planties the medicare program, the Rospital shall obtain from the carwary is determined by the adaptory of the shalloss of the Pung so if the depair depair to the date being the money, if pre, to be aftenn against the money to determine the money in pre- to be aftenn against the money to be aftenn against the proposition of additional in the resident entire.

5.93 Payment from the Truck Property.

(a) The Prosise Arms time to them, upon results of relivan director force the individual or individuals designated by the Committee or soppital to splant, shall make payment from the Licema or compare of the breat property to much payment and in such master and in such assumits as the Committee or at speak thereof is such virtua and lid offert. See such virtua differents shall entity that the payment for shallows in the Plant, and to for one or more at the purposes apposite at below. The Prostess shall once greenest solely upon the direction of the Committee and shall not be required to include like the purpose or nor as liable for the peoplety of any much payment, beyond thall be made from the trust property only for malphorates James of the Booplah whether man leaves some from insidents or clause arising after destinator is. 19th, providing saws set set toward under the tarms of any previously hald commercial liability insucance policy and may be used for the following expanses to the content that such are paying to us assistant that such are paying to use assistant that such are paying to the assistant that such are paying the assistant that such as a such as a

and attayable of the circumstances, econisation and operation, has decreased that in is reasonable and propose the 16 to adopt out entraction tentuga excessmenties to maid a immediati leases. The trusk property shell constitute the field through watch the proposes of the Plan are service out. The Somplish represents to the Trustee Rhot so port of the Slaw it Letterin to estiminia or comes to be maintained on objeting chains promounting and tisk management ectivity to determine whether majoranties limbility saigts, and the cause and cost thermot, and to pirantee the Eroqueray and presently thereof. The Scopical Imbands that the libs be established and mainteided in accuratese with the releg _ and regulations adopted or implemented from time to time by the united Steam Impartment of Banleh, Education and Unither, becisi Security Administration, or any agent thereof or accommon thereto. governing reliminations to the Emplical for payments made in opinionism with the Figs. The Bospital assumes first and sole responsibility for two lames with the rediging regulations. All improcessations and resitals hareis with raspect to the plan shall be desers on be those of the Rospital.

Abricat 4 - Progr Foun and Progress

3.42 Track Fund. The Truster shall held, mesage, admissioner, and other puring all prescuedit gents and expense of the secondary and attempting a fund for the purpose the traces, the Truster shall jurist and priparties as buy he substitute by the consults and proposition as buy he substitute by the occause and layer of the defind taked applicable to calculat hanks exceeded and layer of the defind taked applicable to calculate the press and imposition insued themselves, and any amendatable temperature respecting insustantia by fiduciaries now ar berninalist required by the laws of the Blots of Three, except that any looms he or inverseers and childrenia. Securities or properties of supilial shall be problished. All income or revence realized from mid investment, lacinothed but not limited on, reduces, interest, dividends, etc. anall to relatived and

724 Expenses for administrating the claims management

173 Expanses of expandioning this from and the fromt

F Edd 1

£....

tis Lagal expenses; (4) Actuacial expenses;

[4] Cooks rejecting to the exquisition for the Mospital of excess instrance covariage, if purchased by the fresches.

(6) Expenses imprived with the salatenance of this free; and the crost property by the Transact

133 Cost of administrating arm also management program at the Sampitals if the management to performed by the frintee; provides, however, then the administration and the development to impose upon the friends may done or observed to emiliate they than anagement program of the houghts!

the Physical for any of the tempotag purposes shall be desemble prepare payment to be juid from the treat gampace. It is intensed that all payments from the treat groberty shall be in embricace vitta the embrace regulationer, and the Printer shall not be liains in any vay for the buryical's fallow to comput theresits.

1.84 Arrowers. The Trustee shall beep encerble and detailed administ of all gradient, president and disconnects atto respect to the treat property. Asks from on payable as the Hospital Ahkil from time to the designate, freiteday such present as any se required by the Medicage regulations, shall be allowed by retire, impost and wedit the books of account relating to the treat property apon request access y responsible time dering qualence mount of the Tractes.

Within 60 days efter the elime of each 12-month protect anding or Seytenized 30 of each year, the Treases easyl objects of femoual statement and eccentring containing such information on the Sonotell stail from time to the responding but cet.

APP. 268

limited by, the following informations

- [8] The balance of the treat property at the hegiming of that Pien Tear?
 - (b) Current period contributions;
- (8) The imposite and number of final payments, including a segmente amounting for cities management. logal superners, claims hald, and other similar steems; and
- (4) The trust property believe on the end of his blan bear. Motifichtending pay chilgation to report within 60 days often the close of each 12-month period, Trusten ball? grader such reports regarding the cruse fund and containing such information as Mospite? Whall researchly regard from time to time.
- If this opromest shall be considered for my resem decing a Fine fact, or if the Trustee shall ration we be removed, the Trustee small, within 45 days of such expediention, realignation or removal date, subsiding into a section and persuant for the period from the last previous accounting to the date of such continuism, respection or removal.
- 3.(5 Resignating of Traste). The Provide may radial from .

 this trust at any time by giving 48 days! weighth metics in the mound. Byen such resignation becoming offerive, the frequent shall consert to the Bongistal as account of the administration of the fund ouring the period following that covered by its lows areas accounting and their perform all acce accessary to transfer and deliver the meabs of the Fund to its supressor frustes.
- 1.06 Remove) of trusted. The hoard may remove the trustee at may time upon the delivery of 66 days' written nextur to the trustee. It the sears of such removal, the trustee shall be under the same ofty to stooms and transfer and deliver the Losses of the fund on its purcessor or provided in the most of the funder' resignation.
- 5.57 Original and Summanor Tractes. Frustee harm's need has been selected by the Board on the beats that Trustee is the best qualified and resdily available financial institution mose

sarvier to the Hoppital in the pant has proved Benefitial. It is contemplated that trustee and despital will continue this agreement lodgifalicity. Souwary is the event of a marancy in the troutering at this Trust eccurring at any time, the band shell designers and appoints a qualified successing Trustee of this Trust. Any such successing Trustee within trust. Any such succession Trustee that it has all the cighte and powers barning conferred upon the scleinst Trustee.

3.03 Libbility. Reliber any assert of the Committee, the Poets, the Respiral, the accessey not the Trustee entil pe limite for any areash of Pragounthiblity on the part of persons where then libels for its own asks, onlineions in bad a faith of for which it is grossly askylapan.

ARTICLE C - POPULS OF TRUSTEE

- 5.01 <u>Encourages youker</u>. The Trustee of any successor Trustee shall have the authority visions befor of or report to any odors are utilized to excess the following powers in such transmibly absence as may be fair and aquitable endor the directestames and is howay giren and grantee call powers, authorities, privileges and immittles as provided in the June of the Doited Electes and State of Taxes for Danks everyfrise (frust Eunctions and the regulations inseed they under the powers small include, but not be listed to. the following, to vits
- (3) To retain, sail, invest or relatest in any steeds, bonds, securities, options or other property, including common trust finds withhitished by the Trustee, and stock in the Treates, which is deemed proper, measuring or repedient eitheur responsibility for the exercise at this discretion, except that of using ordinary cases, provided, newweer, that no Joses and be madd from the trust property to the Soupital or to any passes related to the Soupital within the messing of the Soupital cases, regulations.
- (2) To self, evaluate, or otherwise dispose of any property so key time held or required herealeder at public or private sele, for cash or on togos, without the reconsity of saust apprecal

er ofenralisment.

- 13) To register any stock, band or other security in the case of a nonline, with or without obsciously of any fideways relationship, but Secures execute shall be animalized showing that each property in a time treat.
- $\{4\}$. To invent is correctionates of deposit and accounts takened by Yruntee,
- (4) to wate in period or by promy all absolutes subbur association, to grant-provide, general or limited, and to earns at case may other totales in report to one assegnation, serper, numbelliderion, bentisptay to what procedure or promotings attenting by property of the fruit.
- (6) To serve without seking and filing inventory and apprecisement, without filing any manual or other yeturn to any court and without giving conds but the trustee shall fermink to bin Adaptive such (Insectal scatments or are otherwise required by this agreement.
- PT) Trusted is relieved from any responsibility of diversifying investments of sold trust fund. Sowever, it is consemplated that Trusted agrees to each the highest rate of return commenquants with a sound investment policy.
- 4.02 <u>Concernation</u>. The Sompital is suborted to say the Trubber vehicles compensation for the inviews rendered. East compensation shall be based on what is responsibly and outmarily compand for services of a similar type or nature in the community and Shall include an evaluation of the services randored by the Trubber English which the repartisace of payments or distarguments under talk Trust advancents.

ARTICLE 1 - ARCHIPCES AND INVESTOR

7.61. The Bospital, through its Board, shell have the right and power at any time and from time to time by instrument; is writing delivered to the Trustee to seems, it whele of is pers, any or all of the provision of the Plan and trust agreement growleds, nowever.

that the duties, powers and liabilities of the Tristes heritader stall not be substantially increased or secrement without its moment.

- 1.62. <u>Termination</u>. The Rospital espaces this Plan he be continued indefinitely, but of becausity, it reserves the right is terminate the Plan at any class by action of the bend communicated (a voting to the Italiane. If the indpital revokes this agreement or investable the Plan, then upon receipt of virtaes ancies the Plan, then upon receipt of virtaes ancies thereof, the Trustee shall either:
- fit fatted and somitives in temperature with this agreement own parties of the trust property as the Respital small vertify to the Trustee her been determined by an extuary to required by the besider's required as a reseasely reserve find the fatter payment of the Fish until much time as the Emplical Shall comity to the Trustee that an independent actuary has determined that such payment has been our reserves are no longer momentary, thereupes the Trustee whall deliver the halance of the trust property to the Respitals of

(2) Upon servicionation to the Trustee by the Worphtal that each payment is consistent with the hedisers regalaxiess, the Truster shall deliver the balance of the trust property to the

APTICER F - CECTEDUROUS

- First <u>deadings</u>. The needings and sub-meanings is this opposion to see Jean cases of the contember of reference cells and are to be ignored in any openinger of the provisions hereaf.
- a.es construction. This agreement shall be monather in accordance with the lave of the Black of thiss. In the construction of this agreement, the sampuline whall include the lesions and the fingular the plantal in afterms where such meanings would be agreementable.
- E. 31 <u>devertibility</u>, should any provision of this advantance on memods in stoletion of any law, such provision stall be deemed unit

-12-

--

on the estimat required by law and all provinters of this agreement other than that held wold statt wheatt in torse and effect.

1.13 Constripcing. This servement may be assemted in malriple bendurphita- evoluted shall be regarded for all purposes as as original; and much neunterparts shall menticate but one and ben doubt impresent.

TH HITMERS PREMIET, one pursion have caused this agreement to be exercised by their duly successive different to be effective to the data firmt short exchange.

SANTA COME MENTAL GENERAL MOSE LLET. THE

an And Model

1 · ·

1001 P700:

SERVICES IN RELITIFIES COPIES. EACH COPE OF SHIELD SHALL SHE DREATE TO BE AN OXIOTRAL.

<u>4. 73 0 (Bij 5</u>

 $\mathbb{R}^{|\mathcal{H}|}$

Contemperature of the startist and startists and retyred for country treat because to the startist carries and delivery of the foundation that the startist the s

Exhibit "3"

MOTION TO REMAND

PAGE NO. 59

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

10 0200100173

MILDRED FISHER, ET AL

IN THE DISTRICT COURT OF

VS

JOHNSON COLINTY, TEXAS

JOHN B. PAYNE, D.O., OSTECPATIFIC \$ 5 MEDICAL CENTER OF TEXAS.
N. P. CASH, R.N., SUE SAMILEL, R.N., V FATE, CRT, and SUZAMNE SHENK, 0.0 \$

249" JUDICIAL DISTRICT

OFFENCANT OSTECPATHIC MEDICAL CENTER OF TEXAS SECOND SUPPLEMENTAL RESPONSE TO INTERNENCES JACKIEF ISHER, MONTADUALLY AND AS ADMINISTRATING OF THE ESTATE OF JOHNNY FISHER ORCD.
JOHNNY FISHER AND POUSTOM FISHER'S REQUEST FOR DISCLOSUME

Intervences, by and through their elformey of record, E. L. Alkine, 325 S. Mesquite Street. Arlington, Texas, 78010.

COMES NOW Osteopathic Medical Center of Texas, one of the Defendants herein, and

flies its Second Supplemental Response to Jackis Fisher, Individually and as Administrating of the

Extete of Johnny Flener, Decid., Johnny Fisher and Houston Fisher's Request to: Declarate

REQUEST FOR DISCLOSURE A: The correct names of the panies to the lawsuit

<u>RESPONSE</u>: Delenant has no record of any registered nurse in its employ by the name of 'N, P. Cash.' Otherwise, the parces have been correctly named to Defer can's knowledge.

REQUEST FOR DISCUGSURE B: The name, address, and telephone number of any potential

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 marithal all evidence that may be offered at trul)

<u>RESPONSE</u>: Defendant contends that neither it, nor any of its employees, tresched the applicable standard of care with respect to their medical treatment of the Decedent, and that no act of orbission on the part of Defendant, or any of its employees, was a proximate cause of the death of Decedent or any testifling damages to Ptantiffs.

REQUEST FOR DISCLOSURE 0: The amount and any method of calculating economic

RESPONSE. Not applicable

仪.3

Columbia Outcoper's Nacoust Control of Facta Second Supplemental Februarias In Manager's Request by Discours - Page 1

- the general substance of the expert's mental impressions and opinions and a orief 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 purp documents reflecting such
- manusion.

 The expert is retained by, employed by, or otherwise subject to the control of the responding party.
 - all documents, langible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert a enlogation of the expert's testimony; and
 - the expert's current resume and bibliography

RESPONSE. No experts have open retained at this time

REQUEST FOR DISCLOSURE G: Any indemnity and mauring agreements described in Rule 192 3(f).

<u>RESPONSE</u> Defendant mainteint is call-insured trust with limits of \$2,000,000.00 per occurrence, 14,000,000.00 aggregate. Excess coverage is provided through Mutual Assuriance with limits of \$20,000,000.00 A copy of this call-finance drust agreement and dederations page of the sexess insurance poacy are standard to this Response to Request for Disclosure.

REQUEST FOR DISCLOSURE H: Any settlement agreements described in Rule 1922(c):

RESPONSE: None

REQUEST FOR DISCLOSURE I: Any witness statements peachted in Rule 192 3(h).

RESPONSE: None, other than the patient's medical records may book in 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 this that are reasonably related to the injuries or damages sessing or in like thereof, an authorization permitting the disclosure of such medical records and pairs.

RESECUES: Not applicable.

REQUEST FOR DISCLOSURE K: In a stall alleging chysical and mental injury and darwayes, from the occurrence that is the subject of the case, all medical reaches and tills obtained by the restort drup party by writter of all evahor cases humbhed by the rest, salling DAT. V.

<u>DESPONSE</u>: Derendant assumes that Pipinth's are in prospection of the Osteopathic Medical Center of Texas chart relating to the indicerd in guiebon. If not Defenden, wit make this hospital offair avoidable for insuredian and copying at a mitually spreadle time. As for other relation records that may be obtained by virtue of an authorization, this records will be tupplemented assuming that Osteopathic any responsive Information.

Respectfully submitted.

GOODMAN, ODOM: LACY, FLOYD & BERRY, L.I.P. 201 Commerce Steel, Suite 2151 Fort Worth, Texas - 76107 617/338-9400 8174338-9494 (fact)

By: Lane Ocom Texas Ber No 15202800

ATTORNEYS FOR DEFENDANT OSTEOPATHIC MEDICAL

CERTIFICATE OF SERVICE

I heraby Certify that a true and connect copy of the above and foregoing document was served upon intervenors' counsel by certified mail, return receibl requipiled, and upon all other countries of second by regular (U.S. Mail, on the pt2 day of March, 2002,

7. Och

retam Distagos mei Mediah. Cardo et Tauta: Saerend Sude tamarita Sapodaa is, elementre Pequipa he Ciscosura - Saga E

Exhibit "4"

MOTION TO REMAND

PAGE NO. 60

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher Chase\Pleadings\MotRemandFINAL2b.wpd

HEALTH CARE FACILITY EXCESS UMBRELLA LIABILITY POLICY COVERAGE SUMMARY

icyho der ang Az drest: Hestih Care et Texes, inc. Jand se per Memed Insured Endors arrent) 1008 Montgomery Street Fort Worth, Tause, 74-02

Policy Number #100194

- Policy Padde: From Occober 3, 1999 to October 1, 2000 at 12:01 A.M. Standard First at the accepts of the Procylicitor as tested again.
- 2 Total Premium Comment
- cirres of Listelly

Commercial Liability Coverage (Umbraint) (COVERAGE A-CM);
(1) East Obourance-Liabil
(2) General Aggregate Lanc

\$ 25,000,000 \$ 25,000,000

4. Self-Insured Referitions (Applicable Only to Coverages Whiten Excess of Belf-Insured Reletion)

Emisional Clability Coverage (Excess of Self-Insuled Returnion) (COVERAGE 9-SR);
(1) Each Medical for ident
(2) General Aggregate Returnion

\$ 2,000,003 \$ 4,000,000

Minimum Retext one (Appairable Only to Umbrelle Coverages)*

\$ 26,A04

6. Banedule of Primary Coverage;

Type of	George Liebbly	Employers Liability	Aulo Landa;	Garage Liebaty	Felipad Uspaky
Company or Plan:	St. Faul	JGV	SI Paul	Si Paul	Narional
Policy (fumber:	H×1030586		HA00300123	FA00303138	AF 3224755
Policy Period.	4 93/10/01 10/11/2030	3/01/1999- 3/01/2006	10/01/98 to	0/01/95 to 1(/01/2000	10/0 /35 to
Lens	1,080 000 per Scolembia \$2,000 000 aggregate	\$500,000 peich socksen \$1,900 000 policy leph \$2,000,000 peich scriptoves	\$1,900,000 (38)	- STORING CO.	\$13,930,000
Type of Coverage	DOC UMB NOW		Occurrence Fictualing *Ch-owned 5 bired	courence	

Please Core Finally Entered Limitary Liet By Prefer Contained Suffering On 968 Vander I have prompt, in o 94 UM C 75 11 85

Schedule of Printery Coverage, condition

Type of insuremon:	Ht spillal	HCT Fibrase	One Day Surgery	Physicians (Ostaposthia Farst Clinics)
Company or Pran	Self-rawred	The Medical Assurance Company, Inc.	Tre Wed call Acquisings Company, Inc.	Таз Medical Авария Сотряну Inc
Policy Humber	Flia	M005297	MODO29!	re20058
Policy Period	10/01/1999-	10/31/1990-	10/01/1946-11/01/05	10/01/1989-10/01/20
Limits:	\$ 2,000,000 per cinem \$ 4,600,000 postay nggrespen	\$ 1,000,000 per also in \$ 2,600,000 policy sg groups	\$ 1,600 600 per distrit \$ 2,000 000 pp ion approgram	\$ 2,000,000 per de \$ 4,000,000 préc) aggregate
Type of Coverege.	Claims-Made	Claires-Made	Coult's Made	Cains-Made
Cinate Mede Refractive Data	See Named Insured endomentors	10/01/96	:27.7/85	11/01/93

Resounts a Dates apply in Professional Leasity only and apply as partie Names insured execusement

Asset Com Fee by Ermon Smorphy Linuxly Policy Commany & after my Original Assurance in: fage 2 of 7.

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.	§ §	
Defendants.	Ş	JOHNSON COUNTY TEXAS

APPENDIX - PART 6

Exhibit "5"

MOTION TO REMAND

PAGE NO. 61

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

- B. Self-insurance.—Where a provider maintains a solf-insurance program for other due camparaction and comprehensive general liability coverings in conjunction with malpractice coverage, as used as unemplowers compensation and wasters courped, more more conjunction of the second injury coverage, craphyper health: intransac coverage, provided it measures to experience on the self-insurance reserve fund referred to below an extendible in allowable costs. See §12.1.9 for the effect on exactly expect, J Alibowal contributions to the self-insurance reserve fund on the contributions to the self-insurance reserve fund and the conditions of this section loss not be considered available for patient care in determining the necessity of self-order loss of the considered available for patient care in the following condition, any allowable loss cannot conceed the amount of the fund as of the date of the loss; that is, the date a class is actually puid.
- The provider must maintain a self-insusance reserve flund to meet any actual insect that are consulted. In the event of a loss, the amount allowable will be limited to the balance in the reserve fixed at the date of the loss.
- The provider must furnish to the intermediary pertinent details about the specific sames that are to be covered by the self-instrumer reserve fund.
- 3. The reserve must be maintained in a segregated account and the funds must not be comminged with any other funds.
- The self-instruence sessive must be sufficient to most losses of the type and to the enters that they would ordinarily be covered by magnitude.

21-42

- 5. Contributions to the reserve must be made not less frequently than annually,
- The provider's total allowable interest expense under the Medicare program will be offset by income asmed by invested insertance reserve funds.
- Where appropriate, the provider mass demonstrate the ability to effectively
 unsurance companies.
- The treatment of casualty losses sustained by the self-ionurance fined shall follow the procedure provided in §8133ff.
- PROVIDER COSTS FOR MALFRACTICE AND COMPREHENSIVE GENERAL LIABILITY PROTECTION, UNEMPLOYMENT COMPENSATION, WORKERS COMPENSATION, AND EMPLOYEE HEALTH CARE INSURANCE 2162
- A. General.—Where provider costs incurred for protection against malpractice and comprehensive general liability, or for protection against malpractice hisblirty only.

 The protection of the protection against malpractice hisblirty only.

 The protection of the pro
- 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 enableyee incurred curing his her current employment without regard to a promising banding. Where reference is made to workers' compensation covering, it also includes second injury coverage where such isolated to incrured by the provider.
- a The soccessey constitutions to the fund based on an equation determination (as described in §2162.7C) of satisfying Joses for malgrantice, comprehensive general liability coverage in conjunction with malgrantice, unempireyment comprehensive general liability and conjunction between the determination of measures owners of the fund may also be made by a governmental agency for intemployment comprehension and workers' comprehension.
 - The cost of any insurance to supplement self-insurance. like stop-lose insurance.
 - The comparative commercial insurance premium.
- 2162.1 Insurance with a Derhandble or Consummers Provision.—If you purchase an insurance policy with a deductible or configurance provision from a commercial insurance company, the cost of the insurance severage for ionse in orions of the deductible or communice is an altorable cost, to the extent that the measure of severage is expension with sound management practices. (See §2162.5 for the discussion of losses school or deductibles or coinsurance.)
- 2162.2 Insurance Psychotod Press a Limited Pornose Insurance Company.
- A Treating Coast. Some providers, groups of providers, and State hospital seasonations have established invoked purpose insurance compenies (often known as cuprive measures contentions there established invoked purpose insurance compenies (often known as cuprive measures contentions) to some themselves against meliprocisic and, as some antenness, conquerbenslave statement highly knews as well as unreapproposed and workers of compensation insurance and supplementary of the production of the compensation insurance and the supplementary of the meliprocisic and compensations and compensation and compensation insurance coast, and the production of the coast of available compensation insurance coast, and employee beath sensethy productions and more than one coast of the coast of available compensation insurance coast, and the coast of available of the coast of available configuration compensation in coast of the coast of available of the coast of available configuration of the coast of available on the production of the adoption and many coast of the coast of available of the capture of the

In addition, supplemental premiums which are assessed by finited garpose insurer to brild reserves against contemplated losses, as distinguished from capital costs, are allowable costs if, when added to the regular psenatum, the total ptermium costs do not exceed a cost and a musicance precipion for comparable coverages. The supplemental premiums must considered in musicance precipion for comparable coverages. The supplemental premiums must again a potential observativation of potential must are considered to the same that when added to premiums again application of the contemplate of the comparable coverage, the total premium costs allowed in a potential proposal period for comparable coverage, the total permium costs on of exceed the comparable or another than the contemplate of the comparable coverage, the total permium costs on of exceed the comparable coverage, the total permium costs on the contemplate of the comparable coverage.

Any funds returned to the insured by the insurer (releases, distributions, etc.) must be office against the costs in the year you receive them. Such sourced funds must be office against the costs of the Employee Health and Welfare Cost Center for employee health care and against the costs of the Administrative and Osernell Cost Center for employee then the case and against the costs of the Administrative and Osernell Cost Center for other than employee health care and to costs and the costs provided to the return of captatismton costs previously paid by providers receiving the robust. If payments are made to other fast providers, e.g., the house office of a chain organization, appropriate against one of distributions by the bonne office to you must be made based on the appropriate faces in each situation.

The premium pair by you for Inequial-based physicians is subject to the requirements in £2162 B.

The following illustrates elementives to full insurance coverage from communical sources which providers, acting individually or as part of a group or a past, can adopt to obtain malpractice, and comprehensive general liability, memoployment compensation, noticers' compensation, and employees health care insurance protection:

Rev. 406

21-42.1

- Insurance purchased from a commercial insurance company which provides coverage after a deductible or onlineurance provision has been ract;
 - 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 Madicare veinthumenount stated below are for provider malpractice liability and comprehensive general infinity coverage to conjunction with malpractice coverage or for malpractice liability coverage only, unemployment compensation, workers' compensation insurance, and comployee health care tourisment, not for that they coverage costs such as successful, in the confidence of the confiden

- B. Effect on Interns. Readons, and Other Provider-Based Physicians.—The cost of malpractice converage that a provider incurs for its employee interns and readonts is allowable, satiyed to the provisions of \$2120. However, the cost of malpractice coverage incured by a provider for the personal risks of physicians other than interns and estimates for direct codes can conducted by patients is not allowable except where the provider increas such uses for its hospital—based physicians as at deceabled in Regulations No. 5, 4404.380(f) and \$21086 of the named. This cost insurand by the new vider for its hospital—based physicians send to be considered physicians as at deceabled in Regulations No. 5, 4405.844, majoria that this total named. This cost insurand by the newvider for its hospital—based physicians speak be considered physicians of compensation Regulations No. 5, 4405.844, majoria that this total provider for the physicians of the ph
- C. Documentation Required Where Type of Interrupe Changes A provider usually schere the type of strangeriest which is most reasonable and product, taking into account all pertinent facts and circumstances related to its organization and appraison. When a change is made from commercial incustance as described in §21,61 to one of the alternatives of their case alternative to another, the provider swart document a comparative scalpsis which shows that the provider's concision with sound management practices. The provider's comparative scalpsis should be covered as the covered and that the coverage offered and that the coverage offered and that the coverage is a consistent with sound management practices. The provider's comparative scalpsis should be proportioned to a periodic best, usually very 1 to 5 weats to assure consistent application of the prodest betyee principle and to proporty measure the cost effectiveness of the intermediacy in determining the reasonableness of the intermediacy.

21-422

o The administrative cost for the strangements, including the cost for the nee of a fund by a fiduciary, legal cost, cost of a risk management program, over of anagement program, account of costs.

The capitive insurance company must have an adequate claims management and risk management program and, in cases where the captive insurance company is draigned be cover employee health care insurance, it is suggested that a countimation of neutrin program be employed as described in \$2100.7 D. In cases where a limited management company has not healthcare and non-Medicare provide in party presentant and non-Medicare providers do not share in prontum costs that the form that he constrained so that Medicare providers do not share in prontum costs that has been been considered to the non-Medicare providers do not share in pruntum casts that the constraint of the constrain

- If a provider or group of providers is relaced to the interest through ownership or control, as defined in Chapter 10, the following additional provisions apply:
- The captive insurance company must be established in and meet the appropriace insurance have of one of the United States, District of Colorabia, or foreign government, if it is
- The excess of seministiy determined less reserves and related operating expenses over actual leases and related operating expenses and guins and leases from sixtalments must be taken than account in establishing reasonable premium levels which do not reflect a profit factor.
- 3. If you terminate from the Medicara program, you must obtain a final documentation must be obtained from an independent actuary, commercial instruction of the adequacy of premium reserves as of the date of ermination. This documentation must be office abunded from an independent actuary, commercial instruction operation of the date of towardation such so office against your allowable costs in your final offs reported in december additional premium; psyments subsequent to the date of termination are not allowable provider costs.

allowable provider cons.

4. In the case of oll'short captives, investments by a related captive innumnor company see initials to have fink to the fink to the company see initials to have fink to the fink to the company see initials to find the company see initials to find the company see initials of the company see initials of the company see initials of the company see initial states and the find the company seems to find the company of the company of the find states opportunities to the company of the compan

Recognizing that a captive's portfolic may presently contain other than few risk. United Stares have investment and that possible losses in converting a captive's oursest portfolio to acceptable investments may result, the Medicare program allows are investments coaned by the captive on July 31, 1978 to be considered acceptable investments under this work.

investments held by the captive on July 21, 1978 autosquared y mature, are exchanged for other types of investments or soft, any proceeds that are reinvested must be invested in accordance with the provisions of this section.

Loads or any transfer of funds by the insurance community to policy holders, owners of providers, or parties related to them are probletical.

Rev. 406 21-42.52162.1 OOSTS RELATED TO PATIENT CARE 04-98

2162.3 Solid Instrume.—You may believe that it is more predent to mediatain a total self-instrume program (i.e., the assumption by you of the cut of loss) independently or as used of a group or pool rather than a losser protection through sent-thaned insurance coverage. If such a program meets the capatitions specified in §2162.7, payments into each funds are allowable contains.

- 2162.4 Combination of Punchased Insurance and Self-hasumore.—You may believe it appropriate to self instate some of the risk independently or as part of a group or pool and punchase insurance for the remainder of the chief. Where you decide to found all it assure of the risk covered through self-hasumore, payments into a fiduciary fand are although coests if you or the pool sets up a progress which meets the conditions specified in \$23.57. The root of the insurance is also an allowable cost rubject to the conditions of \$21.57.
- THE THE WASHINGTON A STATE OF THE PROPERTY OF

21-42.6

Rev. 406 08-98

COSTS RELATED TO PATIENT CARE

2162

for purposes of this action, a "deductible" refers to the amount of first dollar losses not covere by a purchased insurance policy, a funded self-insurance program, or a combination of both.

2162.6 Leases in Escree of Coverage.—Where a provider income tosses which are in excess of purchased commercial andor trained purpose hasmance reverage or actuaristly determined handed contributions to an approved self-insurance final in meeting specified deductibles, coinnament provisions, or ten's self-insurance, such const are allowable in the year paid where the provider exhibit services or the satisfactors of the information of paid where or familing levels reflected the decisions of postent management.

Losses in excess of ouverage for oversis that cocurred prior to the provider's participation in the Medicare program, where the actual amount of the loss was unknown and could not be observated at the time of the event, are allowable, provided the ditermination and acateal payment of the instead are nace archeological to the provider's entry into the program, and

date of tecurination from an independent actuary, insurance company, or troker (as defined in B below). Any reserves the new development around the office, against the provider's allowable costs in the provider's allowable costs in the provider's allowable contributions to the fined astronomy to the date of termination are not allowable.

 Reporting.—The agreement must require that a final cial statement be focused to the provider or pool frampless by the fiduciery to later than 64 days after the end of each susual instance reporting period. This statement must

21-41.8

Rev. 4

04-12 COSTS RELATED TO PATIENT CARE

2)62.7 (Cont.)

show the balance is the find at the beginning of the period, current period contributions, and assess and nature of final payments, including a separate accounting for claims management, legal expenses, claims said, etc., and the fund balance. This report and fiduciary's renords must be available for intermediary review and studit.

- hnorms Emmed The agreement must provide that any income samed by the fund trans become part of the fund and used in establishing adequate fund levels.
- C. Satisfaces 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 or the appropriate field of medical majoractics and general liability insurance, intemployment compensation, workers' compensation or employee health care insurance. To be independent, there must not be any financial ownership or nontrol, as defined in Chapter 10, either directly or indisectly in the provider.

The actuacy, estimated company, or braker shall determine the account accessary to be paid into the fund. The fund should include reserves for losses based on accepted actuarial techniques customately employed by the section of the insurance industry writing the type of insurance coverage the fund is designant to provide, and expects related to the self-marriance fund as specified in §2.162.8. The actuary, insurance company, or broker shall also provide for an animate of the amounts in the fund its are recessed of what is reasonably needed to support anxiety shall discovered as specified in \$2.162.10. Where funds have been extendished to every camployed health come, the actuary, assumance company or baker must limit fund payments to the cost of insurance precisions of companies principles of covered as the cost of insurance precisions of the control of the payments of the control of the payments of the control of the payments are companied as principles of covered by the final. Fund payments according this amount will be wested as excess any payments.

The actuary, insurance company, or broker must state the actuarial basis and the coverage period used in carabilisting reserve levels. Reserves will not no recognized as allowable Medicare costs for rocease specifically dealed by other subsections of § §2160, 2163, and 2162. Thus, reserve payments will not be exceptional for some such as:

- Losses in excess of the greater of 10 percent of a provider's not worth or \$100,000 where a provider electr to pay lesses directly in lice of analytaining a funded soft-insurance fund (\$2162.5);
- 2. Losses in excess of coverage levels which an intermediary deems do not reflect the decisions of prudent management ($\{2,3,2,6\}$.

The actuary, measures company, or broker must provide its workpapers to Medicare intermediance upon sequent.

manticelassa thes testical

There must be expanse accountability to reflect all operations within each fund.

Rev. 286

21-42.9

assuming that the required evidence of prudent management in catablishing insurance coverage or finding lavels has been submitted.

2162.7 Conditions Applicable to Self-Innurance

A. Definition of Self-Insurance,—Self-insurance is a means whereby a provider(s), whether proprietary or nonproprietary, undersaided the risk to proceed inedit against addedparted 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 with insurance. For example, any agreement designed to provide attainisticative services only shall be considered self-insurance and risks enter the requirements specified below. If the designative services agreements do not most these exquirements, any amount funded as part of the agreement will not be allowed. Payments from the fund, however, will be masted on a claim-paid basis as specified in §2162.3.

There may be situations in which there is a fine line between self-interrupes and prochased or commortal insurance. This is particularly true of 'cost-plus' type estingement. As long as there is at least some shifting of risk to the unrelated party, even if limited to situations such as provider bushruptcy or employee termination, the arrangement will not be considered self-insurance.

B. Scil-insurance Fund.—The provider or pool establishes a fund with a recognized independent fiduciary such as a bank, a bust company, or a private bouefit administrator. In the case of a State or local governmental provider or pool, the State in which the provider or pool is coased may act as a fiduciary. The provider or pool in fiduciary start enter time a written agreement which includes all of the following elements:

Rev. 406

21.42.7

2162.7 (Cont.)

COSTS RELATED TO PATIENT CARE

01-91

- Central Local Responsibility.—The fiduciary agreement must include the appropriate legal perponsibilities and addigations required by State Laws.
- 2. Control of frand.—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 observable or enactor see defined in Cheptor 10, except where a Sase note as a fiduciary for a fittee or local governmental provider or pool. Thus, the home office of their organization or a religious order of which the provider is a sufficient cannot be the fiduciary. In addition, investments which may be made by the fiduciary from the final see initiated to interest provider the major of the fiduciary for the f
- 3. Partnesst by Pideciny The agreement must provide that withdrawals must be for malpractice and comprehensive general liability or unemployment or workers' comparation intumated losted, or employee health benefits coverage only and those expenses listed in §2.162.8, Any principle, of videnda, etc., to the provider from the flast will be used to reduce allowable cost. Purincervine, evidence of a practice of payments from the familier burned to purposes unredicted to the proper administration of the fined say result in a withfrawal of recognition of the self-instance fund by the Medicare program. In such austraces, payments (not the fined 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 adequater of the fund resinned as of the

2162.7 (Cont.)

COSTS RELATED TO PATIENT CARE

01.83

D. Claims Management, Risk Management, and Caordination of Ronelits Program. As provider or pool has an organing claims process and tisk management program. The provider or pool must demonstrate to the intermediaty that it has an organize planta process to determine whether enablepather and comparehensive general tiability, unemployment and workers' comparements in management general tiability, unemployment and workers' comparements where upplicable, and the cost of idelms. A powifer or pool may either utilize its qualified personated or an independent contractor, such as an interact company, to adjust claims. In oddition, a provider or pool must obtain adequate tigal maintance in carrying out its claims. In oddition, a provider or pool must obtain adequate tigal maintance in carrying out its claims. In oddition, a provider must, also have an adequate risk management program to establish the cause of losses and to such action to reduce the frequency and a reduct program has the examinal characteristics of programs exceeding insurers which currently insure providers for these risks. Therefore, a province must have an onegoing andery program, professional and employee training programs, set., to orientate the frequency and severity of maintained and compared the frequency and severity of maintained and compared to the programs and the province must have an onegoing andery program, professional and employee training programs, set., to orientate the frequency and severity of maintained to the cause of majoretic end compared to the province must be a workern't compared to the institute of the province must be compared to the programs and the province must be a workern't compared to the majoretic end compared to the province must be a workern't compared to the must be a supported to the province must be a

For funds established to cover employee health care, the provides, or its fiducinery, about consider the implication of an effective ensedination of benefits perspense. A progress of this motive testude seek to determine whether any benefit into of the hard is partly for fieldy covered by another insurance plant, such as a fundity plant provided to a specier as a finingle benefit of comployment or a private insurance plant hold by the benefit partly with a commercial insurance company. A progress of class type would assure that each beath plant part as appropriate share of the expenses related to the beneficiary's itlnsss, that reducing the inhibitity for full payment by the provider's fund.

E. Trust Mechanism Apolicable to Employee fisalth Care. If the provider wishes, the program will recognize the establishment of self-insorance fands for employee health one in accordance with the provisions of \$501(a/9) of the Instruct Revenue Code. This code section grasts a nax free exemption to funds established in trust provides the funds are used to pity for life, suck, accident or other employee benefits.

Application of this initional Revenue procedure would allow a provider to catablish its employee health care self-insurance fund without reimquishing legal title to the fund to an independent foliuciary. In addition, final trassers any also be employees of the provider, as long as the employees and independently in their administration of the true. All other canditions applicable to self-insurance cloimd in this manual section, however, will be applicable to exployer health one control of the con

2162.8 Expenses Related to Losses Paid Out of Self-Insurance Pume - The following expenses will be consistented costs attributable to a self-insurance fund entablished by a provider on or pool: expenses of stabilishing the provider fund or pool; expenses for administrating the claims management program, expenses involved with maintenance of the fund by the fiduciary or pool, rest: management (if performed by the fiduciary or

21-42-10

Rev. 286

D8-98 COSTS RELATED TO PATIENT CARE

2162.10

good), and a coordination of benefits program (if performed by the fiduciary pool or provider) to the others that such expenses are related to the provider's self-insurance program. All other experses 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 Reimbut sement Principles Where a Provider Bas Self-Insurance ...

- A. Medicards perticipation in the fined contributions will be limited to necessi studed payments under by a provider into the fund and only to the extent of the amoriton permitted by \$2162.CC. Accounts of payments to be made into the fund are allowable cours in the year of exemple if paid within 75 days after the real of a provided cost reparting period. Payments made after the 75th day will be demand allowable in the reporting period paid, provided the tensi contribution made in the period do not encoded the amount prescribed by the sensor, as necessary for the adequacy of the fund.
- B. Total find contributions for employee boattle care are included in the Employee Health and Welfare Cost Coster and for other thin coupleyes health care in the Adolinistrative and General Cost. Center and allocated in the cost-flacing process in the same seattler as commercial insurance premium costs.
- C. Medicare's share of all ovable contributions in a fund which meets the conditions in \$216.7 will be included in the calculation of the regular intering reimbursement. The interiments will be heard on the payments required by the actuary, internance company, or broker for the current your under the agreement setting up the fund.
- D. Interior recombursteness, for actual leases selected to deductibles or colourunces which are not covered by a funded well-immunous property as described in §2167.5 will be based on the provider's contrast of Medicards alters of total paid desiras to be made the coming year. Factors not not the revision's previous years' claims paid obtained to be made the coming year. Factors not not not provider's previous years' claims paid obtained not continue promising, etc., should be used to establishing the estimated leases for interiors payment purposes.
- 2162.10 Traitment of Bases Reserves—Contributions or pool payments for may period in screen of the timous required by 22162.70 as needed to support disbursariest are not allowable more for safe period but may be allowed in the subsequent reporting period to fine cereat that when added to contributions paid in the subsequent reporting period to fine cereat that cannot be allowed to contributions paid in the subsequent your, the sum deten not control the prescribed encount.

Rev. 406

21-42-11

2162.11 COSTS RELATED TO PATIENT CARE

01-28

2162.11 Effective Date and Remonetive Application -

- A. Majoractics and Commenhenelve General Liability—The provisions of this section are effective with payments for majoractice and compreheneave general liability protection in conjunction with natigencies protection or majoractics liability protection only, beginning April 1, 1977. If a provider did not have full coverage timber coverages; in terminal terminal Protection 13, 1974, and disborated strated for such protection under alternative arrangements, such costs of protection are allowable when:
 - 1. The dishargorment 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 so the provisions of this section before:
- s. November 1, 1977, for arrangements other than through purchase of protection from a captive insurance company; or
 - h. July 2, 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 \$2161.8 methy providers new request concerning and revision of cost reports for applicable cost reporting periods to recognize reasonable disbursements for such protection in lice of the costs periods are recognize reasonable disbursements for such protection in lice of the costs periods.

- 2162. PROVIDER COSTS FOR MALFRACTICE AND COMPREHENSIVE GENERAL LIABILITY PROTECTION, UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, AND EMPLOYEE HEALTH CARE DESIGNANCE
- A. Geograf.—Where provider costs incurred for protection against malgrantine and compachemists general liability, or for protection against malgrantice inhibity only, uncomployment components, or many controls of the controls of the controls of the controls of the controls under controls of the controls of the control o

Lismally coupled with workers' compensation laws are according by laws which provide that the employer shall be flable only for the disability resulting from an injury to an employee incurred during his/hor current conditionant without regard to a prescripting hundron. Where reference is made to workers' compensation coverage, it shot includes second injury coverage where such liability is incurred by the provider.

The following illustrates afternatives to full insurance coverage from commercial sources which providers, acting find whitelly or an part of a group or a pool, can adopt to obtain malpractice, and comprehensive general lutality, mentglowness compensation, wedgens compensation, and employers benefit care insurance perfection:

Rev. 406 21-12.1

allowed, if the self-insurance assengement met the provisions of this section before Movember 1, 1977. Such respecting and revisions are not mandatory for periods prior to April 1, 1977.

If a provider has stade payments to a self-interance fund or a pool during the puriod after December 31, 1974, and before April 1, 1977, as independent actuary, insurance company, or broker must review the safequery of the payments made by the end of the cast reporting period coding on or after November 1, 1977. If the neture, insurance company, or broker to be twen that the payments made are excessive, then reliably restricted will be limited to the amount determined necessary by the ordinary, insurance company, or broker. Any covers amounts may be corried forward and included in the subsequent year's contribution to the cases that, when added to contributions ped to the subsequent year's contribution to the cases that, when added to contributions ped to the subsequent year's contributions.

In a self-insurance or pool armagnators, 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 our recognize period. Any withdrawals from the fund for other than underposite losses or comprehensive general liability losses in conjunction with.

21-42.12		_
		Rev. 406
D1-83	COSTS RELATED TO PATIENT CARE	
17-1	COSISTELATED TO PATIENT LAKE	2162 Li /Comr 1

resiperactice coverage and related expenses must be offset against allowable contributions to the final. In addition, all income summed by the fund must become part of the fund and used to exability adopted and below. Any income extend and used for other then this purpose roust be offset against allowable payments in the year context.

162 (Cont.)	COSTS RELATED TO PATIENT CARE	08-93

- Insurance purchased from a commercial insurance company which provides coverage after a deductible or coinsurance provision has been me;
 - Insurance purchased from a limited purpose insurance company (captive);
 - 3. Total self-insurance; or
 - 4. A combination of purchased innurance and self-caramete.

The conditions for Medicase reimbursoment stated below are for provider malpractice liability and comprehensive general liability coverage in conjunction with subpractice coverage or for outspreaded liability coverage only, unemployment companion, sectoral compensation incommon incommon, and employee health come insurance, not fire liability coverage courses do as assumptible liability, fire, therefor in the liability coverage courses and employee health come insurance, not fire liability coverage courses do as assumptible liability, fire, therefor malpractical liability only.

- C. Donumentation Rounined Where Type of ligarizate Change, —A provider usually selects the type of urrangement which is most reasonable and prutient, using into account all pertisent facts and circumstances related to its organization and operation. When a change is made from commercial internances adecarbed in \$2.56 in one of the alternatives of the alternative to account an advantage of account of the commercial internation and electrodary in another, the provider near document a comparative analysis which shows that the growled's choice results in a measonable cost for the coverage offered and that the center of coverage is counts seat with sound management practices. The provider's comparative analysis should be performed on a periodic base, usually every 2 to 5 years, to assure consistent application of the provider should retain these analyses is assist at international provider should being applied. The provider should be result to a supplied and to properly another type coefficient of the insuring method being applied. The provider should retain these analyses is assist at international providers also the reasonablence of the insurance casts. These methyses should show the following information:

APP. 278

21-42.2

01-96....

- o The administrative cost for the ansatzeracuts, including the cost for the maintenance of a flund by a fiduciary, legal cost, one of a risk management program, one of claims management program, actuated costs, and other related costs.
- o The money contributions to the fund based on an acquarist determination (as described in \$216.7C) of auticipated losses for majoraches, comprohessive general labelity everage in conjunction with nonlinearities, unemployance; compensation, workers' compensation, and employee bealth case leavance. The determination of necessary contributions to the Rend may also be trade by a povermanual agency for neemployment compensation and workers' compensation.
 - The cost of any lastgrance to supplement said-insurance, like stop-loss insurance.
 - a The comparative constructed insurance premium
- 2162.1 Internace with a Deductible or Colombiac Provision.—If you purchase an insummer policy with a deductible or colombianism provision from a commercial immunous encapacy, the cost of the formation of the colombianism and provision from a commercial immunous encapacy, the cost of the critent that the immunit of coverings is continued with usual management practices. (See \$2162.5 for the discussion of losses related to deductibles or construence.)

2162.2 Insurance Parchased From a Limited Purpose Insurance Company.—

A hymitati Corta - Stome providers, groupe of providers, and State bospital amodulions have established intrived purpose integrance companies (office brown as copying manusco companies) to insure themselves against antispectice and, in terms instances, comprehensive general liability to sense as well as example/spasse and workers' compression insurance and completes health care costs. The regular preinfuses (office them the supplemental premisures) prid to such companies for provider majorations and completes and connected and process health over costs. The regular preinfuses (office them the supplemental premisures) prid to such companies for provider majorations of the subspace occurrence, so for majorations of the liability coverage only, as well as summapleyment insurance costs paid in the Federal Coverage and to the Stuties, weekers' compensation insurance costs paid in the surance compensation of the supplemental insurance compensation of or sufficient compensation of surance of the cost of restligation compensation of manuscription and more the reaccessible cost provisions of \$2.000. If companies insurance premiums are allowable premium passes of the cost of the subspace compensation of the advance of providers and more the reaccessible cost provisions of \$2.000. If companies insurance premiums are allowable premium to the advance occupance of bruther as determined in \$2.000. The allowable premium trust not exceed the amount which such evaluation determines to be reasonable.

21-42.3

Rev. 406

- 3. If you corruins the first desired program, you want obtain a final determination of the adequacy of premium measures as of the date of termination. This determination must be obtained from an independent actuary, commercial insurance conspiance or breaks as described in \$2162.7. Any reserves that one deemed secencies of the date of termination must be offered against your allowable court in your fault took report. If reserves are deemed insequence, additional pacetiant yet means subsequent to the date of termination are not allowable provider costs.
- promens alberquent to the day of terretantic area so allowable provider costs, or the case of offshore captiver, investments by a selated captive insurance corruptry are limited to low risk investments to United States dollars such as bands and notes issued by the United States Covernant, their securities issued by United States captorities or government, their securities issued by United States captorities or government, their securities issued by United States captorities or government, their securities issued by United States captorities or government, their securities are under the securities and states of the securities are the securities are set of United States proposales or O United States proposales are of United States corporations are affected in the top two classifications by United States accognized securities much organizations of the securities are of the securities are securities. The securities are of United States corporations generated to the force of the securities, payment of the impositionist securities and deposits (Including Confidence of the securities) payment of the impositionist securities and deposits (Including Confidence of Confidence of Confidence of Confidence of the securities are deposited in the securities are of Confidence of United States recognized securities are are after a securities and comparison and superior and approximation of the securities are securities and securities are securities and securities are securities are securities are securities and securities are securities are securities are securities and securities are securities and securities are securities and securities are securities. The securities are securities. The

Recognizing that a emptive's postfolio may presently contain other than low risk United States based investments and that possible losses is convexing a employer current portfolio to acceptable investments may result, the MacKennergroups allows any investment owned by the captive or July 31, 1978 to be considered acceptable investment under his section. As investment had by the captive on July 31, 1978 anheatpointly matters, are exchanged for other types of investments and any proceeds that are reinvested mass be invested in accordance with the provisions of this section.

Loans or any transfer of funds by the insurance company to policy holders, owners of providers, or parties related to them are probabled.

Exhibit "6"

MOTION TO REMAND

PAGE NO. 62

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher Chase\Pleadings\MotRemandFINAL2b.wpd

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

in re:		
FORT WORTH OSTEOPATRIC		
HOSPITAL, INC. D/B/A		Case No. 05-41513-DM1-7
OSTEOPATHIC MEDICAL CENTER	*	
of texas		
***********		************
Estate of Johnny Planer, Decid,	*	
Plais#0	#	
75		Advertory No.
	#	
IP Morgan Chase Bank, N.A.,		
Gloca Militon, Jay Sandlin, Lucy	*	
North, RN and Namey Arga, RN,	#	
Definduats	#	

APPIDAVIT OF EAL ATKINS

BEFORE ME, on this date, personally appeared E L. ATKINS, who, upor his such deposes and states, us follows:

My name is E.L. Arkins. I are an absomey licensed to practice law in Taxas, TBN 61409000. My license is in good standing and has remained so for the forty-two (42) years that I have practiced two in Texas. I are over the age of twenty-ore (21) and are of sound mind. These personal knowledge of the unalters contained in this affidant, and the same are one and correct

I am one of the attorneys of record for The Estate of Johanny Risher, Deceased, in the above-styled case, slong with John Micheau. Toegan representing the Estate of Johnny Fisher.

AdSidervit of E.L. Adding

Commentation Setting interesting Descent of United and District Advantage And Adding Annual Control of Co

Page No. 1



FWOH while it was pending

In all settlement meetings and conferences, I always negociated with Nattry Argo, who was represented as the Right Manager for FWOH. I have fac several malpractice cases against FWOH and always negotiated with Nantry Argo in those cases as FWOH's representative along with FWOH's attorneys assigned in the cases. In every case, initial responses to notices of claim and settlement demands I soot to FWOH were made by Nancy Argo. Nancy Argo attended every court-ordered mediation conference I had in cases involving FWOH multiraction and she was the oast who made, or conservationed to one, the final decision as to the position of PWOH in the Gains.

I have filed numerous malpractice lawsuits against PWOH during the past fifteen (15) years and in every lawsuit, EWOH expresented that it had a self-insured trust fund established in lice of first-level liability insurance to pay any judgment my client might recover against EWON, in additional to excess liability policies. The self-insured trust fund was always represented by EWOH to be E4.004.000 for

In 2005, FWOH filed for bankruptcy. I retained St. Clair Newbern and, with his assistance, obtained an Order from that Bankruptcy Count Infling the automatic bankruptcy stay allowing me to proceed with the Fisher stateparatice case in state pourt. I, then, proceeded to complete the "Fisher vs.FWOH" malgractice and it. Jourson County, Texas. In June. 2007, a pudgrater, was entered by presiding Juage William Borworth to the malgractice case against FWOH for \$157,000.00

Affidavit of E.L. Arkins
Colombia de l'ambratish Decembrish filte al fall follog. 8 verbandes amblet de l'ambratish filte al filment film anni fall filt filment filme

Page No 3

in November, 1999, when his widow, Jackie Fisher, retained use to represent her in all matters surrounding and in connection with his death in October, 1999 at Fort Worth Osterpathic Hampital ("FWOR"). My investigation revealed malpractice on the part of Fort Worth Osterpathic Osteopathic Hospital which directly fed to and basted foliumy 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 Johnson Fisher's children and for his estate. I served the written claim on RWOH. August 24, 2000. When the claim could not be settled, I filed soit on behalf of the estate in Johnson County, Texas. I filed the medical malpractice lawarit against FWOH. April 21, 2001 to the Johnson County Probate Court, and the care was transferred to the 413° Distinct Court, Johnson County, Texas, for trial, shortly after it was Sted.

These personally purceinsted in all phases of the administration of The Estate of Johnny Fisher, which is pending in the Probase 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 maxions. I attended and participated in all hearings and all depositions and all mediums and settlement conferences. I conducted all depositions taken by The Estate in the malpractice case. There were more than tweety (20) depositions taken by the during the course of the lawsest. Much discovery was conducted during the case and numerous attempts were made to settle and soolve the case with

Page No 2

I was advised by FWOH during the entirety of the Fisher malgractice case, that FWOH had two types of inpurance coverage to pay my client's malgractice claim: a solf-instinct trust fund established in lieu of first-level liability insurance and excess hability insurance coverage, to \$25,000,000.00. A copy of the trust agreement and a copy of the excess hability insurance policy was provided use by FWOH's attoristy of record in the case. Accordingly, I proceeded to collect that \$975,000.00 judgment from the self-insured trust fund through the Trustee, Shawe 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 to The Trust when the two passession of it. He advised the, therefore, that the judgment could not be satisfied from the Trust Fund. I notified Chase Bank of the fudgment and demanded that Chase Bank, as Trustee, account for the loss of trust funds and why the trust was not in the status as lad been represented to the state District Court and why the trust could not assisfy the judgment. Chase Bank, and not respond.

I sough: and obtained an order from this Bankrupmy Court, again with the assistance of Mr. Nowbern, to take the deposition of Robert Lansford, the designated Chase Bank representative overseeing the trust. I took that deposition on January 25, 2006. [determined, from that deposition, that Mr. Lansford was both an officer of Chate Bank and a discourse of PWOH. He admitted that he had made discoursements from the trust function that were, apparently, contrary to the requirements of the trust agreement, but were made by Chase Bank on the discourse of institutionals at FWOH.

I spake, again, on several occasions with Shawn Brown. He advised me that he had

Page No. 4

Afficient of E.L. Artists Concerned as Samples with December 1980 of December Research December 1985 in April 1997 Fresholdship State Colombias Colombias areas areas and

Affidienti of E. L. Alkins

C December of Suingender Discours/Alber Fibr of Dillion C No evaluation of NEUREAL/NOLISH

REMAIN-MEDITARIES (C. CLAISTAILING NACCO. General red.)

raviewed receids of the risk reseagureest department of FWOst, which came results possession, as trustes, and that these rule ment general papers indicated that the Johany Figher enalpracture claim had been assigned a value of \$900,000,000 by FWOH shortly after the claim was filed.

I attended the deposition of Bruce Edwards, the former Director of Accounting for Fort. Worth Ostsonathic Hassical

I learned that Mr. Brown had filed an adversary proceeding against Chage Bank, seeking as according from Chase Bank of the self-insured trust. Since The Estate of Johnny Figure had a judgment which FWOH had represented to the Johnson County District Court was to be satisfied from a \$4 million dollar trust fixed, I cought end obtained permission from this Bankraptey Court to intervene in that adversary proceeding, alleging that The Ratace of Johanny Fisher was a benoticiary of the subject trust fand and was ematted to damages as a result of Classe Bank's heading of the trust fund. When I learned that Chase Bank had attempted to settle the Trustee's claim in that adversary promoding in a manner that would destroy any and all misiras The Estate of Johnny Fisher has or might have against Chase Bank as a result of Chase Bank's mistranegament of the trust, I non-mitted 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 State at those musepurepreations, and filed objections with this Benicropicy Court. objecting to the proposed settlement agreement which was attracting to destroy ago claim The Estate of Johnny Frener might have against Cales Bank or anyone else for Chase Bank's

Afficies is of EL. Attitus

Discusses and it is grader in the parameter flow fire of Databa & France ContagnATKINS LIBRARYCLI (PCT
PRETRIES NO MINORITHMS - CONST. Prince ANTION ARROWAL AND

Poge No. 5

misappropriation of funds in the great,

This affidavit is prepared and substituted to the Bankropicy Court is connection with a Motion to Remand, whatin I have filled on behalf of The Estate of Johnny Frahet, Decessed in that Bankruptey Court. This offidayet is estudied to and incorporated into that motion. There reviewed the other decrements when I attrohed as exhibits to the Money to Remand and can affirm thirely state that each and all are documents I have obtained through discovery during the course of any proceduring both the administration of The Estate of Johnny Fisher, Decembed and the medical malpractice laws at 1 filed on the estate's behalf agains; FWOH and are the work product of my efforts on behalf of The Estate of Johany Fisher, Deceased, Parjher, Affiant

BEFORE ME, on this [day of Santa A. J. 2009, personally appeared B.L. Arkins who, and are stated that seek participation of the avoid the avoid and seek at the state of the and and ect, to certify which, wistens my hand and seal of authority



Edic 1 BOR

Affidavit of E.L. Atkins

Page No 5

Exhibit "7"

MOTION TO REMAND

PAGE NO. 63

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

WHE WITH GUTTANAMIT MENTRY, TO CANAMIA TO CANAMIA THE THREE MANAMIA TO CANAMIA THE THREE MANAMIA TO CANAMIA THE THREE TH FIL APPENDANCE, STANKE CHETACH SONGAY (AMENING (817) 186-4162

ANTHON ON OF THAS, FC., ANTH- INC. ANTH- INC

INVESTIGATE CONTRACTOR CONTRACTOR SOLVENING SOLVENING STATES AND S BOTHER INC. CANDSTONED

MUTANT DROWN 106, 142, 33 Between Treatment 2,168,342.65 WARET 'OLL'E 1.10.10.11 2,243, Lor as

13.65.*****

HAME CALLE RETURN ATTENDED THE PERSON

TOM. ANTERS AND FROM CHAIR TO HOTTON CANADA

ACCRUSE DEFORE

7.75

What they seem ĵ

SELECTED SEE CATE OF THE TAXABLE TO Manager no williament

ACAMONE NAMES WITH THE BOTH THE WAS SEEN OF THE SEEN OF SELECTE TO THE OFFICE OF THE SECURITY THE SECURITY SECURITY THE PROPERTY OF THE SECURITY THESE SECURITY THE SECURITY THE SECURITY THE SECURITY THE SECURITY THE SECURITY THE SECURITY T

THE AZATHMENT LE NOT AN WOTTELD MICHERAL MICHELLA WITHOUT HE MANIETERS PRINCESS.

ANG UNC TO ACCOPTED THE THE STATE OF THE STATE AND THE STATE OF THE ST

The Parison In Advisory and Nov.

Marie and Company of the Park

i meta

ACCOUNTY AND TO THE TO SELECT OF THE PERSON OF THE PERSON NAMED NO. THE THE PERSON NAMED N AND SALESTAN

26, Pid. 15-4, Sir., 14F Pt. 6.517, 732, 61 3,371,055.14 Court Chille presents MANUTUR VALAIR ON TOTELLINE PORTONISMENTERS ALLEGE DESCRIPTION OF THE PARTY VATORE ENVISOR Manual Services (ALESES) Manual Services (ALESES) MARKET NOT NOT AND ADDRESS OF

8.18 15.000.40.1 2, (111, 364, 115 TOTAL VALUE SMITH ATTRUST SWIMES ON DAISOUS Address of the second CHRIST WASTE ON BRASHAGE

TOTAL LEVENTRANT ACTION

136.311 07 8 0.0 10.316.31 10.1.144 50

and 1975 (1975)	ad EAT TOO BE	Control Suppressions Off seature programmer Off seat	THE STATE ST	TATAN TATAN TATAN 11,18 TO BILLIAN 11,18 OCET: 31379,777	MALA GLOT IQUINILIBRE	雑せ	TOTAL ASSETS AND CARA ACCURAD PROPER
ă.	TANCTRABER	6: '00' -140					
Actualist on Actual	THE	-4 - 401 - 104 - 1					
Flattement of Account level/94 to Defluying the Yorks carrier agos can state-like	antrant	3.348 H-	E. M. S.	ינו אַנט'ער	1,346.13	£34.50	
MCC2C7578 OF ANDSCA	#50177704	Gen Spidisch im Franch im State Spidisch im Franch im Fr	CONTRACT CANDING AND TO A CONTRACT CANDING AND THE AND	12/81/46 Once participation (12/81/46 Once participation) (12/81/47) Participation (12/81/47) Pa	Decort marine on the course pract that the though prince increases the same to the course taken or the course taken.	CATALLES MISCHARITE THE SCHOOL STATES OF STATE	
ACTOURS IN	{ }	\$67£744	\$6145.13	12/01/44	13/6/21	24/96/41	

- ISA

DEPARTMENT PROPERTY OF SECULIFY PROPERTY AND SELECT

ke |

ELABOLN ELEGAN ALTONA

11.4%, 51E

214, 714, 15

02,596,876 07,511,110 08,500,84 104,763.39

21.286,305.25

4.44,141,45

686,348.00

164, 362,39

2.188,36; n5 47.19 2.190,103.53

TOTAL WALL PATER ACCRESS LINCORES

A seed	PHETODES						
TO 02/38/19	PKINII PRI. SAMB						
STATEMENT OF ACCOUNT ADVOLUTE TO 09/18/19	JACLETS STAN	14,088.13.	EE-150-01	2 24.65.	44,094,33-	10.841.06	-1447.B6-
4345745() have see (4)	a) TTTTED Y	CLA DARvenagos Responsa adesses Vala do labo Obstraven francisio acto e, 57,81345-8	DALDER ELBED OF VAR WATER PAID PAID PAID PAID PAID PAID PAID PAID	PARTEGIA SNO SCHEMAL STATE	ONE PETERMANDAY INCOMES WINDSTAM PACE TO ANIX DESIRABLE MEMORIAL ACT - 17 - 2151-0	THEOMY, DAINTE, CA. THE GRADE PRINCE POSTED MARKET PURD DEPTHORSE PRINCE LANGE TO \$751/99 AND SECURITY CASES/900	SCHOOLS THE SCHOOL FIRST
	# :	E/14/18	B CZPez (u	\$4,111,14	48.01.02.28	\$6710750	6/20/2

	Acritical and gassassesson	FO WITH SPEED SPEED THE STATE OF THE SPEED	9574		7
ţ		2007 THE COLUMN TWO IS NOT THE COLUMN TWO IS	Physical Paris		
1		11			
48/00/50	SPECIES MALANCE PRITER PRINCES	1, 064, 327, 94	1. 054. 892. be	4.50.00.00	
96/14/91	INCIDED BARAIN OR CONTEXT FIRE DISTRIBUTION OF STATE AND STATE OF	18/419.85			
M4/0/01	CALL DISBORRAGENERS PROSSESSAME, SPARK ACCOUNT PAIR TO Extrano 9. Princ Investment America, 1967 ECOS PRE, OR LIGHTANICE PERSONS	45,297,544			
96751761	PORTFOLIO INS MONEY AND STATE AND ST	1.342.75			
8/ 25/0	Chéar interniscours Distribution watering PATD de navo Hetribution watering ACCS. P. 37-82,53-4	4,46.13-			
11/12/14	DOUGH SAMED OF CREEK STATE WHEN SAMED FOR PERMACE FROM 18717PF TO 18717/19 CAMELY BESSAME	of see (c)			
96/11/11	Additional to the PAN WALA. They of Boune was well at the second of the		471,445 SQ.	att, ees yts	

	•		IN SECOND	461,990 34			474, 462, 50					5		Electricated;					A14, 643, 56.		
PRINTED TO ACTUME 18/81/10 TO 06/10/49	TY MONTH COTHE STATE OF WALL-THE	The comme special		M. 141.78	12.002.54		446,162,184	4.44.25-	9. 701,37		Statement or Account 16/85/88 m centered	TO MENTAL PETRO BORD CITE AND C. DES		THE COMPANY OF THE CO	2.66.72.	46, 314.33-	F. FL. ST.	:	54,435,584,		16, 154, 44
ACTIVITY SO. BITANASA		POLATICANO ALONO	CO-757/CO	Note the market bounds on the second of the	SECURITY DESCRIPTION OF THE PROPERTY OF THE PR	A DOI THE WALLEY AND THE TOP OF T	TOTAL STATEMENT OF A STATEMENT OF A STATEMENT AND A STATEMENT AND A STATEMENT OF	03/7//29 Cum Vitabiliamann Sannaidh y Sannaidh Sannaidh Mith Yo Ares Dillicheus Rhitton. Act 1 31-8233-8	63.42.75 DECOME BACKBOD COR. ONE DECOME PARKED PLANS MANUFACTURE TO STATE PLANS CORET. 61553.465			With La	AT AN		1966 ELICINOS ERT OLDOTROMO (1974/17) Gen upano soldin par historiani	ACADAM CONTRACTOR OF THE STANDARD CONTRACTOR OF	TO CONTROL THE TOTAL THE T	## STATES OF THE PROPERTY OF THE STATES OF T	and the state of t	Office of Cartina (47) E240	A CONTRACT OF THE STATE OF THE
Phys. 9		Internations.	Dr 165 773								: }		14V.STIMITES								
PE HONTO CREAD RANG LINE SELE-THE		Control of the Contro	NC.562-541		96, 984, 11.	44.33	f. 229. k7	1.23 m.			PRATEGRAS IN ACCOURT 10.01/59 TO 09/3E/59 PRINCED GROUP USE CONTRACT OF		CARE CARE	:	· · · · · · · · · · · · · · · · · · ·	9, 151, 69	3 439.70.	di, ma 13	9,623,54	£.43).44	
ACTION 46. 8315/400r	CANTS FOR STATE OF THE STATE OF		CA. (2) 104 FUNCHARD SO, NO. PA. 951/2 WINDER TARRES TRANS TRANS FUNCH SAT 28/2/2/2 PA. (2) 200/2 FUNCHARD SAT 1/2/2/2	\$00, FOR THE COMPANY HOSTON CONTINUES TO THE CONTINUES TO	THE PROPERTY OF THE PROPERTY O		Chical Fig. Through annuary to a first through the first through t	ONICE AND PROPERTY OF THE SECONDARY PROPERTY OF THEOREM WIT PECTOR PROPERTY AND			Account on East-cased	2240	Nista Liveria	Linear Prince 20, move 6474-32	Activation properties of the p	GATELY THE GETTER CONTROL THE CONTROL THE CONTROL CONTROL THE CONTROL THE CONTROL THE CONTROL	OPE HEADS SOLVE HAS BELLEVIEW WITH THE PROPERTY OF THE PROPERT	TO THE CONTROL OF THE	Applied the statement of the statement o	A CANADA MANAGARAN PER ACAMAMA MANAHAMAN MANAH	

FAVORAGE OF ACCOUNT 12/01/26 TO 09/30/19.

ACTICIO 16. EDISTRAGE

= |

Entraction of Account Levelves to 05/36/39

ACCELANT 60. 03363749508

ž

46,084.13.

1 02/80/84/80/80/80 Polación redocción 3 No across Stolete Presiden acces. 6: 37: 62396-4

THE UNIT BASEMED DRY CHE CHOURT PAINE HOME: WALKEY FROM HETCHEST PROST 7/1/59 TO 7/1/1/99 CHELL: BASEMED STATES

06/43/51 48761780

7, 540, 846.0s

40772770

1,731,71-

64/41/40

1.06.7

STATEMENT OF ACCUMENT 10/01/96 TO 09/10/199

ALTERNAT MG. 6339570300

Ĭ

S. S. STANDERS 5,317.72 17, 143, 131, 48 STEEL COLCU 2, 317, 75 3,445,175,83 38 1,445, 835 09-TOTAL PAINS OF MONTH MANUEL FOUR AAABAR ONE TO HAY SAARA ENDE ONE THAT MANUEL MANUEL PREDEST ACCOUNT DECEMBER OF THE PARTY. COUNTY SERVING MINISTER PERSON

FT WORTH OSTED HOSP CEN BELF-INS Account number 8098574589 October 1, 1989 - September 39, 2000 Annuel Account Statement

BANK CHE, TEXAS, NA. NYESTHEPT HANGEMENT 500 THRONKHORTON FT. WOITH TX. 78102

www.handore.com

Vour Westh Advisor Is: RIDBENT CANBRIGHD (817) BEE-41ST OF 800-459-5385

This was externact has been emphased to private you wide a sequent defined of both statum extrate and being of both Summerice. It is develoted into monitors, of each breaked. Summerice, the analysis, described into monitors, of each breaked. intuitably plus new Rank Cine Account Statement,

Planse serian dra Buldein danel westuri of John etteumer as å astrane inspolant Fineskydds

EANEST & YOUNG L.C.P. 201 MAIN ST., SUITE 1100 FO'TT WORTH, TX 78102-3161

FIATEGRAF OF ACTOUNT 10/F1/18 TO 06/10/59 ALEXONAY AG. BELLEVIAGE

2

1, 421, 154, 11 P. 237. 72 MINCIPAL CAME 476,544 79 0.11194.6 P. 377.72 55 207.15 cc.soc,1 23, 435, 30 NUTAL PRESIDENCE OF PERET PROTECT FORD POR PORTING ONE DESCRIPTION OF THE PERET PRESENT PRESEN MONTE HALLING TRANSPORTING | BURBARY INCOME TRANSITION ON COME WANTER PARTY DESCRIPTION \$72.99 TO \$733.799 COSTE: \$873.7409 00/18/00 NOTIVEED 508,000 PAR VALUE
UNITED STANKES THEMS AT HEAD STALLS
WITH 00/20/19/00 DEZ 04/18/19/19
THAN SAN DAY NATH AT 100 N
CARTS. PREPARE NOTIVE AT 100 N 68/19179 INTEREST BARRERO DE STALLE DOCTOS PROFES POLOS SELVENSES POL SEO DOS DAZAS EL 100 \$ SCHATZ, 912/1955A7 1977/1978 WALNESTON PARK RESERVE FA 1 69712763

APP. 287

3,767,425.30

3,947,935.00

Page 2 t. II

Market reconciliation

CLOS 1863 CA 197, 198, 198, 198, 198, 198, 198, 198, 198			20.00				12 1 12 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	.,						
	- daniel de la constant de la consta	The second secon			The second secon	(date)	ı
Conjections merked waters	Georges.		The state of the s	The second second		CHARLE STREET, NAMED 1889	Entitry phanes water

1 (WORTH COTEC HOSF CEN SELFANS Account names abbethado Copies II (Aprimen 30, 200)

Summaries

Transaction summary

53,44E,855.03 (41,813,214,173 Beginning races became 150/199

Could recolption
Conference (Control of America)

61 125 146 15) (12 146 15) (12 146 15) (13 146 15) (14 146 15) (15 Cesh disburacents Cesh bourseanish Agriteration reported Telal cash deductsements

Available transactions

60 00 34, 700 cm (81, 100 cm (C. and. 8/k32,186.T31 OCODE BOARD REPORTED BOODER

FEWORTH DETERMINENCEN SELF-BAS

FT WORTH DST FD HOSP GEN SELF-INS Annual nymber, \$506074000. Daman 1 - Suprember 30, 2000.

Summaries

Holdings summary

((x 100 cat x)) 48 18 30 C Constitution of the consti Total haddings

\$56,000.52 \$25,00 \$70,013.50

facome summany

(M.127.44)

Seattern permitteen

\$(3,912.50)

They second Country branches and the subsequency fromths for their principal per included per control of the country of their personnel per control of the country of their personnel personnel of their personnel perso

APP. 288

PT WONTH OETFO HINGW CEAR EPI FLAME

Pos 8 of 18

FT WORTH DSTED HOBP CBH 8815-846 Abbert number, 83365/4600 Dotaber 1 - September 30, 2000

Holdings detail Cash equivalents

Page 6 at 20

| Comments

Assets identified with an amenite (") are hald in the invested income Porticing.

FT WOTTH ORTEO HOSP CER BELFANS Accust number, 8738674500 Octobe 1 - September 30, 2000

Analysis

387

Only has Asset Aboutlen erulyes includes trates land trustique. The Bund Outly and Naturity analyses (if applicable) are finished traveling means lands.

This strainty studies to purelies a right level of surmer leagues while mediate to textelly and principes earliest framesh househouse in lasty-speakly, arruit learn makesy huntest accounties. Principal volatifity is not expected to be an about. Arrestanda objective: Principal Preservation

Asset allocation



The Assat, Albaceaton may raw the placely as described to the Bougament Chickense due to Other Awart Institute

PT MENGTH CRETECHING CHRINE FLERE

Policy (III) III SI MA Policy (III) and the Committee of the Committee of

Page 12 of 28

Transaction detail continued

1 £16 135.07 * 1.24.PC SED COR COD CANNETTATINE TELS COLLECTED THEIR CH HOVENBEEN CHANTER HER. O DANK ONE DA, BLATORIGE FER TO CHKG ACCOUNT BITTEN REQUEST OF CLENK MILTON, B, DW 1784 VALIEC OF 885) ČI 376/30 Athre

177 B16.67 DUD THROUGH MERRIL LYNCH GANT SEC. THEREPT OF INTEREST CAMEDON Mighe 80.41/21

10,780.14 BOLD THRICKISH BARCZ AYS DEZORTE WEDD SEC. OF INTEREST CARMED ON (3/16/97)

47.40.674

1,164.85

12/25/21

FT WALKER DAY HAS HELD SELECTING Adminitrations: passivassed Colorer 1 - September 20, 2009

Detail

Transaction detail continued

1370.00

Page 13 of 20

S. S. (on sub-(a-)) Security of the Security of th

(mo topu cm) CAN OSSUMPETURY PAID TO BARROCK TO, BODE SEE A BOPOCHAID I, LEGAL FIFE SETTLEMENT 1/4/00

S

\$(2,015.58) ALLE AT 96.11mm 's. CASH RECCIPION WITCHEST EARWED ON ECALD THROUGH LENGARN BRICK, INC. SOLD 400,844-7AU V423E OF US TREAS 6418 11/AM/US TRADE DATE 14-4-4 20 Durgr.

STN THIRTOUGH ICT-MAIN BROSS DIS.
145.000 PAKVALIE KT DE JASTS 4.
CASH PRECEDED OF INTEREST EANNED CN
US THE MAS BALL BUTAND
145.000 PART VALUE AT 20.4475 %

900

FT WORTH OSTED HOSP CEN SELF-ING

D,444,676.03 L-(EA)A 11,710.00 (44,362.00) 515.80 (NAT 258 TR) (43,485,00) COMMENSED PURCHASES FOR THE PERSON OF UNK. pROCKS OF CHECKED THE ABILITY CHECK HAT SETT FO. COMMEND TUTCHARDS FOR THE PERIOD OF MRS. MORPH OF ONE ONOUR PRAME MONEY LANGES FLAN. ANNHARTATIVE FEES COLLECTED THEOLICH SCHILLINGER
MUNITH PAO PAD TO EDWARD H PRES REJECTOR ALLANCY PAYMENT FOR BENEFICIARY COMMERNATURE FOR REJECTOR PRESIDES. Security cash balanca 10/1/59 03.010 10T.MM 875 11/2/20

FT WORTH CEIDO HORP CEN BELF. BNG Amount number Bibliot Holp Ductor 1 Benember 20, 2300

30119

Transaction detail communed

11,648

Pidago.m OS MOS MEET M30.17

15,013.50 PACE DATE TITZEN INCOMBED THEORIGH LEMANN PROB. INC. INCOMPANYMAIN AT REATH N.

37574

\$438,874.17

00074

500 200 000

CAG I DISINJARAMENT PAID TO AEGON ASNIGNMENT COMPORATION LEGAL PEEE

dug.

35.5

11,5/18

(454 000 15)

(12 Pres) (43,406,00) ADMINISTRATIVE FEES COLLECTED THROUGH OCTOBER 1,7609 8 BUV8

137 138 33

481187

100

FT WORTH OSTED HEAVY (SPEKING RUN F. LAN

Page 14 of 25

(307) M77.47) 52,530, 183.60 (416.67) (43.486.00) 76.0 Parker principal ADMINISTRATING FEES COLLECTED THOODINW WATER END CHANGE OR CHANGE TO THOODING WATER END CHANGE TO THE CHANGE THE ACCURT
WATER THE STANKE THE ACCURT
WATER THE STANKE AGRAMSTRATURE FEES COLLECTED THROUGH APRIL INQUITY FEEDCHAY TAX RETURN PREP COLLECTED

WE SE IN YOUR AT A RETURN PREP COLLECTED CASH DESCHERENT

AND TITLE AND ACCOUNT

WITHOUTH A FORM ACCOUNT

WORLD AND ACCOUNT

WITHOUTH A FORM AND TO SELECT

WITH A FORM A CASH RECRIPT OF WITSERST EARNED ON ONE OFFICE PRIME MONEY MANUEL FUND INTEREST FROM A1800 TO 42000 CASH RECEPT OF INTEREST EARNED ON ONE GROUP FRIME MONEY MARKET FIND MTRREST FROM WIND TO GOING CASH RECEPT OF WITHEST EARNED ON ONE GING IP THEASURY ONLY MAY MET FO HATEREST FROM BYING TO EXDORO OVERDIALT CHAPAE COLLECTED OATED USAGORODO Fransaction detail continued 5/17/00 DOMES. 57,00 621500 621500 00.81% SZMB 8 90/59 2000

FT WORTH CISTED HOSP CEN SELV-INS Account Inmain: #136874500 October 1 - Beyimmen: 30, 2200

(415.67)

AMERICATIVE FEES COLLECTED THROUGH JUNE MONTH

00/01/1

Transaction detail continued

7/20/00 2/20/00

Page 17 of 20

SA (5) GASH RECEPT OF INTEREST EATINED ON ONE GROUP PRIME MONEY MANGET FLIMIN MITEREST FROM 7/4/00 TO 7/3/4/0 CASH DISBURSEMENT
PAID TO AFOO
WITHGRAWAL FROM ACCOUNT
WONTHLY INSURANCE PREMILM

4.27

00,179

9

97.00

97.00

20476

292.30 (418.67) 5 ADMENISTRATIVE PEES COLLECTED 1-FIGURE JAR Y MONTH CASH RECEPT OF WITCHEST EAGUED ON TAME GROUP THEASURY ONLY MAY MICTED MITTHEST FROM 77/100 TO 7/21/00 CASH RECEPT OF INTEREST EARNED ON ONE OFFICIAL MUNICIPATION AND THUM WITHEST PHOM BEIND TO BAIND

(018.87) CLASH RECEIPT OF METREST EMANDOR
ONE CARE THE MARKET OF LAWY WATER
MISSEST FROM A MOOT OF ATJUST
ALAMON SHATTLY PRES CALLETTE THROAM A MOUST MARTH
BUO Ending cash batance 9/30/00 37.3700

Attrope \$812, 196,73

#(BEZ_196.73)

No pending trades.

Transaction detail continued

Page 14 of 20

Į KK, \$14,521, 10) (43.445.00) 4.814.321.10 100 9 (419.67) COGNINGORIA TRANSPER FICE PROCESSA.

TRANSPER I COCYCE CHECKE.

TRANSPER I COCYCE CHECKE.

AMINISTRATIVE FEES COLLECTED THICKNOW MONTH OPPORTED THE CONTROL OF DECEMBER MONTH AND OWH DOBLASBELIT THANEST IN DISCORE OF SECRET. THANEST HAND STOCKED OF SECRET. THANESTS INCLUDENCE ALL THANESTS INCLUDENCE ALL THANESTS INCLUDENCE ALL CABN DISTRIBUTION THANSTER TO COVER OVERDRAFT, PME TO APCO WITHDRAWAL FROM ACCOUNT MOWINLY MBLIPANCE PREMICAL 274.00 17.500 24.00 1/26/00 Session 279900 2/8/00 372/00 3/2/80

FT WORTH OSTED HOSP CEH SELF. MIS Amburit humben: 8988674500 October 7 - September 30, 2009

Dotal

Transaction detail continued

RBE

ANS. 184.73 \$9,406.46 (418.67) (17.0) HELOTH (17.47) (416.0T) 145 496,00 SP CK. 13.465.003 ADMINISTRATIVE FEES COLLECTED THYOUSH MARCH MANIM CAPH RICEPT OF INTEREST EARNED ON US THEASE BLL BITTON 284,000 PAYVALLE AT IT 3.24 % ASCORD PAYVALLE AT IT 3.24 % ASCORD PAYVALLE FEES COLLECTED THROUGH FEERWART COMITINED. CASH AFCEIPT OF ATTENENT EARLIED ON ONE GROUP PHINE MONEY WARKET FLAND INTEREST PROM 24/40 TO SKNAD CASH DESUMBENIENT
NO TO JACO
MITTORNAL PROM ACCOLAT
MOTTHLY PERSUANCE PRESAMA
OFFICIAL OFFICIAL OFFICIAL
OFFICIAL OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL
OFFICI OVERDRAFT CHANGE COLLECTED WITHCHANN, FROM ACCOUNT MONTHLY RESIDENCE PREJUCIAL OVERDRAFT CHANGE COLLECTED DATED ESSENTING V25-00 300 327.00 373/00 33.00 2005 918/00 613/00 42400 4/28/00

(17.47)

FTWORTH USING HOSP CEN BELFING Acdour Funder, Istaby 4600 Dadder 1 - Separader 30, 2000

7 P 1 G 1

Annual Account Statement

FT WORTH OSTED HOSP CENSELF-INS Account number 8336574660 October f, 2000 - September 30, 2003

BAHK ONE, N.A. MYESTMENT MANAGEMEN GOD TH-POCKNICHTON FT WORTH, DX. 761W.

www.bankone.com

Your Advisor is: FOBERT LAKSFORD (817) 884-f151 or (800) 440-5666

Desiry you for the synaminally to serve your feminal needs into approximate your northbox's any

Physic recommons to creatified Dutoin board (Asserted at the pack of your apparement) for injoining majorings from Baris One.

Don't homewer to contact your acheev if you have any quasitans, commenter or systems.

EFINESTS YOUNG I, L.P. 201 MAIN ST. SUITE 1100 FORT WORTH, TX 78102-3161

FT WORTH OBTED HOSP DEN GELF-RUS Adobut number 8838674500 Databer 1- Boylember 20, 2000

Bulletin board

Page 19 ed 20

Whole lance: incluming propository lakeast lands, and various other meteorshis searches, are at Natural or presented by the Schaul Uncope behaviors Congruency (INCE) or say utten generativel incomend supervised to the Schaul Uncope behaviors of promotive to may utten, at Market behaviorship included to the Schaul promotive to may utten, at Market behaviorship that the close Schaul for the Schaul of protein and the schaul supervised by the Schaul Congruency of the Schaul of protein the schaule of the Schaul supervised by the Schaul Congruency of the Schaul Congruency or the Schaul Congruenc

The Modelga dehal stone me lawrifly an seek as being placings.

These are optical boards that so not reason a callege as sufficient in the laborat quanty waste. Board you assume bridd not all these boards into appoint the law form a sub-law standy. Be advised in an treas boards are NTEE, increases, we stay the law to not be common radiing based in the best.

APP. 292

FT WORTH OSTEO HORP CEN SELF-1949

Sand Addition the seminate extension at equations of the selections by specification of the second o

The Control of the second of the second

1,971,031 1,971,42 1,971,42 000,000 SCANSALT STATES STATES TO SEASON TO Processor

Theories

Theor Boginning market value

The leading reconstruction produces a varieties of a standary retain and wait. The registery and Education of the Company for Tables Merch Illementation scale are transfer, which the Activity is turn to their production, most increase and the company of the Company for the Company for their and all beloads that of all transferors. The Transaction model section provides at the facilities of all presenting transaction information produces a surrelation of confinement produces a surrelation.

PT WORTH DETECHOER CEN 623 F-NB Abount number, BANS74500 Conser 1 - September 30, 8001

Summaries

Property of 18

Transaction summary

12 SCY 2243 177.50 177.50 100 12,777.50 A(852, 196,73) Other measures.

Designed (formate) proceedings and forms

The first in formation of the fo Deginning cash basence 10/1/30

00/08 (1/0/30/98 00/05 (1/0/30/98 00/05 (1/0/30/98 Cash distantements
Cash distantements
Administante assessed,
(Roll cost) distantements

avestment transactions

50.005 50.005 50.005 50.005 50.005 50.005 F1.75.77 \$(134, 731, 27) Sales and metamining choing cash balance Bishnis

PTWOMTH OSTED HOUR CEN BESCHINS Amenat Inselect \$3007/4900 October 11 September 30, 2001

Summaries

Holdings esminary

\$(2,627.50) \$66,326.12 \$2,500.54 \$2.00.5 \$3.00.884 Australic Proome served but not yet received.
Trust holdings with upprusis Cash aquivation?

Total holdings

Income summary

I LOOPING ASSESSMENT OF THE PROPERTY OF THE PR 0.00 \$2,737.50 Resident pointions

The reports paramenty translates teached and the teachings income for bods priviles.

2.05 Strong by bytelepting induces that the Polymerability of the propriate property of the propriate property of the propriate property of propriate prop

808

APP. 293

F7 WORTH COTTO HOSP CEN SELF-RIS

and designad the design to the contract of the second section of the section of the second section of the section of the second section of the se

FI WOM LLOSTEO HOSP DEN DELIGHES
Aconver number; 80,000 October 1 : Espérimber 80, 2001

Committee Commit

Holdfrige detail Cash equivalents

Page 0 at 2 | Not | September | Commany | Comman

\$125.75 (43.903.23 Alexan interfilled with an paterist (*) at the beganning of the meet hears are head in Sec (overland brazers. Porferies.

Alcohole (Income earned has not yet received) Total hastings with accounts

FT WORTH OSTED HORP CON BALL-HWB Acoust number: 8888674600 October 1 - September 20, 2007

Notice of the second se

Page 7 of 14

Asset silocation

Invanthant Objective: Principal Preservation
The above made motive in the level of busine focus water pairwaits
Addity and circuit mode focus in human in injection with making to a pairwait of circuit and circuit and circuit and circuit and circuit and circuit focus and circuit and circuits.

O.ey I've Award statusiann analysis teotakke metaet turat basishge. The Bond quasty and reshifty analyses (if applicable) are depicted restricting majust trans.



The Asset albosain rasy ras by empty as described in the investment expective the to Other Asset husbars.

APP. 294

FT WORTH URI EU HOSP CEN BELF-INS

FT WORTH OSTEO HOSP CEN BELLFANS

ender to the transfer the telescond of the second reserves and the second telescope to the second of the second of

Page 12 Or 16

Fransaction tetal continued

20,00 7 (418.67) 3 (416.87) ACMINISTRATIVE FEES COLLECTED THROUGH MARCH MONTH AQUARMETRATIVE PERSOCALECTED THROUGH APRIL MONTHS
LOAM PRESENT THE WE INTERNET FARRACE (ON
ONE CHIECK) PERSONAL MANIETE FARRA
WITHOUT STRAINS 10 SALVOI. ADMINISTRATIVE PERS COLLECTED THROUGH PERHUAPA MONTH END CASH RECEIPT OF WITHEST EARNED ON ONE GNOUP THEABURY ONLY MAY MAY PO INTEREST FROM SYMPTODISSION CARM PECEFOR OF PATEMENT GARNED CHOOSE DROUGH THE SHAP CALLY MAY LACE FO INTEREST FRIME APART TO ACADE CABH RECEIPT OF BITEARST EARNED ON ONE GROUP PRIME MUNCT LANGET THAN PRIME MUNCT LANGEST TO ARREST TO ARRE 0.20 3/1/2 Ş

FT WORTH OSTEO HIGH CEN SELF-ING Abount marker, \$336074500 Outsert - Sepains on 2020

325.00

(416.57)

ADMINISTRATIVE FEES COLLECTED THROUGH NAY MONTH END

GACH TICKENT OF INTEREST EARHED OF ONE COLOR OF NITREES IN TO SOLVE IN THE COLOR OF THE COLOR OF

16.5 Ş 3

*

Ē

CONTRACTOR OF THE PROPERTY OF

PAGE 13 OF 16

Month. Proprie 8 Character Description

OABH RECEPT OF WITCHEST EAWHED ON CHE GHOUP PRIME MONEY MANBET FUND INTEREST FROM BYOT TO GOWN:

748704

5 63.43 KILE

Transaction detail continued

416.67 158.17 7 ALMANISTRATINE PEES COLL FOLH) THA JUSH JUNE MONTH GAGH TRECEPT OF BATEMENT BANNED ON ONE GROUP TREABURY ONLY MAY NAT FD MYSTREET FROM BYON TO EXPON CASH RECEIPT OF INTEREST EARNED ON ONE GROUP TREASURY ONLY MANY MAT FD NITEREST FROM 77.701 TO 703/01 OASH HECEITT OF MITTHEST EARNED ON ONE GROUP PRIME MOMEY MARKET FAIND MITTHEST FROM 77 NOT TO 781/OF 771.01

149.03 C9 91 H 1 ADMINISTRATIVE FEES CRILECTED THROUGH ALGUST MONTH BAD CARP RECEIPT OF WIENCES EAPRED ON ONE WHOM INLAGANY ONLY MAY MAIL PO INTEREST FROM WIND TO MENDS CASH RECEIPT OF WITEREST EXPREDON ONE CHICAP PRIME MONEY MATINET FUND BYZEREST PROM 27/01 TO MOTOR STANCT.

No pending sades

Transcotion detail

10.00

Sec. 198.73 2007 ī M 16.57 \$ (vw stat COMBINED FUTCHARDS FOR THE FERICO NE 100 MESON OF ONE CONCENTRAL MARKET THAT WE WERE THAT WINDSHIPPINGS AT CHARGE WALLE THAT AN FUTCHARD AT AN AT HE WINGED HE WAS BEEN OF HERSTHERS AT CLOSPING VALUE THAT THE NETTATIVE FILES COLLECTED THROUGH SEPTEMBER ONSH RECORD OF WITHOUT EARLY ON YOUR ON ONE CRIDIN TROUBLE TOWN WHIT YOU WERE THE STATE OF THE WAY AND TO THE STATE OF THE BE GRAZIP THE RELIEVE EARLY OF LEAST HE VARY LET HE EARLY THE VALVE THE VALVE TO WARRY LET HE VALVE THE VA CASH FEED OF WITHEST CANED ON ONE GROUN THREE BOOK TAKEN THE PLACE INTEREST FROM 1 VALUE TO 11 6000. Regimeny colais balance sprikes ODETABL 1130 100,000 01//10 11/100 13/1/20

FT WORTH GETECHOOP GEN SELF-ANS Abbourt number (\$5867/40) - Contact - September 20, 2001

Control of the Contro

Transaction detail confinued

101

44.6.67 (416.57) 1 20.00 9 PARCING LAFTERS CASP RECEPT OF ATTEREST EARNED ON CHECKEN TO WITHOUT ONLY MAY MAY TO WITHOUT TO INSORE ASSESSMENT TO MISS TO INSORE ASSESSMENT TO WITHOUT TO INSORE ASSESSMENT TO THE SECONDATION TO THE ADMINISTRATIVE FEES COLLECTED INFOLION DECEMBER. MONTHERY CABIN NECEPT OF WITHBEST ELEMETO ON ONE BROOK PRIME ALEXA TO UND ONE BROOK PRIME ALEXA TO UND ONE STATE OF THE PRIME ALEXA TO NECEPT OF WATHBEST ELEMETO ON ONE SHOOLD THE BARREY OF VALIDATION ON WITHBEST PROPERTY OF THE BARREY OF VALIDATION OF THE PRIME STATE OF THE PRIME TO STATE OF THE PRIME TO STATE OF THE PRIME STATE OF THE PRIME TO STATE OF THE PRIME TO STATE OF THE PRIME THE PRIME TO STATE OF THE PRIME THE PRIME TO STATE OF THE PRIME TH 10/61 12,300 1331 124100 1021/1

D1 125 5 (616.57) ADMINISTRATIVE FILLS COLLECTED THROUGH JANUARY MONTH CASH RECEPT OF INTEREST EARNED DN ONE GROUP TREASURY DALY NAN HAT FD INTEREST PROM (1/6) TO 1/31/01 CASH RECORT OF WTENEST FANGEO IN ONE GROUP PRIME MANEY MAINLE I HIND MTENEST FROM VURT IO ISSUM

27.69

Q

SPLY22.

12.42T. 8CB

Š

5 210

(416.67)

ADMINISTRATIVE FEED COLLECTED THROUGH JULY WORTHS

FT WITH THIRTEN HORP CEN BELFINS

3

FT WORTH DOTTED HOBPIGEN BELF-BAS Actival Aumbert 8088674500 Dottom 1 - Bepantom 20, (00)

Page 1 of 16

Annual Account Statement

FT WORTH OSTED HOSP CEN SELFINS Account ramber \$334674800 October 1, 2001 - September 39, 2002

BANII: GINE, H.A. NVESTINENTI MANAGENENT 420 THIRICOMORTON FT, METRITS, TX. 78102

HODENT LANSFORD (017) 884-4151 or (800) 480-5965 PRINCIPAL PROPERTY INTERNAL Dur Advisor I.

There you go the agrotherally in service your distincted ments. We appropriate your confidence in up

Please emported to check on bloken hours (boused at the fact of your selement) for Arborrate messages how there. One

Dor) tweetage is contact your addition if you have mry questions, conseque to consequence.

ERNEST & YOUNG L.L.P 201 MAIN ST SUITE 1100 FORT WORTH, TX 78102-3181

FT WORTH OSTED HOSP CEN SELF.INS Aziouri number Issues/4500 October 1 - Beylember 30, 2009

Consideration of the second se

Physical Section

which are created promisery hands leads, and residue other medicables and accides an extractive of programming the released local brazance copporates (ROG) as on year government operation of general brazance previously as on year government operation of general brazance previously as on year government operation of the sheary previously area or any east, at since the brazance that including preside to so of entry of the sheary of the shear of the sh Although that set without and poless have been obtained than bounces we believe results, we do not parametes they accessed. Cellate field indicate actualism and never that are not publicly of inneuranity based carried to readily privat. This alternate is not an official document for housine sex alpointing purposes,

Within thelevally your forms quanty tibes, the preventions expensed to process, in the process, the process, the process of th

Filtrace he suckes man the observation shown as the Realized particless colors to the control of the State of

APP. 296

FT WORTH OSTED HOSP DEN SELF-NS

Market reconciliation

SAN BOOM STANDARD SOTT 1 BET 170 75	400K 774.35 Reg.771.00	(1.05 EST 38)	2,080,48	900	900	\$220,061,00
BE-051,533	COLUMN CO	(A MAN MAL)	PAINT NAME OF THE PAINT NAME O	70	80	\$279,051.09
	The second secon			***************************************		

Begraing march var.	- Approximates		in) iprepipation	PRINTED IN ASSET ATTACHED WATCH	inding market weep	The Adherical contract of the

The Adviced coconsoliation procedure as assuming on a Activity in the account. The first plan of the Characteristic antiquence of the Activity in the coconsoliation and a Theories of the Activity and activity of the Activity in the activity of the devices, and which are applications. The Throughout insuff designs provided as mention for all procedures. The Transaction is the Transaction of Calab (Table and delicement transactions.)

FT WORTH DETED HOSP CEN SIS, F. BUS Account number JESSETASO - Detook 1 - Esphenizor 20, 2000

Summaries

Days & Of 18

Transaction summary Beginning clash balance 10/1/01

12. 17. Least \$(434,723,27)

Cardi receipte Medical (consultationsphintal ted technical Medical (consultationship) Offer controlled

91,283,998,000 15,683,000 15,683,000 16,683,000 17,000,000,000 17,000,000,000 17,000 17,000 Cash disburantants
Cash disburantants
Administrative consensations on one of the cash dispursement

Investment transmotions

0.000 (12.000) 90.00 (12.000) WAT 177 BK MARCH 1772 ME. Notheres Sales and maynings Told invalinent trensactions Ending cash balance scious

FT WORTH OSTEO HOSP CEN \$615 avg Addum number 1886574500 Obsom 1 - \$499mber 34, 200g

Summaries

2

Holdings summery

Water Street, 35, 2022 1,000 1 \$175,250.54 82 000 ES 80,100,8228 87 173 84,354,0253 Forst headings scrouble freedometering har not we made and forst headings with exercises Carlo separate and a separate and a

Income summary

80.00 Income Medicine (connected angeticular and beams) Medicine (connected angeticular and beams) Oper score 744 Footme Realized getry local

The Poorte aureany tradets danks and un-dampi pugate fe fajo principal and principal programs for fajo principal and programs for transporter transporter. These structure references former transporters become and quirtless information formation and quirtless formation formation formation.

APP. 297

PT MEMBER OF PROPERTY CON THE RACK

FT WORTH CSTED MOSP CEN BEEF 46S Attack Turther, 8386574500 Chtaine 1 - Sephendar 30, 3002

Service Constitution of the Constitution of th

Holdings detail

Property of the second P to 0 or 12

Committee Annual Manual ANACO CO | Valent and 10 | Valent and 1 HR.46 000 1.64m. | Comman | C | Vary Australians | Vary Austra

Total hookings with account and the seconds 1220,259 enampara, me Die bysieden finzene physikie.

FT WORTH CETED HOSP CEN SELFAGE Adminited Number, 8208574500 Obtober 1 - September 30, 2009

TOWN THE THE PROPERTY OF THE PARTY OF THE PA

The strainty want to provide a figh level of starmed browns while sustaining fourthy and principles stability beauty in hundromish in high-quality, distributions or marries seventhass. A photopan recensive in the property is to an immahvestment objective: Principal Preservation

Chy fire Asset alcomion avaigns includes requisitant facility. The Board quality and entirely extending the board quality and entirely extending instant language.

Asset allocation



The Assat allocation may not be totally as electrons in the investment organism characters. Other Assats hotslings.

APP. 298

FT WORTH ASPECT HOSPICEN BELF. MS

FT WOMTH ORTEO HOSP CEN SELF-INS

Page 12 of 12

Transcotton data! continued

	Ornorpales	Seafred patertons:	-	į
i revor		manti a mar com a sed descriptor per paparate manti a com a po-	17 12	
D.CAE.		A. S.	(416.47)	
ļ	DAURIDEET CONTROL OF THE STATE	and the second of the second o		\$575,000.00
271ARZ	USAN MECEPI OF MITREST EXPANDING ONE UNIVERSITY FAMILY OF UNIVERSITY TO STATE OF THE UNIVERSITY TO STATE OF THE UNIVERSITY TO STATE OF THE UNIVERSITY OF THE		A 55 %	
271ADC	CARH RECEPT OF WITHEST EAPHED ON ONE CAPCUP THE ASURY CALLY MAY MICH TO HTEREST FROM VAKE TO SKEND		£1	******
CHSEC.			(MQ.NJ)	
AV.	EASH HELSHIT OF MITSHEST EAPHED ON ONE GROUP PRING MONEY MAUVET FIND NTEREST FROM 21702 2024(2)		75.75	
301108	CASH NEUSETT OF BITERIEST EURHEU ON ONE GRICUP TREASURY ONLY JAPA NETT FID HTTEREST FROM 27 UR TO 228/OF	AND THE REAL PROPERTY AND ADMINISTRATION OF THE PROPERTY OF TH	1.00	100
30.000	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY MONTH END	D'AFROLIEN FEBRUARY	(509.02)	
40.MEZ	CUSH USBININGHEN PANT DUAN ONE CANTESABLE THANGTON TO CANTESABLE PPA WHITTH RESTRUCTIONS		pen(pprod)	

FTWORTH OFTED HOSP CEN SELE-INS August Institut SXNS7450 Octobe 1: Superition 30, NEC

Surrounds of the particular of

Transaction defail continued

a de	Detorphys	
4/ MDE		INTERIOR CONTRACTOR CO
	ONE GROWIP PENE MONCY MARKET FUND	
	INTEREBT FROM MARE TO SIGNED	
D: 75	ALTO CASH DECEMBER 1 CASH DECE	the state of the s
	ONE CHOUP TREASURY ONLY NAVY MACHED	\Z :
	WIEREST FREM MINED 411 NATION	
4715402	ATMENISHA IVE FEES DOLLECTED THEOLOGY LANDIS	the state of the s
	3	Tr. Hard
8	AND CLEAR PECEFOR ACTIONS COMMENTED ON	the state of the s

00.177.0013 2 (410.67) CASH MARCHO OF MARCHES THAN TO OUT ON OUT OF A COUNTY OF MARCHES THAN TO OUT OF OUT OF A COUNTY OF A C CASH PECRET
DEFOSIT TO ACCOUNT
THANSTER FROM CA. FISTASSESS

E 10 21

Transaction detail

	7.7		1	Amothe
	SALESTAND TOTAL	150	MA, The 27	17 17 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1	Constitution	Parking publications	į	Andrew
	COMBRED PURCHASES FOR THE PENCO 10° NO - MOUR OF ONE CHOUP PHAIR MONEY MANUET FLAID AMEDINERIS AT CAMPTHO VALUE 91 JUST FALSE	PRINCE (0'10') - 99000 OF ACT TAND LESS FREE		18
	ALES FOR THE PERSON 10'1 (AT . BREAZE PRINCE FOR THE DEAD. S AT CARRYING VALLE: B. 1,000,495,50	er ma March en state marchen state en s		1,000,495,00
10.10)		PATEM	Haust	 - !
towor	CASH NECEPT OF INTEREST ENHANCE ON ONE GROUP TREASURY ONLY MAY JUST TO MARKET PROMENS TO SHOW	THE THE PROPERTY OF THE PROPER	N T	-
100sAct	AUSMANETRATIVE FEED COLLECTED HOLKKIN NOTIFIABLE MACATILIZAD	والمراجعة المراجعة المستقدرية والمراجعة والمراجعة والمراجعة والمراجعة والمراجعة والمراجعة والمراجعة		***************************************
10/24/ph	CAM NEGET TO ACCOUNT IN ACCOUNT I	AND A 12 CAMPS TO SERVE I WAS A 12 CAMPS TO		165,24A.79
(Ortano)	CLASH RECEPT CLASH TO ACCOUNT F/WOAN TEST, SEET FOR JAVA			37.660.92
inevan:		MAR (Angelier) and an advance property of the control of the cont		60, APEL 10
144mi	(ASH PECEIFT I.P. BARRETT BARRETT BA UNE GHOLLF PABEL MARKY MANKET RAND WIEBGEST PROM YOURT TO LIGHTES		THEFT	

FT WORTH OFTEO HOSP CEN SELF-465 Acres Transfer STBEZ-USCO GODON 1 - SEQUIDER 30, 2002

Transaction detail continued



į	Commentation	Control parameters	1	
1177BI	CASH RECEPT OF INTEREST SARAED OPE LINCOLP HEASTHAY LINC Y MAY MAY HATEREST PROMETON TO 1081/17	emakera dadi, da dalah sekara da	61.00	
11/1361	ACHENICITYATINE TEXT COLLECT MONTH END	POUGH OCTOBER	(414,67)	
3	CASH RECEPT DEPOSIT TO ACCOUNT ASSET 1806	THE CONTRACTOR OF MAN AND ADDRESS OF THE CONTRACTOR OF THE CONTRAC	major del more complete del forme personal del more entre del delle men	17 14 14
13.00 10.00		and the control of th		(201964) 1609)
SOMEONS :	CASH RECEPT I HANGDER HALM HENTRAL TRANSPER FLEXIS TO COVER DVERDEATT.		C.74.2	
1 Sribbon	CABH DISBLABEMENT PAD TO BESINFYTOD WITHDINAWAL TYDIN ACCOUNT			(4.614.41)
Pare	İ	of the summer, as we can what the deep many party and the state of the	536.56	
1000	CAGE RECEPT OF WILDLEST BATHED CH ONE BROUP TREASURY CHEY MAY MIT PD NTEREST FROM 1 (VO) TO 140001		140	· · · · · · · · · · · · · · · · · · ·
181361	BES COLLECTED THROUGH NOVEMBER	(1994)	HIGST). V
age of the second	CARH RECEIPT OF ATTEREST EARNED CH CHE GROLP PYME MONEY MARKET FLAND ATTEREST PHON 12/1/1 TO 12/01/01		201199	

(416.67)

2002 30,000 114.56

Transaction drivel continued

27.03

(41447) 2.40

(Ou care)

2 1 2

And perfect

C FIGURIA COTEO HOMP CÉN BÉLIFINS Administration, 6020674800 Oquán 1 - Bugenties 30, 2002

Survivalies in the principals of the control of the

NOTICE TO ALL APPECTED AREITS OF CUSTOMBES. They was a many 1.500 person in many in the control
O.C.

5

When in-paramete an mode in approximation forth synthes, then Dos of an parameter region of an expension of the third of the short of the and then and other species that it indicates the third of the short of the short of the the short of the tension of the short of the short of the short of the short of the tension of the short of the store have the short of t 20 22 25 Although market university (and potes teach bases databased from southers we hadron betablish to a book growing that assures the carbon facility may exclude the carbon facility may be added to the carbon of the carbon facility and added to the carbon facility of the carbon facility facility.

The proteinment is not as elikely document for market in separating personal. When carboning you found with last the carbon facility is resulted to the carbon facility of the carbon facili

MARLA VACE, FASISTING THIS search, Mahmal Sarth, and window often manifolds because as not external to present with the Facilities of the Marla Conjugate and the Marla of the

FT WOORTH (MITTELS REPORTED FOR STATEMENT SEPTEMBER 50, 2009)

1460,000,001 MS6,000.00

CASH RECEIVE THANSE TO OF LABOR ROAD INTRODUCE CASH TO BE WERE OFFI CONTROL MAY IN CIR. AND TO BE WERE OFFI CONTROL MAY IN CIR. AND THE MACHINE OF THE WEST OFFI THANSE OF PLAND FIRM WITH THE WEST OFFI THANSE OF PLAND FIRM WITH THE OFFI CONTROL MAY IN CIR.

95,025

20,000 78.5

(4.8.3)

ĕ

CASH RECEPT OF WITHERST CLANE ON OR CHILD AND A SHARE ON OR CHILD AND WITHERST OF MINISTERS THAN OR CHILD AND WITHERST OF MINISTERS AND AND A SHARE ON ON OR OTHER THANK TO SHARE ON THE SH

ş

ASSESSMENT FEET ON LIGHTS THROUGH LINE HORTH

2

Trans. TANKE Entre F 12 M 15

Fransaction detail continued

1 9 = 6 COMMENSE OF A PRINCIPLES PARKED ON COLOR MESSEN OF A PRINCIPLES PARKED ON COLOR MESSEN ON MESSEN

-

1,000,122,08) Eviding onest belance 9/50/02

Annerse BB-07-122-88

Adopted Bagging of

Marker values north or the Marker seaturalistics, and Terrobadion doubt are as of the seal of the delimited from T. The injuries value on the delits of the trimmachies may be delined:

Present issues that the information should in the Realized partitional unions are a Presentative to the second to the Land and the Land Collection of the Collection is that the Collection is the present in partition in spice unional allows have "them the collection of partitions in spice in collection in the collection of the Collection of the Partition of any Partition is settlement or any partition of any Partition is resulted to the Collection of any Partition of any Partition of any Partition of any Partition of the Collection of the Partition of the Partit

PT WONTH DETECHOEP CEN SELF-INS

FT WORTH OR TEO HOSPICEM BELLFING

FT WORTH INSTEIN MOSEN 12th SEEL-18/5 Account number, 8299-74500 Outstun 1 - September 50, 2003

Page 3 of 16

Summaries Per 1

Holdings summary

Section of the sectio \$20,000 \$1200,000 \$2000,000 \$2000,000.

1,258 124,387.65 Total holdsbyg.
Agonis (Perona serred by log yet secures).
Total foldings with accurate

luxxne eummary

20.00 80.00 Realized gurd(lorm) Necons Overhold storm accordigational and reconsi-inated (probative-model) Ottal score

The motions summary includes whether the recently fromth the both principal and professional from several for the several of a literature of principal plant in the front of the several sever

FT WORTH OSTEO HOSP CEN BRIF-MS Account member: RDMS74600 Dather 1 - Expension 30, 2002

Page 1 of 16

Annual Account Statement

FT WORTH OSTED HOSP CIRN BIELF.ANS Account number 8288574600 October 1, 8902 - Septamber 30, 2313

BANK CHE, N.A. INVESTIBENT MANACEMENT 420 THYDICKHOOFFON 7.T. WOOTTI, TX. 75102 WWW.barkmone.com

Your Adeque H: Heinther Laansfrinn [817] Bid 4151 in (Adij apticas)

There yer for the experiency is salve jest fruitzed needs. We expressive jour conditions to se.

Hamme monumenter in change the Balletin Nowed Docated at the beach of your statement). An impostunt arestrapes from Bank One.

Don't healthe to contact your achieux if you have only quecibora, confinients or consults.

EPMEST & YOUNG L.L.P 201 MAJM ST, BUTE 1100 FORT WORTH, TX 78102-3181

(2.580.03) 72.884.09 (0.587.20) (0.587.00) (02.712.102 date | 1 mm/s | 1 m Pinages Observances Consumerate Consumerates Boghuring market value

The besteld re-confidence provides a summary at all activity in the account. The property are Universities designing any liceach for high Timesquires such as transfers with the account, came dropps immediate, sent menging and additional and state of the account of the account of the additional and account of the account of the account provides and revented for all the succession. The Timesdam stell account provides at the revented of all the succession.

FT WORTH OSTED HOSP CEN SELF RIG Account Author: 1006074500 October 1 - Septenties 30, 2003

Suringing Committee Analysis

7.07

Only the Asses allowance problems recludes maked band replayer. The Board quality and makes of emphasizes in adequates and excluding makind sands.

Investment objective: Principal Preservation

This britisty seeks to provide a right level of custoes excess whole membering blacky, and provide a traditional to high quality, short-farm fromly med it seeks to be an asset.

Asset allocation



The American subsention from the fire prevailty as demonstrated in the unestiment objective than to Other American hotelings.

Summaries

Photo a of 18

FT WISHTH ORTEO HORP CBN SELF. B.B. Accord number: RISHSTASSO Oxedan 1 - Baylember 30, 2003

Transaction summary

FED1,122.88 See1.18283 Regioning ceeh balance 50/1/02

245, MEX. 250, MEX. 252 (50) Seef (108% (64) Obs.** (52) Seef (108% (64) Obs.** (5 8 00 04 00 00 Sales and majurates Total Avoidment Researchers Ending camb believes Ballotto Cash distantanents Cash distantanents Advisibilities expresse Total cash distantanents Processed Desertions

H, MALES

ES JABLES

APP. 302

FT WORTH ORTEO MORP CIEN BELF.INS

PT WORTH OSTED HOSP CEN SELF-BAS

Transaction detail

Perge & of 16

D. and Danker	September Andrew September 1997	Posts:	Attorbet
		\$1601.122.BG	GS01 129 RG
4	Description Alexandra parcelland		1
	COMBINED PUNCHARDS FOR THE PENUDD 10' IN ONE GROUP PRIVIE MONEY MARKET PUND RYEETIABERTS AT CARRYING VALUE, 1994 22		166,499
,	COMMEND BALES FOR THE FEDICO NO 188. SEGIO OF POST ON SEGIO OF POST OF SEGIO OF POST ON SEGIO OF POST ON SEGIO OF POST OF ON SEGIO OF POST OF ON SEGIO OF POST OF ON SEGIO OF SEGIO OF POST OF ON SEGIO OF POST OF OUR POST OUR POST OF OUR POST OUR POST OF OUR P	a professional description of the second	POS 2000 (SP
20/1/EI	CASH RECEPT OF AVERAGE ON STATE OF A STATE O	10.77. (m. 17.07.)	**************************************
10/1/02	OASHTEEDET OF WITEHEST EVENED ON ONE OF THE SECOND THE SECOND OF S		
2 2	ADMINISTRATIVE PETS COLLECTED THROUGH BEPTSHEER WOMIN DIG	(416.87)	
pq+c0;	COLUMN CONTRACTOR CONT	(CD 000 (CD)	
#QUIT	1	20,11,5	
11/1/08	CASH RECEPT OF ACTURET EASIED ON CONC. TO CONC.	1,13	
dustri.	ADMINISTRATIVE FEES COLLECTED THROUGH OCTORER MANY FIND	(45,519)	

F1 WCMOH USTBOTKSHI GEN SELFANS Arsura number (\$30074300 Deader 1 - September 30, 2002

The state of the s

Transaction detail continued

1500 (B

24.20 Emen.

E042/1

1/15/13 116.19

Part of the Part o

States Physical Physi \$1601.NS8.081 1,50 SO, DESCRIPTION 24.24 2 1 116.67 (418.62) ADAMASTRATIK PEES COLLECTED HOUSE HOVEBEEN LOOTH IN COMMING THE COLLECTED HOUSE HOUS MANNERS INCIDITY NEES COLLECTED THROUGH DECEMBERS
COAN DOBLINGSHORT
TANANTER TO ACCORD.
TANANTER TO COMPART AS OF 195/10.2 Desirication britishes Emmas of the Cash Harden Constitution o 12/3/02 STATE .

FT WORTH OUTED HOSP CEN BRITIANS
AMOUNT NUMBER \$130074500 Celeber (- Suptember 30, 200)

Or to a speed

Hotelings detail

Contract Commer 20 501.400 1,000 (20,521.40) \$000.5 Coah equivalents
Ivey Resid saces
Over Group Prime
CORE CORE
CORE Group
C

AT SANT VCS

AT SANT NCS

OCC 1 (May 2011'Y NCS 2011'Y 112.58 10.48.78 Total holdings Assume Institute of the state of Total holdings with severals

0.00 0.00 \$750,17 \$750,17

Appele stranglight with an adaptit () of the trayering of the asset hame are held of the bounded Protein Protein.

APP. 303

*

SYBUS

200

St 14 at 18

Transaction detail confinued

Transaction detail continued

1 4 4 5 E i e (410.87) CHENCHE TO CHERENI LINEATORY ON THE STATE OF CHERENI LINEATORY ON THE STATE OF CHERENI LINEATORY ON THE STATE OF CHECKET OF THE STATE OF CHECKET OF THE STATE OF CHECKET OF THE STATE OF TH Endrig cash believes orginics W-500 1 8

No pending meter.

IT WON'TH OSTED HOSP CON SELF NS About Junior: 833537400 DODGET - Septembri 34, 2001

Burialities of the state of the

Pege 15 of 1

Transaction thruit resultsued

And the Control of Con

Although mit said misson and prictor for publicity enotical excursions have been violating by the misson or their protect. Sets of the misson good of the misson of their protection of their protection of their protection of their protection of the misson of the misson of the their controlled their commentations of the becomes designed, could not missing the form of their protection of the becomes the their protection of their commentation of their commentati

Life houseon extens we arean it cash parentle value main incaring spanicle by houseon extens when me is in C. If he will be in St. in the many property cannot be sent the value forward. For which is it in you have not replaced a sent amendar variation to the cannot be considered by the sent the first an extensity to the cannot be considered by the cannot be considered by the cannot proceed by the cannot proceed by the cannot be considered by the cannot be sent the sent of the cannot be considered by the cannot be cannot

Wisen verlanding your Dated classicy labous. The percentinging may relanded by zavor when the percent, the percent

The Statement is not an effected document for freezing Lan reporting proposition

Prince involvency your designage object, and manners when higher for each manner may root equal quality (medizate for amony prince do its reasoning. The substant value enforce and a white provide to the root over-side figure.

However, consistent has been the contraction of the temporary entry to the root of the antimement princed. The find finds walk to the root of the temporary fortage of the

Fasser for sween that the University and the Arabbad parabotal societies that the Manager of the Control of the

Programmy to an open service of the
FT WORTH CRITED HOSP OSN SELF-HIS

President Special

	Parallel and Paral	and the same of th
į.	USH JAMARAY MONTH	
2006	CACH MEEPING OF MITDREST SAMED ON WELL CONTROL PRINCE TO AND WITEREST TO AND WITEREST TO AND AND TO SAMED.	11 QV
EL C	GALH HEZERF OF WITHERST SAMMENTON OF GRACIEF THE SAMMENTON WITHERST PROSECULATION.	0.73
28	THICK	(e) it dis
845	CASH NECEPT OF BITTERST EXPLISE ON ONE GOAD MAKE HAVET PLAD INITIAS TO AND XIVEN TO SETION	#0.78
RQn/r	OF INTEREST CANNED ON EABLRY ONLY MAY LACT FO 12/103 TO 201/08	£ 6
2071		
E S	TEREST EAPNED ON MONEY WANCES PARD \$5 TO explica	- F. C.
8	CASH RECERT OF MYDNEST EARNED ON ONE GROWN RECERT OF MYDNEST EARNED ON CASH RATE MAT MAT NAT TO MATERIAL TO ADD TO	
200717	ATMENDARY THAT THE FEES COLLECTED THE DUGIL ATM. MONTH	(415.67)

FT WORTH OSTEO HOSP OSKI SELF-INS Appart number 1978/57460 Domber 1 - September 30, 2000

STATE OF THE STATE

7.75.434

2	ì	Proper
8	MENERAL EXPRED ON MONEY TAND AND TO 451AN	\$18.84
8		
8	0	(200)
E S	ATMANSTRATING FEED COLLECTED THROUGH MAY MONTH END	
200		
COVUL	CASH RECEPT OF WITGEST EARNED ON ONE OFFICE TREASURY ONE Y MAY MET FO NYTHINGS TO MOONS	27.0
7/14/03	ADMINISTRATIVE PEEL COLLECTION THROUGH AINE MONTH	(crws)
80	Codes redicated by the Market Schedul code in the sext of Prefer To-Art Schedul Codes and the Sext of Sext	
20 VE	CASH RECEIPT OF NUTBEATT EARNED ON THE CITICLE THE TOTAL TOTAL OF THE TOTAL	
30.00		A18.00
2		12.72

ет wom новтбо иови съи възлив

FT WORTH OBTEO HOSP CEN 65JF-M6 Addomin Number MANGFASOR Combon 3-September 30, 500M

Sunmarles

PAGE & Of 18

Part Company State Company Sta

Holdings summery

(OLEMEN) WE SEEM OF THE SEEM O

Income summany

| Age | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1997 | 1 0,00 (181.24 Resident (principles)

The Prome summary treateds supply and not not placed the bodh palmages are excepted, beginning the first palmages are presented, beginning the presentation of present approaching the palmages. These presents approaching the palmages and provided from the palmages and provided from the seaf of the first seaf-real Provided Reference Reference and provided from the used for the seaf-real Provided Services reprosing

00.05

FT WOATH OSTEO NOOF OLD SELF 44S Agent manage, \$334074800 Doorer 1- 3000mmen 30, 3000

1

FT WORTH ORTHO HOSP CEN BELI-146 Accelent merking \$236,774509 Colouin 1, 2003 - September 30, 2004 Annual Account Statement

BARN CHE THART COMPANY, 11-6. RATESTHANT LANGUAGENT 429 HTDGRAGHTON T. WORTH, TX 78102. WHY DEMICES COMP

Your Advicer is: RUMERT LANSFORD REST ARE-TEST = (RM) 419-2005

Phene personator is struct for Rulesh Young (fracted at the back of your defendent to injocutes mersugate than their Own. them you to the desprehender to more your financial releads. We apprehense your residences as us. Day I restaute to contact your advisor I you have any quantities, commontal or consulta.

ERNEST & YOUNG LLLP 201 MAIN ST. SUITE 1100 FORT WORTH, TX 78102-3161

Coupling groups Unterlandered Change in asset market whee Ending market wakes Beginson maket value

FT WORTH OOTED HOSP CEN BELF INS Account number: BENES/ASID - Cooper 1 - September 30, 2004

Sundament Analysis

7 01 10

Only the Asset abount on project from the includent matural grand leadings. The Grant quality and traducty stability is (I diplication) and displayed anclocing review forth.

This minings exists to provide a high level of current vicinis while invanishingly spacify and principal stability mough thermone in right-cuality, about simmoney halfed socialities, Principal vicinity is not expected in the server Investment objective: Principal Preservation

Asset allocation



The Admit selectation may not be assectly as dissociated in the streethest copiestion due to Otton Assect testings.

FT WORTH CRITED HOUP CIBH BILLS (NW Ambart sumbs. 833/87/4500 October 1 - September 30, 2004

Summerfee year 3

į

Fransaction summary

#(3,442.A3) Conf. recorded.
Designation (consequently recorded in Consequently recorded in Consequently recorded in Consequently recorded in Consequently recorded in recorded in recorded in recorded in recorded in the Consequently recorded in rec Beginning cash belance 10/1/09 Cash dilaturamenta Cash dilaturamenta

50,00 (A.721.08) Administration agence. Investment transactions

60.03 0.03 0.03 ACTING GASTI Delembe 9/30/04 APP. 306

FT WORTH OSTED HOSP CEN SELF-MS

	20% 001 144 145 145 145 145 145 145 145 145 14		- Land
2		\$2,632 E35	51,932.63
•	Designation of the second	ļ	
	COMBINED PURCHASES FOR THE PERIOD 10/1/08 - BOADD CK- ONE SPOUP PRINE MOMEY MARKET FUND INVESTIMENTE AT CARRYING VALUE STRAZA	:	\$(156.24)
1	COMBINED ALLES FOR THE PERIOD IN 103 - 9:200 OF ONE BROAD PRIME HOUSE LANGER PLAND INVESTIGET & CAMPITING YILLE F. 5:200.00	6.3	5,380.bi
10/1/03		2	* * **
10mas	CLRN MEGENT OF WITDERGIT EARWEIDGN. ONG GROUP THE SELECTIVE CALL NAY MACH FOR THE STATE OF THE S	Q.559	į
10/14/00	ADMINISTRATIVE FEER COLLECTED THOUGH SEPTEMETH MONTH END	(418.67)	; ;
113403		12.24	:
STANTS	CASH RECEPT OF WIEREST CARNED ON WE GROUP PRACADEST OWN LAWED WIEREST FORM HAT DE WIEREST FORM HAT DE	9.65	:
th Mila	ADMINISTRATING FEES COLLECTED THROUGH OCTOBER WONTH BID		- Property Laboratory
arines	CASH RECEIPT OF WITENESS FAMILED ON ONE BY THE WAY THE	12.00	+

FT WORTH OBTED HOSP CBN BELF-ING Amount number 63865/4500 October 1 - September 10, 700e

Contraction of the Contraction o

Page 17 of 16

Continuation Anna Asset Continued in the Continued Continued in the Continued Continue

Holdings detail Cash equivalents

Michael Table

FTWORTHOSTEO HOSPICEN SELF-INS Aboomal number: \$38957/4906 | Colouber 1 - Beptember 30, 2004

Page 8 of 18

| Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Conception | Con

12.50

(418.87) 09'03

(419.67)

29:0

12/BK

CARRIED ON STREET CARRED ON ONE SHOULD SHOW SHALL TO MY CARREST FROM THESE TO MY AWAY MATTER TO THESE TO SHALL SHOULD SHALL SHOULD SHALL SHOULD SHALL
12/16/03 ID/O

3.75

Transaction detail continued

(9.28)

(416.07) 1913

OANTROCKET OF NITHERS EARNED ON OWE OACH. "RACEART OVER LAW HART FO BITTERS TRAIN TO NO INSINA ANNA STATIVE FEED COLLEGIED THOUSEN HARTHY FAND

CASH HEGRIT OF INTEREST EAPNED ON ONE GHOUP PHINE MONEY MARKET FUND INTEREST FHOM I MAN TO JAMAN

27204

2/2/04 2130 MAC

1530

CASH PRCEIPT OF INTEREST EARNED ON ONE SHOPPEN THEM STATEMENT TO BE THEM THE ONE OF THE

10.0 *

Particular Annual Annua

klasets idsestikad with an assarlet (r) at the heginning of the seset name are had at the kinneded moone Postoles.

\$18.50 \$19,100.00

Aconais (mazma eamed but not yet maeived) Total holdings with nacmass

APP. 307

ET INVOTA NOTEN ANGBACKI DES E. MID

fransaction detail continued

No pending trade

FT WOATH DEXTED FIDSP CEN SELF-BAS Assumment G039574500 - Dandon (- September 30, 2014

Burnell St. Committee Comm

Proge 15 or 16

Transaction detail continued

Best One of the alligness may studies and accept from the to time 125% leves, work-studies manufactures of the second studies of the

Life beautones vehical are shown as cash surrander relate most inspecify importably you as the beautance Company, erropt where the value shown is \$1.00. If the value is \$0.00, we have not received a sur-surrander value. Although market robus and prices to publishy tracked amorphism have been obtained from the companies of the

FLORIGA CLEDITE, please note that an author for brocken of huselaccid on mallion discipled in the understanding of other retirem topical of the Tubble may be artised as a Cycordin sealand of Seculation form the recept of the final accounting on other without report. Countries, please commit your alternay, (T. C.) was: 702.207).

Projections and consequence to the consequence of the consequence of the consequence of the projection in the consequence of the projection in the consequence of the consequence of the projection in the consequence of the

When referring gover toldings death from matering and for each asset may not equal quantity materials by their price death, manifely. The Material value columns will whenvy unerflue the most excusive figure. Meintei valtus friete in the Market recorditation and i shankalari unada asy as of sta sout or the assemble person. The market value on the dess of the transaction ramy to esistewat.

Hearts for amon's 20x1 for information yit van in the firmitation guidellood, outhern (Flowed to the Circumstant and the description to your additively in Blooker, the MAC (CAS), often Tought the Bastlets on your description required to conflict at Booker walke. These, of the Machine of the State of your description requireling that educated into our pay sent of your designation.

Writen i volmentu yosul Good Ordilly iligle. Nie paramitagen ane gebrikki to Dirip viens I in permutege for a relifig celespay të biba dens una paresra.

l nie Bistament is not an obtolal document (or income las expending auspasse

CACHINECEPT OF WITEHEST BANKED ON DIE GROUP TIE/GURT ONLY HAY WITTP WITEHEST FROM 2010 IS SHIPM MANUFATHE, FEES COLLEGIS (1487) SHIPMANY HE WITH 1800 CAMINES PER US WINNESS EAST OF THE PER US WINNESS FOR WARRY TO ADDROMITTAINET FROM WHANTO ADDROMARKET FROM WHANTO ADDR CASH MICERT OF BYTEMEST EARNIED ON ONE GROUP FRAME MARKET RAND ONE GROUP FRAME MARKET RAND ONE GROUP TO THE MARKET OF STREAM OLD 1 MAY MART TO MICERAL ON ONE GROUP TREAM OLD 1 MAY MART TO MICERAL ON THE MARKET ONE WITH MARKET ONE WAS A STREAM OLD 1 MAY MART TO MICERAL ONE OF THE MARKET ONE OF THE MA CAME INCOMES LE BITTERE EL LAMBITO DE DRE GIELLE PRAME MONEY MANDET PLAO BITTEREST FROM STAN TO 2001/04 CAGE MEDERY OF INTEREST EARNED ON COME ORCY, MANUE MONEY MARKET FLAND NITEREST FROM ANIMATO ACROSO.

3 9

Tanks.

OF ROLL

UMENGTHAT IN FEED COLLECTED THYOUGH PERFURANT MONTH GIO.

Page 12 of 36

(208.34)

CO TO

45.50

3

10.5

5,00

80.56

Š NAM.

100

5

FT WORTH DETECHDER CEN BELF 4NE ACCOUNT NEMBER 33, 7004

(100 mm

1

4 3

A 11 of 11

NAME OF TAXABLE		(NE MOST)			
- Augusta	(Section 19)	(504.28)			
Adopted Part of the Control of the C	•	ADMINISTRUCTURE CULL COLLECTED THROUGH MAY MONTH PAD	CASH RECEIPT OF INTEREST EARNED CH		
	<u> 2</u>	NOUCH SEAT MONTH END	无	4	
	FIDUCIARY YAX RICTURAL PARE COLLECTED POR 2000	AZMANGO TITA TIVE FLED COLLECTED THINGUEN MAY WONTH END	PT OF INTEREST EARWED O	CHE BROUP PRIME MONEY WANTED PLAND	AND THE PERSON SELECT TO BEST OF
	FOUCARY T	ACCEPANCE TO A	CASH PECE	SALE BAOM	AND THE PERSON NAMED IN

MANA TANA

1000

Acta ass

CASH RECORT OF MITTHEST ENVIRONMENT TO METHER OWN ONE THAN MET TO METHER THOSE WING TO STORM.

AUTHER THOSE WING TO STORM THOSE OF THE STORM STO

100

100

80

+Ocat	CALIN RECEIPT OF MTENEST SAGRED ON OUR GROUP PRINCE WAITE WARDEN VAND WITHEST FROM THOM TO THAN WITHEST FROM THOM TO THAN
NO.	SET EARWEID ON DACY MAY NACT FD 3721404
3	ETISKA ADAMASTYANTAE PEGE COLLECTED THPOCKALALY MORTH
, 200 E	CASH-REGIPT OF MTSAST ELANGO ON Org BRACE THE WASHELL HAND KTRASTETS THE MAN HANDER.
3	CASH RECEPT OF INTEREST EANNED ON GASH OCCUPATION OF ATTEMPTS THROUGH ON THE WAT TO THE STATE OF ATTEMPTS THROUGH ON THE STATE OF THE STATE OF THROUGH ON
200	DATACK ANABOSETRATOR FEES COLLECTED THROUGH AUGUST WORTH

D'ALL

1 4 5

FI WONTH OF THO HOMP FEW SIN F-BIN

EMINES NEW YORK OR SERVING

Entiring cases believes (ACOO)

FT WORTH CUSTED HOSP CEN BELF-ING Account combon: \$296574500 Detains 11 - Sestember 30, 2008

Summarine

Holdings summary

Page 3 of 13

Control Contro \$(10,181.47) \$18,181,47 00 D8 Appriate filosome colinad but not you reserved. Total intellings with sectionals Total holangs

Income summary

Propose

Obvious (consequence) and included (con 0.12 Res itsel gain(loss)

The Fuence surround relateds sucrate and terraterial according according to the party according to the fuence of the fuence places are the Fuence fuence of the fuence of

FT WORTH OSTEO HIVEP CENSELF-INS Account number EXSET/FERE Colabor 1: Sweinscher 34, 2004

Ne.1419

Annual Account Statement

FT WORTH OBTIED HOSP CENSELF-INS Actount number 6206574600 October 1, 2004 - September 34, 2005

BANK ONE TRUET COMPANY, N.A. AVESTMENT MANAGEMENT 420 THROCKMOSTON FT, WORTH, TX, YOUR

Yew Adelsor les ROBENT LANSFOND (817) 884-4161 or (800) 485-5980

Others you for the appreniety to be to seen departed energy. We arguments your conference it is.

Armson communication checks are Bushells Board Docates; at the basis of your eleterates) for exportant meschapes.

Christian to contact your added of Rydd Naive any Quentrum, communic or consumers or

ERWEST 4 YOUNG LL.P 201 MAIN ST. SUITE 1109 FDRT WORTH, TX 75102-3161

Market reconciliation

STATESTICAL STATES AND STATES NO. 1 STATESTAN	HOPLE	(52.800.23) A2773	800	00'9\$
THE THE STATE	MANAGEMENT OF THE PROPERTY OF) (47)(12)	250	87 P.
	The state of the s		Se hauer mortel value	
Beginning market value	Resident	hoome	Change in super mortor value	Ending standard value

FT WONTH OSTEO HOSPICEN SELF-LINE Assisted number: BTRBG74600 October 1 - September 30, 2005

Surmains Analysis

The overall market value of your account to either zero ar negative.

Page 7 of 18

Summarioc

FT WORTH OSTED MOSPICER SELF-ING Account number, 1996/2/4600 - Ombert - Baphenser 30, 2006

Pres 5 of 18

02.04 22.42 22.42.01 30.44.00 8(7,488.45) Claim recognis

Divisirità (demendicional-princiale front become)

Fried (transformer-becode)

Given such recognis

Total such recognis Transaction summary Beginning cash balance 10/1/04

\$1,005.91) \$1,005.91) (90,109) (90,000,0) (90,000,0) Cash disbursenents
Cash debarraces
Administrative superes
Idea cash disbursenents Investment transactions Pustansa

Pustanes Sales and resistings Total investment investigate Briding cash balanco 9/20/05

APP. 310

FT WORTH DRITED HOSP CEN SELF-INS

The Mark the section of the last of the section of the section of the section of

PT WORTH ORTEO HOSP CEN BELF-IMB

	Consequent		
76.	CAME HELSENT OF BITTERED EARNED ON ONE GROUP TREASURY DALY MAY MAY NO. I FOR INTEREST PROM I DANGE TO TICKNEY.	<i>U</i> 11	-
	ADMINISTRATION MONTH TO THE PARTY MONTH TO THE PART	SATISTICS OF THE PROPERTY OF T	(75 827)
-E-12-1		9578	
2016		***	i i
TOYON T	AUMINISTRATIVE PEES COLLECTED INVOICEMENTABLE ROOM (2006.23)	(xr soz)	COE 34
1/3406.		84.20	
sun:	CARRY HELEPT OF WITEREST EARNED DAY ONE GROUP THE ASIATY THAT YARY ANY MALT PO WITEREST FROM 124 ION TO 122 JUNE	100 Maria - 100 Ma	
50.517	!	(ACC. DEL	(204.34)
24/65	CARLA RECEPT OF WITHERSTEAMED ON ONE CROCKE PRIME MONEY MARKET FUND WITHEST FROM JUNES TO JOHAN	K4	
24.05	CAST DECEDIT OF WENEST PARKED ON ONE GROUP TREASURY ON Y MAY ART FD MTBREST PROM USES TO 1/21/05	1/1	

FT WORTH OSTEO NOSP CEN BELLING Account number 83,857/edd October 1 - Sauminter 3U, 2006



Hallietin board

5204.34

FIGUR 333

ALXINDAS TRAINTE FEES COLLECTED THYCKICH JAHURAY MONTH

2000 VI

Transaction datail continued

RECENEO 14-44 is DOLLARS OF APPROVED ASTERNAL MET AGOS IN APPROVED ASTERNAL MET AGOS IN APPROVED ASTERNAL MET AGOS IN APPROVED ASTERNAL MET APPROVED ASTERNAL MET APPROVED ASTERNAL APPROVED AST

37.200

2042215

272.003

Summans and Analysis Betall

(T WORTH DETED HOSPICEN SELF-INS Account number 803/657/4500 Detelon 1 - Replander 30, 2003

Challed Triboning

Southern	Southwest cardy business 104 Ma.	Anorth Control of the	A READ IN
		(arrana//w	27.494.02
	COMMEND PROPERTY FOR THE PERSON BY UNIT BROOKS OF ANALONALIES OF THE SECONDARY OF THE SECON		EP 48
	COMBRED SALESFORTHE PERIOD OF INA - 930/35 OF JEWORIGAN YORS UIE THEAS STC NAMET CAP INVESTIMENTS AT DATHYPIG VALUE \$ 1,043/1		1,080,1
	COMBINED SALES POR THE PERIOD OF TON INSUS. OF JANORGAM LIQUID ABETS MAY MAY I MAKEST WASTARDATED AT CAGRAYING VALLES S. 45, 248.78	TRANSPORTER OF THE CONTRACT OF	INState
	COMBRED PLACLARGES FOR THE PERIOD NY YOU. SYOUNG OF "CLOSED "" OLOGED "" ONE BITP PRINC NAMED FOR SYOUNG OF SYNCETHER AND THE SYSTEM."	10000 OF	() () () () () () () () () () () () () (
	COMMIND SALES FOR THE PERSON OF MAY 400/M THE TOTAL SALES THE TASK OF THE PERSON OF MAY 1991 WINDSTRUCTURE AT CAMPING MAKEN PRO- HIVESTRUCTURE AT CAMPING WAS VALUE & SALES SALES	ł	7.043 (K
200	F BYENEST EARWED ON E MONEY MANNET FUND WAS TO BODAN	LAY NA	
8	CASH ROBERTO OF PUTTING RANGED ON ONE ORDAN TREASHITY ORLY, NAV LAKE HA	THE RESERVE OF THE PROPERTY OF	
400,00	PROUGH SEPTEMBER	(SK FIZ)	(PC,10%)
ě.	CASHING DOTH OF PATEREST EXPRED ON ONE OFFICE PLAN ONE OFFICE PROPERTY PLAN INTEREST PLAN INTO A CONTRACT PLAN INT		

18.66

TANA RECEPT OF MIREEST EASHED DN
ONE GANGLOF TRECAMEN TOWN WAT TO
MITTEET THOM 21/20 TO 22/09
CASH TROOPED TO THINTEST EANNED ON
ONE GANGLOF THOM EANNED TANALED ON
INTEREST THOM 21/20 TO SELECT

37.06

PW Cox

AMMET VALUE OF BATASS NVESTMENTS AT CANTIVING VALUE, PARTAR

premi filit in the company of the state of the

Page 14 col 15

Franceintion tiels a continued

1 100 OSZ) (C) City (C) (Q.) (EG 802) 1 3 (184.17) 916 (20.08) FIDOCARY TAX BETT HA HARL MELECTED
PROBATED BASE HINTON IS AND TAX FEE
MORRESTHATIVE FEES COLLECTED THROUGH JULY MONTH
END FINAL REFORESTED

BYTH REFORESTED STATEMENT TO THE STATEM TANAH MALINESERIAN POSTA BERSONA BANAMETEN TRI BITE PAD NON DETENATING MENALL CENTER OF TEXAS GLOSING PROCEEDS PROFIL WOMILLOSTED FIGURATIVA INTERNATION OF COLLECTED

HARMANG TOTACHA TARRIPERE PAR AND
FIGURATOR AND THE PERE PAR AND
FIGURATOR AND THE PERE PAR AND
FIGURATOR AND THE PERE PAR AND
FIGURATOR AND THE PAR AND THE AND THE FIDURIARY TAX RETURN PREP COLLECTED PROGRED ON TAX PEG PWAL FEE COLLECTED \$16TS 9006.7 80514 105/ MAN 1 46 Symps

F.F. WORTH ORTED HOSP CON SELF-AND Account Number: \$336574500 October 1 - Sopherber 30, 2008

Sunnante de la constante de la

Iransection detail continued

History Control Page 15 of 18

Che project (M.12) KS A CO. 10.50 3 1,4 (\$0.F) POLICIANY IAC RETURNS FREE COLLECTED

FANA, TAX PREF TEXT FOR 200.

GAST CORP. TEXT FOR 200.

TAXABLE TO SERVE AT TEXT FOR 200. CALIFECER 1
TO MAY SERVICE AL
TO MAY SERVICE AL
TO MAY SERVICE
TO CASY DEBLASEMENT OF A CONTROLLED ON DEPLACE OF DISABLES OF THE CONTROLLED ON DESCRIPTION OF THE PARTY OF THE (AGIN RECEPT OF WIERCST CAPACT) ON PPACHMAIN LYND ACCIDINGLY NAT RIVEST RITERED FROM BINDS TO BANKS CASH ROLLT OF INTERST EASHED ON PRICESSAN INTERST FROM MAKE UNITERST FROM MAKE INC. TO BRIDGE ON THE STATE WITH MAKE UNITERS IN THE STATE WAS TO BE STATE OF THE STATE WAS TO BE STATE OF THE STATE OF T MANUFER FROM PRINCIPAL

> 878VOS gydug

201/6 į

Galvans

9999

27.75

8 1000

2

No pending trades.

Transaction detail continued

President

		j	EC206.348	•		(per march		-	1	2	(5202)
	1		(200 23)	**************************************		(poe.su)		97)	(22.80)		(208.33)
Prospinon	GABH NECEST OF PURPOSET PARAMETERS APPROACH A LANGE MANAETER TO SHAREST OF THE STATE OF SHAREST OF THE STATE	CAM RICET OF NETWORK ON THE SECOND ON THE SE	ADMINISTRATIVE FEES COLLECTED THROUGH FEBRUARY MONTH SHU	CABA RECEPT OF INTEREST CARRYD ON WASHINGTON TO A MARKED TO BOOK BANK TO BOOK BANK TO BOOK BANKS.	N. J. L. M. C. L.	CANHETTANTE TEST COLLECTED TI MOLIZE HANCH HONTH	A ACT OF THE WINNESS TO ACT OF THE WEST WAS A STATE OF THE WINNESS TO ACT OF THE WEST WAS A STATE OF THE WEST WAS A STATE OF ACT OF THE WEST WAS A STATE OF THE WEST WAS A STATE OF ACT OF THE WEST WAS A STATE OF ACT OF THE WEST WAS A STATE OF THE	CASH RECEPT OF INTEREST EARNEST ON THE WAY AND A SHAREST CAN MITTERS TO A SHARE STO. WAS TO A SHARE SH			ADMINISTRATIVE FILE COLUCTED THROUGH APPL MONTH FINO (20%-23)
1		S IN					,			50.05	

FT WORTH CGIFC HOMP CEN BELF-INS ADDUM NUMBER INJUDITATION OCIDEN 1 - Suprember 30, 2006

Transection detail continued

500 DATORS

j 20.00 POCUMY TAX PETUR MED COLLECTE

ROCALMY TAX PETUR MED COLLECTE

ROWNING DAYS PROTOCOL OF DESCRIPTION OF THE COLLECTE

ROCAL INFECT TO SERVER TEAM OF THE COLLECTE

ROCAL INFECT TO SERVER TEAM OF THE COLLECTE

ROCAL INFECT TO SERVER TO THE COLLECTE

ROCAL ROCAL TO SERVER TO THE COLLECTE

ROCAL ROCAL TO SERVER TO THE COLLECTE

ROCAL ROCAL TO SERVER TO THE COLLECTE

PROTOCOL TO SERVER TO PROCESSES AND RETURN PIER DOLLECTED
PROPERTED BASE FORTON OF BON TAX PRE
PROPERTY FEELS SOLLECTED THROUGH JAKE WORTH
PROPERTY.

7

200 E

FT WORTH DRITED HOSP CIEN SCLE-INB

FTWORTH OSTENHAWN ISHNELF FIRE

FT WORTH OSTEO HOSP CEN SELF-ING Account number, \$236574600 Doctor 1 - September 30, 2005

FT WORTH OSTEO HOSP CEN SELFANE Appart number 8339574600 October 1 - Beplanner 3Q, 2005

Continued of the Contin

Please content your Jibbinghi abreor of your fearnists steems on materiors charge.
When reviewing your Bond spally stoke, it is particulages an iterated to you when it is particulages an iterating for mainting abeligny it has been one persons.
When reviewing your booking dought the teach one persons and may not depart your begings dought the mainting has been provided as a source of the country. The beload Value obtains will always provide as a source from the Country of abress made by the best the country of a series of the series of the action of the abress that when the country return the country of the series of the action of the action of the abress of the series of the transaction (see the material return or by date of the transaction).

They are the absence of the persons are a contracted to the series of the transaction may be distinct. skulter value and prizes for publicy-landed accusation have been citatived form sources between the to selective Wirkell generated of topicing, closed in season yet for the help to and have expended to the control of the properties of the format of and for the conseniors of the accusated control of the format which the properties of the format of the This statement is not an official document for income lax frejoriting pusponess.

Common fress kind fronters: The most inscent suggest armost report of the Bond's common hold Amels is scalable upon sequent at he change.

Stear be, may sought that an added for benefit of such based on marken disclosed in the greatest that the second of the such o

Rocottes (besiding afficiency funds) are not best deposits, of PDD example, the deposits of PDD example of the deposits of PDD example of the deposits of the deposit and the deposit and the deposit of
Page 17 of 18

Please be prose that the biodimator about in the Pleastand desirLoss orders. Dough in the Temperation has better to the adequate of the Unwahled Cardyons on the season for all TAX COST, seen though the seese an your adequate may be seen and thoold were "Desperation you exhere it you wan specified as individually our plant of your adequate you.

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-Mal\Fisher\Fisher v Chase\Pleadings\MotRemandFINAL2b.wpd

HELISSA SPIVEY & ASSOCIATES (817) 226-4599

numbered cause on the 25th day of January, 2008, from

10:12 a m. to 1 20 p.m. tefore Helissa Sofvey CSR in

shorthand at the offices of Barlow Garsek & Simon - LLP

pursuant to the Federal Rules of Civil Procedure and the

23 3815 Liabon Street, Suite 130, Fort Worth, Texas, 75107

and for the State of Taxas reported by machine

25 provisions stated on the record or attached hareto

19

INDEX PAGE Appearances . WITNESS: ROBERT H. ANSFORD EXAMINATION BY MR. ATKINS 5 Signature and Changes EXHIBITS ND. DESCRIPTION PAGE Subpsens 5 10 Fort Worth Detempathic Hospital, Inc Drid's Fort Worth (Steepathic Hedical Center Self-Insurance Plan Trust 2 5.4 11 12 Agreement Photocopy of Check No. 149332, letter to Robert Lansford from Glenn Hilton dated July 1, 1990 and fax trensmission to Diene From Nancy Argo dated July 1, 1989 13 36 14 - 5 Letter to Robert Lansford from Robert D Anderson dated October 4, 1999 and far Transmission to Diana Winton from Bob Anderson maked October 4, 1999 42 1.5 17 \$500,000 disbursement letter to Boo Lansfurd from Glarn Milion dated December 14, 1996 and letter to Glarn Milion from Diana Winton dated December 16, 1989 12 + € 9 20 Fax Transmission to Diara winton from Marcy I. Argo dated mylarCook, memo to Diana winton-Robert Lansford from Mancy C. Argo dated Languary I. 2000 and letter to Hency Argo from Susan E. Baird dated December 22 1859. 21 63 22 23 25

3 FOR THE CREDITORS HR. ST. CLAIR NEWBERN, III LAW GFFICES OF ST. CLAIR NEWBERN. 111, P.C. 5701 RIVER RUN RCAD SUITE 1000 FORT WORTH, TEXAS 76107 ĥ NR. E.L. ATKINS ATKINS LAW FIRM 326 SOUTH MESOLITE STREET SUITE & 7 B ARLINGTON, TEXAS 76010 ٥ HR BARRETT W. STEISON LAM FIRM OF BARRETT W. STEISON 2920 CARLISLE STREET SUITE 360 DALLAS, TEXAS 75202 10 11 12 FOR THE WITNESS 13 MR. ROBERT A. SIMON BARLOW GARSEK & SIMON 3815 LISBON STREET SUITE 160 FORT WORTH, YEXAS 76107 14 15 16 :7 13 19 20 21 22 23 APP. 315 24 25

APPEARANCES

MELISSA SPIVEY & ASSOCIATES (817) 006-4399

```
1
                       (Exhibit No. 1 marked.)
                           ROBERT H. LANSFORD.
     3 having been first culy sworn, testified as follows
                               EXAMINATION
    5 BY MR. ATKINS
                 Good marning, sin
                 Good morning
                By name is E.L. Atkirs, and we're here to take
      the deposition of Pobert taisford. And that would be
   :0
      you, correct?
  11
                Correct
  12
               State your full name please for the reporte-
          ð.
  13
               Pobert M. Lansferd.
               What is your current residence address Mr
          ٥.
  15 Lans toryo
  • 6
               4039 Hidden View Circle Fort Worth
 17
               And what is your current business address?
 ٠,٤
              400 Eurocard ten, Fort Munich
 19
              Is that a business establishment
              What is that?
10
              Prorgan
20
             What is your business telephone number?
54
              (817) 854-4151.
15
             How long have you been callayed with Jehanyan
```

1 feir? 40 years with JFMorgan and predecessor banks; G. 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 shout today was entered into. By whom were you employed 7 at that time? A 1 don't know which bank was involved at that gitime. I really don't. '87' That could be -- I don't 10 know if -- I con't remember when TAB failed, so it could 11 20 Texas Aperican Bank. O. Okay 13 A. I don't roally recall. The trust agreement says Texas American Eagle 15 A. Okay. Then it was Texas American Bank Q — So can you help me from that point in time up 18 17 to JPHorgar? How did we get from Texes American Bails as 18 your employer to JPMorgan as your suployer? A. Texas American Bank failed in the 180s. It 20 was taken over by Deposit Guarenty Bank. Deposit 21 Guaranty Bank changed its name to Feam Bank. Team Bank 22 ac'd to Bank Sne, end Book Dre and JPHorgan eerged And it now operates under the name JPMcggan? A. Yes 25 i C. When was the herger of Sank One with JFNorgan?

MELISSA SPINEY & ASSOCIATES (817) 228-4395

```
funds are to be reposited into?
   2 A. Lato the Os(copathic Medical Center cnecking
   3 account

    And how such were you directed to have out of

  5 the trust to the Osteopath's Mospital checking account?
        A. $900,000.
        9. What is the second page of Exhibit No. 57 is
  Althat the ...
       6. It's a letter from Gleon Milton.
       Q — Is that the request to you to take $900,000
 11 but of the trust ...
 12
      A. Yes

 -- and deliver it to the≤r checking account?

 13
 14
       A. Yes.
     G What was it for? Can you tell from the
 16 letter?
    A it doesn't tell me.
17

 You produced these documents. As you looked.

19 at them, Mr. Lamsford, do you recall this transaction or
20 any specifics of this transaction?
     A. No. I do pot

    From your parliter answers, would it be correct.

23 for we to conclude that you did not cuestion No. Militan
24 as to the purpose of this $900,000 coming out of the
25 trust?
```

MELISSA SPIVEY & ASSOCIATES (£17) 226-4398

```
1 Do you recall?
       A. It was in 2002 I believe, and it's still not
  2
  5 Finalized yet. It's in the process.
        Q. What is your current position with Jefforgen?
        A. I'm senior vice president.

 And as senior vice president, sir, what are

  ? your duties just in general?
  5
       5. I'm a trust advisor, orimari'y e trust
  9 officer. The old title used to be trust officer.
 10
       Q. And what does that entail?
 11
       h. Hanaging accounts.
 12
       0. Trust accounts?
 13
: 4
        0. How long have you held that position with
15 JPMorgan, tince Bank One and JPMorgan werged?
16
       A. Yes,
17
      Q. How long nave you held that position with this
18 bank, whatever its title was?
19
       A. Since the mid 1906.
20
      w. Maybe I can ask a better question. Let's po
21 back to September of '87. Do you recall when you were
22 with Texas American Book what your position was with the
23 bank at that time?
     A. With Texas American Bank, I was sentor vice
25 president and trust officer.
```

MELISSA SPIVEY & ASSOCIATES (817) 226-4398

```
A. If at a correct, I did not question in
          Q. Did you feel obligated as the vice
   3 president -- senior vice president of TAS to question
   4, what this $900,000 was to be used for?
                    PR. SIMON. Objection, form. This wasn't
   8 Texas American Bank anyword. This was Benk Che
   -7 İ
        O. (BY MR ATKINS) You may enswer.
        A. Oh, I don't \cdots at this point, I don't think I
   9 avestioned it.
       Q in your opinion from reading the trust, was
  10
  \mathbb{R}^4 [this particular essas of directing the bank to take
 12 $900,000 out of this plan in conformity with the terms
 is and provisions of the frust agreement?
                  MR. SIMON Objection. You used the word
 15 "oxinton." Objection: form. You used the word
 'S optition.' That's not appropriate. You can sak him if
   that was his understanding
18 C. (BY MR. ATKEAS) You can argue: until he says
 19 don't answer me.
      \lambda_{\rm c}=0{\rm key}_{\rm c} , what was your question again, since
21
        Q As the senior vice prosident and the one in
22 charge of in's trust, was it your opinion that this
23 particular means of requesting you to take $900,000 out
of the trust in conformity with the terms of the trusts
25 July Well Lim going to say that Hr. Militon was
```

HELISSA SPIVEY & ASSECTATES (817) 226-4395

1 peither instructed by the countties or part of the 2 comestree, which I can't result. And fe instructed us to transfer money, and we felt that was within the powers of the instrument. And I'm not putting words in your mouth. Was Э part of that, though, based on your statement to me 7 earlier that this is a revocable trust? Yes.

Wall, can we look at Exhibit ho 5 -- any 10 parts of Exhibit No. 5 and determine where this 11 | 5905 000 -- how this \$800,000 was used?

I do not know how it was used

9. Let's look or Page 7 and 8 of the trust. 1 14 think it's Section 5.03 and beginning on Page 5. They 'o list seven activities or seven items that disbursements 16 from the trust can be used for.

Jh-hum, Okay,

 Is there paything that we can look at the 16 19 Exhibit No S to determine of the use of this \$900 000

20 fits into the category of either Category 1, 2, 3, 4, 5,

21 | 6 or 77

12

22

C. Did the bank have any procedure to verify 24 whenever requests for dispursements were made and case 25 to the tank that someone would look at these seven

HELISSA SPIVEY & ASSOCIATES (£17: 226-4399

D 354574510



Osteopathic Medical Center

April 1 2002

Robert Lansford Bank Che, Taxas P.O. Box 2060 Ft Worth Taxas 76113

Plasse transfer \$500,000 from our deaf Insurance Toust Account Number 8336574500 to our Master Depository Account Number 1576099632 today.

Sincerew.

Burne Elmel

Bruce Edwards
Director of Accounting



Α.	Yes

And I'll ask you agair, did you have anything 3 that would indicate Hancy Argo had authority to tell you 4 to take money out of this trust?

I don't have snything in writing or snything in front of me that would tell me that

And you don't have anything in your file that discould indicate that Texas American Bank questioned this 9 disburssment out of the plan?

:0

12

13

Correct?

No.

(Exhibit No. 7 merked.)

(BY MR ATKINS) I show you Exhib t No. 7.

15 Tell us what Exhibit No. 7 is.

First 's a letter to -- to me from a Bruce Edwards to transfer \$600,000 from the trust account to a 17 15 master depository account, and then the second page is the cover sheet for the fax

Q. Can you determine what the \$600,000 was to be 21 used for?

Α. I cannot

23 ο. Do you remember that transaction as we sit

25

E do no≐.

MELISSA SPEVEY & ASSOCIATES [817] 228-4599

O. sopathic Medical Centr of Texas 1000 Montgomery Fort Worth, Texas 76107

Attn: Mono Winter			• • •
			i
Date: 41, 1-2			
Wessage:		•	
	:		
."			• .

Phone: (817)735-3177 Fax: (817)735-3217

```
1
    me?
      Q. (BY MR. ATKIKS) Yes Did she aver bring that
 3 cuestion to your attention?
        C. Ed you know if it was her responsibility to
 5 check and make sure that whoever signed the written
 7 request for distursements from the plan was on file with
 8 verified or -- certifled and verified signatures at the
 9 bank?
        A. No. It wasn't her job to do that,
11
        Q. khose job was that?
12
        A.
           Nine
13
       3. Old you ever do it?
14
        A. Yes
        2. And are you telling me that somewhere probably
15
16 at the bank we re going to fine a file of the signatures
   on file with the cank?
       a. No I've told you that you're not going to
19 fine that because we did not have that.
       2. Then how did you varify signatures, sir?
       A. I den't answer that. I know some signatures,
22 That's all I can tell you. I know cartain signatures
23 so.
24
      ρ. Do you recognize Nancy Argo's signature?
25
       A. No. I recognize Bruce's signature and Bob
```

MELISSA SPIVEY & ASSOCIATES (617) 226-4395

```
would anybody then document at the bank the
     |
|parameters of this trust to make sure that whoever is
   3 working on it, secretary clarical, officer, knows what
   4 those parameters are:
       A. I don't know how to answer that I really
  Bidor t understand the question wall enough
        Q And I appreciate that. Let no just give you
    ]
an example, a hypothesical. Let's say a trust comes in
  9 to TAB that ar colmon sets up spacifically to create an
 ib art gellery only for Remington paintings
     A. Okay
      And the bank finds a fantastic Renoir that
TS they can buy for a steal for $3 million and they buy it.
14 but the trust specifically says you can only any
16 Rewington. Now when the trust ha set up, somebody
16 would read that to make suce that whoever's working with
17 the crust funds only buys what the trust said to buy ...
      λ. Corract,
18
19
       0. . correcto
20
     A Correc

    And that would be by what, memos, policiest

22 How would that be communicated to all the people
23 handling that perticular trust?
24

    Some kind of a sympos s, administrative check.

25 sheet. Something like that would be set up by the
```

```
HELISSA SPINEY & ASSOCIATES (317) 226-4395
```

```
A. I can't answer that because I don't know 14 I
  2 ever really dealt with the plan itself.
         Q. Mr. Lansford, this particular trust that we're
  3 |
  4 talking about is not the only trust that TAB. or now
  5 JPMorgan, oversaes and administers, is 1t?
         A. No, it's not the only one
         2. Coesn't the bank have just general policies
 E and procedures that are implemented and utilized once a
  9 Trust comes 142
 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

    Now, somebody somewhere would read the trust

16
17 agreement and determine what those requirements are.
18 wouldn't that be standard procedure?
      A. Yes.
20

    Who would do that it 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 Mitchel did that when it
24 came in
25
     Q. Naw, who then would -- strike that.
```

MELISSA SPIVEY & ASSOCIATES (817) 226-4399

```
1 operations department.

 And that would be set up wiether it s a

    3 revocable or an innevocable trust wouldn't it?
         If the trust comes in and the trustor says.
    5.1
   B you can only use these funds to pay & certain type of
   7 debt. isn't the bank going to like sure evenyoody
   Biranuling that trust and sealing with those funcs only
   9 pays out funds to pay those certain types of debts?
        A. Should have.
  11

    This trust says, if I read it correctly, it's

  12 to only be used on maioractice claims
  12
        A. Okay
       Now, what would the bank have in place from
 15 the get-go .. from September of '87 until the time that
 16 you paid all the noney but, what did the bank have in
 "Titlace to make sure that what the book did was consistent
 {\bf 18}_{\perp}{\bf w}^{\star}{\bf th} the requirements of the trust egreement?
 19 [
        A. I don't know what that would be
        G. I gather a lot of it was the fact that you
21 Krew Mr. Sanzelin, you knew tiese officers and you
22 trusted chem. When they said, we need some money, send
22 us $300,000 and put it over into the operating account
24 that you trusted that as being a value request and you
25 comp1 ad?
```

HELISSA SEIVEY & ASSOCIATES 1817 226-4399

- A. That a not entirely correct, I know Mr. 2 Sandelin, I trusted them. But if they -- if I was 3 instructed to put \$900,000 into a checking account d somether would have told me what it's for. Whether frey s gut it in actiting or not, I would have known what it was 6 for. Host 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 e send you information to make a dispursament. Q is that usually the way the bank did its
- 10 business with trusts, that they get it verbat?
- 11 A. It does -- with some accounts, it does. And 12 then you saw one latter here where Drara sent a letter 12 back to verify. When we take firstructions over the 14 phone -- and we do. We have a lot of accounts and we 15 take instructions over the chone and we know the coopie is we're talking to -- then we follow up with a latter like if this to say, this is what we've done
- You have provided me in response to the duces 15 tecum various bank statements and summaries that I (A) ht 20 began in October of '98 and go through September of
- 22] A. Oray
- Q. Did you have an apportunity to look at any of 24 them or were they just printed out and sent to counsel. 25) to be given to me?

MELISSA SPIVEY & ASSCCIATES (817) 226-4399

for statements, summarise -/ statement of accounts (

2 pelieve is what they're called that was delivered to me 3 Monday for my review that I made a copy.

- ո, Օևոյ
- And I'd like you to lock at them and verify E that for me, if you would; and I infik it's for a period 7 October 1, 2001 through September 2005.
 - j. It's correct as you stated, year
- C. How, do you know by whom those documents in 'O Exhibit 8 were generated? Old they come from bank it records or did they come from accountant records? Where 12 gid they come from?
 - 7. They came from JPMongan's operation center.
- And are they computer unintouts of the 15 activities of the Fort Worth Ceteopathic Hospital is self-insurance plan trust from the periods that we're .7 said, October --
- 18 A. October of 98 through 2005, yes, they are Tow, let me go back it my earlier cuestion 26 Are you said you'd have to look at the decements to tell It we wrother they would give be that suswer. Can we out 22 at those occuments -- can you look at those documents 23 and tell we now must was in the trust as of Oc.oter : DE 196 and now much was in it on the last date in September | 25 of 20052

MELESCA SPINEN & ASSOCIATES (7017) 336-4310

```
i maipmant to anica or clamma made against the
2 (tospital?
       Q. None of those date was ever provided to you?
       A. I haver received it, ro.
      Q. So you know if any of that data was ever
  delivered to Taxas American Bank or its successors?
     A. I do not know.
       Q. Well, did you understand that whatever funds
IN were there were intended to cover the lower frait of
it medical malpractice claims that the mospital would have
12 against it at any given count in time?
   a. I don't know if I knew that or not. I don't
12
14 | recall.
                 MR. SIMON. Do you want to take a break?
15
                 PR. ATKINS: SUF6
16
                 MR. SIMDM: I hade to have the deposition
the continue if one of the swyers is not in the room.
                 MR ATKINS: Yeah, let's take a short
19
20 break.
                 (Recess; 11:47-1:55)
21
                 (Exhabit No 6 narked)
23 C (BY MR. ATKINS) Mr. Langford, let me show you
24 what I we mained as Exhibit No. 8 And 1 1 represent
25 to you that it's a combination of all of the bank's ...
```

HELISSA SPIVEY & ASSOCIATES (817) 228-4399

10

. 4

Ġ;

17

- Would you 'cok at them and tell me what those 3 frigures and please?
- On Objectine 1st of 198, it was a market 5 value of \$4,537 752 41.
- q. And fast forward ahead to September of 2005 TiCan you tail ne what the value of the trust was on the 8 last -- at the last date. The September 2005 date? 1 8 believe it's September 30, 2005.
 - A. September 30, 15 was \$17 392 74.
- Is that approximately the emoting that maybe 12 you haid over to the trustee in bankrupicy. Mr. Shawn 3 Erovii
 - MR SIYON Brown.
 - HE NEWBERN: Shown Brown
 - w. i think it was.
 - HP SINON Schooler
- g. (BY MR | ATRINS) And it's your testimony here 13 19 that there is -- there are no fines -- there is no money 20 in this trust fund.
- ing a Convect There are no fords
- g. Now, can let be with your knowledge of these 25 documents of how they he generated and created, would in 24 be serred to say that you can go through them end the of auditions and otheraclions, that is the deposits and

MELLISEA SPIVEY & ASSOCIATES 12.7, 207-4346

the withdrawals should add up to the difference between the teginning balance of \$4,537,752.41 and the encing balance of \$17,992.742

- A Yes.
- 5 Q. When the entries were made, Mr. Lansford, in the bank computers, in the bank records, did the entries indicate which payments were made for medical majoractics claims and which ones were made for 8 something other than madical molpractice claims?
 - A. I can't tell from the transactions.

 (Exhibit No. 9 merked.)
- 12 Q. (BY MR. ATKINS) I serviced one of the pages out of one of those summeries. Hr. Lansford. It's a 14 transaction cetail 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 mould focus on the entry of 4/1/02, cash disbursement 18 paid to Sank One. \$600.000. Do you see that?
 - A Yes

10

-:1

24

25

- 20 g. Can you tell from that computer-generated 21 entry where that \$600,000 was described?
- 22 A Yes. It was desposited into a Bank One 23 checking account.
 - Q. And that's Account No. 1576089632?
 - A Yes

MELISSA SPIVEY & ASSOCIATES (817) 226-4398

know if they furnished that or not Did the bank have snything in place to make 5 sure that they did? A. There might -- they might have. Q. What would it be, some type of guideline some 6 type of directive to tell the pank not to honor a 7 withdrawel or disbursement if it didn't come from a 8 cortified signature? A. It could be any of those. I just don't recall 'D us having it Now, the last sentence of that paragraph is, 12 For all purposes hereunder, the trusted shall be 13 conclusively entitled to rely upon the certified 14 signatures. Did I read that correctly? 15 A. Yes. 16 G. How, what did you understand were your 17 jobligations of you did not have cartified signatures as 16 the basis for the request to take morey out of the 19 trust? What was your duty in that -- if you could 20 | conclusively rely upon certified ergnatures, what was 21 your obligation of they weren't destified? Verify who was sending the request to us and. 28 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

MELISSA EPIVE" & ASSOCIATES (817) 226-4395

```
Q. What die 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.
  Б
      O. As we sit here, do you believe that JFMorgen
  6 and its predecessors did that?
        A. Yes.
 8
       G. As the trust officer, whether you did or
 9 didn't certainly you were obligated to, weren't you?
       A. Yes.
        Q. Now, on Page 4, the first complete paragraph
11
t2 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.
       A. Where are you reading?
77
      2. \ \ I'm\ reading the first sentence of the first
18 complete paragraph on Page 4.
     λ. Óltay.
16
20
       0. 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
20 the trustee a certified signature card for the members
24 of the committee. Old I read that correctly?
```

MELISSA SPIVEY & ASSOCIATES (817) 226-4389

A. I don't know it they did or not -- I don't

```
    Down in 3 03, about hallway down, the santance

   2 tegins. Not in limitation but in amplification -- do
   3 you see that?
       A. Yas.
         G. -- of the "oragoing, the committee shall have
  a the power to construe the plan, to review periodically
  7 the adaquacy of funding and of investment performance
  B and communicate its findings to the hospital and the
  9 trustee. During the time that you were overseeing the
 10 administraction of this, did the hospital ever provide
 11 you with documents indicating edequecy of funding of the
 12 trust?
 12
        A. I don't recall.
 14
        0. I'm sorryn
       A. I don't recall i' they did on not.
       Q. Well if they did, wouldn't that so something
17 that you would keep in the regular course of your
18 Desiness?
20 they provided it to me, yes
       2 And you wa made on edfort, have you not.
22 before we did this deposition to look and find me
23 everything:
25
    A. 1 d-g

    Q. And you didn't find anything in that regard.
```

MELISSA SPIVET & ASSOCIATES (017) 205-4399

1 did you?

- A. I dion't see that. It wasn't in the file that 3 | I locked at. Now, whether it was something before Texas 4 American Bank failed and if it was schething that in the 5 move with the tornado, at cetera, you know, it could 6 have been there I don't know because I lost a lot of 7 documents on my dask to the Lornado.
- So it a your sworn testimony that the hospital 9 may have provided you periodically adequacy of funding 40 of the trust but you don't know, and it hasn't been in If the files that you've searched but it may be somewhere?
 - A. That's correct.
- Q. From your understanding of this trust, why 14 would it be important for the trustee to be communicated 15 the adequecy of funding of the plan periodically?
- A. You know, I don't know why that would be because that's why I was just reading this instrument. 13 It doesn't -- it says they shall do that, and I don't 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 trustes necessarily.
- 22 0. Did you ever question that that you're now questioning during the time that you oversaw this?
- F. Yo, because } con't think they ever proviced 25 that to me. If they did, it would have gone in the

MELTISSA SPILVEY & ASSOCIATES (817) 226-4399

A. Ma.

C. Was there even anything provided to you \cdot , writing that said you had discretion to pay out money 4 from this plan other then as was in the printed 5 provisions of the trust agreement?

A. Not that I receil

v. Then tel' me I guess based upon your expectise 8 or whatever why do you feel - ely do you believe and why are you telling so that you and have discretion 10 under certain circumstances to not follow the scattlic If provisions of the printed cocuments

A. I followed the instructions of the -- the 13 Instrument says that re're to take instructions from the '4 committee or their agent. I believe it says that, you 15 know. I don't memorize -- I didn't memorize the statement, but I think schembers it says the trustee 17 from time to time -- payment of property or Fage 7, 1-18 gives us the instructions that we're to follow. And as 15 Ising as the noney was going at their instructions or to 20 one of their accounts, we would follow their En Instructions

27 See Scott was your interpretation of the 23 instrument that if some officer or the hospital told you 24 to poviout the money, that that socisfied your OS (первечением) шаллет этом артемперат

ijfile. But I'm just saying I don the I don't see the 2 need for the trustee to have that information.

C. 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 decice 6 all questions relating to the determination of payments. ? provided such payment shall be exclusively for the 8 purposes of the plan as hereinafter provided.

А. Экау

10 Q. Bid you understand that there was any leeway 21 or discretion on your part to pay out money from this is for in the oddy of the plan?

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 g. And what was your basis for concluding that you mid have then leeways

19 A. Because the instrument can be changed in any 20 way possible, could be revoked changed, et detera

Q. Was Exhibit No. 2 that was signed September 15. 1987 ever revised to your knowledge?

23 A Not that I know of, no

24 % Was it ever ammided or supplemented to your 25 (know) page 1

MELISSA SPIVEY S ASSUCIATES (917) 226-4399

A. Not racessarily. If ℓ was instructed by 2 somebody from the hospital that came through that 3 committee to pay the noney to either an -- to pay to 4 scheone or deposit money into the hospital's account. S then we followed their instructions. We felt like we 6 were authorized to do that

 $7_{\parallel}=-Q_{\perp}$. Dim you consider that it was your obligation 8 to verify that those directives to withdraw the funds a were not only from someone authorized but they were to 10 be only for medical malpractice losses?

A. No, I didn't wenify that

12 G Solaf ... and correct me if I'm wrong ... if you 13 get 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 practing eccount, you 16 interpreted -- or you concluded that tecause of who that 17 was, that that was in conformity with and in compliance is anth the remas of the trusion A. (Gu Prow | Coance of worthe grading a

20 generality, and I would assume that speciew some kind of verification was object. I can't half you now that was done, but I either tolked to saveboor on the shane or 13 isomething to verify that this was in eccordance with "J | what they wanted to do 25

Coss (by their live you than leewer to versi,

HELISSA SPINE: 8 ASSOCIATES (5.7) (26-4399)

PREED (113) SETATOROGE & VIVER OF ARRIGHM

```
1 by telaphone what is not in the written directive?
        A. I think so,
         Q. Where is that, sir? Where do you have that
  4 instruction?
       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 shone.
        Q. That was your understanding?
  9
 13
     Q. When you were on the board of the hospital, as
 17 a CPA reviewing and evaluating their financial
 12 statements, was the hospital losing money?
13
               MR. SINON: Objection: form. Be specific
14 95 to what time.
15

    (BY MR. ATKINS) You can Biswer

16
                MR SIRDM. As of what time period?
17
                MR. ATKINS: wher he was on the poard.
                HR. SIMON: He was on the board for ten
15 jyears.
20 0. (BY MR. AIKINS) During the time that you were
21 jon the board, cld you see from the finances of the
22 hospital that it began losing money?
23
                MR SIMON: That's B different quastion.
24 but you may answer the question.
26 A. I think there were times that it was losing
```

MELISSA SPIVEY & ASSCRIATES (217) 226-4399

Exhibit "9"

MOTION TO REMAND

PAGE NO. 65

C:\Documents and Settings\admin\My Documents\User Files off Desktop & Notebook\Desktop\ATKINS LIBRARY\CLIENT FILES\Med-Mal\Fisher\Fisher Chase\Pleadings\MotRemandFINAL2b.wpd

THE THE UNITED STATES DESTROYS CAME OF THE POSTBERS DESCRIBED OF THEMS BORE WASTE SPEAKING

FORT MORTE GATBORNINGO HOSFITAT, 1917

TASE NO. GE-1151 3-140/-

Chapter :

Retter.

SHAPE N. BROWN, Chapter To Transper for Port Rest & Caracagather hospitals and

APPERSANCES, 59-4910

JOHORGAN CHASE BAIAN, N.S.

OFFIC NAMED AFTER DEPOSITION OF

PERSON PROMISED

FEBRUSE 12, 1636

SAME VISCOTATES DESCRIPTION OF LARGE EXCEPTED. produced as a witness on the impactor of the ref-origin. and maly aware, are maken in the annue-neglect risk accounted reset on the 25th day of Fernance, haft, from Britt dim to 12:55 game, before planarete store and for the State of Items, reported a emproylability of the offices of fuched " But observe & McColl Wash, Life, 300 From St. Red. Street, Sapre etas, Spiles, retra - Hoff. persuant to the Parsey! Point of C. MIZ (margorise and priprovinces existed in the excist or actimbed record,

14

: 5 16 17 ٦,

. 1

10

2

June of 1990. Mere you employed there explaneously until the Q, Lanksuptoy?

Α.

When did you become director of encounting?

I'm trying -- I -- ? thing it was 196 or 155. A.

۵. As director of accounting, who did you report

The CFG.

Ů. And who wee thet?

A. At what pariods what times

Let's shart with when you first became director Q, of accounting.

A. It was Glean Milton

At some graint in time. With the report report key to someone elsa:

A

When Glern Milton settined stopy hagers became CPG and I reported to him.

Q When was that?

A. duly of 2000.

Open Set and Sem pebeng on the Magnes of Q. until the bankmapter falling?

D. Do . Se tred lessociation in the state of 1800

Chart. And in Palmont is in the Debruser inc. who did you remert his

And who is sher

She was the director of human resources.

A. No.

Okay. Prior to the banharpton, you marked for Q. the Fort Worth Osteopathic Hospital?

£

15

1 ::

Okay For the purposes of this deposition, if ٥. I refer to the hospital, can you and I understand that What -- I'm talking about the Fort Worth Osteopathic

What was your job title at the hospital?

At the end or --A.

Q.

I was the director of accounting

accountant and then ? was object accountant and then

accounting.

When did you sixet go is write for who how, wast

APP. 324

A

٥. Anyone else?

A. Yes.

Α. Yes

Thank you

Let's start with at the end A.

o. Did you held other mitles manual A.

Yes

٥. What other titles did you hold:

Whom I was first hired I was bired as a scaff

accounting manager and them finally desector of

FOR THE PLAINTIFF:

Ms. Kerry Ann Miller ROCHELLE HUTCHESON & MCCULLDUGE, LLP

APPEARANCES

325 N. St. Paul Street Suite 4500

Dallas, Temas 75201

FOR THE DEFENDANT:

Mr. Jeffrey G. Hamilton JACKSON WALKER, LLF 901 Main Street Suita 6000

Dallas, Texas 75202

Mr. Thad Strobach, Videographer Mr. E.L. Atkins

21 ::

ALSO PRESENT:

- insurance? A. Icah, I think I do, yesh.
 - What is that understanding?
- A. We had -- we had to have a frust in order to get commercial insurance. The commercial insurance carriers wanted us to have a reserve satting there is case we had to pay out claims.
- Q. Old you -- as the director of eccounting, did you have any involvement with the purobase of insurance A. No.

2

3

. 1

12

. .

12

. 6

17

11

7.1

:

12

- Q. I Assume as part of your job as director of accounting, you had some knowledge of the hospital's purchase of inerrance in terms of the physical of funda-
- žė, Okag. So you in general there that the hospital 21 was paying for different types of theurance; is that 44 Ä.
 - Yes.
 - 2. Do you have an understanding for to how much of the primary liability the solf-insurance trues was
 - Q. Okey. And that would have been your entry, Page Soj right, in the general ledgers
 - No. Clean -- Glenn -- Clean rould have made the entry into the general ledger because he was reconciling
 - Q. Okay. Would it show up assymbors wise?
 - A. There would be -- we kept manual journal entries in a hook. There should be a journal entry that would show that too.
 - Q. Okey. What about the finencials? Would It show up on the wonthly Einencials:
 - A. It just the difference in the -- the -- or. the balance sheet and the cash secretit
- Q. Oher Did you prepare the monthly financials that were submitted to the board of the bospits \mathcal{V} A. At that time in 1997

 - Q. Ծե-հահ.
- I pulled everything together and then Glenn did the final financial stamements that can't to the board.
- Q. So in 199, you don't know whether this entry would have been specifically noted on the monthly financials more than just a credit end a debit?
 - A. No, Table
- C. ORET. WHENEX IN MOTERN THEM TOO WHENEY. ?4 for instance?

- designed to be responsible for?
 - A. Can you -- can you restare that question?
- Do you have an understanding of how much of the medical maipractice liability the hospital was responsible for itself, how many deliars?
- A. As far as if -- if somebody filed a suit and then what we were responsible for? Ö.

2

14,

17

2

1.

1 :1

1.

- It changed -- it changed over the years and A. I -- I can't tell you offhand.
- As part of your job as director of accounting, Ο. 1: were you required to know --15 Α.
 - No.
- Q. -- what the hospital's limits of liability ** Wete?
 - A. No.
 - Okay. Do you have an understanding as to who the beneficiary of the self-insurance trust was?
- 19 A. If you -- what -- well, what I understood was that it was to pay sulptactice claims on legal -- legal four associated with the claim.
 - Q. Anything else?
 - Not thee I'm avare of.
 - Was that all that was ampresed to be pain our o. of the truet, redical sulpraction chains and legal feat
 - A. Mc. I don't know.
 - Q. Did you ever prepare the morethy financials to go to the boards
 - A. After Glens left, I did.
 - Q. Okay, So starting in about 2000, you prepared the monthly financials for the beard? A. Yas
 - Would you have noted a transfer like this in Q. the monthly financials?
 - A. We I -- we didn't -- we hadn't put may footnotes in the Kinencials I prepared
 - 2. No year lower from Glent town of the transferdation to the monthly financials:
 - A. Ho, I don't.
- 9. Bid you review the monthly firms talk during the time that Glant was preparing them;
 - A. yas
- C. Okay. But you don't remember looking at this one in particular they of their
- A. I will be broked at those books who financial statements that we presented did not the factories to them, the monthly mass
- Q. Be doubt somethe say a brank turber, locking at those financials tell Mar 9: 04112 - 100 configured from the trust to the mester depose the errors.

2 Aug a

A. No.

•

1.

14

17

1 58

14

23

25

- Q. You said after Glans left; you started resonciling the trust account as well; is that correct?

 - 2. What did reconciling the thust eccount involve?
- A. Just seeing if there -- if there were any disbursements or -- or cash added to it and then expensing the monthly service for 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.
- Who had authority to request transfers from the -- from the self-insurance trust:
 - A. I don't -- I don't know.
 - Q. Mas there a trust committee at the hospital?
 - Not that I know of. A.
- You don't think you were ever on a trust committee at the hospital?
 - A. No. I wasn't.
- Ο. Who was the hospital's ascess malprectice liability insurance carrier? Do you know?
- A. I can't think of the name (fffeand.
 - Who was the hospital's insusance broker?

Argo had requested one to see how to treat that.

- Would you look for the -- would you have a copy of the request in your possession to help you reconcile the salf-insurance trust?
 - From Mancy Argo?
 - 0. From anyone.
 - Α.
- So you would have to actually so to the various ο. people at the hospital to get the information to reconcile that account?
 - A. Yes.

13

1 34

.13

100

- : ; Okay. Here there wery 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 fee.
- Q. So whenever there was one in a particular 13 month, you would just 30 to whosper Joe thought authorized it and make sure it was occreat?
 - Yes.
 - Q. And was that generally Nancy Axgo?
 - Малсу, уел.
 - Q. Anybody wise that you can remember going to to

and they cut Medicare payments and us -- I mean, we're like 70 percent Medicare/Medicaid patients, and the other part, to me, the -- the spending get cut 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. Weil, f -- 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 it was either going to Eail or nomebody was Q. going to have to buy you out?
 - A. Yesh.
- O. And was there on active pine, 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 Werrill Lynch to prepare a book -- an offering and this -- and wail that be. I don't know 70 or 40 interested three to many to sell it.
 - ME HEMICEON Com on asits a roundy present 85 milles: Sole.
 - THE WIDEOUS AS YOU SEE YES THE TOTAL SECTION (ferese last 1.5) · 75 . .0
 - THE PIDEOSPADADE COOK OF DEALER

elways looking but for the hepr . Warks' of the hospital's

- А. У
- Q. When Clean made the decision to transfer \$2 million or whatever amount of more over department from the trust to the depository secretar at 1989, do you know if he discussed that with Jey Sendelin?
- A. I -- I don't know for wors, but I would may be dia
 - Q. Why would you say he city
- Because he -- he siways discussed thongs like that with Sandalin.
- Q. Do you think Sandalin, who he was there, one fairly in tune with the firenche, all coming to the hospital?
- Well, he -- it's just by opinion and he was more concerned about the outlying thirds comperies that were set up, about the financial self-reing of them than the hospital
- 2. But you caink that if Gowin had implied to branefaz fiz millione forta the bruse of the Sacons toby account, he could have becomes the
 - Α. Ob. Treat Se would, They
- Model we leave those in the court was observed 0 \$2 millions
 - A.

would make without discussing it with --

A. Ho.

.

3

11

:£

. .

٠,

•

15

15

17

٠r

Q. -- Jay?

Do you know whether he consulted the hourd in terms of making the decision to transfer money from the trust to the depository accounty

- A. I have no idea.
- So you don't know what .- fo you know in general what he took to the bosts and what he didn't take to the board?
 - Α.
- Do you know an general what he took to Sandelin and what he didn't take to Sandelini
 - A. Not really.
- So you don't have a good feel for bor big a ٥. decision weeded to be useds before these would telk be Sandelin:
 - A. Re.
- Q. Why are you sere that he used there therement a transfer from the trust by the deposition accounts
- 22 A. He -- he just -- I mean, enthing his he would - have done that. . .
 - Q. And you trank that was a big decision?
 - A. ice.

- Q. Why do for think that's a big decision? I -- I quese because he .. he knew that we needed to have money in that account, more than -- more than we already had. Who knew that we needed to have money in that ο. account?
 - X
- Glenn brew that the bispitts needed to have money in the account?
 - Yes.
 - Q. Meaning the trusts
 - Coxnect, Teab.
- And the decision to am in temerre that woney from that account was risky for the Prospital: is that -is that what you're seging?
 - Ä. Oh-huh. Yesh.
 - Do per think shann profess of the 2' wie Q
 - risky?

11

1 15

- A. I -- I assume he would be a fleet
- ο. Take a look at Exhibit it posses to prorecognize Embibit 449
 - A. Yee
 - Ο. What is Explaint 44?
 - It's the Frant & Young switted financial
- statements for the hospital for year and 2008 and 198.
- Did you take into account, box much cash was on Page 1:7 hand to pay claims? Α.
 - Øω.
- Q. So the only thing that we that was taken into account hars was now much should be set aside on a balance sheet reserve basis for purposes of medical malpractice liability?
 - A. Correct.
- No throught was given to how to actually pay those claims;
 - A. I quase not
- Q. Where did Gragg Magers 5% when he left the hospital -- when the hospital filled:
- **A**. Just beening from districted prople, he want to Arisons, then he went to Georgia and the last I heard, somebody said he was living in Austin
- Okey. What about Glenn Milton? Where does be o. live now?
 - The same place. He lives in Leiford Α,
 - Where does he works
 - A. He dages 4
 - ý. Is be retiredo
 - A. GEL)
 - Q. Do you would balk to Glassic
- A. Every suce in a while.

- When is the last time jun belief to him! Q. Α. Brunail, we sound o-meal touch and fourth. Frohably two or three weeks age.

 - Q. Barry you discussed this case with him? A. No.

 - to Ach peet no wier gand! Stand Q.
 - A.
 - Q. Didn't like her?
 - Α. No, I like her
- You just said no like means you widn't like ٥. hex.

Do you heek up with signification the hospicale

- A. My -- my employees that with for me.
- Q. Okay
- 96 --
 - MP. HAMILTON: Why one ? we take about a

five-minute break. Ds. ms go over my unter and --

- MS. MILLER Suta
- AR. EAMILTON: -- ! them! I'm done.
- THE VIDEOGRAPHER. Off the record, 10:59
- (Recass from 10:50 $\rho(v)$ to 10.00 $\rho(v)$ THE VIDEOGRAPHED, Services on Section .
- 12:5€.

.:

• •

34

MR. HAMILTON: I'll pass the Withess.

EXAMINATION

Fage 119

BY MS. MILLER:

- Q. I've just got semething really quick for you.
- A. Okay.
- Q. A few minutes ago you had testified that you and Gragg Magers had a conversation and Gragg Magers had said -- had said something to you to the effect of why don't we try putting \$100,000 x week into the trust. Is that a fair statement.
 - A. Yeah, 100,000 a month.
 - Q. 100,800 a month?
 - A. Yes
- Q. Okey. And -- and during this time, during those openerations, was money still orming into the hospital.
- A. We -- we had money coming in, but not anough to do that and pay our payroll and expenses.
- Q. Okey. And so at that point, you were still keeping up with your payroll; in their correct?
 - A. Yes.

1.

1 4.

- Q. And you were still keeping up with your expenses:
 - A Tem

A. Yes, Yes.

Q. So is it we is it fair to may that we that there was money to fund the automath it was just being

diserted to pay other source -- other obligations?

MR. SANILTON: 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. Obsy.
 - A. -- any money to fund it.
- Q. Okay. But you would say that there was money coming into the hospital?
 - A. Yes.

16

1.5

12

.--

Poge 121

- 2. And that money was being test to pay accounts payable?
 - A. Tes.
 - Q. And payroll?
 - A. Yes.
 - Q. And so that money that was coming into the hospital, who -- who was making the object to jut itse money that was coming into the nospital towards accounts payable and payroll as opposed to justing it towards the funding of the insurance trusts
 - A. Gregg Magers.
- Q. Okay. So could Gragg Majers 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?

Cause No. C700100173

ME DRED FISHER

'S

IN THE DISTRICT COURT JOHNSON COUNTY, TEXAS

JOHN B. PAYNE, D.O., OSTBOPATHIC MEDICAL CENTER OF TEXAS, of al. Defendance

氢 ¥ 4 1134 TEDIÇIYT DESTATOL 至

AGREED JUDGMENT

On the _ dey of April 2007, falls cause came on to be tear 1. It was sun that an agreement had been resulted 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 Intervenors, Jackse Figher, Individually and as Administrative and Representative of the Briate of Johnny Fisher, Deceased, Houston Fitter and Johnny Fisher recover from the Defendant, Fort Worth Ostropethic Hespitel, Inc., c/b/a Osteopathic Medical Center of Texas the sum of Nine Hundred Seveny-Five Thousand and no/100 Dollars (\$915,000.00).

IT IS FURTHER ORDERED, ADAUDGED AND DECREED too the indement may be caforced only in accordance with bankruptey law, in Cause No. 05-41513-DML-7, styled "In Re-Fort Worth Osteopathic Hospital, Inc., Debtor", In the United Stress Brakruptcy Court for the Northern District of Texas. Fort Worth Division CLER

L'DGMENT

ACEMIFED COPY TO S DESTRUCTORY ATTEST OF THE TOTAL DAVIO IL LLC 10 District Clark, Johns

FINATKINS LIBRAR VICLIENT FILESMED MAINFILDE PLEADING

Pt. 2

M4/13/2027 18:48 8112613147

(4.55541.470

UFUSE SCOTT RENDERSO EIL ATKONS LAS

___ 2007

F## 43/64 196 (A

IT IS FUPTRES ORDERED, ADJE DEED AND DECEMBED datable control line Court we doesed against the party incurring hand

STONED By day cl____

IUDGE FRESIDING

State But No. 01.409000 Affine Law Phys 325 South Mescritz Screen P.O. Box 157

P.O. Sex 127
Arkington, T.Z. 261.0
Telegianer 3.2.7.261.534.6
Telegianer 3.2.7.261.534.6
Telegianer 3.2.7.261.334.7
Artomicy for Intervences, hotels Pither, in and a definition of the following the control of the Distance Tolking Fight, Decembed, Houston Fisher and Industry Fisher.

Varyus Chaffain;
Faus Bar McD6728300
Crisss Scritt Heiserton & Allen, T.L.P.
Attorney at Law
2777 Adian Passaray, 7º Finer
Facuston, Passar 77019-2127
Attorney for Definations, Total Listenace,
Sharon On, P.M., and Kares Con, F.M.,

oce ine Stratel 2.21.,

TUTI GMEN!

FOR THE STEER ALL YOU TEST FILE TO MAKE A MENT SHOP THE ALL DOCTOR APPEARED.

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

2 day of June

was sunst TUDGE PRESIDING

State Bar No. 01409000 Arkins Low Firm 325 South Mescuite Street P.O. Box 157 Arlington, TX 76010 Telephone: 817-261-3346 Teleopier: 817-261-3347

Attorney for Intervenera, Jackie Fisher, Individually and as Administratrix and Representative of the Estate of Johnny Pisher, Deceased. Pourton Fisher and Johnny Fisher

Warms Clewater State Bar No 04328500 Crusa, Scott, Henderson & Allm, L.L.P. Attorneys at Law 2777 Aller Parkway, 7^a Floor Houston, Texas 77019-2333 Attorney for Defendants, John Laurence, She Samuel, R.N., Sistion Ott, R.N., and Karen Cox, R.N.,

JUDGMENT.

FIGHTRINS LIBRARY CLIEFT FILES Med-Malvisher PLES DESCRIPTION Adapted in the Control of the Cont

TXHIBIT 10"

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	9 §	
NORRIS, RN, and NANCY ARGO, RN	§	
Defendants.	§ §	JOHNSON COUNTY, TEXAS

APPENDIX - PART 7

EXHIBIT O

Case No. C2000800560

ESTATE OF JOHNNY FISHER, DEC'D.

Plaintiff

VS.

*

413 FII 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 law suit, 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 Sandehn. Oversight and coordination of the plan was

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

C: Documents and Settings admin My Documents User Lifes off Desktop & Notebook Desktop ATKANS I BRARY-CLHENT FILES Med-Mal Fisher Lisher v Chase Bank Written Discovery Interrogatories Rsp Interr Argo,wod

30F 7

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 Af-Rsp Interr Argownd

Defendant, Argo, knew that The Hospital's CFO'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 \$900,000,000. 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 hability 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

A: Rsp Interr Argo,wpd

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 Defendam, 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 malpraetice lawsust. 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 Sci of Interrogatories, to Plaintiff

A: Rsp Interr Argo.wpd

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 charge 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.
- 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 A: Rsp Interr Argo wnd

- 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."
- 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."
- Ocrtified 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 refort 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 Bankruptey 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 AllRsp Interr Argowpd

- Certified copy of Transcript of Proceedings, Motion to Compromise Controversy, October 30, 2008. Before the Honorable D. Michael Lynn, United States Bankruptey 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
- 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
- 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, Dee'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.
- 21. Certified copy of Certificate of Death of Johnny Fisher

Plaintiff's Written Response to Defendan). Nancy Argo's First Set of Interrogatories, to Plaintiff A: Rsp Interr Argo wpd

- 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
- 24. Copy of Transcript of Hearing on Motion to Dismiss Adversary Proceeding, filed by Defendant, JPMorgan Chase Bank, NA, in Bankruptey 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 bankruptey 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)
- Copy of transcript of oral deposition of Jay Sandelin, taken February 13, 2008, in Case No. 05-41513-DML-7, styled "In Rev Fort Worth Osteopathic Hospital, Inc., Debtor", Adversary No. 07-4016, styled "Shavii K. Brown, Chapter 7, Trustee for Fort Worth

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories, to Plaintiff A: Rsp Interr Argowyd

- 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 Ostcopathic 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.
- 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 Ostcopathic 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.
- Copy of memo to Diana Winton Robert Lansford Office from Nancy Argo, dated January
 2000, regarding transfer of funds from self-insured trust fund.
- 38. Copy of letter from Susan F. 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 At Rsp Interr Argo,wpd

- 40. Copy of letter from Bruce I-dwards, 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 lingation.
- 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 fidwards 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, St. Vice President, Osteopathic Medical Center of

Plaintiff's Written Response to Defendant, Nancy Argo's First Sci 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.
- 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.
- 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.
- 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

- Business Minutes, January 18, 2000, Fort Worth Osteopathic Hospital, Inc., d.b.a.
 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.
- 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.

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 Plantiff'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 Interr Argo word

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, FWOH, and are not in the possession or control of Plaintiff. This response will be supplemented, as required.

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

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 acked
ATKINS LAW FIRM
325 South Mesquite Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346
(817) 261-3347 Fax
atkinslawfirm@asbcglobal.net

and

MACLEAN & BOULWARE

Attorneys at Law

11 Main Street

Cleburne, Texas 76033

(817)645/3700

(847)645-3788 Day

 B_{Y}

(T. L. (Ci.)

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

All Rsp Intern Argo, word

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, Administrator

SUBSCRIBED AND SWORN TO. BEFORE ME, the undersigned anthority, this [1] day of [1] day of [2011; to certify which, witness my hand and seal of authority.

Commission expires: 31/6/13

ISA MORROW

Notary Public

STATE OF TEXAS

AND CORRECT EXP. 03/16/2012

Plaintiff's Written Response to Defendant, Nancy Argo's First Set of Interrogatories to Plaintiff
At Rsp Interr Argowyd

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 Bonrland & Kirkman Attorneys 201 Main St. Suite 1400 Fort Worth, TX 76102 Attorneys for Nancy Argo and Gienn Milton, Defendants via CM RRR no. 7010 2780 0001 6034 6368

> _E-E: Arkitis John MacLean

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

C.Documents and Settings admin-My Documents User Files off Desktop & Notebook/Desktop A4KINS LIBRARY/CLIENT FILES Med-Mal Fisher Uisher v Chase Bank Written Discovery Interrogatorics 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 <u>directly</u> 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

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

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

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

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

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,

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

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, Sandlin 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

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."

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

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"

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

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

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

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.

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.

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

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

ATKINS LAW FIRM
325 South Mesquite Street
P.O. Box 157
Arlington, Texas 76010-0004
(817) 261-3346
(817) 261-3347 Fax
atkinslawfirm@sbcglobal.net

and

MACLEAN & BOULWARE

Attorneys at Law

11 Main Street

Cleburne, Texas 76033

(817)645**67**00

(817)645-3788 Fax

By:

È L. Atkins

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, Administrator

SUBSCRIBED AND SWORN TO, BEFORE ME, the undersigned authority, this 23 day of MUU, 2011; to certify which, witness my hand and seal of authority.



Natalistembridge Notary Public

CERTIFICATE OF SERVICE

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 6399

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 CMRRR no. 7010 2780 0001 6034 6405

William L. Kirkman
Susanna Johnson
Bourland & Kirkman
Attorneys
201 Main St.
Suite 1400
Fort Worth, TX 76102
Attorneys for Jay Sandelin and Glenn Milton, Defendants
via CM RRR no. 7010 2780 0001 6034 6412

v

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

Lain, Bonnie
Hamilton, Jeffrey
jhamilton@jw.com
00793886
Jackson Walker LLP - Dallas
901 Main St.
Suite 6000
Dallas, TX 75202
214-953-6000
214-953-5822
Hamilton, Jeffrey
·
jhamilton1
jhamilton@jw.com
00793886 Yes
165
Confirmation
Friday, June 24, 2011 2:25 PM
ED126J016373004
413th District Court
District
C200800560
Estate of Johnny Fisher, Dec'd v. J P Morgan Chase Bank, N.A., Glenn Milton, Jay Sandlin, Luci
Norris, Rn, and Nancy Argo, RN MOTION FOR JUDGMENT
No No
NO

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: ${\sf JPMCF} is her \textbf{Motion for Summary Judgment Johnson County Sui...}$ 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

Electronic Filing Manager	

Page 3 of 3

Document Description:

File Name:

Appendix Part 7.pdf

Document Description: