

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 08-417(DSD/JJK)

Owatonna Clinic-Mayo Health
System,

Plaintiff,

v.

ORDER

The Medical Protective Company
of Fort Wayne, Indiana,

Defendant.

This matter is before the court upon defendant's motion for approval of supersedeas and stay of judgment pending appeal. Defendant submitted a proposed bond. (Def.'s Mot. [Doc. No. 142-1] Ex. A.) The parties agree on all elements of the bond except the language of the Promise to Pay, which states that defendant and its surety "each undertakes and promises to pay to Plaintiff Owatonna Clinic all damages, costs, and interest that may be awarded to Plaintiff Owatonna Clinic following an appeal in this matter up to, but not to exceed the sum of \$3,578,666.90" (Id. at 1.) Plaintiff argues that the phrase "but not to exceed" should be removed. The court finds that the phrase "up to" renders the phrase "but not to exceed" superfluous, and therefore, the latter phrase should be stricken. Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's motion [Doc. No. 142] is granted;
2. The court approves the supersedeas bond [Doc. No. 142-1] in the amount of \$3,578,666.90 on the condition that the

phrase "but not to exceed" is removed and grants defendant leave to file the bond in conformity with this order within 14 days;

3. All proceedings to enforce or execute the judgment of the court in favor of plaintiff are stayed pending exhaustion of appeals; and

4. If the judgment is affirmed, the appeal is dismissed or the judgment is modified, plaintiff may commence enforcement proceedings without further order of this court.

Dated: May 14, 2010

s/David S. Doty
David S. Doty, Judge
United States District Court