

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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In re : Case No. 99-40663
: :
YOUNGSTOWN OSTEOPATHIC : Chapter 11
HOSPITAL ASSOCIATION, : :
: : Judge: WILLIAM T. BODOH
Debtor. : :
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**MOTION FOR LEAVE TO RESPOND TO MOTION FOR ALLOWANCE
FILED BY THE OHIO NURSES ASSOCIATION**

Youngstown Osteopathic Hospital Association (“Debtor”), debtor and debtor in possession, hereby moves (the “Motion”) the Court for leave, until January 31, 2001, to respond to the *Motion for Allowance* filed by the Ohio Nurses Association. In support of this Motion, the Debtor states as follows:

1. On or about November 2, 2000, the Ohio Nurses Association (the “ONA”) filed its *Motion for Allowance* seeking entry of an order allowing certain “fringe benefits” purportedly due to certain of its members under the terms of a collective bargaining agreement between the ONA and the Debtor as chapter 11 administrative expenses.¹

2. As reflected in the Certificate of Service attached to the Motion for Allowance, the motion was not served on Debtor’s counsel, Benesch, Friedlander, Coplan & Aronoff LLP (“BFC&A”) by the ONA. Consequently, BFC&A did not become aware of the existence of the ONA’s motion until Monday, December 4, 2000.

¹ Although denominated a “motion”, the Motion for Allowance is in actuality a “Request for Payment of Administrative Expense” and, therefore, falls outside of the ambit of the Court’s rules governing “motion” practice, as administrative expense claims are generally not determined until necessary, i.e., at or about the time when distribution of estate assets will be made.

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3. The ONA's motion acknowledges that "[t]he exact amount of fringe benefits owed for each nurse . . . cannot be ascertained at this time." Similarly, the ONA states in the related Memorandum of Law in Support of Motion, that "[t]he amount needs to be determined by a review of the record between the Debtor and Counsel for ONA." Accordingly, granting the Debtor leave to respond will provide the Debtor and the ONA with time to review the Debtor's records and make a determination as to the amounts, if any, that may be due and owing to the ONA member claimants.

4. Moreover, although the ONA's motion speaks merely in terms of allowance of such claims as chapter 11 administrative expense priorities, the supporting memorandum of law requests that claims be "granted super-priority" or alternatively as chapter 11 administrative expenses. The ONA's request for "super-priority" status is premised on case law holding that the United States Court of Appeals for the Sixth Circuit in *In re Unimet Corporation*² established a super-priority in chapter 11 for claims arising under a collective bargaining agreement. An appeal on this issue is presently pending before the Sixth Circuit in *Youngstown Osteopathic Hospital Assoc. v. Teamsters Local Union No. 377, Health and Welfare Fund (In re: Youngstown Osteopathic Hospital Assoc.)*, docketed as Court of Appeals No. 00-4195. Thus, a ruling in this appeal could have a direct impact on the treatment to be afforded to the claims of the union's members in this chapter 11 case warranting a deferral of the ruling on the *Motion for Allowance* pending the decision by the Sixth Circuit in the appeal.

5. The ONA and its members will not be prejudiced by granting the Debtor leave to respond as, in any event, the additional time is necessary to determine the amount, if any, of the

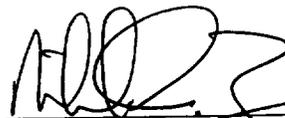
² 842 F.2d 879 (6th Cir.), *cert denied*, 109 S.Ct. 81 (1988).

union member's claims. Moreover, granting the Debtor leave is appropriate in light of the appeal presently pending before the Sixth Circuit regarding certain of the legal issues raised by the ONA in the Motion.

WHEREFORE, the Debtor respectfully requests (i) that it be granted leave, until January 31, 2001, to respond to the ONA's Motion for Allowance, (ii) that such leave be without prejudice to the Debtor's ability to seek further extensions of time to respond if the circumstances warrant, and (iii) for such other relief as may be appropriate in the circumstances.

Dated: Cleveland, Ohio
December 11, 2000

Respectfully submitted,

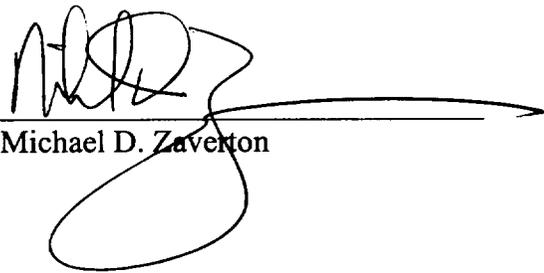


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion for Leave to Respond to Motion for Allowance Filed by The Ohio Nurses Association* was served by first class United States mail, postage prepaid, to all parties listed on Exhibit A attached hereto on the 11th day of December, 2000.



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EXHIBIT A

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