

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re

OTERO COUNTY HOSPITAL  
ASSOCIATION, INC. (d/b/a Gerald  
Champion Regional Medical Center d/b/a  
Mountain View Catering),

Debtor.

No. 11-11-13686-JA

**NON-MATERIAL MODIFICATION OF THIRD AMENDED CHAPTER 11 PLAN OF  
REORGANIZATION FOR OTERO COUNTY HOSPITAL ASSOCIATION, INC.,  
DATED JUNE 20, 2012, TO RESOLVE THE EAST CLAIM**

Otero County Hospital Association, Inc. (the “Debtor”) hereby files this *Non-Material Modification of Third Amended Chapter 11 Plan of Reorganization of Otero County Hospital Association, Inc., Dated June 20, 2012, to Resolve the East Claim* (the “Modification Document”) and hereby represents as follows:

**RECITALS**

WHEREAS on August 16, 2011 (the “Petition Date”), the Debtor filed its voluntary petition (the “Petition”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned chapter 11 case (the “Chapter 11 Case”);

WHEREAS the Debtor continues to manage and operate its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on December 20, 2011, Sandra J. East, both individually and as personal representative of the estate of Stanley B. East, deceased (“East”), filed proof of claim number 262 in the amount of \$2.5 million (the “East Proof of Claim”) alleging that the Debtor was responsible for the wrongful death of Stanley B. East;



WHEREAS, the Debtor has filed its *Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.*, dated June 20, 2012 [Docket No. 591] (the “Plan”), which classifies the claims asserted by East pursuant to the East Proof of Claim in Class 5—Trust Personal Injury Claims. The claims of the United Tort Claimants (as defined in the Plan) are also classified in Class 5—Trust Personal Injury Claims;

WHEREAS, East disputes that her claims are properly classified, objects to her treatment as a member of Class 5—Trust Personal Injury Claims, and otherwise opposes the Plan;

WHEREAS, the Debtor, East and the United Tort Claimants have conducted arm’s-length negotiations to resolve the objections of East to the Plan and, as a result of such negotiations, have reached a settlement that resolves East’s objections to the Plan (the “East Settlement”) and will lead to a consensual confirmation process with respect to East;

WHEREAS, in order to implement such settlement, it is necessary to make the non-material modifications to the Plan set forth in this Modification Document;

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Debtor hereby files this Modification Document, which makes non-material modifications to the Plan to implement the East Settlement:

#### **MODIFICATIONS TO THE PLAN**

1. The Plan is modified as follows:

(a) Exhibit A to the Plan is modified by adding the following defined terms thereto in alphabetical order:

“East” means Sandra J. East, both individually and as personal representative of the estate of Stanley B. East, deceased.

“East Claim” means the Claim evidenced by the East Proof of Claim.

“East Payment” means a payment of \$90,000 to be made on the Effective Date by the Personal Injury Trust to East pursuant to the Plan.

“East Proof of Claim” means the proof of claim filed by East against the Debtor on December 20, 2011, reflected as Claim No. 262 on the claims register maintained in this Chapter 11 Case.

“Quantum” means Quantum Healthcare Medical Associates, Inc., a California professional corporation.

“Quantum Agreement” means the Emergency Services Agreement effective as of July 17, 2002 between the Debtor and Quantum, as amended from time to time.

“Quantum Indemnity Rights” means the Debtor’s indemnification rights against Quantum, whether under the Quantum Agreement or any other applicable law, including, without limitation, New Mexico state law.

(b) Exhibit A to the Plan is hereby modified by striking clause (a) of the definition of “Allowed” and inserting the following in its place:

“(a) with respect to any Claim, except for a Claim that is an Administrative Claim, a Letter of Credit Claim, or a Trust Personal Injury Claim, means such Claim to the extent it is not a Contested Claim or a Disallowed Claim; except, that the East Claim shall be deemed Allowed on the Effective Date as otherwise provided in the Plan.”

(c) Exhibit A to the Plan is modified by striking the definition of “Other Personal Injury Claims” and inserting the following in its place:

““Other Personal Injury Claims’ means all Claims against the Debtor, whenever arising, sounding in tort for personal injury and/or malpractice, including, without limitation, physical and economic injuries resulting from or related to medical care provided by the Debtor or any of its employees or associated physicians, whether or not a proof of claim with respect to any such Claims was filed, except for (a) any such Claim held by a Person who has agreed to limit its recoveries to available insurance; (b) the Trust Personal Injury Claims; and (c) the East Claim.”

(d) Exhibit A to the Plan is modified by striking the definition of “Unsecured Claim” and inserting the following in its place:

““Unsecured Claim’ means any Claim against the Debtor other than an Administrative Claim, the Robins & Morton Claim, a Priority Claim, a Tax Claim, a Secured Claim, a Trust Personal Injury Claim, the East Claim, a Non-QHR Reimbursement, Contribution and Indemnity Claim, a QHR Claim, a Subordinated Claim or the Letter of Credit Claim.”

(e) Exhibit B to the Plan is modified by striking the phrase “Sandra J. East, both individually and as personal representative of the estate of Stanley B. East, deceased” therefrom.

(f) Section 2.2 of the Plan is modified by inserting the text:

“Class 5A – East Claims. Class 5A shall consist of the East Claims against the Debtor,” on a separate line between the text reading: “Class 5 – Trust Personal Injury Claims. Class 5 shall consist of all Trust Personal Injury Claims against the Debtor,” and the text reading: “Class 6 – Unsecured Claims. Class 6 shall consist of all Unsecured Claims against the Debtor.”

(g) Section 3.1 of the Plan is modified to read in full as follows:

**“3.1 Unimpaired Classes of Claims.**

Class 1 – Priority Claims, Class 2 – Letter of Credit Claims and Class 5A – East Claims are not impaired under the Plan.”

(h) Section 4.1 is modified by adding a new Section 4.1(f) to replace the current Section 4.1(f) as follows:

“(f) Class 5A—East Claims.

On the Effective Date, East shall receive the following treatment under the Plan on account of the East Claim: (i) the East Claim shall be Allowed in the amount of \$2,500,000; (ii) the Personal Injury Trust shall make the East Payment; (iii) the Debtor shall make a \$10,000 Cash payment to East; and (iv) the Debtor shall assign all of its Quantum Indemnity Rights to East free and clear of all Claims and interests, including, without limitation, liens. In the interest of clarity, East, the Debtor and the United Tort Claimants agree that, notwithstanding the Allowance of the East Claim as set forth in this Section 4.1(f), the Debtor shall have no liability for the East Claim over and above (1) the Cash payment to be paid by the Debtor under clause (iii) of this Section 4.1(f) and (2) any amounts that East actually collects from Quantum in connection with the assignment of the Quantum Indemnity Rights.”

In addition to the foregoing, Section 4.1 is further modified by re-designating current Sections 4.1(f), 4.1(g), 4.1(h) and 4.1(i) of the Plan as Sections 4.1(g), 4.1(h), 4.1(i) and 4.1(j) of the Plan respectively, and modifying all cross-references in the Plan to reflect such re-designation.

(i) Section 6.1 of the Plan is modified to read in full as follows:

**“6.1 Classes Entitled to Vote.**

Except for Class 1 – Priority Claims, Class 2 – Letter of Credit Claims, Class 5A – East Claims and Class 9 – Subordinated Claims, all classes of Claims are entitled to vote on the Plan. Class 1 – Priority Claims, Class 2 – Letter of Credit Claims and Class 5A – East Claims are unimpaired and are deemed to have accepted the Plan. Holders of Class 9 – Subordinated Claims are not retaining or receiving any property under the Plan on account of their Claims and, therefore, Class 9 – Subordinated Claims is deemed to have rejected the Plan.”

(j) Section 7.2(c) of the Plan is modified to read in full as follows:

**“(c) Certain Obligations of the Personal Injury Trustee.**

The Personal Injury Trust shall be solely responsible for paying from the Personal Injury Trust Property (i) the East Payment, (ii), subject to Section 4.1(h) and Section 7.2(h), any and all Allowed Non-QHR Reimbursement, Contribution and Indemnity Claims; and (iii) all costs and expenses of the Personal Injury Claims Committee.”

(k) Article VII of the Plan is modified by adding a new Section 7.14 to read in full as follows:

**“7.14 East Settlement.**

The entry of the Confirmation Order shall constitute a finding and determination that the settlement among the Debtor, the United Tort Claimants and East set forth in the *Non-Material Modification of Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc., dated June 20, 2012, to Resolve East Claim* filed on July 9, 2012 is (a) approved in all respects, including, without limitation, pursuant to Bankruptcy Rule 9019, (b) fair, equitable and in the best interest of creditors and all other parties in interest; (c) the product of good faith arm’s-length negotiations, (d) fully consistent with and does not violate any applicable laws in any respect or manner whatsoever and (e) appropriate in all other respects and entered into in good faith. Upon the entry of the Confirmation Order, East shall have all of the Debtor’s rights to pursue the Quantum Indemnification Rights as provided in the Plan without further order of the Bankruptcy Court.”

2. **Effect of Modification Document.** Except as expressly amended by this Modification Document, all terms and provisions of the Plan are and shall remain the same. After the filing of this Modification Document, all references in the Plan shall refer to the Plan as modified by this Modification Document.

3. Non-Material Modifications. The Debtor believes that the modifications of the Plan contained in this Modification Document are not material and do not require a re-solicitation of the Plan. The Debtor will set forth its position in detail in its confirmation brief in respect of the Plan.

4. Settlement of Claims. The modifications of the Plan set forth herein evidence the East Settlement. If the Plan, as modified hereby, does not become effective, the East Settlement shall be null and void and the Debtor, the United Tort Claimants and East shall be returned to the exact same legal position that they occupied prior to the East Settlement and the filing of the Modification Document.

5. Reservation of Rights. The Debtor reserves the right to make non-East Claim related changes to the Plan pursuant to Section 14.13 of the Plan as it may deem appropriate at any time and from time to time.

Dated: July 9, 2012

WHITE & CASE LLP

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**NOTICE**

On the date thereof, I directed Kurtzman Carson Consultants LLC, the Debtor's claims, noticing, and balloting agent, to serve notice of the foregoing Modification Document via United States First Class Mail on the Master Service List maintained in the above-captioned chapter 11 case, as well as on the persons at the addresses indicated below.

/s/ Roberto J. Kampfner  
Roberto J. Kampfner

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