

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Chapter 7
	)	Honorable Jacqueline Cox
MAYER EISENSTEIN, M.D.,	)	No. 13-01449
	)	
Debtor.	)	<i>(One of 5 jointly administered cases</i>
<hr/>	)	<i>under lead case: Comprehensive</i>
	)	<i>Integrated Medicine M.D.S.C.,</i>
JEFFREY HAUGLAND, AS	)	<i>Case No. 13-01440)</i>
ADMINISTRATOR OF THE ESTATE OF	)	
HAYLEY HAUGLAND, DECEASED	)	
AND JEFFREY HAUGLAND,	)	
INDIVIDUALLY; THERESA MELTON,	)	
AND ROBERT MELTON; STEPHEN	)	
TREMPER AND THE ESTATE OF	)	Adv. Proc. No.
DYLAN TREMPER; DONNA WILLIAMS,	)	
ROCKY WILLIAMS, AND THE ESTATE	)	
OF JOSHUA WILLIAMS; RUTH ANN	)	
MORITZ AND BERNARD HANS	)	
MORITZ, JR., INDIVIDUALLY AND AS	)	
CO-GUARDIANS OF THE ESTATE OF	)	
ADAM MORITZ, A DISABLED MINOR;	)	
AYESHA EL-AMIN, ADMINISTRATOR	)	
OF ESTATE OF NA'EEM SHAHID.	)	
Plaintiffs.	)	
	)	
v.	)	
	)	
MAYER EISENSTEIN, M.D.,	)	
Defendant.	)	

**COMPLAINT TO EXCEPT DEBT FROM DISCHARGE**  
11 U.S.C. § 523(a)

Now come the Plaintiffs: Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, deceased and Jeffrey Haugland, individually; Theresa Melton, and Robert Melton; Stephen Tremper and the Estate of Dylan Tremper; Donna Williams, Rocky Williams, and the Estate of Joshua Williams; Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as

co-guardians of the estate of Adam Moritz, a disabled minor; Ayesha El-Amin, Administrator of Estate of Na'eem Shahid;, all as consolidated personal injury plaintiffs in case 07 L 99 in the Circuit Court of Cook County, Illinois, by their attorney, James P. Wognum, and complain of the Defendant, Mayer Eisenstein, M.D., Debtor in the consolidated Bankruptcy Proceeding, and say:

### **JURISDICTION AND VENUE**

1. On January 15, 2013, Comprehensive Integrated Medicine M.D. S.C. (Case No. 13- 01440); Comprehensive Integrated Home Health Care Agency, Inc. (Case No. 13-01445); Mayer Eisenstein, M.D. (Case No. 13-1449); Mayer Eisenstein, M.D. S.C . (Case No. 13-01455); and Home Care Home Health Agency, Inc. (Case No. 13-01458) (collectively referred to as "Debtors") filed their voluntary petitions for relief under Chapter 7 of the Bankruptcy Code [11 U.S.C. Section 101 et seq.].

2. On March 5, 2013, this Court entered its Order Directing Joint Administration of Related Chapter 7 Cases providing that the five (5) bankruptcy cases filed by the Debtors referred to in paragraph 1 ("Jointly Administered Cases") shall be jointly administered for procedural purposes only pursuant to Fed.R.Bankr.P. 1015(b).

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois since this case relates to a Chapter 7 case . Venue is proper in this Court pursuant to 28 U.S.C. § 1408 and § 1409, since the Debtor's Chapter case was commenced in this district and division.

4. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(I), since it seeks to determine the dischargeability of particular debts due from Mayer Eisenstein, M.D. to the

Plaintiffs collectively and severally.

### THE PARTIES

5. The Plaintiffs are a group of personal injury plaintiffs, (hereinafter “Personal Injury Plaintiffs”) who consolidated their claims against Mayer Eisenstein, M.D. into a case pending in the Law Division of the Circuit Court of Cook County, Illinois, entitled *El Amin, et al., v. Eisenstein, et al.* Case numbers: 07 L 99, with the consolidated case consisting of the following individual cases:

*El-Amin v. Mayer Eisenstein, M.D. S.C. et al.*, 07 L 99.  
*Tremper v. Mayer Eisenstein, M.D. et al.*, 06 L 11570, 05 L 10761, 04 L 11131, 03 L 00971, and 07 L 11437.  
*Moritz v. Gelb*, 06 L 7010  
*Williams v. Mayer Eisenstein, M.D.S.C., et al.*, 05 L 012346  
*Louis Weiss Memorial Hosp., v. Rosi, et al.*, 06 L 7938  
*Shelton v. Mayer Eisenstein, M.D., et al.*, 05 L 9843  
*Melton v. Homefirst Health Services, et al.*, 03 L 15830  
*Haugland v. Zumhagen, et al.*, 99 L 4763

6. The consolidated cases were medical malpractice cases against the Defendant Mayer Eisenstein, M.D. and other persons or entities.

7. The Plaintiffs in this cause are all joined in this one suit, since, under the provisions of Rule 20(a)(1)(A) and (B) they assert a right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence , or series of transactions and occurrences and there are questions of law and fact common to all plaintiffs.

8. The Defendant Mayer Eisenstein, M.D. is a licensed physician and is one of the debtors in the consolidated pending bankruptcy case of: *In Re: Comprehensive Integrated Medicine M.D.S.C, et al., Debtor(s)*, case number 13-01440. Mayer Eisenstein, M.D.’s individual case is number 13-01449.

9. Mayer Eisenstein, M.D. is also an attorney at law licensed to practice in the State of Illinois.

10. On March 5, 2013, an Order for Joint Administration of Chapter 7 Cases was entered in the following cases: *Comprehensive Integrated Medicine M.D. S.C.* (Case No. 13-01440); *Comprehensive Integrated Home Health Care Agency, Inc.* (Case No. 13-01445); *Mayer Eisenstein, M.D.* (Case No. 13-1449); *Mayer Eisenstein, M.D. S.C.* (Case No. 13-01455); and *Home Care Home Health Agency, Inc.* (Case No. 13-01458) providing that the five related chapter 7 cases shall be jointly administered for procedural purposes only pursuant to Fed. R. Bankr.P. 1015(b).

## **ALLEGATIONS COMMON TO ALL COUNTS**

### **Background**

11. Mayer Eisenstein, M.D.S.C. filed a prior Chapter 11 Bankruptcy case on July 14, 2004. That case was dismissed by an order entered June 13, 2006; effective July 10, 2006.

### **Mediation and Settlement**

12. Following the dismissal of that 2004 bankruptcy case, all of the Personal Injury Plaintiffs' medical malpractice cases, referenced above, were consolidated and assigned to Judge Maddux in the Circuit Court of Cook County, Illinois, under the case name of *El-Amin v. v. Mayer Eisenstein, M.D. S.C. et al.*, 07 L 99. Judge Maddux referred the entire matter to Retired Judge Donald O'Connell for mediation of matters in common to all Personal Injury Plaintiffs and Mayer Eisenstein, M.D.

13. On or about June 11, 2007, a mediation session was conducted by Judge O'Connell at the offices of Arnstein & Lehr, who were counsel for Mayer Eisenstein, M.D.

14. Resulting from that mediation session was a document titled “Terms of Agreement,” prepared by Mayer Eisenstein, M.D.’s attorney and agent Arnstein & Lehr, which related to a settlement of all of the claims of the Personal Injury Plaintiffs, in common. A revised “red-line/strike-out” version of that document was prepared by Arnstein & Lehr, which version shows the language of both the initial and subsequent Terms of Agreement. A copy of the “red-line/strike-out” Terms of Agreement is attached to this complaint as Exhibit A.

15. The Terms of Agreement provided for an aggregate settlement of \$1,275,000.00 (hereinafter the “Settlement Amount”) to resolve the claims of all of the Personal Injury Plaintiffs in the consolidated suit, 07 L 99. The Terms of Agreement does not allocate the division of the Settlement Amount between the Personal Injury Plaintiffs

16. Thereafter, on July 21, 2008, the Personal Injury Plaintiffs, in common and as one transaction binding all of the Personal Injury Plaintiffs, and Mayer Eisenstein, M.D. caused an agreed order to be entered by Judge Maddux in the consolidated case, setting out a schedule of payment of the Settlement Amount. A copy of that order is attached as Exhibit B.

17. The aggregate Settlement Amount of \$1,275,000 represents a small fraction of the total of claims by the Personal Injury Plaintiffs, some of which had reached verdict and judgment.

#### **Allocation of Settlement Payments Among Plaintiffs**

18. Thereafter the Personal Injury Plaintiffs entered into an agreement among themselves allocating the settlement payments between them, where each of the Personal Injury Plaintiffs were to receive the following percentage of the Settlement Amount:

Personal Injury Claimant	Settlement	
	Percent	Amount
Ayesha El-Amin, Administrator of Estate of Na'eem Shahid.	32.1568%	\$ 410,000.00
Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as co-guardians of the estate of Adam Moritz, a disabled minor. . . . .	32.1568%	\$ 410,000.00
Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, Deceased and Jeffrey Haugland, individually. . . . .	17.6471%	\$ 225,000.00
Stephen Tremper and the Estate of Dylan Tremper. . . . .	9.4118%	\$ 120,000.00
Donna Williams; Rocky Williams; and the Estate of Joshua Williams. . . . .	4.7059%	\$ 60,000.00
Theresa Melton; and Robert Melton. . . . .	3.9216%	\$ 50,000.00
Totals	100.0000%	\$ 1,275,000.00

19. This allocation was only among the Personal Injury Plaintiffs, and did not materially affect Mayer Eisenstein, M.D.'s obligation to all of the Personal Injury Plaintiffs in common. The settlement installments contained in the Order of July 21, 2008 (Exhibit B) were an aggregate of the sums to be paid to the individual Personal Injury Plaintiffs and were to be paid by Mayer Eisenstein, M.D. to his counsel, and his counsel would then distribute the pro-rata shares to each of the Personal Injury Plaintiffs.

**Payment of Installments and Default in Payment of Installments**

20. The first four installments of the Settlement Amount were paid as follows:

Installments Due on or Before:	Amount
September 22, 2008. . . . .	\$ 100,000.00
September 22, 2009. . . . .	\$ 100,000.00
September 22, 2010. . . . .	\$ 100,000.00
September 22, 2011. . . . .	\$ 130,000.00
Total	\$ 430,000.00

21. The installment payment of the Settlement Amount which was due to be paid on September 22, 2012 was not paid, and there is due on the Settlement Amount the following sums:

Installments to Be Paid on or Before:	Amount
September 22, 2012 (not paid when due). . . . .	\$ 140,000.00
September 22, 2013 (not yet due). . . . .	\$ 150,000.00
September 22, 2014 (not yet due). . . . .	\$ 160,000.00
September 22, 2015 (not yet due). . . . .	\$ 395,000.00
Total due and unpaid and to become due	\$ 845,000.00

22. Each of the Personal Injury Plaintiffs is due a portion of the settlement installments which are due and unpaid or to become due, in the total amount of \$845,000.00 as follows:

Personal Injury Plaintiff	%	Amount Due
Ayesha El-Amin, Adminstrator of Estate of Na'eem Shahid. . . . .	32.1568%	\$ 271,724.96
Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as co-guardians of the estate of Adam Moritz, a disabled minor. . . . .	32.1568%	\$ 271,724.96
Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, Deceased and Jeffrey Haugland, individually. . . . .	17.6471%	\$ 149,118.00
Stephen Tremper and the Estate of Dylan Tremper. . . . .	9.4118%	\$ 79,529.71
Donna Williams; Rocky Williams; and the Estate of Joshua Williams. . . . .	4.7059%	\$ 39,764.86
Theresa Melton; and Robert Melton. . . . .	3.9216%	\$ 33,137.52
Totals	100.00%	\$ 845,000.00

**The Property at 1101 Dodge, Evanston, Illinois**

23. Paragraph 3 of the Circuit Court order of July 12, 2008 provides:

“3. Defendants agree to title the property securing the settlement, 1101 Dodge, Evanston, IL in a land trust, with the executed settlement agreement serving as the direction to the trustee in the event of a default.”

24. The records of the Office of the Recorder of Deeds of Cook County, Illinois disclose the following transactions for the property at 1101 Dodge, Evanston, Illinois, PIN 10-24-208-032-0000:

(a) Karen Eisenstein (Mayer Eisenstein, M.D.’s spouse) took title by a deed recorded

on April 29, 2002 as document number 0020384408.

- (b) Karen Eisenstein transferred title to North Star Trust Co. Tr. # 36189 by a deed in trust recorded on June 11, 2003 as document number 0316239026.

25. Paragraph 6 of the Circuit Court order of July 12, 2008 further provides:

“6. Plaintiffs are to have secured creditor status in the event of an applicable bankruptcy filing.”

26. Notwithstanding that the title to 1101 Dodge was in a land trust at the time of the entry of the July 21, 2008, the Personal Injury Plaintiffs never received a security interest in the property at 1101 Dodge, and according to Mayer Eisenstein, M.D.’s schedules, the Personal Injury Plaintiffs are not secured creditors and the property at 1101 Dodge, Evanston, Illinois is not listed as property of the estate.

**Statements Made By and On Behalf of Mayer Eisenstein, M.D.**

27. The Terms of agreement and the order of July 21, 2008 were prepared by Arnstein & Lehr, the attorneys for Mayer Eisenstein, M.D., and are to be considered to be representations by Mayer Eisenstein, M.D.

28. As attorneys for Mayer Eisenstein, M.D. Arnstein & Lehr and its individual attorneys were agents of Mayer Eisenstein, M.D. and made representations on his behalf.

**COUNT I**

**Fraudulent Statements in the Terms of Agreement and the Order of July 21, 2008**

11 U.S.C. § 523(a)(2)(A)

29. The Plaintiffs repeat and reallege the allegations contained in the Allegations Common to All Counts.

30. Section 523(a)(2)(A) of the United States Bankruptcy Code provides:



(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by -

(A) false pretenses, a false representation, or actual fraud, other than an statement respecting the debtor's or an insider's financial condition;

**Representations Made in the “Terms of Agreement” and Order of July 21, 2008**

31. On or about June 20, 2008, Mayer Eisenstein, M.D.'s attorney and his agent prepared a revision of the “Terms of Agreement” (Exhibit A), which provided, in part, as follows:

“E. The settlement amount will be secured by 1101 Dodge, Evanston, Illinois. Defendants are to provide evidence of title in the properties in the form of title insurance from either Chicago Title or Attorneys’ Title for both properties. The title to the property shall be in the name of a defendant responsible for paying the settlement amount and no other person or entity shall be a title holder. Defendants are to provide a current appraisal by an appraiser selected by the remaining plaintiffs of the property, as well as evidence of the current amount of all encumbrances on those properties certified by the current lienholders who would have a preferred claim over the Trustee. The title insurance and appraisal called for in this paragraph shall be presented to the remaining plaintiffs not later than 30 days after all of the remaining plaintiffs have signed these Terms of Agreement. Defendants agree not to allow further encumbrances, sales, transfer, or other impediments or impairment to the title on those two properties until the Settlement Amount is paid in full, except if the present cash value of the remaining settlement amount is paid in full from the proceeds of the sale, in the situation where no default has occurred and the provisions of paragraph G have been met.”

“H. Defendants have further agreed to give to the Trustee secured creditor status with respect to the settlement amount.

“I. Defendants in this matter affirm that they do not have any liability insurance coverage for any of the claims of the remaining plaintiffs.”

32. On July 21, 2008, at a hearing of the cases of the Personal Injury Plaintiffs before

Judge Maddux, Mayer Eisenstein, M.D.'s attorney and his agent drafted an order which was then entered by Judge Maddux, which order (Exhibit B) provided, in part, as follows:

“3. Defendants agree to title the property securing the settlement, 1101 Dodge, Evanston, IL in a land trust, with the executed settlement agreement serving as the direction to the trustee in the event of a default;

“5. This settlement is approved;

“6. Plaintiffs are to have secured creditor status in the event of an applicable bankruptcy filing;”

#### **Acceptance**

33. Based upon the Terms of Agreement and the Order of July 21, 2008, the Personal Injury Plaintiffs agreed to accept the aggregate Settlement Amount of \$1,275,000.00, which amount was a small fraction of the total of the claims of the Personal Injury Plaintiffs.

34. Mayer Eisenstein, M.D. accepted the benefits of the settlement contained in the Terms of Agreement and the Order of July 21, 2008, and made the first four installment payments detailed in paragraph 1(a) through 1(d) of the Order of July 21, 2008.

#### **Falsity of Statements**

35. The statements in the Terms of Agreement and the Order of July 21, 2008 relating to the property at 1101 Dodge, Evanston, Illinois, and the status of the Personal Injury Plaintiffs as secured creditors were false at the time of the Terms of Agreement or the entry of the Order of July 21, 2008 in the following particulars:

(a) Mayer Eisenstein, M.D. was not the beneficiary of the land trust holding title to the property at 1101 Dodge.

(b) Karen Eisenstein, Mayer Eisenstein, M.D.'s spouse, was the beneficiary of the

land trust.

- (c) Mayer Eisenstein, M.D., as he claimed at the meeting of creditors, did not have the ability to fulfil the terms of the Order of July 21, 2008 as to the granting of a security interest or providing the Personal Injury Plaintiffs with secured creditor status without the cooperation of this spouse.

36. Mayer Eisenstein, M.D. knew that he could not fulfill the Terms of Agreement or the provisions of the Order of July 21, 2008, but permitted his attorney and agent to include the same in the Terms of Agreement and the Order of July 21, 2008.

37. Neither Mayer Eisenstein, M.D. nor his attorney stated to counsel for the Personal Injury Plaintiffs the inability to fulfill the terms or the false nature of the statements in the Terms of Agreement or the Order.

38. Alternatively or additionally, Mayer Eisenstein, M.D. never intended to fulfill the provisions of the Terms of Agreement or the Order.

39. Mayer Eisenstein, M.D., or his attorney, knew that the statements regarding 1101 Dodge and secured status were false when the Terms of Agreement were made and were false when the Order of July 21, 2008 was entered, or were made with reckless disregard for the truth.

#### **Intent to Deceive**

40. The false representations or false pretenses regarding 1101 Dodge and the secured status promised to the Personal Injury Plaintiffs were made with intent to deceive the Personal Injury Plaintiffs and cause them to accept the terms of agreement and the order, in the following particulars:

- (a) In promising to pledge the property at 1101 Dodge, Mayer Eisenstein, M.D. either

knew that it was not in his power to carry out the pledge, or acted with reckless disregard of his lack of such power.

- (b) He led the Personal Injury Plaintiffs and the Circuit Court to believe that he had the power to pledge the property at 1101 Dodge.
- (c) He took no steps to undertake one or more of the following obligations to which he agreed in the Order of July 21, 2008:
  - (I) To transfer title or beneficial interest to himself.
  - (ii) To have the property appraised or to obtain title insurance.
  - (iii) To acquire the power to comply with the terms of the Order of July 21, 2008.
- (d) He took no steps to communicate to any of the Personal Injury Plaintiffs or the Circuit Court that he did not authorize his attorneys to enter into a settlement with the Personal Injury Plaintiffs.

### **Reliance**

41. The Personal Injury Plaintiffs justifiably relied on the statements and accepted the settlement, which created a liquidated debt from Mayer Eisenstein, M.D. to the Personal Injury Plaintiffs, collectively and individually, in view of the following facts:

- (a) The Personal Injury Plaintiffs had no knowledge of the false representations or false pretenses contained in the Terms of Agreement or the Order of July 21, 2008.
- (b) Mayer Eisenstein, M.D. is educated and sophisticated, being a physician as well as being licensed to practice law in Illinois, and was at all relevant time represented

by counsel..

- (c) Mayer Eisenstein, M.D. was present at many of the sessions to mediate and settle the personal injury actions
- (d) The Terms of Agreement and the Order of July 21, 2008 were drafted by Mayer Eisenstein, M.D.'s counsel
- (e) No objections were made when the July 21, 2008 order was entered by Judge Maddux, and no attempts were made to correct the order.
- (f) Multiple drafts of the Terms of Agreement were prepared by Mayer Eisenstein's counsel, and all of them contained provisions for security, and were not challenged.
- (g) Counsel for Mayer Eisenstein, M.D. stated that the property at 1101 Dodge was better security than the two other parcels which were initially proposed as security.
- (h) After the entry of the Order of July 21, 2008, Mayer Eisenstein, M.D. appeared to honor the terms of that order, since he, through his attorneys, Arnstein & Lehr made four annual installment payments pursuant to that order.
- (i) The negotiations and mediation to settle the consolidated Circuit Court cases took place from about June, 2007 until the entry of the Order on July 21, 2008, and during that time, Mayer Eisenstein, M.D. failed to communicate to any of the Personal Injury Plaintiffs, their counsel or Judge Maddux of the Circuit Court that he was unwilling or unable to pledge the property at 1101 Dodge as security for the settlement.

42. The Personal Injury Plaintiffs have been injured by the lack of security.

WHEREFORE, the Plaintiffs request that the debt in the amount of \$845,000.00 due from Mayer Eisenstein, M.D. to the Personal Injury Plaintiffs in the aggregate be excepted from Mayer Eisenstein, M.D.’s Chapter 7 discharge, and specifically the percentage of the aggregate debt, due to each of the individual Personal Injury Plaintiffs, as follows:

Personal Injury Plaintiff	%	Amount Due
Ayesha El-Amin, Adminstrator of Estate of Na’eem Shahid. . . . .	32.1568%	\$ 271,724.96
Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as co-guardians of the estate of Adam Moritz, a disabled minor. . . . .	32.1568%	\$ 271,724.96
Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, Deceased and Jeffrey Haugland, individually. . . . .	17.6471%	\$ 149,118.00
Stephen Tremper and the Estate of Dylan Tremper. . . . .	9.4118%	\$ 79,529.71
Donna Williams; Rocky Williams; and the Estate of Joshua Williams. . . . .	4.7059%	\$ 39,764.86
Theresa Melton; and Robert Melton. . . . .	3.9216%	\$ 33,137.52
Totals	100.00%	\$ 845,000.00

be excepted from Mayer Eisenstein, M.D.’s Chapter 7 discharge as to that Personal Injury Plaintiff.

**COUNT II**  
**False Statement as to Insurance Coverage**  
 11 U.S.C. § 523(a)(2)(A)

43. The Plaintiffs repeat and reallege the allegations contained in the Allegations Common to All Counts and paragraphs 31 through 34 of Count I.

**The Representation**

44. The Terms of Agreement contain the following language:

“I. Defendants in this matter affirm that they do not have any liability insurance coverage for any of the claims of the remaining plaintiffs.”

45. At one of the meetings pursuant to Section 341 of the Bankruptcy Code, Mayer Eisenstein, M.D. stated that from time to time he has malpractice insurance to allow him to be on staff at an area hospital.

46. At that same meeting, Mayer Eisenstein, M.D. stated that he did not submit any of the claims to that malpractice insurance carrier, because, as he claimed, if he had the insurance would have been cancelled, and he could no longer use the hospital

47. If Mayer Eisenstein, M.D. had medical malpractice insurance coverage in place at a time when the claims or one or more of the Personal Injury Plaintiffs cases arose, then the statement was false.

#### **Intent to Deceive**

48. The statement, if false, was uttered with the intent to deceive the Personal Injury Plaintiffs.

#### **Reliance**

49. The Personal Injury Plaintiffs justifiably relied on the statement, and accepted a settlement, which created a liquidated debt from Mayer Eisenstein, M.D. to the Personal Injury Plaintiffs, collectively and individually. The Personal Injury Plaintiffs have been injured to the extent of that debt.

WHEREFORE, the Plaintiffs request that the debt in the amount of \$845,000.00 due from Mayer Eisenstein, M.D. to the Personal Injury Plaintiffs in the aggregate be excepted from Mayer Eisenstein, M.D.'s Chapter 7 discharge, and specifically the percentage of the aggregate debt, due to each of the individual Personal Injury Plaintiffs, as follows:

Personal Injury Plaintiff	%	Amount Due
Ayesha El-Amin, Adminstrator of Estate of Na'eem Shahid. . . . .	32.1568%	\$ 271,724.96
Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as co-guardians of the estate of Adam Moritz, a disabled minor. . . . .	32.1568%	\$ 271,724.96
Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, Deceased and Jeffrey Haugland, individually. . . . .	17.6471%	\$ 149,118.00
Stephen Tremper and the Estate of Dylan Tremper. . . . .	9.4118%	\$ 79,529.71
Donna Williams; Rocky Williams; and the Estate of Joshua Williams. . . . .	4.7059%	\$ 39,764.86
Theresa Melton; and Robert Melton. . . . .	3.9216%	\$ 33,137.52
Totals	100.00%	\$ 845,000.00

be excepted from Mayer Eisenstein, M.D.'s Chapter 7 discharge as to that Personal Injury Plaintiff.

**COUNT III**  
**Willful and Malicious Injury**  
 11 U.S.C. § 523(a)(6)

50. The Plaintiffs repeat and reallege the allegations contained in the Allegations Common to All Counts and paragraphs 31 through 34 of Count I.

51. Section 523(a)(6) of the United States Bankruptcy Code provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

52. Mayer Eisenstein, M.D. by his counsel negotiated a settlement of the claims of the Personal Injury Plaintiffs which was very advantageous to Mayer Eisenstein, M.D., as is set forth in the Terms of Agreement (Exhibit A) and the Order of July 21, 2008 (Exhibit B).

53. To obtain the favorable settlement, Mayer Eisenstein, M.D., individually or by his



attorney and agent, intentionally and maliciously made misrepresentations as to the pledging of security to secure the terms of the settlement, which terms Mayer Eisenstein, M.D. was not able to meet at the time of the misrepresentations, and, according to his statements at the Section 341 meeting, which he never intended to honor.

### **Willful**

54. Mayer Eisenstein, M.D.'s actions were willful in attempting to deceive the Personal Injury Plaintiffs in that the representations as to Dodge being pledged as security was either a false representation or a false pretense, and as such, was at the time known by the defendant to be without legal justification, since at the time such representation was made one or more of the following facts were true as to defendant's intent to deceive the plaintiff:

- (a) In promising to pledge the property at 1101 Dodge as security, Mayer Eisenstein, M.D. either knew that this promise could not be satisfied, or was in reckless disregard of the same.
- (b) He led the Personal Injury Plaintiffs and the Circuit Court to believe that he had the power to pledge the property at 1101 Dodge.
- (c) Other than making four of the installment payments, he took no steps to satisfy the terms of the Order of July 21, 2008
- (d) He took no steps to undertake one or more of the following obligations to which he agreed in the Order of July 21, 2008:
  - (I) To transfer title or beneficial interest to himself.
  - (ii) To have the property appraised or to obtain title insurance.
  - (iii) To acquire the power to comply with the terms of the Order of July 21,

2008.

- (e) He took no steps to communicate to any of the Personal Injury Plaintiffs or the Circuit Court that he did not authorize his attorneys to enter into a settlement with the Personal Injury Plaintiffs.
- (f) He failed to disclose that the property at 1101 was being marketed for sale.

55. Mayer Eisenstein, M.D.'s inability or refusal to pledge the property at 1101 Dodge was to protect his spouse's asset.

#### **Malice**

56. Mayer Eisenstein, M.D.'s actions were malicious, to induce the Personal Injury Plaintiffs to accept a settlement with the major inducement for the settlement either unable to be performed or which Mayer Eisenstein, M.D. never intended to perform, which was not communicated to the Personal Injury Plaintiffs or their counsel.

#### **Intent to Injure**

57. Mayer Eisenstein, M.D.'s actions intended to injure the Personal Injury Plaintiffs in that he knew that the Personal Injury Plaintiffs were relying on the pledge of security. At the time of the actions the state of mind of Mayer Eisenstein, M.D. was such that either he desired to inflict financial injury on the plaintiff by depriving the plaintiff of the promised security or, in the alternative, knew or should have known that such injury was highly likely to result from his actions, in view of the following facts:

- (a) In the event of a default on the settlement installment payments, the Personal Injury Plaintiffs would not be able to recover against any medical malpractice insurance since he carried none and had admitted it in the consolidated suits, or in

the alternative, failed to report the relevant malpractice to his insurance carrier;

- (b) The Personal Injury Plaintiffs were relying on the pledge of the Dodge property as a valid pledge when, in fact, it was not; and thus they would have no chance to collect the settlement debt by recourse to it;
- (c) Mayer Eisenstein had caused the Dodge property to be listed for sale before the date of the Order of July 21, 2008 and it remained listed on that date and , if sold, would be beyond the reach of defendant’s creditors including the Personal Injury Plaintiffs;
- (d) Before the entry of the order on July 21, 2008, Mayer Eisenstein, M.D. knew that other real estate he owned or controlled, namely property in Rolling Meadows and Naperville, Illinois had insufficient equity to be offered as security, and so proposed that those properties be deleted from the proposed Terms of Agreement and that the Dodge property be substituted therefor as the only one adequate as security.

58. The Personal Injury Plaintiffs have been injured by the acts of Mayer Eisenstein, M.D.

WHEREFORE, the Plaintiffs request that the debt in the amount of \$845,000.00 due from Mayer Eisenstein, M.D. to the Personal Injury Plaintiffs in the aggregate be excepted from Mayer Eisenstein, M.D.’s Chapter 7 discharge, and specifically the percentage of the aggregate debt, due to each of the individual Personal Injury Plaintiffs, as follows:

Personal Injury Plaintiff	%	Amount Due
Ayesha El-Amin, Administrator of Estate of Na’eem Shahid. ....	32.1568%	\$271,724.96

Personal Injury Plaintiff	%	Amount Due
Ruth Ann Moritz and Bernard Hans Moritz, Jr., individually and as co-guardians of the estate of Adam Moritz, a disabled minor. . . . .	32.1568%	\$ 271,724.96
Jeffrey Haugland, as Administrator of the Estate of Hayley Haugland, Deceased and Jeffrey Haugland, individually. . . . .	17.6471%	\$ 149,118.00
Stephen Tremper and the Estate of Dylan Tremper. . . .	9.4118%	\$ 79,529.71
Donna Williams; Rocky Williams; and the Estate of Joshua Williams. . . . .	4.7059%	\$ 39,764.86
Theresa Melton; and Robert Melton. . . . .	3.9216%	\$ 33,137.52
Totals	100.00%	\$ 845,000.00

be excepted from Mayer Eisenstein, M.D.’s Chapter 7 discharge as to that Personal Injury Plaintiff.

**RULE 9011 STATEMENT**

Pursuant to Rule 9011, Fed.R.Bankr.P., the undersigned states that the allegations and other factual contentions have evidentiary support, or, as to the allegations of paragraphs 35 through 40, 45 through 48, and 54 through 57, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

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Respectfully submitted:

/s/ James P. Wognum