

**SUBROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

In the Matter of the Application of
THE LONG ISLAND COLLEGE HOSPITAL, a Beneficiary
under the Last Will and Testament of
Donald F. Olshen,

Deceased
for a modification of the restrictions on his bequest under
Section 8-J 1(c) of the Estates, Powers and Trusts Law of the
State of New York.

**AFFIDAVIT OF NO
OBJECTION ON BEHALF
OF THE ATTORNEY GENERAL**

ELIOT SPITZER,
Attorney General

Attorney for Ultimate Charitable Beneficiaries
Paula Gellman, AAG
Charities Bureau
Office and P.O. Address
120 Broadway, New York, NY 10271
Tel (212) 416-8404

Personal service of a copy of
within day of
is admitted this day of
2006

Sir:

Please take notice that the within is a
true copy of
duly filed and entered in the office of the
Clerk of County, on the day
of , 2006

Yours, etc.,
ELIOT SPITZER,
Attorney General.

Attorney From
Office and P.O. Address
120 Broadway, New York, NY 10271

To
, Esq.
Attorney for

Sir:
Please take notice that the within

will be presented for settlement and signature
herein to the Hon. one of the judges of
the within named Court, at in the
Borough of City of New York, on the
day of 2006, at M.

Dated, N.Y., , 2006
Yours, etc.,
ELIOT SPITZER,
Attorney General.

Attorney For
Office and P.O. Address
120 Broadway, New York, NY 10271
To
, Esq.
Attorney for

575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

February 8, 2006

Via Hand Delivery

Ms. Madeline Raphael
Accounting/Miscellaneous Department
Kings County Surrogate's Court
2 Johnson Street
Brooklyn, NY 11201

JASMINE M. HANIF
jasmine.hanif@kattenlaw.com
212.940.6491 direct
212.894.5591 fax

**Re: Estate of Donald F. Othmer, File #5101/95
Estate of Mildred Topp Othmer, File # 1686/98**

Dear Ms. Raphael:

Pursuant to your instructions, enclosed is a separate Petition for cy pres relief in connection with each of the above-referenced estates. Please note that since we were unable to reach you by telephone to confirm as much, we assumed that you would require that our Memorandum of Law also be submitted separately for each estate and therefore submit herewith a separate Memorandum of Law in support of each separate Petition. In addition, we have asked the Attorney General's office to resubmit its Affidavit of No Objection as two separate Affidavits – one for each Petition. The Attorney General's Affidavits should follow shortly.

Once again, I urge you to speak with Charles Brody before your office begins to process these Petitions as we had pre-cleared submission of these documents with Mr. Brody. At that time, Mr. Brody had informed us that the original single petition would be reviewed by Surrogate Seddio and it would clearly be inefficient for the matters to be reviewed by two different Surrogates simply because the Petition has been split into two separate submissions.

I trust that the documents submitted herewith, along with the Attorney General's Affidavits of No Objection and the two previously submitted filing fees satisfy your needs. However, should you require anything else, please let me know as soon as possible.

Sincerely,



Jasmine M. Hanif

JMH
Enclosures

cc: Kathryn Meyer, Esq. (with enclosures)
Paula Gellman, Esq. (with enclosures)
Ronni G. Davidowitz, Esq. (with enclosures)

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of
THE LONG ISLAND COLLEGE HOSPITAL, a Beneficiary
under the Last Will and Testament of

File No. 5101/95

Donald F. Othmer,
Deceased,

AFFIDAVIT OF NO
OBJECTION ON
BEHALF OF THE
ATTORNEY GENERAL

for a modification of the restrictions on its bequests under
Section 8-1.1(c) of the Estates, Powers and Trusts Law of the
State of New York.

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

PAULA GELLMAN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the Charities Bureau of the office of Eliot Spitzer, Attorney General of the State of New York. The Attorney General represents the ultimate beneficiaries of gifts for charitable purposes pursuant to Article 8 of the Estates, Powers and Trusts Law ("EPTL"), and is a necessary party to this proceeding under EPTL § 8-1.1(f).

2. I submit this affidavit in connection with the Cy Pres Petition (the "Petition") of The Long Island College Hospital ("LICH"), a not-for-profit hospital corporation located in Brooklyn, New York, for cy pres relief pursuant to EPTL § 8-1.1(c) with respect to the bequests under the wills of Donald F. Othmer and Mildred Topp Othmer, held by LICH as the Othmer Endowment Funds. LICH is in dire financial condition and seeks to authorization to borrow \$25 million from the Othmer Endowment Funds in order to pay down existing accounts payable and fund critical capital projects.

3. A prior order granting cy pres relief to LICH in connection with the Othmer Endowment Funds was granted by this Court on May 30, 2000 by Acting Surrogate Leonard Skolnick. The 2000 cy pres order permitted LICH to modify the gift restrictions in order to use Othmer Endowment Funds as collateral for approximately \$89 million in new financing, as well as \$15 million from the bequest of Mildred Othmer to acquire and renovate a medical treatment facility. Despite the improved performance of LICH following from the 2000 cy pres relief, LICH continued to face large operating losses. As a result, LICH now seeks additional cy pres relief from this Court for the reasons set forth more fully in the Petition.


4. According to the Petition, LICH's limited cash and high levels of accounts payable create severe operating and financial problems for LICH. LICH seeks to be relieved of the restriction that income only from the Othmer Endowment Funds is available to LICH for its general purposes. LICH seeks an order authorizing it to borrow \$25 million from the Othmer Endowment Funds so that it may pay down its accounts payable by \$15 million and fund \$10 million in critical capital projects, as more fully described in the Petition at paragraphs 31-33.

5. The Attorney General's Charities Bureau has carefully reviewed the Petition and the proposed Order, which were submitted to the Charities Bureau for review before being filed with the Court. In addition, the Charities Bureau has reviewed financial data and other requested documents and information, and has conducted extensive discussions with representatives of LICH and LICH's counsel. As the result of our review, the Attorney General is satisfied that the requirements of EPTL § 8-1.1(c) and the doctrine of cy pres have been met; in particular, that (a) the bequests to LICH under the wills of Donald F. Othmer and Mildred Topp Othmer were charitable in nature, (b) the Othmers had a general, rather than a specific, charitable intent, and

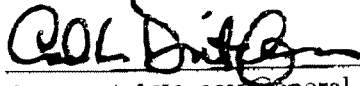
(c) circumstances have so changed since the execution of the wills as to render impracticable or impossible a literal compliance with the terms of the bequests, warranting the cy pres relief requested in the petition. Based on the financial hardship described in the petition, the Charities Bureau is satisfied that, absent the cy pres relief requested here, LICH will be at substantial risk in the near future for bankruptcy and closure of the hospital. It appears that the requested cy pres relief would significantly alleviate LICH's current serious financial difficulties as described in detail in the petition and thus enable LICH to continue to carry out its not-for-profit hospital purposes. Moreover, the requested cy pres relief is narrowly tailored to preserve the Othmer Endowment Funds by avoiding an outright invasion of such funds.

6. LICH has agreed to a repayment and reporting schedule that is satisfactory to the Attorney General. The Attorney General has also confirmed that, despite its financial condition, LICH has remained current in its repayment obligations arising out of the 2000 cy pres proceeding.

7. Accordingly, the Attorney General has no objection to the granting of the cy pres relief requested by LICH and entry of the proposed Order submitted with the Petition.


 Paula Gellman

Sworn to before me this
 8th day of February, 2006


 Assistant Attorney General
 (pursuant to Exec. L. § 73)

To: Ronni G. Davidowitz, Esq.
 Attorney for Petitioner