

File a Motion:

99-00615-MFW PRIMARY HEALTH SYSTEMS, INC.

Notice of Electronic Filing

The following transaction was received from Kosmowski, Edward J. entered on 9/10/2002 at 3:39 PM EDT and filed on 9/10/2002

Case Name: PRIMARY HEALTH SYSTEMS, INC.
Case Number: 99-00615-MFW
Document Number: 1894

Docket Text:

Stipulation *Stipulation, Agreement and Order Granting Relief From the Automatic Stay to Pursue Litigation* By PRIMARY HEALTH SYSTEMS, INC. and Between Willie Calhoun Filed by PRIMARY HEALTH SYSTEMS, INC.. Objections due by 9/25/2002. (Attachments: # (1) Notice # (2) Proposed Form of Order # (3) Affidavit of Service) (Kosmowski, Edward)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:N:/Bankruptcy/Arundel/Primary/910 Stipulation.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=9/10/2002] [FileNumber=926539-0] [2c1459280ace10111aa42700ddff7a14875c029da96ab0c1d00537aef5c183796ce99e3b96f5d7cc6ae123718f04d223c99ab92af23decc684ba8846461fe2]]

Document description:Notice

Original filename:N:/Bankruptcy/Arundel/Primary/910 Stip Notice.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=9/10/2002] [FileNumber=926539-1] [027f1dd5b49a5e8035e5622b7346a88e09ca0cd9628984df5525bb8ad4d600b1dbccc f50a41fd3d9fa55aa929278f517de5c81b54385ebb362e1181666d3eb2c]]

Document description:Proposed Form of Order

Original filename:N:/Bankruptcy/Arundel/Primary/910 Stip Order.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=9/10/2002] [FileNumber=926539-2] [743a2ce16fb7c60c3b2a8f70dca8661c9fed1328f62a95cb4e56a6f6b22bdd745981cb113502e3c5acf495e8f2356b65a6413ebcf5008a9925765ac8483eae]]

Document description: Affidavit of Service

Original filename:N:/Bankruptcy/Arundel/Primary/910 stip Affidavit.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=9/10/2002] [FileNumber=926539-3] [90ecb3a34e37211d6bda82a5e910ee84864e9f65e7c4dc1560ba7e48ffd2477c4ecc590db0ea1777a0ab7b0e1d4015e4f07495b06f10880fc5b704f2e90e486d]]

99-00615-MFW Notice will be electronically mailed to:

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CFIDS 06C01

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.,	)	Objection Deadline: September 25, 2002 at 4:00 p.m.
	)	Hearing Date: Only if Objections are filed
Debtors.)	

NOTICE OF STIPULATION

TO: Counsel to Committee	Office of the United States Trustee for the District of Delaware
Gerald F. Cooper (Counsel to Plaintiffs)	All parties requesting notice pursuant to Rule 2002

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (the "Debtors") have filed a **Stipulation, Agreement and Order Granting Relief from the Automatic Stay to Pursue Litigation** (the "Stipulation").

Responses to the Stipulation, if any, must be filed on or before **September 25, 2002 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 5th Floor, 824 Market Street, Wilmington, Delaware 19801.

At the same time, you must also file and serve a copy of the response upon the undersigned counsel to the Debtors so that the response is received on or before the Objection Deadline.

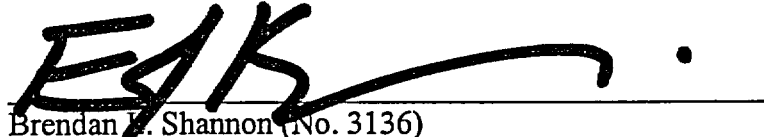
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200 Park Avenue
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IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY APPROVE THE STIPULATION WITHOUT FURTHER NOTICE OR HEARING.

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

A large, bold, handwritten signature in black ink, appearing to read 'EJK', is written over a horizontal line.

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Co-Counsel to the Debtors and Debtors in Possession

Date: September 10, 2002

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"), PHS Mt. Sinai, Inc. (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. Subsequent to the Commencement Date, on March 24, 2000, Willie Calhoun and Althea Calhoun (collectively, the "Plaintiffs") commenced an action in the Court of Common Pleas for Cuyahoga County against, among others, PHS and the Mt. Sinai Medical Center, styled *Willie Calhoun, et al. v. Mt. Sinai Medical Center, et al.*, and bearing index number 404628 (the

"State Court Action"), arising out of a personal injury allegedly caused by the Mt. Sinai Medical Center during the chapter 11 cases (the "Malpractice Claim").

D. At the time relevant to the Malpractice Claim, PHS owned and operated the Mt. Sinai Medical Center. PHS's liability, if any, to the Plaintiff with respect to the Malpractice Claim is covered by liability insurance maintained with OHIC Insurance Company 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. The Plaintiffs seek, and PHS is willing to consent to, 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 against PHS to settlement or judgment and to collect any settlement or judgment obtained solely from PHS's insurer.

Stipulation and Agreement

1. *Modification of Automatic Stay.* Upon the approval of this Stipulation and Agreement by the Court, the Automatic Stay shall be modified, nunc pro tunc to March 24, 2000, solely to the extent of permitting the Plaintiffs 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 OHIC Insurance Company the full extent of the judgment or settlement as may be

available under the policy; provided that the Plaintiffs agree 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.

2. *Waiver of Claims Against Estates.* The Plaintiffs hereby waive and relinquish any claims that each 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 Plaintiffs' 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.

3. *Scope of Stay Relief.* Except to the extent expressly set forth in paragraph 1 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 Plaintiffs nor any of their 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 Plaintiffs' 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 Plaintiffs with respect to the State Court Action.

4. *Authority.* The attorney for the Plaintiffs represent and warrant that the Plaintiffs have full knowledge of and have consented to this Stipulation and Agreement and that he has full authority to execute this Stipulation and Agreement on behalf of the Plaintiffs.

5. *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.

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

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

Dated: November 21, 2000

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By: 

Gerald F. Cooper

Counsel for the Plaintiffs

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.,)
) Ref. Docket No. _____
Debtors.)

**ORDER PURSUANT TO 11 U.S.C. § 362 OF THE
BANKRUPTCY CODE APPROVING STIPULATION
GRANTING RELIEF FROM THE AUTOMATIC STAY**

Upon the stipulation (the "Stipulation") by and between the above-captioned Debtors and Plaintiffs¹ for entry of an order granting Plaintiffs relief from the automatic stay regarding the Action, it is hereby

ORDERED that the Stipulation is approved; and it is further

ORDERED that this Court shall retain jurisdiction over all matters relating to this Order and the Stipulation.

Dated: Wilmington, Delaware
_____, 2002

Mary F. Walrath
United States Bankruptcy Judge

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

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 SHEALTH SYSTEMS OF)	
OHIO, L.P., PHS ST. ALEXIS, INC.,	)	Jointly Administered
PHS LAURELWOOD, INC.,)	
PHS ROXBOROUGH, INC., and)	
LOWER BUCKS, INC.,)	
)	
Debtors.)	

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Elizabeth Anne Arundel, employed by the law firm of Young Conaway Stargatt & Taylor, LLP, attorneys for Primary Health Systems, Inc., et al., in the within captioned matter, being duly sworn according to law, deposes and says that on the 10th day of September, 2002, a copy of the following document(s):

**Stipulation, Agreement and Order Granting
Relief from the Automatic Stay to Pursue Litigation**

was caused to be served upon the parties identified on the attached service list as indicated.

Elizabeth Anne Arundel
Elizabeth Anne Arundel

SWORN TO AND SUBSCRIBED before me this 10th day of September, 2002.

Debbie Laskin
Notary Public

DEBBIE E. LASKIN
Notary Public - State of Delaware
My Comm. Expires Dec. 21, 2004

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