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11 Counsel to U.S. Bank Trust Company,  
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13 UNITED STATES BANKRUPTCY COURT  
14 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

15 In re:

16 BEVERLY COMMUNITY HOSPITAL  
17 ASSOCIATION, dba BEVERLY HOSPITAL  
18 (A NONPROFIT PUBLIC BENEFIT  
19 CORPORATION), *et al*,<sup>1</sup>

20 Debtors,

- 21 ☒ Affects all Debtors  
22 ☐ Affects Beverly Community  
23 Hospital Association  
24 ☐ Montebello Community Health  
25 Services, Inc.  
26 ☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359-SK

Jointly administered with:

Case No.: 2:23-bk-12360-SK

Case No.: 2:23-bk-12361-SK

Hon. Sandra R. Klein

Chapter 11 Case

**U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION, AS MASTER  
TRUSTEE'S OBJECTION TO  
APPLICATION FOR ORDER SETTING  
HEARING ON SHORTENED NOTICE**

Date: TBD

Time: TBD

Judge: Sandra R. Klein

Place: Zoom.Gov

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.



1 Secured creditor U.S. Bank Trust Company, National Association, as master trustee (the  
2 “Master Trustee”) hereby objects to the Official Committee of Unsecured Creditors’ (the  
3 “Committee”) *Application for Order Setting Hearing on Shortened Notice* [Docket No. 929] (the  
4 “Application”). Through the Application the Committee requests that the Court hear its *Motion to*  
5 *Expand the Scope of the Mediation* [Docket No. 928] (the “Motion”) on shortened notice to allow  
6 the Committee to join the Chapter 11 Trustee, Howard M. Ehrenberg (the “Chapter 11 Trustee”)  
7 into a mediation in the currently pending adversary proceeding brought by the Committee against  
8 the Master Trustee (the “Adversary Proceeding”), which is scheduled to begin on March 8, 2024 in  
9 Los Angeles (the “Mediation”), and expand the scope of the Mediation to include issues that the  
10 Committee readily admits are not yet before this Court.  
11

12 The Court should deny the Application because there is no good cause to shorten the time in  
13 which the Master Trustee must respond to what can most generously be described as the  
14 Committee’s latest filing borne of desperation. The Committee has had four (4) months since the  
15 October 18, 2023 status conference during which the Court ordered the parties in the Adversary  
16 Proceeding to mediation to bring the Motion and ask the Court to expand the scope of the Mediation.  
17 The Committee even tried at that October 18<sup>th</sup> hearing to expand the scope of the Mediation to no  
18 avail.  
19

20 More than a month has passed since the Chapter 11 Trustee filed his status report on January  
21 10, 2024 [Docket No. 915], disclosing his settlement discussions with the Master Trustee concerning  
22 the funding of this case going forward. And over three (3) weeks have elapsed since the last status  
23 conference in this case, during which the Committee expressed its intent to attempt to expand the  
24 scope of the Mediation.  
25

26 Either the Committee sat on its hands and did not seek the relief it now requests through the  
27 Motion until the last minute (which is nobody’s fault but its own), or, more likely, the Committee  
28

1 waited until the eleventh hour (right before a holiday weekend) to file its Motion and seek an  
2 expediated hearing in a transparent attempt to catch the Master Trustee off-guard and limit its time  
3 to respond to the Motion. The alleged timing crunch is a self-created emergency reminiscent of  
4 when the Committee filed its Amended Complaint in the Adversary Proceeding mere days before  
5 the sale hearing in an attempt to frustrate the Master Trustee's consent rights with respect to the sale  
6 of its collateral under 11 U.S.C. § 363(f). The Court saw through the Committee's gamesmanship  
7 then, and did not countenance their tactics. The Application and Motion are simply more of the same  
8 hustle and should be similarly denied.

10 The Motion does not need to be heard on an expediated basis for several reasons, not the  
11 least of which is the fact that there is no mediation pending in the main bankruptcy case to which to  
12 join the Committee's fanciful surcharge arguments. Rather, the Committee and the Master Trustee  
13 are mediating the Adversary Proceeding. The Committee and Master Trustee are the only parties in  
14 the Adversary Proceeding. There is no logic to the Committee's request that the Court add another  
15 party, the Chapter 11 Trustee, and add issues that are wholly unrelated to the Adversary Proceeding,  
16 to the Mediation that is already scheduled and fully briefed. Indeed, it took the parties weeks to  
17 simply schedule the Mediation because the Committee demanded that **both** of its law firms attend  
18 the Mediation.<sup>2</sup>

20 In fact, days after the January 24, 2024 status conference, during which counsel for the  
21 Committee proclaimed that he had "peeled back the onion" on the legal standard for a surcharge in  
22 the Ninth Circuit (which is curious phraseology in light of the fact that the surcharge standard in this  
23 jurisdiction is well settled), and concluded that the Master Trustee is liable for \$12 million to \$26  
24

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26 <sup>2</sup> One can only speculate that the impetus of those delay tactics was to allow the Committee the time to file the  
27 Motion, in which it seeks to force the Master Trustee to discuss the payment of the Committee's professional fees, the  
28 Committee's seemingly sole focus in this case. In addition, the fact that the Committee finds it necessary to have two  
law firms attend the Mediation when only one firm is tasked with handling the Adversary Proceeding speaks volumes  
as to why the fees of the estate professionals are so outrageously high in this case.

1 million<sup>3</sup> under Section 506(c) of the Bankruptcy Code, the Master Trustee requested, through the  
2 Chapter 11 Trustee, that the Committee provide its legal support for that statement. According to  
3 the Chapter 11 Trustee, counsel for the Committee refused to do so and the Committee's counsel  
4 did not take that opportunity to reach out to the Master Trustee's counsel to discuss the surcharge  
5 issue. It smacks of desperation that the Committee would refuse to engage with the Master Trustee  
6 to discuss its arguments but now wants to force the Master Trustee to mediate those same arguments  
7 (thereby wasting not only the Master Trustee's time but that of Judge Barash who has already been  
8 more than generous with his time).

9  
10 What's more, there is nothing to mediate at this time with respect to a surcharge of the Master  
11 Trustee's collateral. The Chapter 11 Trustee, who is the only party that can seek a surcharge, has  
12 not filed any such motion. Nor have the Chapter 11 Trustee and the Master Trustee reached a  
13 settlement with respect to the parameters of a surcharge. The Committee has no standing to seek a  
14 surcharge<sup>4</sup> and it is inappropriate for the Committee to insert itself into those negotiations under the  
15 guise of the Mediation in the Adversary Proceeding. Indeed, even *if* the Master Trustee and the  
16 Chapter 11 Trustee reach a settlement with respect to a surcharge, the Committee's dispute would  
17 ultimately be with the Chapter 11 Trustee, not the Master Trustee, and be governed by the settlement  
18 standard of Federal Rule of Bankruptcy Procedure 9019. What role the Master Trustee would have  
19 in any such mediation is a mystery.  
20  
21  
22

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23 <sup>3</sup> The fact that the Committee claims to believe that the Master Trustee could possibly be surcharged for \$26  
24 million in connection with the sale of its collateral for \$23.2 million is telling of the legitimacy of their legal theories  
25 and candor with the Court. Of course, the Committee cited to no legal authority for the proposition that a secured creditor  
26 would owe money, over and above the value of its collateral, under Section 506(c). Counsel should peel another onion  
27 or two and review the applicable case law regarding the scope of a surcharge under Section 506(c) in the Ninth Circuit  
28 before filing briefs and addressing the Court.

29 <sup>4</sup> See e.g., *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.)*,  
255 F.3d 1061, 1068-69 (9th Cir. 2001) ("Under *Hartford Underwriters*, [a creditor] has no standing to seek a surcharge  
from [a secured creditor]. Consequently, the immunizing language of the settlement agreement did not alter the legal  
rights of [creditor] and was properly approved by the bankruptcy court.")

1 At bottom, the Committee created the timing issue that it now complains of, either  
2 intentionally as part of its “trial by ambush” strategy in this case, or through inattention by waiting  
3 until the last minute to file its Motion. In either case, there is no good cause to expediate the  
4 consideration of the Motion that has no connection to the Mediation scheduled for March 8th, and  
5 the Court should deny the Application and set the Motion on a normal notice and briefing schedule.  
6

7 **RESERVATION OF RIGHTS TO SEEK SANCTIONS**

8 The Master Trustee hereby reserves its rights to seek sanctions against the Committee for its  
9 filing of the Application based on a self-created emergency. The Master Trustee further reserves its  
10 rights to similarly seek sanctions against the Committee for its costs and fees associated with  
11 responding to the Motion, which largely ignores well-settled case law in this jurisdiction, is riddled  
12 with false and/or inaccurate statements of fact and law and through which the Committee is  
13 inappropriately attempting to litigate surcharge issues that it has no standing to bring under black  
14 letter law.  
15

16 WHEREFORE, the Master Trustee respectfully request that the Court deny the Application  
17 and set the Motion for a normal notice and hearing schedule.  
18  
19

20 Respectfully Submitted

21 GREENBERG TRAURIG, LLP  
22

23 By /s/ Kevin J. Walsh

24 Kevin J. Walsh (admitted *pro hac vice*)

25 Colleen A. Murphy (admitted *pro hac vice*)

26 Christopher Marks (admitted *pro hac vice*)

27 Counsel to the U.S. Bank Trust Company,  
28 National Association, as Master Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
One International Place, Boston, MA 02110

A true and correct copy of the foregoing document entitled (*specify*): U.S. Bank Trust Company, National Association,  
as Master Trustee's Objection to Application for Order for Order Setting Hearing on Shortened Notice.

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 02/16/2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 02/16/2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

02/16/2024      Kevin J. Walsh  
*Date*                      *Printed Name*

/s/ Kevin J. Walsh  
*Signature*

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