

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
PRIMARY HEALTH SYSTEMS, INC.,)
PHS CLEVELAND, INC.,) Case No. 99-615 (MFW)
PHS PHYSICIAN MANAGEMENT OF)
OHIO, INC., PHS MT. SINAI, INC.,)
PRIMARY HEALTH SYSTEMS OF)
OHIO, L.P., PHS ST. ALEXIS, INC.,) Jointly Administered
PHS LAURELWOOD, INC.,)
PHS ROXBOROUGH, INC., and)
LOWER BUCKS, INC.,)
Debtors.)
Objection Deadline: October 23, 2001 at 4:00 p.m.
Hearing Date: Only if Objections are filed

NOTICE OF STIPULATION

TO: Neil B. Glassman
(Committee Counsel)

Richard A. Schepacarter
(U.S. Trustee)

Patricia P. McGonigle
(Counsel to Plaintiff)

All parties requesting notice pursuant to
Rule 2002

PLEASE TAKE NOTICE that Jocelyn Green, and PHS St. Michael Hospital, et al., have filed a **Stipulation, Agreement And Order Granting Relief From The Automatic Stay To Pursue Litigation.**

Objections to the attached Stipulation must be filed on or before **October 23, 2001 at 4:00 p.m.**

At the same time, you must also serve a copy of the response upon Debtors' Counsel:

Brendan Linehan Shannon, Esquire
Edward J. Kosmowski, Esquire
Young Conaway Stargatt & Taylor, LLP
1100 North Market Street
Wilmington Trust Center
Wilmington DE, 19899

James P. Ricciardi, Esquire
Craig A. Bruens, Esquire
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200 Park Avenue
New York, NY 10166

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY APPROVE THE STIPULATION WITHOUT FURTHER NOTICE OR HEARING.

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IF OBJECTIONS ARE TIMELY FILED AND SERVED A HEARING WILL BE SCHEDULED AT THE CONVENIENCE OF THE COURT. ONLY OBJECTIONS WHICH HAVE BEEN TIMELY FILED AND SERVED WILL BE CONSIDERED AT SUCH A HEARING.

YOUNG CONAWAY STARGATT & TAYLOR LLP



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New York, New York 10166
(212) 351-4000

Co-Counsel to the Debtors and Debtors in Possession

Date: October 8, 2001

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	Chapter 11
)	
PRIMARY HEALTH SYSTEMS, INC.,)	Case No. 99-615 (MFW)
PHS CLEVELAND, INC.,)	
PHS PHYSICIAN MANAGEMENT OF OHIO, INC.,)	(Jointly Administered)
PHS MT. SINAI, INC.,)	
PRIMARY HEALTH SYSTEMS OF OHIO, L.P.,)	
PHS ST. ALEXIS, INC.,)	
PHS LAURELWOOD, INC.,)	
PHS ROXBOROUGH, INC., and)	
LOWER BUCKS, INC.,)	
)	
Debtors.)	
)	

**STIPULATION, AGREEMENT AND ORDER GRANTING RELIEF
FROM THE AUTOMATIC STAY TO PURSUE LITIGATION**

Recitals

- A. On March 17, 1999 (the "Commencement Date"), Primary Health Systems of Ohio, L.P. (hereinafter, "PHS") and certain of its affiliates (collectively, the "Debtors") each commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").
- B. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their properties as debtors in possession.
- C. Prior to the Commencement Date, Jocelyn Green (the "Plaintiff") commenced an action in the Court of Common Pleas for Cuyahoga County, Ohio against, among others, St. Michael's Hospital c/o Primary Health Systems, styled *Jocelyn Green v. St. Michael Hospital, et al.*, and bearing index number 375192 (the "State Court Action"), arising out of a personal injury

(the "Malpractice Claim") allegedly caused by St. Michael Hospital prior to the Commencement Date.

D. At all times relevant to the Malpractice Claim, PHS owned and operated St. Michael's Hospital. PHS's liability, if any, to the Plaintiff with respect to the Malpractice Claim is covered by liability insurance maintained with American International Group, Inc. ("AIG"), which insurance is not subject to any deductible or self-insured retention payable by the Debtors.

E. Upon the commencement of the Debtors' chapter 11 cases, the commencement of any action relating to, and any attempt to collect, the Malpractice Claim, including, but not limited to, the State Court Action, was stayed under section 362(a) of the Bankruptcy Code (the "Automatic Stay").

F. On June 10, 1999, the Court entered an order (the "Bar Order") that requires any entity asserting a contingent, unliquidated or disputed claim against the Debtors that arose prior to the Commencement Date to file a proof of claim on or before July 30, 1999 (the "Bar Date"). The Bar Order provides that any entity required to file a proof of claim that fails to file a proof of claim on or before the Bar Date is forever barred from asserting the claim against the Debtors or their property.

G. The Debtors' records indicate that the Plaintiff was served with notice, by mail and by publication, of the Bar Order and did not timely file a proof of claim against PHS or any of the other Debtors as required by the Bar Order.

H. The Plaintiff seeks, and PHS is willing to consent to, subject to this Court's approval, an extension of time for the Plaintiff to file a proof of claim so as not to be barred under the Bar Order from asserting the Malpractice Claim against the Debtors, and the modification of the Automatic Stay, on the terms and subject to the conditions set forth herein, so as to allow the

commencement and prosecution of the State Court Action with respect to the Malpractice Claim against PHS to settlement or judgment and to collect any settlement or judgment obtained solely from PHS's insurer.

Stipulation and Agreement

1. *Extension of Time for the Plaintiff to File a Proof of Claim.* The Bar Date shall be extended to the date of approval of this Stipulation and Agreement with respect to the Plaintiff so that the Malpractice Claim is not barred under the Bar Order. Furthermore, the Plaintiff shall be deemed to have filed a sufficient proof of claim for the Malpractice Claim and to have waived and relinquished such claim as against the Debtors' estates as provided in paragraph 3 herein.

2. *Modification of Automatic Stay.* Upon the approval of this Stipulation and Agreement by the Court, the Automatic Stay shall be modified solely to the extent of permitting the Plaintiff to (a) commence and prosecute to settlement or judgment the State Court Action against PHS with respect to the Malpractice Claim, and any subsequent appeals or writs of review taken by any of the parties thereto, solely for the purpose of determining the liability and damages, if any, of PHS with respect to the Malpractice Claim and (b) collect any such settlement or judgment solely from the proceeds of PHS's insurance policy with AIG to the full extent of the judgment or settlement as may be available under the policy; provided that the Plaintiff agrees to permit PHS to respond, if necessary, with all rights and remedies under applicable state law, to the State Court Action as if PHS was first served with the summons and complaint as of the date this Stipulation and Agreement is approved by the Court.

3. *Waiver of Claims Against Estates.* The Plaintiff hereby waives and relinquishes any claim that the Plaintiff ever had, now has, or hereafter can, shall or may have against the assets or properties of the Debtors' estates, without prejudice to the Plaintiff's recovery, if any, from the Debtors' insurer by way of compromise and settlement or judgment or otherwise, provided that

such recovery is not made from the assets or properties of the Debtors and would not result in any cost to the Debtors.

4. *Scope of Stay Relief.* Except to the extent expressly set forth in paragraph 2 hereof, the provisions of section 362 of the Bankruptcy Code, including, without limitation, those provisions prohibiting execution, enforcement or collection of any judgment that may be obtained against PHS from and against any assets or properties of the Debtors' estates (as defined in section 541 of the Bankruptcy Code), shall remain in full force and effect, and neither the Plaintiff nor any of the Plaintiff's agents, attorneys or representatives shall take any action or attempt to cause any action to be taken to collect all or any portion of any such judgment from the assets or properties of the Debtors' estates, without prejudice to the Plaintiff's recovery, if any, from the Debtors' insurer by way of compromise and settlement or otherwise, provided that such recovery is not made from the assets or properties of the Debtors and would not result in any cost to the Debtors. Nothing contained herein shall constitute or operate as a waiver or modification of the Automatic Stay so as to permit the prosecution against any of the Debtors of any claims by any person or entity other than the Plaintiff with respect to the Malpractice Claim.

5. *Authority.* The attorney for the Plaintiff represents and warrants that the Plaintiff has full knowledge of and has consented to this Stipulation and Agreement and that the attorney for the Plaintiff has full authority to execute this Stipulation and Agreement on behalf of the Plaintiff.

6. *Bankruptcy Court Approval.* This Stipulation and Agreement is subject to the approval of the Court and shall be of no force and effect unless and until an order approving the same has been entered. If this Stipulation and Agreement is not approved by the Court, it shall

be null and void and shall not be referred to or used for any purpose by any of the parties hereto or any of the parties to the State Court Action except as to this paragraph.

7. *Reservation of Rights, Claims and Defenses.* Except as expressly provided for herein, the parties reserve all of their respective rights, claims and defenses.

8. *Modification of Stipulation.* This Stipulation and Agreement may be not be amended orally.

Dated: October __, 2001

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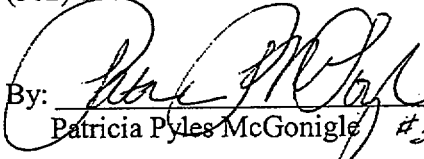
By: 
Brendan Linehan Shannon

- and -

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By: 
Patricia Pyles McGonigle #3126

Counsel for the Plaintiff

SO ORDERED this ____ day of _____ 2001:

Honorable Mary F. Walrath
United States Bankruptcy Judge

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