

PONTIAC SUCCESSFULLY RECOVERS OVER \$2,000,000
FROM THE NORTH OAKLAND MEDICAL CENTER
BANKRUPTCY

The City of Pontiac was able to recover approximately \$2,250,000 from the North Oakland Medical Center Bankruptcy which has been pending in the U.S. Bankruptcy Court in Detroit, Michigan since August of 2008. The recovery was finalized in a Settlement Agreement approved by the Bankruptcy Court after the Court ordered facilitation of the dispute and complex negotiations amongst multiple parties.

Historical Background

Prior to December of 1993, the City of Pontiac owned and operated Pontiac General Hospital and Medical Center, Inc.

In 1985, the City of Pontiac established a self insurance Trust to handle malpractice claims filed against the hospital. That Trust continued up through the bankruptcy proceedings of NOMC.

In 1993, the City of Pontiac and the Pontiac Hospital Finance Authority entered into a series of transactions pursuant to which Pontiac General Hospital was transferred to and began operations as a private non-profit hospital known as North Oakland Medical Center (NOMC). At that time, the new private hospital established its own self insurance Trust to handle claims that were filed against the private entity, while the 1985 Trust continued as a separate entity to handle claims that could be filed against the hospital when it was operated as a division of the City.

In 2008, NOMC began negotiations to sell its assets as a going concern. NOMC reached an agreement for the sale of its assets to Doctors' Hospital of Michigan (DHM). Because NOMC was only leasing its buildings and several assets from the City, several agreements had to be negotiated between Doctors' Hospital and the City for the sale of the buildings and the other assets. In order to facilitate the sale, NOMC commenced a bankruptcy proceeding in August of 2008. The sale of the assets of NOMC was concluded in November of 2008.

During the bankruptcy proceedings, it was learned that in 2005, NOMC caused the 1985 Trust to be amended to allow the Trust's funds to be used for claims and liabilities arising before and after the privatization of the hospital. This fact was discovered by the

City during the bankruptcy proceedings, and in February of 2009, the City and the Pontiac Hospital Finance Authority filed a Complaint against NOMC seeking a ruling that the funds of the Trust belonged to the City and should revert to the City. The Complaint also alleged the Trust could not properly be amended by NOMC without the City's consent, which had not been secured.

The City experienced extreme difficulty in obtaining relevant information and documents regarding the operation of the Trust, including its purported amendment in 2005. Eventually, the City discovered that approximately \$4,000,000 remained in the Trust. In addition, several malpractice claims were pending including one against the hospital when it was owned by the City and dozens that arose after the hospital was privatized. These malpractice claims asserted the Trust was properly amended and that they, therefore, could claim recoveries from the funds in the Trust. During the litigation, the City further discovered that the funds in the Trust were used to purchase insurance from the North Oakland Medical Center Insurance Company (NOMCIC) located in the Cayman Islands. Further, other policies were written by the NOMCIC for physicians who worked at NOMC after the date that the City transferred the hospital to NOMC.

U.S. Bankruptcy Judge McIvor ordered the malpractice claimants, NOMC, representatives of NOMCIC, the City of Pontiac, and the Pontiac Hospital Finance Authority into facilitation before Ms. Kelly Allen. After several meetings with the Court appointed facilitator and several facilitation sessions, an agreement was reached which included the following:

- 1) The only malpractice claim against the City, which arose prior to the transfer of Pontiac General Hospital to NOMC, would be settled with \$1,000,000 being paid from the Trust and the contribution of an indemnification agreement from Doctors' Hospital in the amount of \$500,000 to this malpractice claimant.
- 2) The City would receive 75% of the remaining \$3,000,000, which is the approximate \$2,250,000 settlement. \$750,000 would be used to satisfy all of the remaining 30 claims (of which 21 claimants intervened) filed against NOMC after December of 1993.
- 3) The NOMCIC would use its remaining assets to satisfy the 7 malpractice claims that arose against the physicians it insured after December of 1993. In

addition, NOMCIC would be liquidated in accordance with Cayman Island law and any proceeds from litigation would be used to satisfy the malpractice claims.

The discovery and the recovery of the remaining funds of the 1985 Trust were the result of the diligent efforts of representatives and counsel for the City of Pontiac. Ms. Lisa Gretchko and Mr. Timothy Wittebort of the firm of Howard and Howard discovered the remaining funds of the 1985 Trust and worked diligently in this process together with Mr. Timothy J. Carrier of Beier Howlett who assisted in the facilitation and settlement negotiations.