

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

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

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

**JURISDICTION**

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

**BACKGROUND**

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

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

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

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

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

### **PROPOSED COMPROMISE**

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

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

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

#### **RELIEF REQUESTED**

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

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

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

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

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

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

**THE COMPROMISE MEETS THE  
“FAIR AND REASONABLE” STANDARD**

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

**REQUEST FOR LIMITED NOTICE**

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

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<sup>4</sup> *Shugrue*, 165 B.R. at 122.

<sup>5</sup> *See, generally, Shugrue.*

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

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

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

Dated: April 17, 2001  
Cleveland, Ohio

Respectfully submitted:



---

Michael D. Zaverton (OBR # 0038597)  
BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP  
2300 BP Tower  
200 Public Square  
Cleveland, Ohio 44114  
(216) 363-4500

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

**CERTIFICATE OF SERVICE**

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

  
Michael D. Zaverton

## SERVICE LIST

Askounis & Borst, P.C.  
Attn: Thomas V. Askounis, Esq.  
303 East Wacker Drive  
Ninth Floor  
Chicago, IL 60601

Central States, Southeast and Southwest  
Areas Pension Fund  
Attn: Brad R. Berliner, Esq.  
P. O. Box 5123  
Des Plaines, IL 60017-5123

Fisher Scientific Company LLC  
Attn: Kate Getka, Credit Department  
2000 Park Lane Drive  
Pittsburgh, PA 15275-1126

Great-West Life & Annuity Ins. Co.  
Attn: Kelly S. Noble, Esq.  
8515 East Orchard Road, 7T2  
Englewood, CO 80111

Herzfeld & Rubin, P.C.  
Attn: Ira L. Herman, Esq.  
40 Wall Street  
New York, NY 10005

Kahn, Kleinman, Yanowitz & Arnsen  
Co., L.P.A.  
Attn: M. Colette Gibbons, Esq.  
2600 Tower at Erieview  
Cleveland, OH 44114-1824

Meyer, Unkovic & Scott, LLP  
Attn: Joel M. Helmrich, Esq.  
1300 Oliver Building  
Pittsburgh, PA 15222-2304

National City Bank-Bond Trustee  
Attn: Catherine Frug, Administrator  
101 West Washington Street  
Suite 655 South  
Indianapolis, IN 46255

PNC Bank, National Association  
PNC Capital Recovery Corp.  
Attn: Martin E. Mueller, Vice President  
249 Fifth Avenue-18th Floor  
Pittsburgh, PA 15222-2707

United States of America  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Attn: Stuart A. Treby, Esq., Asst. General  
Counsel for Rulemaking & Fuel Cycle  
Washington, D.C. 20555-0001

Burland & Associates, LLC  
Attn: Bradley D. Burland, Esq.  
23875 Commerce Park Road, Suite 105  
Beachwood, OH 44122

Cloppert, Portman, Sauter, et al.  
Attn: Frederick G. Cloppert, Esq.  
Ronald H. Snyder, Esq.  
225 East Broad Street  
Columbus, OH 43215

Charles W. Fonda, Esq.  
75 Public Square, Suite 730  
Cleveland, OH 44113

Harrington, Hoppe & Mitchell, Ltd.  
Attn: Frederick S. Coombs III, Esq.  
1200 Mahoning Bank Building  
Youngstown, OH 44503

Hewlett-Packard Company  
Attn: FCG-Recovery  
20 Perimeter Summit Blvd.  
Mailstop 507  
Atlanta, GA 30319

Luckhart, Mumaw, Zellers & Robinson  
Attn: Richard G. Zellers, Esq.  
3810 Starrs Centre Drive  
Canfield, OH 44406

Miller, Canfield, Paddock and Stone,  
P.L.C.  
Attn: Lori L. Purkey, Esq.  
444 West Michigan Avenue  
Kalamazoo, MI 49007

Ohio Bureau of Employment Services  
Attn: Jill A. Whitworth, Esq.,  
Assistant Attorney General  
Revenue Recovery Section  
101 E. Town Street, Second Floor  
Columbus, OH 43215

Thompson Hine & Flory LLP  
Attn: Richard K. Stovall, Esq.  
One Columbus  
10 West Broad Street  
Columbus, OH 43215-3435

United States Trustee  
Attn: Amy L. Good, Esq.  
BP Tower-20th Floor  
200 Public Square, Suite 3300  
Cleveland, OH 44114

Central States, Southeast and Southwest  
Areas Pension Fund--Legal Dept.  
Attn: Brad R. Berliner, Esq.  
9377 West Higgins Road  
Rosemont, IL 60018-4938

Dubin, Joseph & Shagrin  
Attn: Michael B. Shagrin, Esq.  
75 Public Square, Suite 650  
Cleveland, OH 44113

Friedman & Rummell Co., L.P.A.  
Attn: Carl D. Raforth, Esq.  
300 City Centre One  
Youngstown, OH 44503-1810

Henderson, Covington, Messenger,  
Newman & Thomas Co., L.P.A.  
Attn: Richard J. Thomas, Esq.  
Jerry M. Bryan, Esq.  
34 Federal Plaza West, #600  
Youngstown, OH 44503  
Internal Revenue Service  
Dept. of Treasury  
Attn: Antoinette Ruminski,  
Insolvency Specialist  
P. O. Box 99183  
Cleveland, OH 44199

Manchester, Bennett, Powers & Ullman  
Attn: James W. Ehrman, Esq.  
201 East Commerce Street  
Youngstown, OH 44503-1641

Nadler, Nadler & Burdman Co., L.P.A.  
Attn: Michael A. Gallo, Esq.  
20 Federal Plaza West, Suite 600  
Youngstown, OH 44503-1559

Ohio University  
Attn: Charles F. Glander, Esq., Assistant  
Director  
Office of Legal Affairs  
10 E. Union Street  
Akron, OH 45701  
Thompson Hine & Flory LLP  
Attn: Robert C. Folland, Esq.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

Vorys, Sater, Seymour & Pease LLP  
Attn: Robert J. Sidman, Esq.  
52 East Gay Street  
P. O. Box 1008  
Columbus, OH 43216-1008

Weltman, Weinberg & Reis Co., L.P.A.  
Attn: Alan C. Hochheiser, Esq.  
Lakeside Place, Suite 200  
323 Lakeside Avenue, West  
Cleveland, OH 44113-1099

Youngstown Osteopathic Hospital Assoc.  
Attn: Joseph R. Mortellaro Jr.  
1319 Florencedale Avenue  
Youngstown, OH 44505

Kegler, Brown, Hill & Ritter  
A Legal Professional Association  
Attn: Larry J. McClatchey  
65 East State Street  
Suite 1800  
Columbus, OH 43215

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

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

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

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

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

Dated: Cleveland, Ohio  
April 17, 2001

Respectfully submitted,



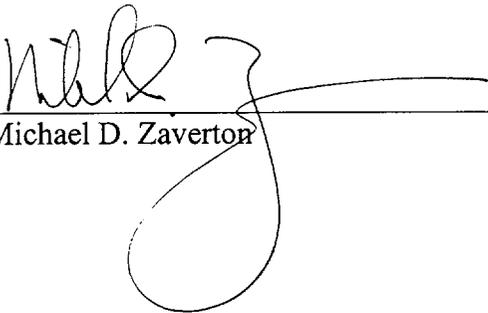
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Michael D. Zaverton (OBR #0038597)  
BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP  
2300 BF Tower  
200 Public Square  
Cleveland, Ohio 44114-2738  
(216) 363-4500

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

**CERTIFICATE OF SERVICE**

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

  
Michael D. Zaverton

## SERVICE LIST

Askounis & Borst, P.C.  
Attn: Thomas V. Askounis, Esq.  
303 East Wacker Drive  
Ninth Floor  
Chicago, IL 60601

Central States, Southeast and Southwest  
Areas Pension Fund  
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1300 Oliver Building  
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1200 Mahoning Bank Building  
Youngstown, OH 44503

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20 Perimeter Summit Blvd.  
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Assistant Attorney General  
Revenue Recovery Section  
101 E. Town Street, Second Floor  
Columbus, OH 43215

Thompson Hine & Flory LLP  
Attn: Richard K. Stovall, Esq.  
One Columbus  
10 West Broad Street  
Columbus, OH 43215-3435

United States Trustee  
Attn: Amy L. Good, Esq.  
BP Tower-20th Floor  
200 Public Square, Suite 3300  
Cleveland, OH 44114

Central States, Southeast and Southwest  
Areas Pension Fund--Legal Dept.  
Attn: Brad R. Berliner, Esq.  
9377 West Higgins Road  
Rosemont, IL 60018-4938

Dubin, Joseph & Shagrin  
Attn: Michael B. Shagrin, Esq.  
75 Public Square, Suite 650  
Cleveland, OH 44113

Friedman & Rummell Co., L.P.A.  
Attn: Carl D. Raforth, Esq.  
300 City Centre One  
Youngstown, OH 44503-1810

Henderson, Covington, Messenger,  
Newman & Thomas Co., L.P.A.  
Attn: Richard J. Thomas, Esq.  
Jerry M. Bryan, Esq.  
34 Federal Plaza West, #600  
Youngstown, OH 44503

Internal Revenue Service  
Dept. of Treasury  
Attn: Antoinette Ruminski,  
Insolvency Specialist  
P. O. Box 99183  
Cleveland, OH 44199

Manchester, Bennett, Powers & Ullman  
Attn: James W. Ehrman, Esq.  
201 East Commerce Street  
Youngstown, OH 44503-1641

Nadler, Nadler & Burdman Co., L.P.A.  
Attn: Michael A. Gallo, Esq.  
20 Federal Plaza West, Suite 600  
Youngstown, OH 44503-1559

Ohio University  
Attn: Charles F. Glander, Esq., Assistant  
Director  
Office of Legal Affairs  
10 E. Union Street  
Akron, OH 45701  
Thompson Hine & Flory LLP  
Attn: Robert C. Folland, Esq.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

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Attn: Robert J. Sidman, Esq.  
52 East Gay Street  
P. O. Box 1008  
Columbus, OH 43216-1008

Welman, Weinberg & Reis Co., L.P.A.  
Attn: Alan C. Hochheiser, Esq.  
Lakeside Place, Suite 200  
323 Lakeside Avenue, West  
Cleveland, OH 44113-1099

Teamsters Local No. 377  
Health and Welfare Fund  
1223 Teamsters Drive  
(Downstairs Office)  
Youngstown, Ohio 44502

Youngstown Osteopathic Hospital Assoc.  
Attn: Joseph R. Mortellaro Jr.  
1319 Florencedale Avenue  
Youngstown, OH 44505

Kegler, Brown, Hill & Ritter  
A Legal Professional Association  
Attn: Larry J. McClatchey  
65 East State Street  
Suite 1800  
Columbus, OH 43215

Green, Haines, Sgambati, Murphy &  
Macala Co., L.P.A.  
Attn: Dennis Haines, Esq.  
National City Bank Building, Suite 400  
Youngstown, Ohio 44501

April 17, 2001 12:51pm—lsc  
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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

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

**JURISDICTION**

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

**BACKGROUND**

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

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

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

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

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

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

### **PROPOSED COMPROMISE**

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

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

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

## RELIEF REQUESTED

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

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

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

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

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

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

<sup>4</sup> *Shugrue*, 165 B.R. at 122.

<sup>5</sup> *See, generally, Shugrue.*

**THE COMPROMISE MEETS THE  
“FAIR AND REASONABLE” STANDARD**

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

**REQUEST FOR LIMITED NOTICE**

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

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

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

Dated: April 17, 2001  
Cleveland, Ohio

Respectfully submitted:

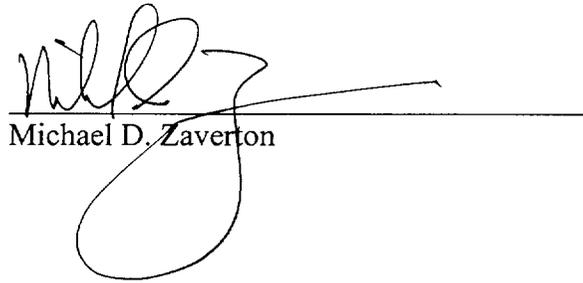


Michael D. Zaveron (OBR # 0038597)  
BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP  
2300 BP Tower  
200 Public Square  
Cleveland, Ohio 44114  
(216) 363-4500

Attorneys for Youngstown Osteopathic  
Hospital, Debtor and Debtor in  
Possession

**CERTIFICATE OF SERVICE**

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

  
Michael D. Zaverton

**SERVICE LIST**

Askounis & Borst, P.C.  
Attn: Thomas V. Askounis, Esq.  
303 East Wacker Drive  
Ninth Floor  
Chicago, IL 60601

Central States, Southeast and Southwest  
Areas Pension Fund  
Attn: Brad R. Berliner, Esq.  
P. O. Box 5123  
Des Plaines, IL 60017-5123

Fisher Scientific Company LLC  
Attn: Kate Getka, Credit Department  
2000 Park Lane Drive  
Pittsburgh, PA 15275-1126

Great-West Life & Annuity Ins. Co.  
Attn: Kelly S. Noble, Esq.  
8515 East Orchard Road, 7T2  
Englewood, CO 80111

Herzfeld & Rubin, P.C.  
Attn: Ira L. Herman, Esq.  
40 Wall Street  
New York, NY 10005

Kahn, Kleinman, Yanowitz & Arnsen  
Co., L.P.A.  
Attn: M. Colette Gibbons, Esq.  
2600 Tower at Erieview  
Cleveland, OH 44114-1824

Meyer, Unkovic & Scott, LLP  
Attn: Joel M. Helmrich, Esq.  
1300 Oliver Building  
Pittsburgh, PA 15222-2304

National City Bank-Bond Trustee  
Attn: Catherine Frug, Administrator  
101 West Washington Street  
Suite 655 South  
Indianapolis, IN 46255

PNC Bank, National Association  
PNC Capital Recovery Corp.  
Attn: Martin E. Mueller, Vice President  
249 Fifth Avenue-18th Floor  
Pittsburgh, PA 15222-2707

United States of America  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Attn: Stuart A. Treby, Esq., Asst. General  
Counsel for Rulemaking & Fuel Cycle  
Washington, D.C. 20555-0001

Burland & Associates, LLC  
Attn: Bradley D. Burland, Esq.  
23875 Commerce Park Road, Suite 105  
Beachwood, OH 44122

Cloppert, Portman, Sauter, et al.  
Attn: Frederick G. Cloppert, Esq.  
Ronald H. Snyder, Esq.  
225 East Broad Street  
Columbus, OH 43215

Charles W. Fonda, Esq.  
75 Public Square, Suite 730  
Cleveland, OH 44113

Harrington, Hoppe & Mitchell, Ltd.  
Attn: Frederick S. Coombs III, Esq.  
1200 Mahoning Bank Building  
Youngstown, OH 44503

Hewlett-Packard Company  
Attn: FCG-Recovery  
20 Perimeter Summit Blvd.  
Mailstop 507  
Atlanta, GA 30319

Luckhart, Mumaw, Zellers & Robinson  
Attn: Richard G. Zellers, Esq.  
3810 Starrs Centre Drive  
Canfield, OH 44406

Miller, Canfield, Paddock and Stone,  
P.L.C.  
Attn: Lori L. Purkey, Esq.  
444 West Michigan Avenue  
Kalamazoo, MI 49007

Ohio Bureau of Employment Services  
Attn: Jill A. Whitworth, Esq.,  
Assistant Attorney General  
Revenue Recovery Section  
101 E. Town Street, Second Floor  
Columbus, OH 43215

Thompson Hine & Flory LLP  
Attn: Richard K. Stovall, Esq.  
One Columbus  
10 West Broad Street  
Columbus, OH 43215-3435

United States Trustee  
Attn: Amy L. Good, Esq.  
BP Tower-20th Floor  
200 Public Square, Suite 3300  
Cleveland, OH 44114

Central States, Southeast and Southwest  
Areas Pension Fund--Legal Dept.  
Attn: Brad R. Berliner, Esq.  
9377 West Higgins Road  
Rosemont, IL 60018-4938

Dubin, Joseph & Shagrin  
Attn: Michael B. Shagrin, Esq.  
75 Public Square, Suite 650  
Cleveland, OH 44113

Friedman & Rummell Co., L.P.A.  
Attn: Carl D. Raforth, Esq.  
300 City Centre One  
Youngstown, OH 44503-1810

Henderson, Covington, Messenger,  
Newman & Thomas Co., L.P.A.  
Attn: Richard J. Thomas, Esq.  
Jerry M. Bryan, Esq.  
34 Federal Plaza West, #600  
Youngstown, OH 44503  
Internal Revenue Service  
Dept. of Treasury  
Attn: Antoinette Ruminski,  
Insolvency Specialist  
P. O. Box 99183  
Cleveland, OH 44199

Manchester, Bennett, Powers & Ullman  
Attn: James W. Ehrman, Esq.  
201 East Commerce Street  
Youngstown, OH 44503-1641

Nadler, Nadler & Burdman Co., L.P.A.  
Attn: Michael A. Gallo, Esq.  
20 Federal Plaza West, Suite 600  
Youngstown, OH 44503-1559

Ohio University  
Attn: Charles F. Glander, Esq., Assistant  
Director  
Office of Legal Affairs  
10 E. Union Street  
Akron, OH 45701  
Thompson Hine & Flory LLP  
Attn: Robert C. Folland, Esq.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

Vorys, Sater, Seymour & Pease LLP  
Attn: Robert J. Sidman, Esq.  
52 East Gay Street  
P. O. Box 1008  
Columbus, OH 43216-1008

Weltman, Weinberg & Reis Co., L.P.A.  
Attn: Alan C. Hochheiser, Esq.  
Lakeside Place, Suite 200  
323 Lakeside Avenue, West  
Cleveland, OH 44113-1099

Youngstown Osteopathic Hospital Assoc.  
Attn: Joseph R. Mortellaro Jr.  
1319 Florencedale Avenue  
Youngstown, OH 44505

Green, Haines, Sgambati, Murphy &  
Macala Co., L.P.A.  
Attn: Dennis Haines, Esq.  
National City Bank Building, Suite 400  
Youngstown, Ohio 44501

Teamsters Local No. 377  
Health and Welfare Fund  
1223 Teamsters Drive  
(Downstairs Office)  
Youngstown, Ohio 44502

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