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### Forest Park Medical at Frisco, LLC.: The Decline of one Structure and the Rise of Another

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# FOREST PARK MEDICAL AT FRISCO, LLC.

## The Decline of one Structure and the Rise of Another

### Abstract

This paper discusses the bankruptcy and restructuring that Forest Medical Center at Frisco (Texas) recently underwent in order to return the hospital to profitability. The discussion begins with a summary of the hospital's corporate history and founding and an introduction to the key players in the restructuring process, including the relevant circumstances and management figures responsible for the considerable financial problems that led Forest Medical Center to have to make a Chapter 11 filing. The paper provides an account of the bankruptcy proceedings from the hospital's pre-petition plan to the court's confirmation of the debtor's re-organization strategy. The paper concludes with a discussion of the company's economic position post-bankruptcy.

Lori Lynn Millsaps

# The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco

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## **I. BACKGROUND**

### **A. THE HOSPITAL AT FRISCO**

Forest Park Medical Center at Frisco LLC (FRISCO) was formed as part of a rising trend in healthcare where for-profit, doctor-owned hospitals were flourishing. The hospitals promised more privacy, more comfort and better outcomes for their patients (Lindenberger, 2015).<sup>1</sup> The hospital was to be considered a high-end facility similar to those already operating under the Dallas-based network of physician-owned facilities for Forest Park. Each hospital opened within the Forest Park network would be its own financial entity. Forest Park Medical Center at Frisco was formed in 2010 by four founders who believed that patients who could afford it would choose high-end medical care provided at small hospitals largely owned by physicians. It opened its doors in 2012.<sup>2</sup>

The 4-story, 141,500-square-foot Forest Park Medical Center at Frisco Square opened July 26, 2012. The complex included 56,000 square feet of medical office space on two floors, more 34,000 square feet of retail space for restaurants and shops and a 600-car parking structure. The developer of the project was Neal Richards Group, and the project was designed by Dallas-based architecture and design firm BOKA Powell LLC (Brown, 2012).

According to the hospital's new website, Forest Park Medical at Frisco (now known as "Medical City Frisco")<sup>3</sup> is a 54-bed acute care hospital which is located in Frisco, Texas. The

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<sup>1</sup> Lindenberger, M. A. (2015, September 9). Forest Park Medical Center Frisco facility files for Chapter 11. Retrieved from Dallas Morning News: <http://www.dallasnews.com/business/health-care/20150923-forest-park-medical-center-frisco-facility-files-for-chapter-11.ece>

<sup>2</sup> Id.

<sup>3</sup> Upon restructuring and sale, Forest Park Medical Center at Frisco has been renamed to Medical City Frisco and the Forest Park Medical Center website no longer affiliates with this hospital. About Us | Medical City Frisco

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hospital offers a range of services including adult and pediatric surgery, orthopedics, robotic-assisted laparoscopic surgery, imaging and emergency services. The hospital boasts that it is a “green” facility, with a silver LEED certification for environmental and energy efficiency (Medical City Frisco, 2016).

### **B. THE BUSINESS PLAN**

Forest Park Medical center at Frisco (FRISCO) was to be part of the “12 by 12” plan of its parent, Forest Park Medical Center. The plan’s goal involved having twelve high-end scaled hospitals open or under construction within a year (Hethcock, 2015). While ambitious to achieve, Forest Park Medical Center was determined to meet this 12 by 12 plan by branching past its largest flagship facility located in Dallas, to develop smaller facilities in towns such as Frisco, Southlake, Ft. Worth, San Antonio, and a proposed facility in Austin Texas which never came to fruition. At the time of the writing of this paper, all of the facilities have either closed or entered into Chapter 11 and the Forest Park system of hospitals continues to struggle within financial distress<sup>4</sup> with even the flagship hospital closing its doors in October of 2015.

### **C. THE BEGINNING FOUNDERS**

- **Todd Furniss:** CEO and managing partner of glendonTodd Capital and Chairman of the Management Company at Forest Park Medical Center

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<sup>4</sup> Id.



## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

- **Derrick Evers:** Former CEO of the Neal Richards Group; CEP of Kaizen Development Partners (Co-founded in May 2015, after exiting NRG); original partner in glendonTodd Capital
- **Dr. Richard Toussaint:** Co-Founder of Forest Park Medical Center and original partner in glendonTodd Capital; anesthesiologist
- **Dr. Wade Barker:** Co-Founder of Forest Park Medical Center; partner in glendonTodd Capital; bariatric surgeon

### **D. THE FOUNDING AND COLLAPSE**

Under the business plan developed by the founders, Forest Park initially expected to prosper as an out-of-network hospital where patients would agree to be treated even if their insurance policies paid far smaller shares of their hospital bills than if they had gone to cheaper, in-network providers. For the first year or so after opening the doors at Frisco, the plan progressed as expected.

Eighty-six physicians own 68.7 percent of the Frisco hospital. Todd Furniss and partners controlled the management firm “glendonTodd Capital LLC” that ran the hospital for a 3 percent share of its revenues. A second firm controlled by Furniss and his partners is an investment vehicle that owned 13 percent of the hospital itself. FRISCO is one of seven independently structured partnerships formed to launch doctor-owned hospitals in Dallas, Austin, Plano, Southlake, San Antonio and Kansas City.

In 2013, the company’s revenue began to lag behind the system’s expectations and the company began to seek to join insurance company networks in order to broaden the potential

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

customer base. Unfortunately, this strategy failed to produce enough lower-margin customers to make up for the smaller amounts they were allowed to bill.<sup>5</sup>

### **E. THE AFFORDABLE CARE ACT OF 2010**

Along with the failing revenue attributed to the failure to join insurance company networks and broaden the potential customer base, the system also faced the changes in the health-care landscape which was affected by the implementation of the Affordable Care Act., commonly referred to as Obamacare.<sup>6</sup>

This Act set out to cover the millions of Americans without health care and added to the already pre-existing restrictions on self-referrals and referrals to entities by physicians who have established a financial relationship. This law effectively banned Medicare and Medicaid reimbursements to physician-owned hospitals such as FRISCO. This law was driven after critics, such as the American Hospital Association widely expressed opposition and argued that doctor-owned facilities have a built in conflict of interest when they are both hospital owner and physician and can cherry-pick the most profitable patients.<sup>7</sup> In anticipation of the restrictions on government reimbursements for physician-owned facilities, FRISCO was not set up to accept Medicare or Medicaid reimbursements. In hindsight, the option to do so may have opened new revenue streams that could have helped to prevent the company downfall.

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<sup>5</sup> Lindenberger\_Dallas%20Morning%20News\_FRISCO%20facility%20files%20for%20Chapter%2011 - Bing

<sup>6</sup> Affordable Care Act | Medicaid.gov

<sup>7</sup> Cover Story: Forest Park business model is broken, and there's no easy cure - Dallas Business Journal

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### **F. THE ATTEMPT TO SALVAGE**

Due to the financial disparity of Forest Park, the health giant system's focus switched from their expeditious growth plan to a plan of survival.<sup>8</sup> With this new plan, the system recruited the help of Todd Furniss and his private equity firm to save the faltering system. As the CEO and Managing Partner of the private equity firm and chairman of the Management Company at Forest Park Medical Center, Mr. Furniss was recruited to save Forest Park's system as a whole from complete bankruptcy which was brought on by a variety of factors such as changes in healthcare and by the plan's cost structure that has left the system's hospitals underfunded and hemorrhaging cash.<sup>9</sup>

### **G. FOREST PARK MEDICAL CENTER AT KANSAS CITY**

Attorneys representing about one dozen Kansas City physician investors filed suit against Forest Park and its managing company to obtain a return of money invested for the development and operation of a hospital in Kansas City under the Forest Park Medical Center platform. The suit complaint alleges that the involved physicians donated approximately \$4 million dollars to the founding physicians of Forest Park and its operating company, Vibrant Healthcare for the development of the new hospital. However, allegedly 500,000 of those funds were diverted to FRISCO to cover payroll without the consultation or approval of the diversion.<sup>10</sup> This lawsuit and allegations add to the already growing financial distress of FRISCO.

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

# The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco

## II. PRE-BANKRUPTCY

### A. FINANCIAL POSITION OF FRISCO

#### a. *Secured Lender*

FRISCO entered into a Loan and Security Agreement for a line of credit on October 10, 2012 with Texas Capital Bank (“TCB”).<sup>11</sup> This line of credit agreement was secured by all of FRISCO’s assets. This line of credit matured at the end of December in 2014 but FRISCO was able to procure an extension until March 31, 2015. Upon reaching the maturity date, TCB informed FRISCO that it would not be renewing the line of credit or providing any additional extensions. At the time directly before filing a petition for bankruptcy, FRISCO owed approximately \$2.5 Million dollars under their line of credit agreement with TCB. The hospital also was indebted to TCB under a Master Equipment Lease which was dated May 30, 2012 and was in place for equipment in possession of FRISCO. There were additional equipment leases to various parties. At the time prior to petition, FRISCO was indebted to TCB for a total of \$6 million dollars secured by FRISCO’s assets.<sup>12</sup>

#### b. *Revenue & Expenses*

Prior to the filing of the petition and in account of three months prior to its filing, FRISCO had generated approximately \$3.4 million a month in revenue. It had an operating expense of approximately \$4.3 million a month. These amounts show that FRISCO was not generating sufficient revenue to continue to operate.

<sup>11</sup> The Best Business Bank in Texas® | Texas Capital Bank

<sup>12</sup> Complex Chapter 11 Motion Re: Maintenance of Bank Accounts and Existing Cash Management; Case No. 15-41684; Doc. No. 6

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### *c. Landlord*

Sabra (Nasdaq: SBRA)<sup>13</sup>, is a California-based Real Estate Investment Trust (REIT) that purchased the Forest Park's Frisco facilities in 2013 for \$119.8 million dollars. In September of 2015 and prior to the bankruptcy filing, FRISCO owed Sabra over \$8.5 million dollars in rent and had not paid anything to its landlord since January of 2015.<sup>14</sup>

### **B. HOSPITAL OPERATIONS**

In the third quarter of 2015, FRISCO spiral downward was evident with being minimally staffed to care for an average of one to three inpatients per day and up to 200 outpatients calculated per month which is only a small percentage of the possible capacity maximum of 54 inpatients per day and 1,000 outpatients per month. The hospital staffed approximately 159 employees including 100 full-time employees and 59 part-time employees.<sup>15</sup>

### **C. ATTEMPTS TO RESTRUCTURE**

According to the affidavit by Michael Miller filed with the Chapter 11 petition<sup>16</sup>, the hospital's knowledge that the hospital was unable to sustain the level needed to survive by operating solely out of network caused it to move forward with the intention of accepting the discounted in-network reimbursement rates to increase volume and boost revenue. However, the

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<sup>13</sup> Sabra Health Care REIT, Inc\_ - Home\_aspx.mht

<sup>14</sup> <http://www.bizjournals.com/dallas/blog/2015/09/forest-parks-frisco-hospital-debts-total-15m.html>

<sup>15</sup> Complex Chapter 11 Motion Re: Maintenance of Bank Accounts and Existing Cash Management; Case No. 15-41684; Doc. No. 6 at page 3)

<sup>16</sup> Affidavit of Michael Miller; Case\_15-41684; Doc. No. 3

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reduced rates didn't affect the volume enough to satisfy the need to purchase supplies causing the hospital to delve into cash resources and continually reduce FRISCO's revenues.

In June of 2014, FRISCO engaged Juniper Advisory, LLC to assist in pursuing a sale of the hospital but was unsuccessful in closing a sale.

A replacement revolving lender was sought and located that would pay off the TCB line of credit and provide an additional \$6.5 million dollars but certain obstacles and intervening lawsuits caused the financing to never close.

FRISCO retained Deloitte CRG in September of 2015 to assist in creating the company's short-term budgets and assess FRISCO's assets and provide options on how to improve its operations.

### **D. DEBTOR IN POSSESSION FINANCING**

Sabra offered FRISCO with debtor in possession financing ("DIP") in the estimated amount of \$18.5 million accruing at an interest rate of 5% and payable in monthly arrears, but mature upon the occurrence of certain events, including the conversion or dismissal of the bankruptcy case, the sale of substantially all of the Frisco facilities, or the revocation of Forest Park-Frisco's license to operate, or the expiration of thirty-five days after the filing of a Petition if a final order approving the DIP Financing has not been approved by the Bankruptcy Court.<sup>17</sup>

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<sup>17</sup> Case\_15-41684; Doc No. 6 at page 4

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### **E. RESOLVE TO FILE BANKRUPTCY**

The physician-controlled board of FRISCO decided that bankruptcy protection was necessary after reviewing the financial challenges and insurance company restrictions of payments for their out-of-network provider operations. The board was governed by an eight-member Board of Managers (the “Board”). Its make-up consisted of the following doctors: Dr. Guy Culpepper, Dr. Brian Borgfeld, Dr. Ricardo Meade, Dr. Jeff Catorini, Dr. Colin Pero and Dr. Robert Wyatt. In addition, two members of glendonTodd Capital, LLC (“GlendonTodd”), Todd Furniss and Mary Hatcher, (who were also with the Management Company and Vibrant Healthcare Frisco Holdings, LLC ), also served on the Board.<sup>18</sup>

The financial challenges along with the enforcement of the pre-existing law under the Affordable Care Act, essentially banning physician owned facilities from receiving Medicare and Medicaid reimbursements left the hospital with no other option but to reorganize and restructure.

A spokeswoman for Forest Park-Frisco stated that the hospital had received interim approval from the bankruptcy court to move forward with restructuring plans. Kandace Cortez, executive director of communications for Forest Park, called it a “strategic decision” to reorganize the business under Chapter 11.<sup>19</sup> She stated “Under Chapter 11, the hospital will continue to operate while developing a plan to restructure its finances and operations.”

Todd Furness expressed his thoughts and optimism<sup>20</sup> by stating, “It’s unfortunate that this is the outcome.” He added, “Hopefully it will solve some problems and allow the hospital to move

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<sup>18</sup> Application to Employ Michael S. Miller as Chief Restructuring Officer Case No. 15-41684; Doc. No. 4

<sup>19</sup> Forest Park's Frisco hospital debts total \$15M, including \$8.5M to landlord Sabra (Nasdaq: SBRA) - Dallas Business Journal

<sup>20</sup> Id.

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forward quickly and enter some new circumstances.” Attorneys for FRISCO filed their voluntary petition on Tuesday, September 22, 2015 in the U.S. Bankruptcy Court for the Eastern District of Texas.



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### **III. CHAPTER 11 FILING**

Forest Park Medical Center at Frisco, LLC employed Michael S. Miller as the Chief Restructuring Officer as depicted in the Debtor's Application for Entry of An Order Authorizing the Employment, Retention and Designation of Michael S. Miller as Chief Restructuring Officer as of the Petition Date.<sup>21</sup> In Mr. Miller's affidavit before the bankruptcy court, he summarized and mirrored Todd Furniss' opinion of how the hospital system's revenue model fell apart.<sup>22</sup> He stated in the affidavit:

“This model relied upon higher reimbursement rates as an exclusive out-of-network facility. However, the debtor's declining 2013 revenues revealed that the out of network model did not provide a sufficient level of revenue to sustain operations,” Miller's statement continued by stating “Consequently, the debtor attempted to increase its revenues by entering into network contracts with various insurance providers.”

Forest Park's plan in filing a Chapter 11 bankruptcy was that it would have an opportunity to quickly evaluate whether a reorganization plan or a sale of the assets would provide the best and most efficient recovery for its creditors. The hospital was seeking to prevent further deterioration of its business and wanted to preserve over one hundred jobs for its employees.<sup>23</sup>

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<sup>21</sup> Case\_15-41684; Doc. No. 4

<sup>22</sup> Case\_15-41684; Doc. No. 3

<sup>23</sup> Case\_15-41684; Doc. No. 6 at page 7

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

### **A. VOLUNTARY PETITION**

The petition was filed on September 22, 2015 in the Eastern District of Texas.<sup>24</sup> FRISCO had retained Lewis Brisbois Bisgaard & Smith LLP, namely Mr. William L. Medford to file the petition on its behalf. Mr. Michael Miller, the Chief Restructuring Officer executed the petition on behalf of the debtor.<sup>25</sup>

Forest Park Medical Center Frisco, LLC listed itself as a corporation with between 200 to 999 creditors, and estimated it had assets in the amount between \$10 million to \$50 million dollars. The petition listed its estimated liabilities at between \$10 million to \$50 million dollars. The petition reflected that most of the debts were primarily that of business debts and that there would be funds available for distribution to unsecured creditors. The petition did not identify any other prior or pending bankruptcy cases.<sup>26</sup> The petition was filed with a Notice of Designation of the filing being that of a complex Chapter 11 case due to the facts that the debtor has debt of more than \$10 million dollars and there are more than 50 parties in interest in this case.<sup>27</sup> Filed along with the petition was a list of creditors holding 20 of the largest unsecured claims.<sup>28</sup> FRISCO's largest unsecured creditors included:

<u><b>Creditor</b></u>	<u><b>Location</b></u>	<u><b>Type</b></u>	<u><b>Amount Due</b></u>
Sabra Texas Holdings, LP	Dallas, TX	Landlord	\$8,517,302.16
Vibrant Management	Dallas, TX	Vendor	\$866,255.00
Intuitive Surgical	San Francisco, CA	Vendor	\$596,964.08
CPM Medical LLC	Richardson, TX	Vendor	\$519,254.94

<sup>24</sup> Chapter 11 Voluntary Petition, without Schedules, Statements and Other Required Documents; Case No. 15-41684; Doc. No. 1

<sup>25</sup> Id. at page 3

<sup>26</sup> Id. at page 2

<sup>27</sup> Id. at page 1.1

<sup>28</sup> List of 20 Largest Unsecured Creditors; Case\_15-41684; Doc. No. 2

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Valley Services, Inc.	Atlanta, CA	Vendor	\$260,116.81
Medline	Mundelein, IL	Vendor	\$195,254.94
Lifecell Corporation	Houston, TX	Vendor	\$177,099.70
Identity Media Svc., LLC	Irving, TX	Vendor	\$168,806.07
Johnson & Johnson Health	Piscataway, NJ	Vendor	\$166,384.82
LDR Spine USA, Inc.	Dallas, TX	Vendor	\$162,668.00
Bell Nunnally & Martin	Dallas, TX	Vendor	\$141,850.22
Stryker Instruments	Kalamazoo, MI	Vendor	\$139,883.36
Stryker Endoscopy	Chicago, IL	Vendor	\$133,290.10
Pro Silver Star Ltd.	Irving, TX	Vendor	\$131,888.88
Inpatient Physician Assoc.	Dallas, TX	Vendor	\$130,000.00
Ricoh USA Inc.	Dallas, TX	Vendor	\$125,430.59
Medical Information Tech.	Westwood, MA	Vendor	\$120,862.79
Smith & Nephew, Inc.	Memphis, TN	Vendor	\$100,560.99
Siemens Medical Solutions	Malvern, PA	Vendor	\$98,736.52
Allergen USA Inc.	Irvine, CA	Vendor	\$96,417.35

**B. FIRST DAY MOTIONS**

On September 22, 2015 along with the filing of the Voluntary Petition, FRISCO also filed several first day motions in which they request the court to grant certain provisions of relief regarding business operation needs as well as to streamline the reorganization or restructuring process of the debtor.

*a. To Authorize Certain Procedures to Maintain the Confidentiality of Patient Information and Related Items*

FRISCO sought an entry of an order that would authorize it to perform certain procedures to maintain the confidentiality of patient information as required under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Texas Medical Records Privacy

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Act (“TMRPA”).<sup>29</sup> As a healthcare service provider, FRISCO estimates that it had treated over 24,000 patients at the hospital over the three year term. Among those patients, there were approximately 900 patients which may have had claims against FRISCO for refunds. To comply with applicable privacy restrictions, the Debtor proposed filing the Supplemental Schedule F and Patient Matrix under seal.<sup>30</sup> The motion also requested that because the privacy restrictions of HIPAA may still be imposed beyond final disposition of this case, a further request that the Patient Matrix and Supplemental Schedule F be kept confidential indefinitely and not deemed unsealed after the final disposition of the case.<sup>31</sup> Further, this motion sought approval from the Court as a practical matter for a less complicated notice structure for the twenty-four thousand patients who are technically entitled to receive notification as a streamlined process of notifying each patient in writing when possible of just the Notice of Commencement of the Bankruptcy Filing, providing a Proof of Claim form as well as a communication to inform the patients how to request further notice of future pleadings and actions to the case. The motion also requested approval to notify all patients via publication in a local newspaper. Finally this first day motion requested the court to allow the debtor to not be required to submit the Patient Matrix as required by local rules due to the request to file the matrix under seal as well as the significant cost and delay that would be associated with filing under the required format.<sup>32</sup> This first day motion was granted on September 24, 2015.<sup>33</sup>

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<sup>29</sup> Emergency Motion to Authorize Confidentiality of Patient Information; Case\_15-41684; Doc. No. 5 at page 8

<sup>30</sup> Id. at page 11

<sup>31</sup> Id.

<sup>32</sup> Id. at 15.

<sup>33</sup> Order Granting Emergency Motion to Authorize Confidentiality of Patient Info; Case\_15-41684; Doc. No. 31

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***b. Application for Entry Authorizing the Employment of Michael S. Miller as Chief Restructuring Officer***

FRISCO sought an entry of an order that would authorize it to employ Michael S. Miller as its Chief Restructuring Officer ("CRO") as of September 22, 2015.<sup>34</sup> The motion included the engagement letter between Mr. Miller and FRISCO as well as all the addendums associated with that agreement as well as an Affidavit by Mr. Miller in support of FRISCO's Chapter 11 Petition and First-Day Relief requests. In the motion, FRISCO requested its decision to be authorized because it believes Michael Miller to be well qualified and equipped to assist in the duties of a CRO.<sup>35</sup> This first day motion was granted as an interim order on September 24, 2015.<sup>36</sup>

***c. Authorization to Pay Pre-Petition Wages, Benefits, Business Expenses, and Related Items***

When FRISCO filed its voluntary petition for Chapter 11 bankruptcy, its workforce included a total of 159) non-insider clinical and non-clinical professionals and staff.<sup>37</sup> FRISCO acknowledged that the continued and uninterrupted service of the Employees is essential to its continuing business operations and its ability to reorganize. Those employed at FRISCO were not direct employees of FRISCO but were rather employed by Shared Services.<sup>38</sup> Further, the motion provided that the employee benefits such as payroll, health insurance etc., were all managed through a contract held by the Management Company that covered employees for all of the Forest

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<sup>34</sup> Case\_15-41684; Doc. No. 4

<sup>35</sup> Id. at page 12.

<sup>36</sup> Interim Order Approving Debtor's Application to Employ Michael S. Miller as Chief Restructuring Officer; Case\_15-41684; Doc. No. 32

<sup>37</sup> Complex Chapter 11 Motion to Pay Pre-Petition Wages and Salaries; Case\_15-41684; Doc. No. 7

<sup>38</sup> Id. at page 6

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Park Hospital System locations.<sup>39</sup> Further disclosed in the motion were the obligation that FRISCO had to pay staff wages for Shared Services in which the expenses of this staff was divided among all of the Forest Park affiliations.<sup>40</sup> FRISCO funded payroll for its employees and its percentage allocated for the Shared Services staff on a bi-weekly basis. According to the motion filed, FRISCO sought authority to pay all (a) Pre-Petition Wages, (b) Withholdings, (c) Benefits, and (d) Expenses, totaling approximately \$485,500.00.<sup>41</sup>

FRISCO also requested as an alternative, the entry of an order authorizing it to pay pre-petition amounts owed to Shared Services for Pre-Petition Wages, Withholding, Benefits and Expenses as a *critical vendor* because the employees working at FRISCO were essential to its business operation.

FRISCO requested this relief under the “necessity of payment” doctrine citing *In re Leigh & New England Ry. Co.*, 657 F.2d 570, 581 (3rd Cir. 1981), quoting:

“If payment of a claim that arose prior to reorganization is essential to the continued operation of the business during the reorganization, payment may be authorized even if it is made out of corpus.”<sup>42</sup>

FRISCO also sought approval of their motion to obtain secured post-petition financing (the “DIP Motion”), which proposed that all post-petition financing would be used according to a limited budget.<sup>43</sup> By following this limited budget, FRISCO alleged it would have sufficient funds to pay the amounts sought by this motion.

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<sup>39</sup> Id.

<sup>40</sup> Id. at page 7

<sup>41</sup> Id. at page 10

<sup>42</sup> Id. at page 12

<sup>43</sup> Id. at page 13

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Finally, in this motion, FRISCO requested the authority for banks and other financial institutions to honor and pay all checks issued to pay Pre-Petition Wages, Withholdings, Benefits, and Expenses, whether those checks were presented prior to or after the date of the petition, as long as there was sufficient funds available in the applicable accounts the checks were written on.<sup>44</sup> This first day motion was granted on September 24, 2015.<sup>45</sup>

***d. Authorizing Maintaining Existing Cash Management System & Bank Accounts and related items***

FRISCO's Cash Management System enabled its customers to transfer payments directly to the Lockbox Account.<sup>46</sup> In order to avoid disruption to the business or to the flow of incoming cash, FRISCO proposed to maintain its existing system for collections on pre-petition accounts receivables as well as opening up new debtor-in-possession (DIP) accounts at "PlainsCapital" which was an authorized depository institution for DIP financing funds.<sup>47</sup> FRISCO asserted that their Cash Management System through its existing Lockbox Account constituted an ordinary and essential business course of action which provided a significant benefit to the hospital by affording the ability to ensure maximum availability of funds when necessary and to reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. It asked the Court to approve continued use of its existing Cash Management System. FRISCO also asserted that it would ensure that any funds disbursed by the hospital post-petition will be easily identified as post-petition expenditures and would come out of

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<sup>44</sup> Id. at page 17

<sup>45</sup> Order Granting Debtor's Emergency Motion for an Order Authorizing (I) the Debtor to Pay Pre-Petition Wages and Benefits or Alternatively, to Pay or Honor Pre-Petition Obligations to Certain Critical Vendors and (II) Banks to Honor and Pay Checks Issued to Pay Pre-Petition Wages and Withholdings; Case No. 15-41684; Doc. No. 34

<sup>46</sup> Case\_15-41684; Doc. No. 6

<sup>47</sup> Id. at page 10

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

the established DIP Disbursements Account. FRISCO emphasized that allowing it to continue to utilize the existing system without interruption was vital to the efficient and economic administration of its Chapter 11 case.<sup>48</sup>

FRISCO also motioned the Court to allow it to preserve business continuity and avoid disruption and delay of collection procedures by not closing the TCB bank accounts. As under the U.S. Trustee's operating guidelines and financial requirements which are required in all cases under Chapter 11, there is a mandated closure of a Debtors' pre-petition bank accounts, the opening of new accounts and the immediate printing of new checks with a "Debtors-in-Possession" designation on them.<sup>49</sup> FRISCO asserted that if it was required to strictly comply with these guidelines, its operations would be severely harmed by the disruption, confusion, delay and cost and that it was in the best interest of all parties involved to continue to maintain the TCB pre-petition accounts. This first day motion was granted as an Interim Order on September 24, 2015.<sup>50</sup> A final order granting this motion was entered on October 28, 2015.<sup>51</sup>

*e. Authorizing Obtaining Post-Petition Financing on Senior Secured Superpriority Basis and Related Items*

FRISCO motioned the court to authorize obtaining post-petition financing from the Post-Petition Lender (Sabra) in the amount of \$18.5 million dollars, which it believed was necessary to continue the operation of its business as Debtor-in-Possession, to preserve the going-concern value of its assets, and to minimize any disruption as a going concern.<sup>52</sup> Without this financing, FRISCO

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<sup>48</sup> Id.

<sup>49</sup> Id. at page 15

<sup>50</sup> Interim Order Granting Debtor's Emergency Motion; Case\_15-41684; Doc. No. 37

<sup>51</sup> Final Order; Case\_15-41684; Doc. No. 198

<sup>52</sup> Complex Chapter 11 Motion for Interim Approval of Post-Petition Secured and Super Priority Financing Pursuant to Section 364(c) of the Bankruptcy Code; Case\_15-41684; Doc. No. 8



## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

believed it would suffer irreparable harm. Section 364 of the Bankruptcy Code allows a Debtor to (a) obtain unsecured credit in the ordinary course of business, (b ) obtain unsecured credit out of the ordinary course of business, and (c) obtain credit with specialized priority or with security. If a debtor-in-possession cannot obtain post-petition credit on an unsecured basis, the Court may authorize the obtaining of credit or the incurring of debt and the repayment of obtaining is entitled to super-priority administrative expense status.<sup>53</sup>

The relief that FRISCO was seeking in this motion was the authorization for (a) FRISCO to enter into a DIP Agreement, (b) FRISCO to obtain the post-petition financing in one or more advances from the Post-Petition Lender under the DIP Loan, (c) to pay all interest, fees, expenses, and other obligations provided for under the DIP Financing Documents, and (d) for FRISCO to satisfy all conditions precedent and perform all obligations in accordance with the DIP Agreement.<sup>54</sup> FRISCO alleged that despite its diligent efforts, it had been unable to obtain financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense or solely in exchange for the grant of a super-priority administrative expense claim pursuant to Section 364 of the Bankruptcy Code, and it had been unable to obtain financing in the form of credit secured by liens that are junior to existing liens on property of its estate pursuant to Sections 364 of the Bankruptcy Code.<sup>55</sup> FRISCO expressed that it was essential to its operations that it be granted immediate access to funds. Without access to this financing, FRISCO expressed it would be unable to maintain its business operations, preserve the value of their assets, or adequately care for its patients.<sup>56</sup>

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<sup>53</sup> Id. at page 15

<sup>54</sup> Id. at page 12

<sup>55</sup> Id. at page 11

<sup>56</sup> Id. at page 14

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

On September 23, 2015, TCB Bank filed an objection to this motion alleging that the post-petition financing from Sabra would affect its liens and collection and management of TCB's cash collateral. TCB expressed that it had priority and that all liens provided to Sabra under the proposed DIP financing should be subordinate to all prior and perfected liens held by TCB.<sup>57</sup> This first day motion was granted as an Interim Order on September 24, 2015<sup>58</sup>

### **C. CREDITORS' COMMITTEE**

On September 30, 2015, the U.S. Trustee appointed 5 members to the Committee of Unsecured Creditors.<sup>59</sup> The appointment list included:

- Shane Reed (Interim Chair) of Medline Industries, Inc. in Mundelein Illinois.
- Matthew Davis, M.D. of Inpatient Physicians Associates, PLLC in Dallas Texas.
- Thomas Walker of Pro Silver Star Ltd in Irving Texas.
- Scott Way of LDR Spine, USA Inc. in Austin Texas.
- Steven Nuesse of Identity Media Services in Dallas Texas

The committee was represented by co-counsel, Eric A. Liepens, Esq., from Dallas Texas and attorneys Robert M. Hirsh and George P. Angelich from Arent Fox, LLP of New York.

On October 21, 2015, counsel for the committee filed an application with the Court requesting authorization of the employment of Cohreznick LLP, as the financial advisors for the

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<sup>57</sup> Objection Filed by Texas Capital Bank, N.A.; Case\_15-41684; Doc. No. 22

<sup>58</sup> Interim Order (I) Authorizing Debtor to Obtain Post-Petition Financing on a Senior Secured SuperPriority Basis Pursuant to 11 USC 105, 361, 362, 363, and 364; (II) Setting a Final Hearing; and (III) Granting Related Relief; Case\_15-41684; Doc. No. 38

<sup>59</sup> Notice of Appointment of Creditors' Committee Filed by US Trustee; Case\_15-41684; Doc. No. 46

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

Creditors' Committee.<sup>60</sup> The order granting that motion was entered by the Court on November 10, 2015.<sup>61</sup>

On October 28, 2015 an amendment to the Appointment of Official Unsecured Creditors' Committee was filed. In this amendment, the U.S. Trustee appointed Mr. Thomas Walker of Pro Silver Star Ltd, in Irving Texas as the Chairman of the Committee.<sup>62</sup>

On November 4, 2015, Sabra Texas Holdings, L.P. ("Sabra") submitted their opposition in the employment of Arent Fox LLP and Eric A. Liepens, P.C. as co-counsel for the Unsecured Creditors Committee.<sup>63</sup> Sabra expressed its concern in the fact that the Committee requested representation by two law firms and the duplication of efforts between the two firms should not be recoverable against the bankruptcy estate. Further it asserted that the Arent Fox attorneys assigned to this matter were physically located in New York. As a cost benefit to the matter, Sabra retained that it was reasonable to allow the local counsel to continue its representation at lower rates than the New York co-counsel and further that it was unreasonable to continue to incur additional fees, costs and expenses above what was necessary to adequately represent the Committee's interest in the case.<sup>64</sup>

On November 20, 2015, the Court entered an Order authorizing the employment and retention of Arent Fox LLP as co-counsel for the Official Committee of Unsecured Creditors.<sup>65</sup>

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<sup>60</sup> Application to Employ Cohenreznick LLP as Financial Advisors Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 163

<sup>61</sup> Order Authorizing the Committee of Unsecured Creditors to Employ CohnReznick LLP as Its Financial Advisors Effective as of October 8, 2015; Case\_15-41684; Doc. No. 244

<sup>62</sup> Notice of Appointment of Creditors' Committee (Amendment); Case\_15-41684; Doc. No. 202

<sup>63</sup> Objection Filed by Sabra Texas Holdings, L. P. – Opposition to Co-Counsel for Creditor Committee; Case\_15-41684; Doc. No. 235

<sup>64</sup> Id.

<sup>65</sup> Order Authorizing the Employment and Retention of Arent Fox LLP as Co-Counsel for the Official Committee of Unsecured Creditors Nunc Pro Tunc to October 5, 2015; Case\_15-41684; Doc. No. 279

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On the same day, the Court also entered an Order granting the authority to employ Eric A. Liepens and his law firm as the local counsel of record for the Official Committee of Unsecured Creditors.<sup>66</sup> By the granting of both of these Orders, the opposition filed by Sabra was considered and determined not substantial to prevent the granting of the employment motions.

### **D. MEETING OF CREDITORS**

The Notice of the Chapter 11 Bankruptcy Meeting of Creditors was filed on September 30, 2015 providing notice that the Meeting of Creditors was scheduled to be held on November 9, 2015 in Plano, Texas. The deadline allowed for creditors to file a proof of claim was February 8, 2016 for non-governmental creditors and March 21, 2016 for governmental creditors.<sup>67</sup>

### **E. KEEPING THE LIGHTS ON**

On October 7, 2015, FRISCO filed an “Expedited” Motion to prohibit their utility companies from altering, refusing, or discontinuing service.<sup>68</sup> The motion provided a detailed “Utilities List” as an exhibit to the motion.<sup>69</sup> This motion requested the Court to enter an order which would prohibit FRISCO’s utility provider from discontinuing services on account of pre-petition invoices asserting that any disruption would hinder or prevent a successful attempt at its reorganization.

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<sup>66</sup> Order Granting Application for Authority to Employ Local Counsel for Unsecured Creditors Committee; Case\_15-41684; Doc. No. 280

<sup>67</sup> BNC Certificate of Mailing - Notice of Meeting of Creditors; Case\_15-41684; Doc. No. 48

<sup>68</sup> Complex Chapter 11 Motion Pursuant to 11 U.S.C. Section 366, for Entry of Interim Order Determining Adequate Assurance of Payment for Future Utility Services and Restraining Utility Companies from Discontinuing, Altering or Refusing Service; Case\_15-41684; Doc. No. 81

<sup>69</sup> Id. at page 81-1

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Congress enacted Section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, providing utility companies an adequate assurance that the debtor will pay for post-petition services.

FRISCO submitted that the proposed adequate assurance was sufficient adequate assurance of payment within the meaning of Section 366. Furthermore, the hospital was incentivized to maintain its post-petition utility obligations, as a loss of utility services would cripple its business.

This expedited motion was granted as an Interim Order by the Court on October 19, 2015.<sup>70</sup>

On November 20, 2015, the Court further granted FRISCO's Motion by Final Order.<sup>71</sup>

### **F. AUTOMATIC STAY MOTIONS**

#### ***a. Blue Cross Blue Shield (BCBS)***

On October 9, 2015, FRISCO filed an Emergency Motion to Enforce the Automatic Stay and Request for Damages for Stay Violation against Blue Cross Blue Shield.<sup>72</sup> The hospital's employees (directly employed by Shared Services) received health insurance through Blue Cross Blue Shield ("BCBS"). The contract for the health insurance was between Shared Services and BCBS but the funding for those insurance premiums came from all the hospitals within the Forest Park System. As part of the relief granted by the Court at the "first day" hearings on September

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<sup>70</sup> Interim Order Prohibiting Utilities to Alter or Discontinue; Case\_15-41684; Doc. No. 148

<sup>71</sup> Final Order Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment; Case\_15-41684; Doc. No. 284

<sup>72</sup> Motion to Impose Automatic Stay As To Blue Cross Blue Shield; Case\_15-41684; Doc. No. 104

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23, 2015, FRISCO was granted authority to pay approximately \$160,000.00 in pre-petition benefits payments, some of which was earmarked to bring the BCBS insurance policy covering the Employees (the “Insurance Policy”) current.<sup>73</sup>

On October 5, 2015, Shared Services informed FRISCO that it had not used the funds received from each hospital to pay the insurance premiums due to BCBS and premiums were still due for August, September and October of 2015. Shared Services further informed FRISCO that all of the employees located at each of the hospitals were on a claims hold and the total payment due is over \$2,350,000. FRISCO entered into negotiations to attempt to address the issue by paying its portion of the premium attributable to its employees. FRISCO asserted that if BCBS canceled the Insurance Policy, or continued the claims hold, without seeking to lift the automatic stay, such an action would be a willful violation of the automatic stay, and FRISCO would be entitled to damages arising that violation.

Section 362(a) of the Bankruptcy Code precludes any entity from taking any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. Section 362 also precludes any act to collect, assess, or recover a claim against the Debtor that arose before the commencement of the bankruptcy case (see 11 U.S.C. § 362). FRISCO asserted that by cancelling the Insurance Policy, BCBS would be violating the automatic stay by exercising control over property of the estate and the FRISCO’s business operations, all in furtherance of BCBS’s attempt to collect and recover on a pre-petition claim against Shared Services.<sup>74</sup>

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<sup>73</sup> Order Granting Debtor's Emergency Motion for an Order Authorizing (I) the Debtor to Pay Pre-Petition Wages and Benefits or Alternatively, to Pay or Honor Pre-Petition Obligations to Certain Critical Vendors and (II) Banks to Honor and Pay Checks Issued to Pay Pre-Petition Wages and Withholdings; Case\_15-41684; Doc. No. 34

<sup>74</sup> Id. at page 5

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FRISCO requested that the Court issue an order compelling BCBS to immediately reinstate the Insurance Policy and/or immediately lift the claims lock on claims made under the Insurance Policy as to the Employees until BCBS obtains an order from this Bankruptcy Court authorizing it to do so. It also requested that the Court sanction BCBS for its willful and intentional violation of the automatic stay.

On November 10, 2015, the Court granted the Agreed Order on the Emergency Motion to Enforce the Automatic Stay.<sup>75</sup> The order stipulated that BCBS would apply the payments made by FRISCO in October of 2015 to the premiums due for Employees for the coverage of the month of September 2015. The order further stipulated that the lock of claims be immediately lifted.<sup>76</sup> The order required FRISCO to pay for the premiums due for October and November of 2015 and ordered that both parties work together to develop and maintain a separate billing account for those employees that work for FRISCO. BCBS was required to continue coverage to those employees and not place a claims lock or terminate the employee coverage as long as FRISCO continued to pay their portion of premiums.<sup>77</sup>

While an Agreed Order was entered on November 10, 2015, FRISCO continued to have issues involving BCBS. In December of 2015, FRISCO had gone through open enrollment and made their benefit selections for the 2016 year. Following that event, FRISCO received correspondence from BCBS informing of its decision to withdrawal a renewal offer for medical coverage for the 2016 year and that employee benefits would expire on December 31, 2015 and that BCBS did not plan to renew any coverage.

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<sup>75</sup> Agreed Order on Debtor's (I) Emergency Motion to Enforce the Automatic Stay and Request for Damages for Stay Violation; Case\_15-41684; Doc. No. 246

<sup>76</sup> Id. at page 2.

<sup>77</sup> Id.

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On December 21, 2015, FRISCO filed an Emergency Motion to Enforce the Agreed Order which was previously granted on November 10, 2015.<sup>78</sup> FRISCO asserted that it had relied upon previous communications with BCBS and the terms of the Agreed Order and did not locate alternative medical benefit coverage for its employees. The employees had successfully completed the open enrollment process and made decisions based on the BCBS offer to renew the medical benefit coverage.<sup>79</sup> FRISCO also asserted that by BCBS withdrawing its renewal offer and not allowing FRISCO ample time to find a suitable replacement, would cause irreparable damage to the hospital's business operations. It reminded the Court that BCBS had negotiated and agreed to the terms of the Agreed Order entered on November 10, 2015 and that BCBS never took steps to notify FRISCO's counsel of its intention to withdraw coverage renewal.<sup>80</sup> Finally, FRISCO asserted that the Agreed Order clearly stated that BCBS shall not place a claims lock nor terminate coverage for FRISCO's employees so long as the hospital's portion of premiums remained current.<sup>81</sup> FRISCO requested the Court issue an order enforcing the already Agreed Order and compelling BCBS to maintain its medical benefits coverage for the employees until FRISCO can reasonably locate alternative coverage.

On December 23, 2015, the Court entered an Agreed Order on the Emergency Motion to Enforce Agreed Order between BCBS and FRISCO.<sup>82</sup> The Emergency Motion was granted to the extent that BCBS would carve out the contract between it and FRISCO for health insurance coverage during the 2015 year plan for FRISCO's employees. It was also ordered that BCBS

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<sup>78</sup> Motion to Enforce Order; Case\_15-41684; Doc. No. 353

<sup>79</sup> Id. at page 5.

<sup>80</sup> Id.

<sup>81</sup> Id. at page 6.

<sup>82</sup> Agreed Order on Emergency Motion to Enforce agreed Order-BCBS; Case\_15-41684; Doc. No. 362



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would permit an extension of that carve out beyond its termination date of December 31, 2015 and provide an additional two months of coverage for FRISCO's employees conditional to FRISCO paying all current unpaid post-petition premiums. The Order also provided that FRISCO waived and released any claims asserted against BCBS for violation of the automatic stay or for violating the agreed order as previously entered.<sup>83</sup>

*b. Jason Davis, Individually, as Representative of the Estate of Talva Davis, deceased, and as Next Friend of the Minors, J.D., T.D., and B.D.; and Shealan Hayes, Individually vs. Forest Park Medical Center at Frisco, LLC D/B/A Forest Park Medical Center Frisco; Michael Richardson, M.D.; and Inpatient Physician Associates, PLLC; DC-13-09404*

On October 23, 2015, an Agreed Motion to Modify Stay was filed on behalf of a party that was currently involved in another legal proceeding pending in the 68th Judicial District Court of Dallas County under Docket No. DC-13-09404 ("Davis Party") where FRISCO was a defendant.<sup>84</sup> Maria Wormington of the Wormington Law Group, PLLC of McKinney Texas filed the agreed motion on behalf of the Davis party in an attempt to modify the automatic stay pursuant to Section 362 of the United States Bankruptcy Code and 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code"). Davis was seeking authority from the Bankruptcy Court to proceed with its matter in the District Court to obtain a judgment against FRISCO as to liability and damages without the limitation of the automatic stay.

On November 17, 2015, the Court entered an Agreed Order granting the motion to modify the automatic stay and allowed the Davis party to proceed against FRISCO in the Davis matter for

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<sup>83</sup> Id. at page 3.

<sup>84</sup> Agreed Motion to Modify Auto Stay; Case\_15-41684; Doc. No. 182

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the limited purpose of reducing the Davis party's alleged claims against FRISCO to judgement as liability and damages while prohibiting recovery against FRISCO including any proceeds of any of FRISCO's insurance policies.<sup>85</sup>

*c. Joint Motion for Modifying Automatic Stay to Allow TCB to Sweep and Apply Collections from Pre-petition Accounts*

On November 4, 2015, FRISCO and TCB entered a joint motion to approve Modifying the Automatic Stay which would allow TCB to sweep and apply collections from the pre-petition accounts pursuant to 11 U.S.C. §§105(a), 361, 362 and 363.<sup>86</sup> The motion presented that an agreement to modify the automatic stay was reached by FRISCO, Sabra and TCB.<sup>87</sup> This agreement provided that TCB would be permitted to sweep from the TCB accounts any collected funds identified and agreed to be proceeds of pre-petition accounts and apply those funds against TCB's revolving loan. By continuing to do this act, it would reduce the balance in the revolving loan and would in turn reduce the accrual of post-petition interest. FRISCO also requested the Court to waive the 30-day requirement for a hearing under Local Bankruptcy Rule 4001(b)(1).<sup>88</sup>

On November 30, 2015, the Court entered an Agreed Order and Stipulation Modifying the Automatic Stay to allow TCB to Sweep and Apply Collections from Pre-Petition Accounts.<sup>89</sup> The modifications provided TCB would continue to receive collections from FRISCO's accounts in accordance with the Agreed Order granting the Continued Use of Existing Cash Management

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<sup>85</sup> Agreed Order Modifying Automatic Stay; Case\_15-41684; Doc. No. 271

<sup>86</sup> Motion for Relief from Automatic Stay With Waiver of 30-Day Hearing Requirement As To [Joint Motion to Approve Agreed Order and Stipulation Modifying Stay to Allow for Texas Capital Bank, N.A. to Sweep and Apply Collections from Prepetition Accounts Pursuant to 11 U.S.C. §§105(a), 361, 362 and 363; Waiver of 30 Day Requirement Pursuant to Local Rule 4001(b)(1)]; Case\_15-41684; Doc. No. 236

<sup>87</sup> Id. at page 11.

<sup>88</sup> Id. at page 3.

<sup>89</sup> Agreed Order and Stipulation Modifying Stay to Allow Texas Capital Bank, N.A. to Sweep and Apply Collections from Prepetition Accounts; Case\_15-41684; Doc. No. 293

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System etc. (Docket No. 198).<sup>90</sup> Further, TCB shall remit to FRISCO funds payments on accounts arising from services provided by the Hospital on or after the Petition Date.<sup>91</sup> Finally, the Court ordered that the funds deposited in the TCB accounts in which TCB, FRISCO and Sabra identify as payments on accounts arising from services provided prior to the Petition Date will be swept from the accounts and applied against the debt owed to TCB.<sup>92</sup>

### ***d. Synchrony Bank (Synchrony Financial)***

Prior to the petition filing and on or about May 3, 2012, FRISCO entered an Agreement with GE Capital Retail Bank to establish a consumer credit program for its patients. In June of 2014, GE Capital Retail Bank changed its name to Synchrony Bank (“Synchrony”).<sup>93</sup> In November of 2015, FRISCO received notice from Synchrony that it would no longer offer consumer financing and card processing to the hospital effective December 4, 2015.<sup>94</sup> In response, FRISCO corresponded to Synchrony that it was in bankruptcy and attached the petition as filed. FRISCO sent the correspondence via facsimile and certified mail with a return receipt request. In its correspondence, FRISCO notified Synchrony that its purported termination of the Agreement and refusal to perform services under the Agreement constituted violations of the automatic stay under Section 362 of the Bankruptcy Code. FRISCO had continued to make numerous attempts to resolve the issue with Synchrony.

Section 362(a) of the Bankruptcy Code precludes any entity from taking any act to obtain possession of property of the estate or of property from the estate or to exercise control over

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<sup>90</sup> Final Order; Case\_15-41684; Doc. No. 198

<sup>91</sup> Case\_15-41684; Doc. No. 293

<sup>92</sup> Id. at page 2.

<sup>93</sup> Motion to Impose Automatic Stay As To Synchrony Bank and Synchrony Financial; Case\_15-41684; Doc. No. 305

<sup>94</sup> Id. at page 3.

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property of the estate. Section 362 also precludes any act to collect, assess, or recover a claim against the Debtor that arose before the commencement of the bankruptcy case.<sup>95</sup>

On December 2, 2015, FRISCO filed an Emergency Motion to Enforce the Automatic Stay and Request for Damages for Stay Violation against Synchrony Bank.<sup>96</sup> At the time the motion was filed, FRISCO estimated that it had incurred \$5,000.00 in legal fees and expenses as a result of Synchrony's actions. FRISCO further asserts that if Synchrony continues to violate the stay and terminate its agreement, FRISCO stands to lose approximately \$34,000 dollars in revenue each month. FRISCO alleged that should Synchrony terminate services with the hospital, FRISCO would be unable to accept this form of payment from its patients and this would negatively impact the hospital's business operations.<sup>97</sup> FRISCO asserted that this would constitute a willful violation of the automatic stay and requested that the Court issue an order enjoining Synchrony from taking this action. FRISCO also requested the Court to sanction Synchrony for its actions taken in violation of the stay and award FRISCO damages, punitive damages and attorney fees.<sup>98</sup>

On December 7, 2015, the Court entered a Preliminary Order Granting FRISCO's Motion to Enforce the Automatic Stay against Synchrony.<sup>99</sup> The Court ordered that Symphony was prohibited from terminating the Agreement with FRISCO or from ceasing consumer financing and card processing and that any continuance of those acts would constitute a violation of the automatic stay. The Order scheduled a Final Hearing on this Motion for December 9, 2015.<sup>100</sup>

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<sup>95</sup> 11 U.S.C. § 362.

<sup>96</sup> Case\_15-41684; Doc. No. 305

<sup>97</sup> Id. at page 4.

<sup>98</sup> Id. at page 5.

<sup>99</sup> Preliminary Order Granting Debtor's Emergency Motion to Enforce The Automatic Stay and Request for Damages for Stay Violation; Case\_15-41684; Doc. No. 326

<sup>100</sup> Id. at page 2.

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An agreed Final Order was entered into the docket on December 9, 2015.<sup>101</sup> The Order provided that both parties agreed to continue with the terms of the Agreement dated May 3, 2012 between Synchrony and FRISCO and that Synchrony would not terminate or cease to provide consumer financing and card processing services to FRISCO.<sup>102</sup> The Order also provided that FRISCO would promptly pay all post-petition amounts it owed to Synchrony and that FRISCO would withdraw its request for further relief against Synchrony without prejudice.

### *e. FPMC Services LLC*

On January 26, 2016, the hospital filed an Emergency Motion with the Court to Enforce the Automatic Stay against FPMC Services, LLP (“FPMC”).<sup>103</sup> FPMC provided the Hospital’s human resources management and back office services.<sup>104</sup> Prior to the filing of this bankruptcy petition filing, FPMC performed all of the billing, collection, financial management and reporting for the hospital as it did for all of the hospitals within the Forest Park System. FPMC informed the hospital that it would no longer provide services after December 31, 2015.<sup>105</sup> As the prior primary provider of all billing, collection, financial management and reporting for the hospital, FPMC had the possession, custody and control of certain documents and information, including but not limited to, books, records and bank statements relating to the hospital’s property and financial affairs. Post-petition, the hospital has discovered some discrepancies have arisen as to payments in which it made to FPMC or believed FPMC had paid to the hospital’s creditors. The hospital asserted to the Court that it is necessary to investigate the payments collected and paid by

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<sup>101</sup> Agreed Final Order Granting Debtor's Emergency Motion to Enforce the Automatic Stay; Case\_15-41684; Doc. No. 335

<sup>102</sup> Id. at page 2.

<sup>103</sup> Emergency Motion to Enforce the Automatic Stay; Case\_15-41684; Doc. No. 405

<sup>104</sup> Id. at page 2.

<sup>105</sup> Id. at page 3.

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FPMC and to determine a reliable accounting of those transactions. The hospital contends that in order to conduct the investigation, it must have firsthand access to the books, records and bank statements of FPMC as well as any other documents which may contain information relating to the hospital's property or financial affairs.<sup>106</sup> It motioned the Court to Order a turnover of the property as requested.

The hospital asserted that its need for this information was immediate given the issues with various creditors, the deadline to file its monthly operating report and in light of its proposed sale transaction.<sup>107</sup> It further stated that attempts to reach an agreement with FPMC has gone unanswered. It further declared FPMC's actions in refusing to provide the hospital with the requested financial information constituted an attempt to exercise control over property of the estate.<sup>108</sup> They believed that FPMC's actions constituted a willful violation of the automatic stay.

On January 27, 2016, FPMC along with Vibrant Healthcare Frisco., LLC ("Vibrant") filed a response to the hospital's emergency motion.<sup>109</sup> In the response, FPMC and Vibrant asserted that requesting a turnover motion is improper because a request for turnover of property of, relating to, the estate is subject to Rules 7001(a) and 7003 of the Federal Rules of Bankruptcy Procedure. Rule 7001(a) provides that a proceeding to recover money or property is an adversary proceeding and Rule 7003 requires any adversary proceeding to be commenced by the filing of a complaint. The hospital did not file any complaint, therefore FPMC and Vibrant argue that this motion to turnover property is improper.<sup>110</sup>

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<sup>106</sup> Id. at page 4.

<sup>107</sup> Id.

<sup>108</sup> Id. at page 5.

<sup>109</sup> Objection Filed by FPMC Services LLC , Vibrant Healthcare Frisco, LLC; Case\_15-41684; Doc. No. 419 110 Id. at page 3.

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FPMC and Vibrant further assert that the property that the hospital is requesting is not property of its estate and the hospital cannot show that the requested information is property of its estate. FPMC and Vibrant contend that they are independent contractors and not agents or partners of the hospital and that the property in FPMC's possession is owned by it and not the hospital.<sup>111</sup>

FPMC and Vibrant stated that the information that the hospital is requesting includes trade secrets and other confidential information in which these entities are entitled to have adequate protection for their proprietary information and the hospital in its demand, has offered no such protection.<sup>112</sup> Finally, FPMC and Vibrant also requested the Court to award an administrative expense for the costs incurred in producing such documents if so ordered.<sup>113</sup>

On February 9, 2016, the Court entered an Agreed Order Granting the Emergency Motion and ordered FPMC to continue to provide the Hospital with access to the historical information necessary to complete its needs to satisfy its investigation.<sup>114</sup> The Court further ordered that the Hospital would continue to pay its allocation of payroll and benefits for FPMC and will continue to reimburse FPMC for expenses which have been paid post-petition. The Order granted FPMC the right to seek compensation in the form of an administrative expense claim and that any other relief requested in the motions be denied without prejudice.<sup>115</sup>

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<sup>111</sup> Id.

<sup>112</sup> Id. at page 4.

<sup>113</sup> Id. at page 5.

<sup>114</sup> Agreed Order Granting 1) Emergency Motion of Debtor and Debtor-In-Possession to Enforce the Automatic Stay and 2) Emergency Motion of Debtor and Debtor-In-Possession for an Order Compelling Turnover of Books, Records, and Bank Statements of FPMC Services, LLC Relating to Debtor's Property or Financial Affairs; Case\_15-41684; Doc. No. 436

<sup>115</sup> Id. at page 3.

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### **G. OBJECTIONS**

#### *a. Post-Petition Financing on a Senior Secured Superpriority Basis and other matters*

##### **i.) City of Frisco**

On October 15, 2015, an Objection to the Interim Order granting 1) Authorizing Debtor to Obtain Post-Petition Financing on a Senior Secured Superpriority Basis and other related matters was filed by the City of Frisco (“Frisco”).<sup>116</sup> The City of Frisco is a duly organized governmental unit of the State of Texas, and was the holder of a claim for pre-petition business personal property taxes assessed against FRISCO for 2015 in the amount of \$121,831.51. Frisco asserted that pursuant to Texas Tax Code Sections 32.01 and 32.05, its claim was secured as an unavoidable, perfected and first priority lien on all of FRISCO’s business personal property. Frisco asserted that pursuant to Texas Law, Frisco held senior liens against all personal property that FRISCO owed on January 1, 2015 and on all after acquired property.<sup>117</sup> Frisco requested that the Court modify the Interim Order and any final order to: (1) provide that Frisco retains the senior statutory priority of its prepetition and post-petition liens nunc pro tunc to the petition date; (2) include Frisco in the mandatory five (5) days written notice from the Lender of its intention to exercise its rights and remedies; and (3) grant Frisco such other and further relief to which it may be justly entitled.<sup>118</sup>

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<sup>116</sup> Objection Filed by City of Frisco; Case\_15-41684; Doc. No. 138

<sup>117</sup> Id. at page 2.

<sup>118</sup> Id. at page 4.



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A second Interim Order was entered on October 22, 2015 which overruled the objections filed and granted the motion and scheduled a final hearing on the matter for October 27, 2015.<sup>119</sup>

### **ii.) Official Committee of Unsecured Creditors**

On October 23, 2015, co-counsel for the Official Committee of Unsecured Creditors filed an Objection with respect to the Emergency Motions authorizing FRISCO to 1) obtain post-petition financing, 2) grant liens and super-priority administrative expense status and 3) modify the automatic stay and related matters.<sup>120</sup> The Committee asserted that since the forming on September 30, 2015 and the appointment of counsel on October 2, 2015, it has been working with FRISCO and counsel for Sabra in an attempt to reach consensual resolution concerning issues and concerns involving the emergency motion seeking interim and final orders filed by FRISCO (Court Docket No. 8).<sup>121</sup> The Committee asserted that while minor issues have been resolved, significant issues still remained and believed it would be premature to enter a final order approving the DIP to a definite process and would prefer to continue the DIP on an interim basis. Issues of concern include:

- The budget and professional fee inequality and an imbalance in the carve out.
- FRISCOs affirmation of pre-petition lease obligations to Sabra
- Events of Default – Sabra’s “sole and absolute discretion”
- Waiver/Whitewashing of pre-petition claims against Sabra

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<sup>119</sup> Second Interim Order (I) Authorizing Debtor to Obtain Post-Petition Financing (II) Setting a Final Hearing; and, (III) Granting Related Relief; Case\_15-41684; Doc. No. 173

<sup>120</sup> Objection Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 184

<sup>121</sup> Case\_15-41684; Doc. No. 8

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- Need clarification that the DIP Lender is not trying to roll-up of the DIP Lender's pre-petition debt into a super-priority administrative expense claim.

Due to the questions and issues the Committee felt have gone unanswered or unaddressed, it believed that certain relief as requested in the DIP Motion (Docket No. 8) should be denied and perhaps it may be required to have a full evidentiary hearing to review the numerous factual issues that are in dispute.<sup>122</sup>

### **iii.) Vibrant Healthcare Frisco, LLC**

Another objection to the same motions, was filed on the same day by Vibrant Healthcare Frisco, LLC, which serves as the Manager of Forest Park Medical Center at Frisco.<sup>123</sup> Vibrant asserted that the Emergency Motion filed by FRISCO fails to present a thorough explanation of the shortcomings that will transpire against the estate if it is granted. Vibrant asserted that the budget was insufficient and rendered the estate administratively insolvent. While it was depicted in the DIP Motion that Sabra would lend \$18.5 million dollars, over 20% of that money would be earmarked to Sabra (as FRISCO's landlord).<sup>124</sup> Therefore, the financing would result in a wholesale granting of rights to Sabra which would result in providing an overwhelming windfall to Sabra at the expense of all other creditors. Vibrant goes on to point out that the budget only ran through October 23, 2015 and while a second interim order was entered on October 22, 2015, no updated budget was provided into court record. Vibrant submitted the revised budget as an Exhibit (Exhibit A).<sup>125</sup> The budget displayed that there were not sufficient funds to pay administrative expenses. While the Agreement as proposed provides for payment of nearly \$1 million dollars for

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<sup>122</sup> Id. at page 9

<sup>123</sup> Objection Filed by Vibrant Healthcare Frisco, LLC; Case\_15\_41684; Doc. No. 187

<sup>124</sup> Id. at page 2

<sup>125</sup> Id. at page 20.

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professional fees and over \$1.3 million dollars to Sabra for rent, it discriminates against other post-petition creditors by not providing or allowing for payment of their claims. Vibrant further asserted that the terms of the loan agreement were overreaching and should not be approved.<sup>126</sup>

A third Interim Order was entered on October 28, 2015 which overruled the objections filed and granted the motion and re-scheduled a final hearing on the matter for November 2, 2015.<sup>127</sup>

On November 10, 2015 a final order was entered authorizing FRISCO to obtain post-petition financing on a senior secured superpriority basis.<sup>128</sup> The order granted the motion to the extent that the financing is authorized and approved and that all objections sought were overruled.<sup>129</sup>

***b. Application for Entry Authorizing the Employment of Michael S. Miller as  
Chief Restructuring Officer***

On October 13, 2015, a number of class A physicians filed a Limited Objection to the Proposed Final Order on Debtor's Application to Employ Mr. Miller as CRO.<sup>130</sup> The physicians, represented by Linda S. LaRue of Quilling, Selandar, Lownds, Winslett & Moser P.C., asserted that they had invested in the opportunity to participate in FRISCO. While the interim order was granted on September 24, 2015, the final hearing was set for October 16, 2015 and the physicians filed the objection not substantively to the Application but rather to the terms of the proposed order

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<sup>126</sup> Id. at page 6.

<sup>127</sup> Third Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C §§ 105, 361, 362, 363 and 364; (II) Setting Final Hearing and (III) Granting Related Relief; Case\_15-41684; Doc. No. 199

<sup>128</sup> Final Order (I) Authorizing Debtor to Obtain Postpetition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364; and (II) Granting Related Relief Case\_15-41684; Doc. No. 247

<sup>129</sup> Id. at page 10.

<sup>130</sup> Objection Filed-Physicians; Case\_15\_41684; Doc. No. 128

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and requested a more clear and definite language be required to allow the CRO to perform his duties successfully.<sup>131</sup>

A final order approving the application authorizing Michael S. Miller to be employed, retained and designated as the CRO was entered into the court docket on October 30, 2015.<sup>132</sup>

### **H. 363 SALE TRANSACTION**

When an entity enters into the realm of bankruptcy, it has two major outcomes are decided...one would be the confirmation of a reorganization plan from the court. The other is the sale of its major assets. If the entity is unable to reach an acceptable and reachable plan during the course of the bankruptcy proceedings, its next step would be to file a motion to sell their assets at auction pursuant to Section §363.<sup>133</sup>

Pursuant to 11 U.S.C. § 363 (b)(1), “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...”<sup>134</sup> The underlying reason for the practical success of today’s bankruptcy sale process is that it enables a bankruptcy court to approve a transaction that achieves one of the most fundamental goals of the Chapter 11 reorganization process: to expeditiously and effectively separate a business’ past problems from its future prospects. Unlike a Chapter 11 plan, a bankruptcy sale can enable a debtor to achieve this goal without the pain, time, trouble and turmoil of the plan confirmation process.<sup>135</sup>

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<sup>131</sup> Id. at page 2.

<sup>132</sup> Final Order Approving Debtor's Application for Entry of an Order Authorizing the Employment, Retention and Designation of Michael S. Miller as Chief Restructuring Officer, as of the Petition Date; Case\_15-41684; Doc. No. 214

<sup>133</sup> [https://www.mcguirewoods.com/news-resources/publications/financial\\_services/jb1p.15.02.pdf](https://www.mcguirewoods.com/news-resources/publications/financial_services/jb1p.15.02.pdf)

<sup>134</sup> <https://www.law.cornell.edu/uscode/text/11/363>

<sup>135</sup> [https://www.mcguirewoods.com/news-resources/publications/financial\\_services/jb1p.15.02.pdf](https://www.mcguirewoods.com/news-resources/publications/financial_services/jb1p.15.02.pdf)

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On November 14, 2015, FRISCO filed an Emergency Motion for Orders 1) Approving the Bidding Procedures in Advance of Auction, 2) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, 3) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, 4) Setting Related Deadlines and Hearings and 5) Granting Related Relief.<sup>136</sup>

FRISCO decided that the best way to maximize value for the benefit of all interested parties was to conduct an auction and sales process for its assets.<sup>137</sup> With the assistance of its investment banker and financial advisor, Houlihan Lokey Capital Inc.<sup>138</sup>, FRISCO had performed due diligence on the assets as well as compiling a list of potential buyers who have proactively shown an interest in purchasing at both the local and national level.<sup>139</sup>

### ***a. Stalking Horse Bidder***

The hospital asked for the Court to set a hearing to approve FRISCO's selection of a "Stalking Horse Bidder". The initial bidder with whom the debtor negotiates a purchase agreement is called the "stalking horse" bidder. There is a significant benefit in FRISCO having a potential stalking horse bidder. With having a potential buyer already in place prior to the live auction that is conducted in a 363 sale, gives the debtor some comfort in knowing what the possible sale price is going to be as well as allows other potential bidders incentive to drive the purchase price up.

FRISCO targeted January 22, 2016 as the date for designating any Stalking Horse Bidder with an intention to negotiate the form of an Asset Purchase Agreement ("APA form"). Once the

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<sup>136</sup> Motion to Prohibit or Condition the Use, Sale, or Lease of Property and Approve Bid Procedures and Related Relief On Emergency Basis; Case\_15\_41684; Doc. No. 260

<sup>137</sup> Id. at page 6.

<sup>138</sup> Final Order Authorizing Debtor to Retain and Employ Houlihan Lokey Capital, Inc. as Investment Banker and Financial Advisor to the Debtor as of the Petition Date; Case\_15-41684; Doc. No. 253

<sup>139</sup> Case\_15-41684; Doc. No. 260

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Stalking Horse Bidder was designated, FRISCO was to further request the Court to schedule a hearing on short notice to approve the Stalking Horse Bidder, and the accompanying agreement and bid protections associated with that bidder.<sup>140</sup>

In furtherance of moving the process along at a pace that would achieve the highest value possible for all parties, FRISCO planned to prepare a form for the sale of the Assets to potential buyer(s), hoping to have the form finalized in conjunction with any Stalking Horse Bidder and planned to file this form on January 22, 2016 along with the designation.<sup>141</sup> The terms of the APA form were:

Transaction:	Acquisition by Buyer(s), via sale of substantially all the Debtor Assets.
Purchased Assets and Related Consideration:	Buyer(s) will purchase the assets specifically identified in the APA and the assumption of certain liabilities for a cash payment. DIP Lender must be paid in full.
Excluded Assets:	Buyer(s) will not acquire the accounts receivable and other excluded assets identified in the APA.
Excluded Liabilities:	All liabilities other than Assumed Liabilities.
Assigned Contracts:	Those executory contracts and unexpired leases set forth in the APA.
Closing:	No later than February 24, 2016.
Topping/Break-up Fees:	TBD based on negotiations with Stalking Horse Bidder(s) and disclosed by January 22, 2016.
Competing Bids:	Open bidding to Qualified Bidders. Auction will require incremental bids of \$50,000.
Relationship with potential purchasers.	To be disclosed if any.

### *b. Assumption and Assignment of Contracts*

Pursuant to Section 365 of the Bankruptcy Code<sup>142</sup>, FRISCO would assign to the Buyer and have the Buyer assume from FRISCO all of the assigned contracts, personal property leases,

<sup>140</sup> Id. at page 7.

<sup>141</sup> Id. at page 8.

<sup>142</sup> <https://www.law.cornell.edu/uscode/text/11/365>

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real property leases, and intellectual property licenses (collectively “Assigned Contracts”).<sup>143</sup> Section 365 requires that the buyer will be responsible for the “Cure Amounts” necessary for the assumption and assignment of the Assigned Contracts. FRISCO asserted that on or before January 27, 2016, it would file and serve a notice of the proposed Cure Amounts. It then determined February 2, 2016 to be the deadline for any identified parties to file an objection to the cure notice.

### *c. Bidding Procedures*

FRISCO proposed to the court to approve specific bidding procedures concerning the potential bidder, the deadline for submission of bids, submission of those bids, qualification of bid, the Auction, the Auction procedures, the final hearing and the closing.<sup>144</sup>

### *d. Right to Modify Timeline*

FRISCO sought authority from the Court to shorten the timeline of the sale process. FRISCO asserted that if it believes in its best judgment, and with the consent of Sabra, that shortening the timeline as proposed would better maximize the value of the assets, it would like to have the authority to do so without needing to obtain an additional Order from the Court.<sup>145</sup>

### *e. Summary of Timeline*

FRISCO proposed a timeline to effectuate the transaction with the request to seek hearings and deadlines as outlined in the timeline:

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<sup>143</sup> Case\_15-41684; Doc. No. 260 at page 9

<sup>144</sup> Id. at page 10

<sup>145</sup> Id. at page 18.

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Case Day		Activity/Deadline
January 27, 2016	<input type="checkbox"/>	Notice of Cure Amounts
February 2, 2016	<input type="checkbox"/>	Deadline for Contract Parties to object to Cure Amounts
January 22, 2016	<input type="checkbox"/>	Notice of Stalking Horse Bidder and form of APA
TBD	<input type="checkbox"/>	Stalking Horse Hearing to Approve Stalking Horse Bidder and Bid Protections
January 27, 2016	<input type="checkbox"/>	Bid Deadline
February 2, 2016	<input type="checkbox"/>	Auction
February 5, 2016	<input type="checkbox"/>	Last day to object to Transaction
February 9, 2016	<input type="checkbox"/>	Final Hearing
On or before February 24, 2016	<input type="checkbox"/>	Projected closing of Transaction

FRISCO asserted that it has determined that a reorganization plan was not a viable option due to its lack of liquidity to appropriately fund continuation of its businesses. FRISCO sought relief of the Court pursuant to sections 105, 363 and 365 of the Bankruptcy Code.<sup>146</sup>

*f. Disposition of the Assets under Section 363(b)*

FRISCO contended that Courts have held that Section 363(b) may be used to dispose of all or most of a Chapter 11 debtor's assets through the sale as a going concern or by liquidation. FRISCO stated that it was exercising sound judgment in making the determination to sell all its assets and transfer/assign all licenses. Permits and contracts held by FRISCO relating to the operation of the Hospital. FRISCO also clarified that it would not be selling its accounts receivables or case. As such, FRISCO requested the Court to approve the sale of the Assets and Assumption and Assignment of the contract to the successful bidder as determined.<sup>147</sup>

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<sup>146</sup> Id. at page 19.

<sup>147</sup> Id. at page 21.



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### ***g. Sale of Assets Free and Clear Under Section 363(f)***

FRISCO contended that Section 363(f) of the code provides for the sale of assets to be free and clear from any interests. However, in order to reap the benefit of this section, certain conditions must be satisfied. The Trustee may sell property free and clear of any interest in such property of an entity other than the estate only if:

- 1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- 2) such entity consents;
- 3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- 4) such interest is in a bona fide dispute; or
- 5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.<sup>148</sup>

FRISCO submitted that each interest that is not an Assumed Liability satisfies at least one of the five conditions in Section 363(f) of the Bankruptcy Code. The hospital accordingly requests authority to convey the Assets to the Buyer, free and clear of all interests (except as otherwise provided in the APA).<sup>149</sup>

### ***h. Buyer Entitled To Good Faith Protection under Section 363(m)***

Section 363(m) of the Bankruptcy Code provides:

“The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not

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<sup>148</sup> 11 U.S.C. § 363(f)

<sup>149</sup> Case\_15-41684; Doc. No. 260 at page 22

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affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.”

FRISCO asserted their intention to make an appropriate showing that the APA with the potential buyer is the result of a negotiated arms'-length transaction and that at the time of the transaction, the buyer was purchasing the assets in good faith within the meaning of Section 363(m).<sup>150</sup>

### *i. Request for Waiver of Stay*

FRISCO sought a waiver of any stay as provided in Bankruptcy Rule 6004(h) which declares:

“[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”

Further, FRISCO cited Bankruptcy Rule 6006(d) which provides:

“[a]n order authorizing trustee to assign an executory contract or expired lease under §365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”<sup>151</sup>

FRISCO believed that for the reasons described in its motion, there is ample cause to justify a waiver of the 14-day stay that is imposed by Bankruptcy Rules 6004(h) and 6006(d).<sup>152</sup>

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<sup>150</sup> Id. at page 25.

<sup>151</sup> Id. at page 28.

<sup>152</sup> Id.

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### *j. Order Approving 363 Transaction Process*

On November 20, 2015, the Court entered an Order approving the motion filed by FRISCO providing the bidding procedures and intended process in its 363 transaction.<sup>153</sup> The Order set by the court provided that the Final Hearing to approve a sales transaction would be heard on February 9, 2016. Any objections to the transaction would have had to have been filed at least two days prior to the hearing, and that the closing date for the transaction must be completed within fourteen days after the entry of the Order approving the sales transaction.<sup>154</sup>

### *k. Notice of Executed Asset Purchase Agreement*

On February 11, 2016, FRISCO as represented by counsel filed a Certificate of Notice of an Executed Asset Purchase Agreement.<sup>155</sup> The notice announced that an agreement had been executed on February 9, 2016 between FRISCO and Columbia Medical Center of Plano Subsidiary, L.P. (“Columbia”).<sup>156</sup> Columbia Medical Center of Plano Subsidiary, L.P., was founded in 1975 and is based in Plano, Texas.<sup>157</sup> Columbia Medical Center of Plano Subsidiary, L.P. operates as a subsidiary of HCA Holdings, Inc.

## **I. NO PLAN IN SIGHT**

As discussed above, in order for an entity to exit a Chapter 11 bankruptcy successfully, it must either have a confirmed re-organization plan or have a successful sale under Section 363.

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<sup>153</sup> Order Approving (1) Bidding Procedures in Advance of Auction, (2) Approving Form and Manner of Notice of Proposed Cure Amounts, (3) Auction (4) Stalking Horse and Final Hearing and (5) Granting Related Relief; Case\_15-41684; Doc. No. 283

<sup>154</sup> Id.

<sup>155</sup> Certificate of Notice of Executed Asset Purchase Agreement; Case\_15-41684; Doc. No. 441

<sup>156</sup> Id. at page 441-1

<sup>157</sup> Columbia Medical Center of Plano Subsidiary, L.P.: Private Company Information - Businessweek

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While FRISCO had filed a motion to set up a 363 transaction, it had not provided any form of reorganization plan to the Court.

On December 17, 2015, FRISCO filed a Motion to Extend Exclusive Time to File and Confirm Plan of Reorganization.<sup>158</sup> In its motion, FRISCO asserted that it has made the determination that a disposition of its operating assets is necessary to maximize available value. It reminded the Court that it had filed its Emergency Motion for the 363 transaction procedures on November 14, 2015<sup>159</sup> and that the Court had granted that Motion on November 20, 2015.<sup>160</sup>

FRISCO acknowledged that the last day to file a plan of reorganization had been scheduled to be January 20, 2015 and confirmation of that plan was due March 20, 2016, and requested the Court to grant a ninety day extension of the exclusive period to file and confirm a plan of reorganization which would update the deadlines to April 19, 2016 to file a plan and June 18, 2016 to confirm it.<sup>161</sup>

On January 20, 2016, the Court entered an Order granting an extension of the deadline for FRISCO to file its Plan of Reorganization up to and including April 19, 2016 and to file a plan of reorganization up to and including June 18, 2016.<sup>162</sup>

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<sup>158</sup> Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement; Case\_15-41684; Doc. No. 345

<sup>159</sup> Case\_15-41684; Doc. No. 260

<sup>160</sup> Order Approving (1) Bidding Procedures in Advance of Auction,(2)Approving Form and Manner of Notice of Proposed Cure Amounts, (3)Auction (4)Stalking Horse and Final Hearing and (5)Granting Related Relief; Case\_15-41684; Doc. No. 283

<sup>161</sup> Case\_15-41684; Doc. No. 345

<sup>162</sup> Order Granting Motion of Debtor and Debtor-In-Possession for an Order Extending Exclusive Time to File and Confirm Plan of Reorganization; Case\_15-41684; Doc. No. 383

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**J. MISCELLANEOUS MOTIONS/ORDERS AFTER GRANTING OF 363  
TRANSACTIONAL PROCESS**

*a. Debtor's Motion to Extend the Deadline to Assume and Reject Executory  
Contracts and Unexpired Nonresidential Leases*

On December 17, 2015, FRISCO filed a Motion with the Court to Extend the Deadline to Assume and Reject Executory Contracts and Unexpired Nonresidential Leases pursuant to Section 365.<sup>163</sup>

As part of the 363 Transactional Process, the Bidding Procedures Order entered on November 20, 2015<sup>164</sup> required FRISCO to provide notice to all non-debtor parties to its contracts and leases that may be assigned in a sale of FRISCO's potential intent to assume and assign that party's contract as well as the proposed cure amount. The order stipulated the deadline for the notice to be served by January 27, 2016. The stipulated deadline for those parties to object to the proposed assumption and assignment or cure was February 2, 2016. Further, the last day of the period in which a motion can be filed to assume unexpired nonresidential leases was scheduled for January 20, 2016.<sup>165</sup>

FRISCO filed a motion to extend these deadlines pursuant to Section 365(d)(4)(B). Section 365(d)(4)(B) states in pertinent part,

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<sup>163</sup> Motion to Extend Time to Assume or Reject Executory Contract; Case\_15-41684; Doc. No. 346

<sup>164</sup> Order Approving (1) Bidding Procedures in Advance of Auction, (2) Approving Form and Manner of Notice of Proposed Cure Amounts, (3) Auction (4) Stalking Horse and Final Hearing and (5) Granting Related Relief; Case\_15-41684; Doc. No. 283

<sup>165</sup> Id. at page 3.

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“[t]he court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.”<sup>166</sup>

The stipulated deadline for submission of bids under the Bidding Order is January 27, 2016. However, FRISCO cannot be certain of what contracts and leases the potential buyer will seek to assume until it has reviewed all of the bids and selected a potential buyer. The January 20, 2016 date that is currently required to file a motion to assume is not sufficient as there may be bidders that submit their bids after that date and up to the January 27, 2016 deadline.<sup>167</sup> FRISCO asserted that its proposed assumption or rejection of executory contracts and unexpired nonresidential leases in this case is inextricably bound by the sale process. Due to the conflicting dates, FRISCO requested a 90 day extension of the 120-day period, up to and including April 19, 2016 to assume and reject executory contracts and unexpired nonresidential leases.

On January 20, 2016, the Court entered an Order that granted FRISCO an extension of the deadline to assume and reject executory contracts and unexpired nonresidential leases up to and including April 19, 2016.<sup>168</sup>

- b. Objection to Debtor Motion for Order Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests***
  - i.) Collin County Texas Tax Assessor-Collector**

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<sup>166</sup> 11 U.S.C. § 365(d)(4)(B).

<sup>167</sup> Case\_15-41684; Doc. No. 346

<sup>168</sup> Order Granting Motion to Extend Deadline to Assume or Reject Executory Contracts and Unexpired Nonresidential Leases; Case\_15-41684; Doc. No. 384

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On January 5, 2016, a Response and Limited Objection was filed with the Court by the Collin County Texas Tax Assessor-Collector as a secured creditor (“Collin”).<sup>169</sup> The document filed in the Court expressed that per the creditor’s proof of claim, FRISCO owed at least \$608,758.06 dollars in taxes.

Collin did not object to the sale of property but rather sought protection of its lien position by providing that 1) that Collin’s statutory tax liens would attach to the proceeds of the sale in the same order of priority that existed immediately prior to the sale; and 2) FRISCO should be required to segregate from the sale proceeds, the funds sufficient to pay Collin’s ad valorem tax claims in full with the appropriate interest.<sup>170</sup>

### **ii.) City of Frisco**

On February 5, 2016, an Objection was filed with the Court by the City of Frisco (“Frisco”).<sup>171</sup> It presented to the Court that it was the holder of a claim for pre-petition ad valorem business personal property taxes for tax year 2015 assessed against FPMC’s property in the amount of \$121,831.51. It further asserted that as of January 1, 2016, it was the holder of an administrative expense claim for year 2016 ad valorem business personal property taxes. As like Collin, Frisco asserted that its claim is secured by unavoidable perfected, first priority liens on all of FRISCO’s business personal property pursuant to Texas Tax Code Sections 32.01 and 32.05.<sup>172</sup> While Frisco did not object to the sale, it requested the Court to enter an order that provided that 1) Frisco’s liens should attach to the gross sale proceeds with the same validity, priority and extent that they attached to the assets sold: 2) Frisco should receive payment in full of its claim for ad valorem

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<sup>169</sup> Response and Limited Objection Filed by Collin County Tax Assessor/Collector Case\_15-41684; Doc. No. 369

<sup>170</sup> Id. at page 3.

<sup>171</sup> Objection Filed by City of Frisco; Case\_15-41684; Doc. No. 427

<sup>172</sup> Id. at page 2.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

business personal property taxes with post-petition interest at the state statutory rate of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 as well as payment of estimated year 2016 ad valorem property taxes from the first sale proceeds at the sale closing.<sup>173</sup>

### **iii.) Vibrant Healthcare Frisco LLC and FPMC Services, LLC**

On February 16, 2016, Vibrant Healthcare Frisco, LLC (“Vibrant”) and FPMC Services, LLC (“FPMC”) filed a Limited Objection to the Hospital’s proposed sale of assets.<sup>174</sup> In the Objection, Vibrant and FPMC asserted to the Court that the proposed Asset Purchase Agreement for the sale of the hospital’s assets provided that the hospital must satisfy certain conditions precedent to closing that purchase. Vibrant and FPMC contended that the proposed Sale Order and the proposed Asset Purchase Agreement seemed to enable the hospital and the Buyer to negotiate the terms of a transition services agreement regarding the management services provided by Vibrant and FPMC without any input by Vibrant or FPMC and without regard to whether those terms are acceptable to Vibrant and FPMC. Further, the proposed Sale Order expressly provides that it would be binding on Vibrant and FPMC, and preclude any “Claims” by Vibrant or FPMC against the Buyer.<sup>175</sup> Vibrant and FPMC asserted that the proposed Sale Order and the proposed Asset Purchase Agreement would seemingly enable the Hospital and the Buyer to force Vibrant and/or FPMC to continue to provide management services and/or supply personnel to the hospital for an indefinite period of time without any prospect of being paid.<sup>176</sup> Vibrant and FPMC objected to the proposed Sale Order and the proposed Asset Purchase Agreement to the extent that they

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<sup>173</sup> Id. at page 3.

<sup>174</sup> Objection Filed by FPMC Services LLC, Vibrant Healthcare Frisco, LLC; Case\_15-41684; Doc. No. 452

<sup>175</sup> Id. at page 2.

<sup>176</sup> Id. at page 3.



## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

would be bound to a transition services agreement that was not acceptable to them in the exercise of their reasonable discretion.

### **iv.) Official Committee of Unsecured Creditors**

On February 17, 2016, the Official Committee of Unsecured Creditors (“Committee”) submitted a limited objection to FRISCO’s emergency motion.<sup>177</sup> The Committee requested the Court to continue the final sale hearing to provide the Committee enough time to review the Transition Services Agreement proposed in the sale.<sup>178</sup>

The Committee further asserted that with FRISCO’s motion, it was seeking authorization to immediately pay as much as \$7 million dollars in current and future lease obligations as well as allegedly secured claims without any meaningful review of the validity and amount that was actually due. The Committee asserted that due to FRISCO’s rush to push the sale through, the Committee has not been able to obtain copies of all relevant agreements and perform its own analysis to the nature of those agreements and the fair market value of the underlying collateral.<sup>179</sup>

Due to the concerns that the Committee faced in the transaction, it requested that the Court continue the sale hearing to allow some resolve into the issues it believed existed. As an alternative, the Committee asked the court to modify the proposed sale order to reflect that the sale may close but that the cure or payoff amounts be held in reserve pending a final determination of the proper pay amounts.<sup>180</sup>

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<sup>177</sup> Objection Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 459

<sup>178</sup> Id. at page 3.

<sup>179</sup> Id. at page 6.

<sup>180</sup> Id. at page 7.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

### ***c. Motion to Compel Debtor to Assume or Reject Management Agreement***

Vibrant Healthcare Frisco, LLC (“Vibrant”) and FPMC Services, LLC (“FPMC”) filed a Motion to Compel Debtor to Assume or Reject Management Agreement on February 8, 2016.<sup>181</sup> Vibrant/FPMC asserted to the Court that in accordance with their contractual obligations, both entities had continued to provide substantial and necessary services and personnel to ensure that the hospital remained a viable and operational prior to and since the Petition Date.<sup>182</sup> The Motion declared that while the day to day management and operation of the Hospital had continued, Vibrant/FPMC had not been paid its monthly management fee pursuant to the Management Agreement between the parties since 2014. It estimated the pre-petition amounts that the Hospital owed to be \$904,563.79 dollars. It also provided that the post-petition monthly management fees totaled \$308,431.77.<sup>183</sup> The combined entities ask the Court to compel the Hospital to assume or reject the Management Agreement between the parties to promptly provide Vibrant/FPMC with the assurances they needed to continue to manage and operate respectively.<sup>184</sup> The Motion further requested the Court to set a prompt deadline for the Hospital to decide whether to assume or reject the Agreement.<sup>185</sup>

### **i.) Hospital’s Response to Vibrant/FPMC’s Motion to Compel**

On February 19, 2016, the Hospital filed a Limited Response to Vibrant/FPMC’s Motion to Compel.<sup>186</sup> In its response, the hospital asserted that the Sale Motion was approved on February

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<sup>181</sup> Motion to Compel Debtor to Assume Or Reject Management Agreement Filed by FPMC Services LLC, Vibrant Healthcare Frisco, LLC; Case\_15-41684; Doc. No. 431

<sup>182</sup> Id. at page 5.

<sup>183</sup> Id. at page 6.

<sup>184</sup> Id. at page 9.

<sup>185</sup> Id. at page 10.

<sup>186</sup> Objection Filed by Forest Park Medical Center at Frisco, LLC; Case\_15-41684; Doc. No. 466

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

18, 2016 by the Court and in that approval, essentially all of the hospital's assets would be sold to Columbia. The anticipated closing date was earmarked for March 31, 2016. The hospital contended that once the sale has closed, it would no longer need the services provided by FPMC under the Management Agreement and that it intended to file a motion to reject the Agreement once the sale has closed. The hospital requested the Court to allow it the time it needed until the close of the sale to file its motion to reject the Management Agreement.<sup>187</sup>

### **ii.) Official Committee of Unsecured Creditors' Objection to Vibrant/FPMC's Motion to Compel**

Another Objection to Vibrant/FPMC's Motion to Compel was filed by the Official Committee of Unsecured Creditors ("Committee") on February 19, 2016.<sup>188</sup>

With respect to portion related to the Motion to Compel, the Committee contended that in a bankruptcy case, the Debtor has until the time of plan confirmation to assume and reject executory contracts. In this matter, Vibrant/FPMC had given no good reason to accelerate that assumption/rejection deadline and therefore requested that the Court deny Vibrant/FPMC's motion.<sup>189</sup>

### **iii.) Order Denying Vibrant/FPMC Motion To Compel**

Finally bringing this issue full circle, the Court entered an Order on March 15, 2016 denying Vibrant/FPMC's motion to compel the Hospital to assume or reject its management agreement.<sup>190</sup> The Court ordered that the motion to compel would be denied but asserted that the Hospital had to meet the obligation to Assume or Reject its Second Amended and Restated

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<sup>187</sup> Id. at page 2.

<sup>188</sup> Objection Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 471

<sup>189</sup> Id. at page 7.

<sup>190</sup> Order Denying Motion to Compel; Case\_15-41684; Doc. No. 515

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Hospital Development and Management Services Agreement by the later of either 1) the closing of the sale of the hospital or 2) April 18, 2016.

### *d. Limited Objection to Assignment of Trademarks*

On February 16, 2016, Callidus Capital Corporation (“Callidus”) filed a limited objection to FRISCO’s proposed sale of its assets.<sup>191</sup> In its objection, Callidus asserted to the Court that while FRISCO proposed to assign to “Columbia” its rights as a licensee of certain registered trademarks and common law marks, those marks were actually trademarks owned by Forest Park Medical Center, LLC (“Dallas”) and only licensed to FRISCO pursuant to a License Agreement dated June 1, 2013.<sup>192</sup>

Further Callidus asserted that pursuant to an Agreement entered between it and Dallas dated June 26, 2015, Callidus holds a lien in all of Dallas’ assets including its trademarks. Callidus provided the Court with proof that its lien was perfected with the UCC filing with the Secretary of State of Texas on June 26, 2015. Callidus declared to the Court that it joined in objection with Dallas as well as on its own behalf to the proposed assignment as it was contrary to the language of the License Agreement between FRISCO and Dallas which provides in Section 3 of the Agreement:

“The license herein granted shall not be assignable or transferable in any manner whatsoever, nor shall Licensee have the right to grant any sublicenses, except by prior written consent of Licensor, which consent shall be at the absolute discretion of Licensor.”<sup>193</sup>

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<sup>191</sup> Objection Filed by Callidus Capital Corporation; Case\_15-41684; Doc. No. 446

<sup>192</sup> Id. at page 446-2

<sup>193</sup> Id.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

Callidus further asserted to the Court that the proposed assignment would also devalue the trademarks, thereby impairing its collateral without consent. It declared that no effort was made to obtain that consent of Dallas or Callidus, as well as no consideration was being paid to it for the sale of its property.<sup>194</sup> For these reasons, Callidus requested the Court to prohibit FRISCO from assigning its license in the trademarks to Columbia.<sup>195</sup>

As a follow up to Callidus' Limited Objection, on the following day Forest Park Medical Center, LLC ("Dallas") also filed a Limited Objection.<sup>196</sup> Dallas based its objection on the same assertions regarding the License Agreement and lack of consent.<sup>197</sup>

### **K. APPROVAL OF THE SALE**

On February 22, 2016, the Court entered the Order Approving the Asset Purchase Agreement ("APA") between FRISCO and Columbia.<sup>198</sup> It also approved the authorizing of the sale of the assets free and clear of liens, claims and encumbrances and authorized the assumption and assignment of certain executory contracts and unexpired leases in connection with the sale.<sup>199</sup>

The Court found that FRISCO had demonstrated good and sound business purposes and justifications to be granted the approval of the APA from the court. The Court found that FRISCO and Columbia complied with the proper bidding procedures and that FRISCO and its advisors had engaged in proper marketing processes to obtain the highest value for FRISCO's assets. The Court

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<sup>194</sup> Case\_15-41684; Doc. No. 446

<sup>195</sup> Id. at page 2.

<sup>196</sup> Objection Filed by Forest Park Medical Center at Frisco, LLC; Case\_15-41684; Doc. No. 451

<sup>197</sup> Id. at page 3.

<sup>198</sup> Order (I)Approving the Asset Purchase Agreement Between the Debtor and Columbia Medical Center of Plano Subsidiary, L.P., (II)Authorizing the Sale of the Debtor's Assets Free and Clear of Liens, Claims, Interest and Encumbrances, (III)Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and (IV)Granting Related ReliefCase\_15-41684; Doc. No. 474

<sup>199</sup> Id. at page 2.

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found that the parties both engaged in the transaction in good faith without collusion and from an arm's length bargaining position.<sup>200</sup>

### ***a. Objections Overruled***

The Court ordered that any objections in regard to the Sale Order were overruled on the merits and with prejudice.<sup>201</sup>

The Court authorized FRISCO to sell the assets free and clear of all liens, claims, rights, liabilities, encumbrances and other interests of any kind. The Order further provided that persons who have claims of any kind against FRISCO or the assets sold will be forever estopped and permanently enjoined from pursuing those claims against Columbia.

### ***b. Transfer of Assets Free and Clear***

The Court ordered that pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, FRISCO was authorized to transfer its Assets as specified in the terms of the Asset Purchase Agreement. Upon closing, the transfer of the Assets to Columbia will (a) be valid, legal, binding and effective, (b) vest Columbia with all right, title and interest of FRISCO in the Assets, and (c) be free and clear of all Claims in accordance with Section 363(f) of the Bankruptcy Code. The Court specifically included those Claims of FPMC, Services, Manager, or any Governmental Authority.<sup>202</sup>

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<sup>200</sup> Id. at page 6.

<sup>201</sup> Id. at page 16.

<sup>202</sup> Id. at page 19.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

### *c. Assumption and Assignment of Assumed Contracts*

The Court authorized FRISCO to assume and assign the Assumed Contracts to Columbia free and clear of ALL claims under Section 365 of the Bankruptcy Code.<sup>203</sup> Once Closing has commenced, Columbia would be fully and irrevocably vested with all right, title and interest of FRISCO under the Assumed Contracts and be relieved from any liability.

### *d. Cure Amounts*

The Order stipulated that all Cure Amounts will be in the amounts specified in the proposed sales order.<sup>204</sup>

### *e. Rejection of Executory Contracts, Licenses and Leases*

The Court ordered that All executory contracts, licenses and leases that were not assumed and assigned by Closing would be deemed rejected as of the Closing Date, without further order of the Court.<sup>205</sup>

### *f. Taxing Authorities*

The Court ordered that the statutory tax liens held by Collin County Tax Assessor/Collector will attach to the gross sale proceeds with the same validity, priority and extent that its liens attached to the assets sold. Further, any ad valorem personal property taxes that are owed for the previous 2014 and 2015 tax years would be paid in full upon the sale of closing with post-petition interest that had accrued from the date of the filing of FRISCO's bankruptcy petition through the date of payment at the state statutory rate of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511.<sup>206</sup>

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<sup>203</sup> Id. at page 25.

<sup>204</sup> Id. at page 26.

<sup>205</sup> Id. at page 27.

<sup>206</sup> Id.

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The Court also ordered that with respect to the ad valorem personal property taxes for 2016 tax year, the liens that secure all amounts ultimately owed to the City of Frisco and to the Collin County Tax Assessor/Collector for tax year 2016 should remain attached to the Assets and become the responsibility of the Buyer, Columbia.<sup>207</sup>

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<sup>207</sup> Id. at page 28.



**The Decline of One Structure and Rise of Another:  
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**IV. COMPENSATION, REIMBURSEMENT AND EXPENSES FOR PROFESSIONAL SERVICES**

**A. LEWIS BRISBOIS BISGAARD & SMITH LLP (“LBBS”)**

LBBS represented FRISCO in the Chapter 11 bankruptcy matter. On January 20, 2016, the firm submitted its first application for compensation to the Court, declaring that for the period from September 22, 2015 and December 31, 2015, it had provided 1323.70 hours of professional services and 235.30 hours of paraprofessional services for FRISCO for this time period and had accrued a total of \$499,267.96 in services rendered with actual and necessary expenses.<sup>208</sup>

On February 24, 2016, the Court entered an Order Granting LBBS’ application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay LBBS all portions of the claim that remained.<sup>209</sup>

**B. DELOITTE TRANSACTIONS AND BUSINESS ANALYTICS LLP (DTBA)**

On October 21, 2015, FRISCO filed for an Order Authorizing it to Retain and Employ Deloitte Transactions and Business Analytics LLP to Provide Michael S. Miller as Chief Restructuring Officer. DTBA also provided additional personnel to advise and perform services for FRISCO in its Chapter 11 bankruptcy case. On January 20, 2016, DTBA submitted its first application for compensation to the Court declaring that for the period from September 22, 2015 and December 31, 2015, it had provided an accumulated 1401.5 hours of professional services and

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<sup>208</sup> Application for Compensation and Reimbursement of Expenses for Lewis Brisbois Bisgaard & Smith LLP; Case\_15-41684; Doc. No. 385

<sup>209</sup> Order Granting First Application of Lewis Brisbois Bisgaard & Smith LLP for Allowance of Interim Compensation for Professional Services Rendered and for Reimbursement of Expenses Incurred as Counsel for the Debtor and Debtor-In-Possession; Case\_15-41684; Doc. No. 485

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paraprofessional services for FRISCO for this time period and had accrued a total of \$651,162.22 in services rendered with actual and necessary expenses.<sup>210</sup>

On February 24, 2016, the Court entered an Order Granting DTBA's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay DTBA all portions of the claim that remained.<sup>211</sup>

### **C. COHNREZNICK LLP**

On October 8, 2015, the Official Committee of Unsecured Creditors selected CohnReznick LLP ("CohnReznick") as its financial advisors in this case. On January 20, 2016, CohnReznick submitted an Interim Application for compensation to the Court declaring that for the period from October 8, 2015 to December 31, 2015, it had provided it had provided an accumulated 220.80 hours of professional services for the committee during this time period and had accrued a total of \$132,592.50 and expenses incurred in the amount of \$2,741.61, totaling \$135,334.11.<sup>212</sup>

#### ***a. Sabra Objection to Committee Application for Allowance***

On February 19, 2016, Sabra Texas Holdings, L.P. ("Sabra") filed an Objection to the Unsecured Creditors Committee Interim Application for Allowance of Compensation and Reimbursement.<sup>213</sup>

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<sup>210</sup> Application for Compensation and Reimbursement of Expenses for Deloitte Transactions and Business Analytics LLP, Other Professional; Case\_15-41684; Doc. No. 387

<sup>211</sup> Order Granting First Application of Deloitte Transactions and Business Analytics LLP for Compensation for Professional Services Rendered and for Reimbursement of Expenses; Case\_15-41684; Doc. No. 487

<sup>212</sup> Interim Application for Compensation and Reimbursement of Expenses for CohnReznick LLP, Financial Advisor; Case\_15-41684; Doc. No. 388

<sup>213</sup> Objection Filed by Sabra Texas Holdings, L. P.; Case\_15-41684; Doc. No. 469

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The objection applied to both the CohnReznick application filed on January 20, 2016 as well as the Arent Fox LLP application filed on the same day.

Sabra objected to the applications for three reasons:

- 1) The Applications sought approval of fees and reimbursement of expenses in excess of the budgeted amounts for the Committee's professionals.
- 2) The Applications sought approval of fees incurred for investigation of claims against Sabra in excess of the \$25,000.00 limit.
- 3) The Applications sought approval of excessive fees resulting from duplicative efforts, unreasonable rates, and incommensurate value returned to the Estate.

Sabra contended that the Committee professionals were over budget.<sup>214</sup> It requested the Court to reduce the fees awarded to the reasonable and necessary amount in accordance with Section 330(a) and eliminate any unreasonable and unnecessary fees incurred by duplicate efforts, excessive rates and any that did not provide a material benefit to the Estate. It further requested that the Court reduce the fees awarded to the limits of the carve out detailed in the budget which included (i) no more than \$25,000.00 attributable to the Committee's investigation of Sabra, and (ii) no more than an aggregate amount of \$405,000.00 through December 31, 2015.<sup>215</sup>

### ***b. Creditor Committee's Response to Sabra's Objection***

On February 22, 2016, the Official Committee of Unsecured Creditors filed a Response to Sabra's previous objection.<sup>216</sup> On February 19, 2016, Sabra Texas Holdings, L.P. ("Sabra") filed an Objection to the Unsecured Creditors Committee Interim Application for Allowance of

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<sup>214</sup> Id. at page 2.

<sup>215</sup> Id. at page 10.

<sup>216</sup> Reply Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 480

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Compensation and Reimbursement. Sabra's objection applied to both CohnReznick Advisory Group as well as Arent Fox LLP.

With respect to the objection relative to CohnReznick, the Committee responded by asserting that the CohnReznick's services were necessary and covered the gamut of services typically provided by a financial advisor representing a committee.<sup>217</sup> It further requested that the Court overrule Sabra's objection and that the Application be approved on an interim basis so that FRISCO could pay the outstanding amounts.

*c. Order Granting Application for Compensation for ChonReznick, LLP.*

On February 24, 2016, the Court entered an Order granting ChonReznick's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay ChonReznick all portions of the claim that remained. The Court also decreed that the Objection by Sabra would be continued until the Final Application for the Fee and Expenses of ChonReznick.<sup>218</sup>

**D. DONLIN RECANO & COMPANY, INC.**

Donlin, Recano & Company, Inc. ("DRC") was FRISCO's claims, noticing and solicitation agent in the hospital's bankruptcy case. On January 20, 2016, DRC submitted its first application (interim) for compensation to the Court, declaring that for the period from September 22, 2015 and December 31, 2015, it had provided 748.1 hours of professional services for FRISCO for this

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<sup>217</sup> Id. at page 6.

<sup>218</sup> Order Granting First Interim Application of CohnReznick LLP, Financial Advisor to the Committee of Unsecured Creditors for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred; Case\_15-41684; Doc. No. 490

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time period and had accrued a total of \$ 106,445.40 in services rendered with actual and necessary expenses.<sup>219</sup>

On February 24, 2016, the Court entered an Order Granting DRC's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay DRC all portions of the claim that remained.<sup>220</sup>

### **E. SILHOL LAW, PLLC**

Silhol Law, PLLC ("Silhol") was special counsel to FRISCO in its Chapter 11 bankruptcy case. On January 20, 2016, Silhol submitted its first application for compensation to the Court declaring that for the period from September 22, 2015 and December 31, 2015, it had provided an accumulated 133.2 hours of professional services and paraprofessional services for FRISCO for this time period and had accrued a total of \$ 43,015.39 in services rendered with actual and necessary expenses.<sup>221</sup>

On February 24, 2016, the Court entered an Order Granting Silhol's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay Silhol all portions of the claim that remained.<sup>222</sup>

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<sup>219</sup> Application for Compensation and Reimbursement of Expenses for Donlin, Recano & Company, Inc., Other Professional; Case\_15-41684; Doc. No. 389

<sup>220</sup> Order Granting First Application of Donlin, Recano & Company, Inc. for Allowance of Interim Compensation for Professional Services Rendered and for Reimbursement of Expenses Incurred as Claims, Noticing and Solicitation Agent for the Debtor and Debtor-In-Possession; Case\_15-41684; Doc. No. 488

<sup>221</sup> Application for Compensation and Reimbursement of Expenses for Silhol Law, PLLC, Special Counsel; Case\_15-41684; Doc. No. 390

<sup>222</sup> Order Granting First Application of Silhol, PLLC. For Allowance of Interim Compensation for Professional Services Rendered and for Reimbursement of Expenses Incurred as Special Counsel for the Debtor-in-Possession; Case\_15-41684; Doc. No. 489

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### **F. ARENT FOX LLP**

Arent Fox LLP (“Arent Fox”) was co-counsel for the Official Committee of Unsecured Creditors (“Committee”) of FRISCO during this bankruptcy proceeding. On January 20, 2016, Arent Fox submitted its first interim application for compensation to the Court declaring that for the period from October 5, 2015 to December 31, 2015, it had provided professional services for the Committee for this time period and has accrued a total of \$311,503.47 in services rendered with actual and necessary expenses.<sup>223</sup>

#### ***a. Sabra Objection to the Application for Compensation for Arent Fox, LLP***

On February 19, 2016, Sabra Texas Holdings, L.P. (“Sabra”) filed an Objection to the Unsecured Creditors Committee Interim Application for Allowance of Compensation and Reimbursement.<sup>224</sup>

The objection, as discussed above, applied to both the Arent Fox LLP administrative fees, as well as the CohnReznick Application for Compensation and the objections provided by Sabra applied to both firms and asked for a reduction in fees (See CohnReznick, LLP *Supra*).

#### ***b. Creditor Committee’s Response to Sabra’s Objection***

On February 22, 2016, the Official Committee of Unsecured Creditors filed a Response to Sabra’s previous objection.<sup>225</sup> On February 19, 2016, Sabra Texas Holdings, L.P. (“Sabra”) filed an Objection to the Unsecured Creditors Committee Interim Application for Allowance of

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<sup>223</sup> First Interim Application for Allowance of Attorney’s Fees and Expenses for Arent Fox LLP as Counsel for the Official Committee of Unsecured Creditors; Case\_15-41684; Doc. No 391

<sup>224</sup> Objection to Unsecured Creditors Committee Professionals’ First Interim Applications for Allowance of Compensation and Reimbursement of Expenses Incurred; Case\_15-41684; Doc. No. 469

<sup>225</sup> Reply Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 480

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Compensation and Reimbursement. Sabra's objection applied to both CohnReznick Advisory Group as well as Arent Fox LLP.

With respect to the objection relative to Arent Fox LLP, the Committee responded by asserting that Arent Fox LLP's services were necessary and significant, including investigating the Debtor's pre-petition and post-petition operations. Sabra questioned Arent Fox's hourly rates in its objection, but the Committee reminds the Court that these rates were clearly disclosed in Arent Fox's retention application, which were found reasonable and approved by the Court's order entered on November 20, 2015.<sup>226</sup>

It further requested that the Court overrule Sabra's objection and that the Application be approved on an interim basis so that FRISCO could pay the outstanding amounts.

### ***c. Order Granting Application for Compensation for Arent Fox, LLP***

On February 24, 2016, the Court entered an Order granting Arent Fox's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay Arent Fox, LLP all portions of the claim that remained. The Court also decreed that the Objection by Sabra would be continued until the Final Application for the Fee and Expenses are submitted.<sup>227</sup>

## **G. BELL NUNNALLY & MARTIN LLP**

Bell Nunnally & Martin LLP ("BN&M") was special counsel to FRISCO in its Chapter 11 bankruptcy case. On January 20, 2016, BN&M submitted its first application for compensation to

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<sup>226</sup> Id. at page 5.

<sup>227</sup> Order Granting First Interim Application By Arent Fox LLP as Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred; Case\_15-41684; Doc. No. 491

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the Court declaring that for the period from October 6, 2015 and January 19, 2016, it had provided an accumulated 15.8 hours of professional services for FRISCO for this time period and had accrued a total of \$ 9,368.25 in services rendered with actual and necessary expenses.<sup>228</sup>

On February 25, 2016, the Court entered an Order Granting BN&M's application. The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary and that FRISCO was authorized to pay BN&M all portions of the claim that remained.<sup>229</sup>

### **H. VIBRANT HEALTHCARE FRISCO, LLC**

Vibrant Healthcare Frisco, LLC ("Vibrant") managed and operated FRISCO pursuant to the Second Amended and Restated Hospital Development and Management Services Agreement agreed upon by the Hospital, Vibrant, and FPMC Services, LLC ("FPMC") dated January 1, 2013. On February 5, 2016, Vibrant submitted its first application for compensation to the Court declaring that for the period from September 22, 2015 and December 31, 2015, it provided Management services to FRISCO and had accrued a total of \$308,431.77 in services rendered with actual and necessary expenses.<sup>230</sup>

#### ***a. Hospital's Response to Vibrant/FPMC Application***

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<sup>228</sup> First Application for Compensation and Reimbursement of Expenses for Bell Nunally & Martin LLP, Special Counsel; Case\_15-41684; Doc. No. 392

<sup>229</sup> Order Granting First Application of Bell Nunally & Martin LLP for Allowance of Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred as Special Counsel for the Debtor and Debtor-In-Possession; Case\_15-41684; Doc. No. 493

<sup>230</sup> First Application of for Administrative Expenses Filed by Vibrant Healthcare Frisco, LLC; Case\_15-41684; Doc. No. 429



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On February 19, 2016, the Hospital filed a Response to Vibrant/FPMC's Application for Payment of Administrative Expenses.<sup>231</sup> In its response, the Hospital agreed that it had a Management Agreement with Vibrant originally dated January 1, 2013 and further amended in July of 2015.<sup>232</sup> It agreed that Vibrant was to provide management services through FMPC. The agreement provided that in exchange for the management services, Vibrant was supposed to be paid a monthly management fee equal to 3% of the Actual Adjusted Gross Patient Charges as well as reimbursement for other fees and expenses as applicable.<sup>233</sup> The hospital clarified to the Court that since the Petition Filing, some of the tasks that were to be performed by Vibrant were taken over by the Hospital's CRO. Therefore, the Hospital claimed, it was unclear as to whether Vibrant would still be entitled to management fees as its role had significantly changed once the CRO took over.<sup>234</sup>

The Hospital contended that Vibrant/FPMC's claim was subordinated to the claim of Sabra Texas Holdings, L.P. ("Sabra").<sup>235</sup> On May 28, 2015, Sabra, as the hospital's landlord and post-petition DIP Lender, entered into a Memorandum of Understanding ("MOU"). That document was updated on July 19, 2015 and then again an Amended and Restated Memorandum of Understanding was dated July 21, 2015 (See exhibit "D" of the Debtor's Response).<sup>236</sup> Each of those MOUs required that management fees owed by the hospital would be subordinated to the unpaid rent due to Sabra. The hospital asserted that any administrative expense claim

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<sup>231</sup> Objection Filed by Forest Park Medical Center at Frisco, LLC.; Case\_15-41684; Doc. No. 467

<sup>232</sup> Id. at page 467-1

<sup>233</sup> Id. at page 3.

<sup>234</sup> Id.

<sup>235</sup> Id. at page 5.

<sup>236</sup> Id. at page 467-4

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Vibrant/FPMC was awarded must be contingent on the asserted subordination and the Hospital requested that the Court enter an Order consistent with that assertion.<sup>237</sup>

### ***b. Sabra's Objection to Vibrant/FPMC's Application***

To further prohibit the motion filed by Vibrant/FPMC, another Objection was filed on February 19, 2016 by Sabra.<sup>238</sup> Sabra asserted that it objected to the relief requested in Vibrant/FPMC's Application to the extent that Vibrant/FPMC sought payment of any administrative expenses prior to Sabra's receipt of payments fully satisfying all obligations entitled to administrative expense priority claim arising from Sabra's post-petition financing extended to the Hospital.

Sabra further asserted that the DIP Order entered by the Court on November 10, 2015<sup>239</sup> provided that all loan proceeds provided by Sabra pursuant to the post-petition financing were entitled to superpriority administrative-expense status, which would be senior to all administrative expenses of any kind, subject only to a carve out for professional fees. Further, professional fees that were included in that carve out were limited to persons formally retained as professionals by the Hospital or Committee and whose employment is formally approved under a final order from the Court. Sabra pointed out that Vibrant/FPMC had not retained an order from the Court approving its employment as an estate professional and accordingly, any administrative fees allowed to Vibrant/FPMC would not be included in the carve out.<sup>240</sup>

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<sup>237</sup> Id. at page 6.

<sup>238</sup> Objection Filed by Sabra Texas Holdings, L. P. ; Case\_15-41684; Doc. No. 468

<sup>239</sup> Final Order (I) Authorizing Debtor to Obtain Postpetition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364; and (II) Granting Related Relief; Case\_15-41684; Doc. No. 247

<sup>240</sup> Case\_15-41684; Doc. No. 468

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Sabra contended that its Loan Proceeds had not yet been repaid in full and still retained the superpriority administrative status as approved by the Court, therefore Vibrant/FPMC's request for administrative expenses could not be allowed until all of the DIP Loan Proceeds have been repaid to Sabra in full.<sup>241</sup>

### *c. Official Committee of Unsecured Creditors' Objection to Vibrant/FPMC Application*

Another Objection to Vibrant/FPMC's application was filed by the Official Committee of Unsecured Creditors ("Committee") on February 19, 2016.<sup>242</sup>

With respect to Vibrant/FPMC's application, the Committee asserted that since the petition date, Vibrant/FPMC had provided very little to the value of the bankruptcy estate. It contended that Vibrant/FPMC had failed to provide the Hospital and its CRO minimum records necessary to operate as a Debtor-in-Possession and have failed to uphold their responsibilities to the Hospital. This and the fact that a sale of substantially all of the assets had been approved gave reason for the Court to deny Vibrant/FPMC's application.<sup>243</sup>

### *d. Order Granting Application for Compensation for Vibrant/FPMC*

On March 30, 2016, the Court entered an Order Granting Vibrant/FPMC's application.<sup>244</sup> The Court found that the fees and expenses requested in the Fee Application were reasonable and necessary. It also ordered that all amounts allowed in favor of Vibrant under its Application were to remain fully subordinated to all rights to payment due and owing to Sabra Texas Holdings, L.P.,

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<sup>241</sup> Id. at page 2.

<sup>242</sup> Objection Filed by Unsecured Creditors Committee; Case\_15-41684; Doc. No. 471

<sup>243</sup> Id. at page 3.

<sup>244</sup> Order Regarding Vibrant Healthcare Frisco, LLC's First Application for Administrative Expenses; Case\_15-41684; Doc. No. 546

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and that any payments received by Vibrant/FPMC will not be allowed until all obligations due to Sabra have been paid and received.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

### **V. POST-BANKRUPTCY**

#### **A. THE NEW OWNER**

The \$96 million dollar acquisition of Forest Park Medical Center in Frisco was added to HCA North Texas growing presence in North Texas. HCA already owns the Plaza Medical Center and Medical Center Alliance in Fort Worth as well as the Medical Center Arlington and North Hills Hospital located in North Richland Hills.<sup>245</sup>

#### **B. THE FACILITY**

The Hospital's name was changed to Medical City Frisco and is the 13<sup>th</sup> HCA hospital in the Dallas-Fort Worth Area.<sup>246</sup> HCA North Texas is one of the region's largest comprehensive health care providers, and also includes 56 patient care sites, more than 5500 active physicians and 15,000 employees in Dallas-Fort Worth and Oklahoma. In becoming part of the HCA North Texas, the facility will be able to offer patients the broader resources of a large hospital system when a higher level of care is required, along with a proven network of primary and urgent care centers.<sup>247</sup>

Medical City Frisco is operated as a campus of The Medical Center of Plano, which allows the hospital to accept Medicare patients immediately and continue uninterrupted service to the community.<sup>248</sup>

The plans are for Medical City Frisco to operate as an acute care hospital with services including orthopedics, neurosurgery, gynecology, pediatric surgery, bariatrics, general surgery,

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<sup>245</sup> Frisco's Forest Park hospital sells to HCA for \$96 million | Dallas Morning News

<sup>246</sup> HCA completes purchase of bankrupt Texas hospital

<sup>247</sup> HCA North Texas Announces Plans for Acquired Hospital in Frisco | HCA North Texas

<sup>248</sup> Id.

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ENT, robotics, and ER. Additional services, including OB and cardiovascular treatment, intend to be added in the future.

The new hospital website is <http://medicalcityfrisco.com/>

### **C. THE FOREST PARK SYSTEM**

Since FRISCO entered bankruptcy proceedings, the 12 by 12 plan that its parent, Forest Park Medical had intended to rapidly grow into a success continued to decline. The system's hospital in San Antonio closed its doors abruptly in October of 2015 leaving 139 people without jobs. Within two weeks of that closing, the Dallas Flagship hospital closed its doors which led to 196 layoffs. Forest Park Medical Center in Austin Texas remains vacant since its closing of construction and has also filed for bankruptcy. In January of 2016, the Forest Park hospital in Fort Worth filed for Chapter 11.<sup>249</sup> Finally, records show that the Forest Park Medical Center in Southlake also filed for bankruptcy in late January of 2016.<sup>250</sup>

If you visit the Forest Park Medical Center website, you will see that the hospital system is now reduced to two locations.<sup>251</sup> Both of these locations, and the only remaining hospitals in this system are both in bankruptcy proceedings.

### **D. REMAINING DOCKET ITEMS**

While the Chapter 11 bankruptcy itself and as it applies to the sale of the hospital is complete, the interested parties in this matter still continue to file wrap up motions and the Court

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<sup>249</sup> Exclusive: Forest Park Medical Center's Fort Worth hospital files for Chapter 11 - Dallas Business Journal

<sup>250</sup> Forest Park Medical Center Southlake Files For Chapter 11 Bankruptcy « D Healthcare Daily

<sup>251</sup> FORESTPARKMC.COM

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in turn continues to hear these motions and enter an Order in its regard. Some of the open issues are those such as the Final Applications of Allowance for Compensation.

### **E. IN CLOSING**

Overall, the timeline for FRISCO's bankruptcy from petition filing in September 22, 2015 to the sale and closing in March of 2016 would imply a fairly simple and quick filing. However, review of certain motions, objections and responses reflect that it was much more engulfed in a tug-of-war on certain issues than one would expect in such a short time-line.

As a final note, official transcripts throughout the bankruptcy proceeding were sealed from public access. The last of which was a transcript sealed on April 7, 2016 which will be unsealed by the Court by July 7, 2016. It would be interesting to return back to the hospital docket in order to review the transcript since there seemed to be a very significant adversarial relationship between the Debtor and a few of the interested parties.

## **The Decline of One Structure and Rise of Another: Forest Park Medical Center at Frisco**

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