

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

STATE OF ILLINOIS,)	
)	
)	
)	
Plaintiffs,)	
v.)	Case No. 06 L 2742
)	
THE UNIVERSITY OF)	Judge Allen Goldberg
CHICAGO HOSPITALS,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by the State of Illinois, through the Office of the Attorney General of the State of Illinois; _____ personally and through their authorized representatives; and the University of Chicago Medical Center, individually and through its authorized representatives, without trial or adjudication of any issue of fact or law.

I. DEFINITIONS

1. "Agreement" means the Settlement Agreement.
2. "State of Illinois" means the State of Illinois, its officers, agents, employees, agencies, and departments, including the Office of the Attorney General of the State of Illinois.
3. "Illinois Attorney General" means the Office of the Attorney General of the State of Illinois.
4. "UCMC" means Defendant University of Chicago Medical Center and its current and future parents, subsidiaries, predecessors, successors, directors, executives, officers,

managers, employees, attorneys, agents, assigns, transferees, heirs, and "trustees" pursuant to 225 ILCS 460/1(n). "UCMC" includes, but is not limited to, the University of Chicago Hospitals ("UCH"), Wyler Children's Hospital, Bernard Mitchell Hospital, Chicago Lying-in Hospital, and Comer Children's Hospitals. UCMC is an Illinois non-profit corporation with its principal place of business in Chicago, Cook County, Illinois. UCMC is the successor in interest to UCH.

5. "NICU" means UCMC's neonatal intensive care unit and intermediate care nursery, also known as Level II, Level III, and Level III+ (plus) nurseries.

6. "Relators" means _____ and _____ who are individual residents of Illinois. Relators were nurses in UCMC's NICU.

7. "Parties" means the State of Illinois, Relators, and UCMC.

8. "Court" means the Circuit Court of Cook County, Illinois.

9. "Joint Complaint" means the Plaintiffs' Joint Complaint filed on March 14, 2006 in the Circuit Court of Cook County and captioned *State of Illinois, _____* v. *The University of Chicago Hospitals*, Case No. 06 L 2742.

10. "Amended Complaint" means the Amended Complaint filed on December ____, 2009 by the State of Illinois in the Circuit Court of Cook County and captioned *State of Illinois* v. *The University of Chicago Hospitals*, No. 06 L 2742.

11. "ILCS" means the State of Illinois Compiled Statutes.

12. "Ill. Admin. Code" means the State of Illinois Administrative Code.

13. "U.S.C." means the United States Code.

14. "EMTALA" means the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd.

15. "FQHC" means Federally Qualified Health Center.

16. "IDPH" means the Illinois Department of Public Health.

II. BACKGROUND

1. This action was originally filed under seal in federal court in February 2003. On February 28, 2006, after the district court granted UCMC's motion to dismiss the federal lawsuit, the State of Illinois and Relators filed Plaintiffs' Joint Complaint in state court on March 14, 2006.

2. On December ____, 2009, the State of Illinois filed an Amended Complaint against UCMC.

3. UCMC does not admit liability for the claims in the Joint Complaint or the Amended Complaint, and the State of Illinois and Relators do not concede that their claims are legally insufficient.

4. The Parties have determined that it is in their mutual best interests to resolve their dispute to avoid the delay, uncertainty, inconvenience, and expense of further litigation of the above-captioned cause.

5. The Parties consider this Agreement to be an appropriate and equitable resolution of their dispute.

III. JURISDICTION

1. **Jurisdiction:** This Court has jurisdiction over the subject matter of this case and over each of the Parties.

2. **Venue:** Venue is proper in the Court, Law Division, pursuant to 735 ILCS 5/2-101 and 5/2-102.

3. **Dismissal of Complaint:** Within three (3) business days after the payments described herein are made, the Illinois Attorney General shall file a Stipulation to Dismiss the Joint Complaint and the Amended Complaint with prejudice.

4. **Action Pursuant to the Agreement:** Any interpretation, enforcement, or modification of this Agreement shall be governed by the laws of the State of Illinois. The exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the Court.

IV. SETTLEMENT

1. **The Settlement:** UCMC agrees to settle this litigation with a payment of \$7,000,000.00 (the "Settlement Amount"). Of the Settlement Amount, UCMC shall pay, within seven (7) business days from the Effective Date of the Agreement, as defined in Section VIII, Paragraph 14 below, \$5,135,000.00 (the "Recipient Amount") into a segregated account for disbursements upon directions from the Illinois Attorney General. Such disbursements shall be made upon the direction of the Illinois Attorney General out of the segregated account to Holy Cross Hospital, Mercy Family Health Center (FQHC), and other non-profit hospitals, FQHCs, and health care clinics designated by the Illinois Attorney General (the "Recipients") principally

to deliver preconception, prenatal, interconception, and general maternal health care services to indigent female patients of reproductive age on the South Side of Chicago. Of the remainder of the Settlement Amount, UCMC shall pay the Relators' Share directly to the Relators, as set out in Section IV, Paragraph 5 below, and \$500,000.00 directly to the United States Government within seven (7) business days of the Effective Date of the Settlement Agreement, as set out in Section VIII, Paragraph 14 below.

2. **Attorney General's Authority:** Except as otherwise set forth in this Agreement, the Illinois Attorney General has the sole discretion to designate or alter the identity of Recipients and the portion of the Recipient Amount each Recipient is to receive. The Illinois Attorney General has the sole discretion to monitor all Recipients and to request reports from all Recipients that detail their expenditures of any monies they have received pursuant to this Agreement.

3. **UCMC's Representations Regarding the Settlement Amount:** UCMC hereby represents and warrants that any portion of the Settlement Amount provided to Holy Cross Hospital and Mercy Family Health Center (FQHC) is in addition to and separate and apart from any monies UCMC intended to or intends to contribute to Holy Cross Hospital and Mercy Family Health Center (FQHC) prior to the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below.

4. **Entirety of Settlement Amount:** Except for the Relators' Share set out in Section IV, Paragraph 5 below and the payment of \$500,000.00 to the United States Government, the Settlement Amount will not be affected, reduced, or altered in any way by any

payment UCMC makes to Relators for Relators' attorneys' fees, costs, and expenses, as set out in Section IV, Paragraph 6 below, or to the State of Illinois for the State of Illinois' costs and expenses, as set out in Section IV, Paragraph 7 below. The entire Recipient Amount will be distributed only to those entities set out in Section IV, Paragraph 1 above and to other similar entities selected by the Illinois Attorney General and will not be diverted to pay for other expenses accounted for in this Agreement.

5. **Relators' Share:** The Illinois Attorney General hereby authorizes and directs UCMC to pay Relators \$1,365,000.00 within seven (7) business days from the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below. Such payment of Relators' Share shall be made by wire transfer pursuant to written instructions from Relators' counsel.

6. **Relators' Attorneys' Fees:** In addition to the payments described herein, UCMC agrees to pay Relators' attorneys' fees and costs as described in the letter agreement between Relators' Counsel and UCMC dated November 17, 2009 ("Letter Agreement"). Such payment shall be made at the same time as the payment of the Relators' Share pursuant to the instructions in the Letter Agreement.

7. **State of Illinois' Costs and Expenses:** Within seven (7) business days from the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below, UCMC will pay \$70,512.40 for deposit into the Illinois Attorney General State Projects and Court Ordered Distribution Fund for subsequent expenditure as authorized by the Illinois Attorney General. The amount UCMC pays to the State of Illinois for payment and

reimbursement of the State of Illinois' costs and expenses is over and above the Settlement Amount and does not and will not affect or reduce the Settlement Amount.

8. **Characterization of Settlement Amount:** Nothing in this Agreement constitutes an agreement by the State of Illinois concerning the characterization of the Settlement Amount or any other payment under this Agreement for purposes of Chapter 35 of the Illinois Compiled Statutes.

V. COMPLIANCE WITH ILLINOIS LICENSING REGULATIONS

1. UCMC will comply with Illinois licensing regulations on bed-spacing, including but not limited to 77 Ill. Admin. Code 250.2630(f)(2) and 250.1830(e)(2), and regulations on capacity, including but not limited to 77 Ill. Admin. Code 250.230(a) and (b), except in exigent circumstances, including circumstances implicating UCMC's EMTALA obligations to patients presenting at UCMC or at its network hospitals. Within 24 hours of such an exigent circumstance, UCMC shall notify IDPH of such event and shall subsequently make its best effort to decompress the NICU within a reasonable period of time to resume compliance with Illinois licensing regulations on bed-spacing and capacity.

VI. ENFORCEMENT

1. If at any time subsequent to the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below, UCMC violates the terms of Section V, Paragraph 1 above, the State of Illinois shall, upon showing of such violation before the Court, be entitled to a Stipulated Penalty in the form of a Judgment in favor of the State of Illinois and against UCMC in the amount of \$5,000.00 for each such violation. The State of Illinois will also be

entitled to reimbursement of its costs and expenses in investigating and prosecuting the claim for penalties.

VII. COVERED CONDUCT AND RELEASES

1. **Covered Conduct:** "Covered Conduct" is defined as any and all conduct relating to the allegations in the Joint Complaint or the Amended Complaint, as well as any and all conduct from January 1, 1997, to the Effective Date of the Settlement Agreement relating to UCMC's non-compliance with Illinois NICU regulations on bed-spacing, including but not limited to 77 Ill. Admin. Code 250.2630(f)(2) and 250.1830(e)(2), and capacity, including but not limited to 77 Ill. Admin. Code 250.230(a) and (b).

2. **State of Illinois' Release as to UCMC:** Subject to the exceptions in Section VII, Paragraph 3 below; in consideration of the obligations of UCMC in this Agreement; and conditioned upon UCMC's payments in full as described in Section IV above, the State of Illinois releases UCMC from any and all civil or administrative monetary claims, whether known or unknown, including but not limited to any administrative action seeking exclusion from the Medical Assistance Program under 305 ILCS 5/5-1, *et seq.*, the State of Illinois ever had, now has, or may have for the Covered Conduct.

3. **Preservation of Law Enforcement Actions:** Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the Release specified in Section VII, Paragraph 2 above, as to any entity or person, including UCMC and Relators, are the following:

a. Any civil, criminal, or administrative liability arising under Chapter 35 of the Illinois Compiled Statutes or any regulations promulgated under the authority of any statute contained therein;

b. Any criminal liability;

c. Any claims by or liability to the State of Illinois or its agencies for any conduct other than the Covered Conduct; and

d. Any claims or liability based upon such obligations that are unfulfilled as are created by this Agreement.

4. **Relators' Release as to UCMC:** Conditioned upon their receipt of the Relators' Share described in Section IV, Paragraph 5 above and the receipt of attorneys' fees and costs as provided in the Letter Agreement, Relators fully and finally release UCMC from any claims, whether known or unknown, including attorneys' fees, costs, and expenses of every kind, however denominated, that Relators have asserted, could have asserted, or may assert in the future against UCMC related to or arising in any way from the Covered Conduct or the Relators' employment at UCMC.

5. **Relators' Release as to State of Illinois:** Relators and their heirs, successors, agents, transferees, and assigns agree and confirm that this Agreement is fair, adequate, and reasonable under all circumstances, and, conditioned upon receipt of the Relators' Share described in Section IV, Paragraph 5 above, Relators, for themselves individually, and for their heirs, successors, agents, transferees, and assigns, fully and finally release, waive, and forever discharge the State of Illinois from any claims, whether known or unknown, arising from or

relating to the Covered Conduct; from any claims, whether known or unknown, arising from the filing of the Complaint; from any claims, whether known or unknown, for a larger share of the Settlement Amount; and from any claims, whether known or unknown, Relators may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the State of Illinois has or may have against the Relators arising under Chapter 35 of the Illinois Compiled Statutes or any claims arising under this Agreement.

6. **UCMC's Waiver:** UCMC waives and shall not assert any defenses UCMC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or any comparable provision in Article 1, Section 10 of the Illinois Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, or any comparable provision in Article 1, Section 11 of the Illinois Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. **UCMC's Release as to State of Illinois:** Conditioned upon the dismissal of the Joint Complaint and the Amended Complaint, UCMC fully and finally releases the State of Illinois from any claims, whether known or unknown, including attorneys' fees, costs, and expenses of every kind, however denominated, that UCMC has asserted, could have asserted, or may assert in the future against the State of Illinois related to or arising from the State of Illinois' investigation and prosecution of the Covered Conduct up to the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below.

8. **UCMC's Release as to Relators:** Conditioned upon the dismissal of the Joint Complaint, UCMC fully and finally releases Relators from any claims, whether known or unknown, including attorneys' fees, costs, and expenses of every kind, however denominated, that UCMC has asserted, could have asserted, or may assert in the future against Relators related to or arising in any way from their employment at UCMC or the investigation and prosecution of the Covered Conduct.

VIII. GENERAL PROVISIONS

1. **UCMC's Representation as to Financial Condition:** UCMC warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to UCMC, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which UCMC, on some future date, may become indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

2. **UCMC's Notification of Change in Circumstances:** UCMC shall notify the State of Illinois and Relators in writing at least 30 days prior to any proposed change that may

affect its compliance obligations under this Agreement, such as dissolution, assignment, sale resulting in the emergence of a successor entity, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations under this Agreement. A copy of this Agreement shall be given to any successor entity.

3. **Bankruptcy:** If, within 91 days of the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below, or of any payment made under this Agreement, UCMC commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of UCMC's debts or seeking to adjudicate UCMC as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for UCMC or for all or any substantial part of UCMC's assets, UCMC agrees as follows:

a. UCMC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and UCMC shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) UCMC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) UCMC was insolvent at the time this Agreement was entered into, or became insolvent as a result of any payment made under this Agreement; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to UCMC.

b. If UCMC's obligations under this Agreement are avoided through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Illinois, at its

sole option, may rescind the release in this Agreement and bring any civil and/or administrative claim, action, or proceeding against UCMC for the claims that would otherwise be covered by the release provided in Section VII, Paragraph 2 above. UCMC agrees that, in that circumstance, (i) any such claims, actions, or proceedings brought by the State of Illinois are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first sentence of this Paragraph, and UCMC shall not argue or otherwise contend that the State of Illinois' claims, actions, or proceedings are subject to an automatic stay; (ii) UCMC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State of Illinois within 90 calendar days of written notification to UCMC that the releases have been rescinded pursuant to this Paragraph, except to the extent that such defenses were available on the Effective Date of the Settlement Agreement, as defined in Section VIII, Paragraph 14 below; and (iii) the State of Illinois has a valid claim against UCMC in the amount of \$6,500,000.00 plus interest minus any amount paid by UCMC, and the State of Illinois may pursue its claims in the case, action, or proceeding referenced in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

c. UCMC acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided for in this Agreement.

4. **Legal Costs and Expenses:** Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

5. **Authority of Signatories:** The signatories below represent that they have the lawful authority to bind the Parties for whom they are signing to the terms of this Agreement. The Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

6. **Governing Law:** This Agreement is governed by the laws of the State of Illinois.

7. **Entirety of Agreement:** This Agreement constitutes the complete agreement among the Parties. All other agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matters hereof are contained herein. All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants, and warranties between the Parties, concerning the subject matter hereof, are merged herein.

8. **Severability:** If any portion, clause, phrase, or term of this Agreement is later determined by a court of law to be invalid or unenforceable, for whatever reason, the remaining provisions of this Agreement will remain valid and in effect as to the Parties and will be unaffected by said determination.

9. **Counterparts:** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

10. **Binding Agreement:** This Agreement is binding on UCMC and the State of Illinois. This Agreement is binding on Relators and their heirs, successors, agents, transferees, and assigns.

11. **Headings and Interchangeability:** The headings of sections contained in this Agreement are merely for the convenience of reference and shall not affect the interpretation of any of the provisions. Whenever the context so requires, the singular shall include the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or gender neutral, according to the context. This Agreement is deemed to have been drafted jointly by the Parties and any uncertainty or ambiguity shall not be construed for or against any Party as an attribution of drafting to such Party.

12. **Disclosure:** All Parties consent to the State of Illinois' disclosure of this Agreement, and information about this Agreement, to the public.

13. **Non-Approval of Conduct:** Nothing herein constitutes approval by the State of Illinois as to UCMC's practices complained of in the Joint Complaint or the Amended Complaint. UCMC shall not make any representations contrary to this paragraph.

14. **Effective Date:** This Agreement shall be effective on the date of signature of the last signatory to the Agreement ("Effective Date of the Settlement Agreement").

IX. NOTIFICATIONS

All notices issued pursuant to this Agreement shall be issued, with a reference to the case caption and number, to the following individuals:

To the State of Illinois:

Paul Gaynor, Chief, Public Interest Division
Carl Bergetz, Chief, Special Litigation Bureau
Malini Rao, Assistant Attorney General
OFFICE OF THE ILLINOIS ATTORNEY GENERAL
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3000 (telephone)

(312) 814-1154 (facsimile)

To Relators:

Steven H. Cohen
COHEN LAW GROUP, P.C.
500 North Michigan Avenue, Suite 850
Chicago, Illinois 60611
(312) 327-8800 (telephone)
(312) 327-0266 (facsimile)

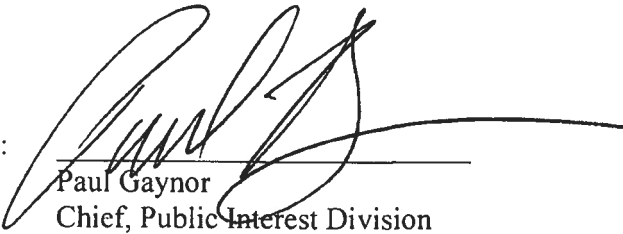
To UCMC:

John Satalic
Acting General Counsel
UNIVERSITY OF CHICAGO MEDICAL CENTER
5841 South Maryland Avenue
M/C 1132
Chicago, Illinois 60637
(773) 702-1000 (telephone)
(773) 702-9310 (facsimile)

Respectfully submitted and agreed to by:

The State of Illinois:

Date: 12/11/09

By: 

Paul Gaynor
Chief, Public Interest Division
OFFICE OF THE ATTORNEY GENERAL OF THE
STATE OF ILLINOIS
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3000 (telephone)
(312) 814-1154 (facsimile)

The University of Chicago Medical Center:

Date: _____

By: _____

John Satalic
Acting General Counsel
UNIVERSITY OF CHICAGO MEDICAL CENTER
5841 South Maryland Avenue
M/C 1132
Chicago, Illinois 60637
(773) 702-1000 (telephone)
(773) 702-9310 (facsimile)

Date: _____

By: _____

John N. Gallo
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000 (telephone)
(312) 853-7036 (facsimile)

Respectfully submitted and agreed to by:

The State of Illinois:

Date: _____

By: _____

Paul Gaynor
Chief, Public Interest Division
OFFICE OF THE ATTORNEY GENERAL OF THE
STATE OF ILLINOIS
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3000 (telephone)
(312) 814-1154 (facsimile)

The University of Chicago Medical Center:

Date: 12-10-09

By:  _____

John Satalic
Acting General Counsel
UNIVERSITY OF CHICAGO MEDICAL CENTER
5841 South Maryland Avenue
M/C 1132
Chicago, Illinois 60637
(773) 702-1000 (telephone)
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Date: _____

By: _____

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(312) 853-7000 (telephone)
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Respectfully submitted and agreed to by:

The State of Illinois:

Date: _____

By: _____

Paul Gaynor
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The University of Chicago Medical Center:

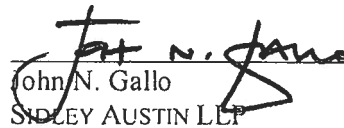
Date: _____

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Date: 12/10/09

By: _____


John N. Gallo
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One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000 (telephone)
(312) 853-7036 (facsimile)

The Relators _____

Date: 2/10/09

By: 

Date: _____

By: _____

Date: _____

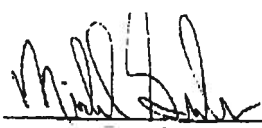
By: _____
Counsel for: _____
Steven H. Cohen
COHEN LAW GROUP, P.C.
500 North Michigan Avenue, Suite 850
Chicago, Illinois 60611
(312) 327-8800 (telephone)
(312) 327-0266 (facsimile)

The Relators _____

Date: _____

By: _____

Date: 12/11/69

By: 

Date: _____

By: _____

Counsel for _____
Steven H. Cohen
COHEN LAW GROUP, P.C.
500 North Michigan Avenue, Suite 850
Chicago, Illinois 60611
(312) 327-8800 (telephone)
(312) 327-0266 (facsimile)

The Relators _____


Date: _____

By: _____

Date: _____

By: _____

Date: 12.11.09


By: _____

Counsel for I _____
Steven H. Cohen
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