

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

EXHIBIT C

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In re: :

HMCA (CAROLINA), INC. : BK No. 90-03402 (ANV)
Debtor Chapter 11

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In re: :

HMCA (PR), INC. : BK No. 90-03403 (ANV)
Debtor Chapter 11

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**ORDER TO SHOW CAUSE WHY THE PUERTO RICO DEPARTMENT OF HEALTH
AND ITS AGENTS SHOULD NOT BE HELD IN CONTEMPT**

On September 28, 2001, judgment entered in the amount of \$9,050, jointly and severally, against the Puerto Rico Department of Health ("DOH"), and its attorneys and agents, pursuant to this Court's September 27, 2001, Opinion and Order Allowing Compensatory Sanctions.¹ Said Order is attached as Exhibit A. Thereafter, on his individual behalf, Jean Philip Gauthier, Esq., a DOH attorney, sought reconsideration of said Order on the ground that he was not personally culpable.² On

¹ Regrettably, in 20-20 hindsight, said Order also denied the Debtors' Request for Punitive Sanctions, but the DOH and its people seem determined to have that issue revisited.

² The grounds alleged and argued by Mr. Gauthier strongly suggest that he either failed to read or completely misunderstood the part of the Order where we said:

February 25, 2002, by separate Order, I denied Gauthier's Motion to Reconsider, and required that:

A report and affidavit of compliance with this Order shall be filed within 30 days. Implicit herein is the requirement that the guilty party(ies) pay the sanction(s) personally, and that they may not apply for reimbursement from the Commonwealth. To have any meaning, these sanctions must be paid by the wrongdoers, and not simply passed on to taxpayers. ...

Closure of this matter is long overdue, and the respondents are forewarned that further delay will likely result in the imposition of additional sanctions.

Order Denying Motion to Reconsider, February 25, 2002, Document No. 659, at 2-3 (citations omitted). Neither the September nor the February Orders were appealed, and they are final orders. To date, no report has been filed, the sanctions have not been

The Court is not privy to information as to whether DOH personnel or its then counsel were more at fault for generating and prosecuting the offending Medicare Motion. Therefore, initially at least, we leave the apportionment of this monetary sanction to the DOH and whoever its attorneys were at the time, because at this point they alone know where the responsibility lies. If given proof on the subject, the Court would have imposed sanctions personally against named *individuals*, with instructions not to apply for reimbursement. Unfortunately, on this record I cannot do that. See *In re HMCA (Carolina), Inc.*, BK No. 90-23042, slip op. at 11, n.6 (Bankr. D.P.R. September 27, 2001).

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paid, and the Respondents³ continue to ignore their obligations to the Court.

In light of this, the Debtor filed a Motion for an Order to Show Cause and to impose additional sanctions against the Respondents for their failure to comply with this Court's prior orders. Because, even under the threat of additional sanctions the DOH and its agents and attorneys have ignored the prior orders of this Court, the Motion for Order to Show Cause is **GRANTED**, and the Respondents⁴ are **ORDERED TO SHOW CAUSE, in writing** why they should not be held in further contempt, and why additional sanctions of \$150 per day should not be imposed against them, jointly and severally, on account of their repeated failures to comply, and their refusal to file reports and affidavits, as ordered. In addition, the DOH is **ORDERED** to

³ See attached service list. If there are other individuals involved, it is up to the present DOH insiders to make that disclosure.

⁴ It matters not that while the prior mischief was being committed, certain agents of the DOH may no longer be with the Department. Such persons are responsible for their actions while employed by the DOH, and their obligation to the Court continues. Joining the list of responsible parties are any DOH newcomers who, by their current failure to respond *in any way*, are compounding the malfeasance of their predecessors.

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furnish a list of everyone who worked on this case between April
10, 1996 and today, together with a description of the services
they performed. Responses to this Order to Show Cause shall be
filed at the Bankruptcy Court in San Juan, Puerto Rico, on or
before February 28, 2003, with copies faxed simultaneously to my
Chambers at (401) 528-4089.

Dated at Providence, Rhode Island, this 12th day
of February, 2003.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge*

*Of the District of Rhode Island, sitting by designation.