

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: FOREST PARK MEDICAL CENTER AT FRISCO, LLC, DEBTOR.	§ § § § § § § § §	CHAPTER 11 CASE NO. 15-41684 - BTR Complex Case
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**DEBTOR’S EMERGENCY MOTION TO ENFORCE THE AUTOMATIC STAY
AND REQUEST FOR DAMAGES FOR STAY VIOLATION**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

EMERGENCY CONSIDERATION HAS BEEN REQUESTED

TO THE HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Forest Park Medical Center at Frisco, LLC (the “Debtor”), debtor and debtor-in-possession, hereby submits this emergency motion (the “Motion”) pursuant to Sections 105(a) and 362 of the United States Bankruptcy Code and 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”),

for the entry of an order enforcing the automatic stay and awarding damages for willful stay violation. In support of this Motion, the Debtor respectfully represents as follows:

I.
STATUS OF THE CASE AND JURISDICTION

1. On September 22, 2015 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 the Bankruptcy Code. The Debtor has continued in the possession of its property and is operating and managing its business as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

2. No request for a trustee or examiner has been made. An Official Unsecured Creditors’ Committee was appointed on September 30, 2015. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Section 105(a) and 362 of the Bankruptcy Code.

II.
BACKGROUND

A. General.

4. The Debtor is a doctor-owned Texas limited liability company that owns and operates a 54-bed state-of-the-art medical facility, including 30 private rooms, 14 family suites, and 10 intensive care rooms (the “Hospital”) in Frisco, Texas. The Hospital is a luxury medical facility located at 5500 Frisco Square Boulevard in Frisco, Texas, off of the Dallas North Tollway and Main Street. Prior to the Petition Date, approximately 159 employees worked at the Hospital, including 100 full-time employees and 59 part-time employees (the “Employees”).

The Debtor offers a range of surgical services, including, but not limited to, pediatric, bariatric, brain, orthopedic, pain management, plastics and reconstructive, spine, and neurosurgery. The Hospital's back office services and employees are contracted through FPMC Services, LLC ("Shared Services"). Shared Services manages all revenue for the Debtor, as well as six other affiliates and is owned in equal parts by those seven entities for which it performs these services.

5. As the direct employer of all of the Hospital's employees, Shared Services is the party who contracted with Blue Cross Blue Shield ("BCBS") to provide the Hospital's employees with health insurance. Each month, prior to the Petition Date, the Debtor sent funds to Shared Services for the Debtor's "portion" of the premium due to BCBS. The Debtor believed that all the hospitals in the Forest Park system were doing the same and that those funds were being used to pay the BCBS health insurance premiums.

6. As part of the relief granted by the Court at the "first day" hearings on September 23, 2015, the Debtor sought and was granted authority to pay approximately \$160,000.00 in pre-petition benefits payments, in order to, among other things, bring current the BCBS insurance policy covering the Employees (the "Insurance Policy"). *See* Docket Nos. 7 and 34. The Debtor believed, until October 5, 2015, that the only amounts owing to BCBS were the payment missed by the Debtor to Shared Services just prior to the Petition Date and that this \$160,000 payment would bring BCBS current.

7. On October 5, 2015, at a meeting with the CEO's from the Dallas, Southlake, Fort Worth and Frisco locations, Shared Services informed the CEO's, for the first time, that Shared Services had not used the funds paid by each of these hospitals to pay the health insurance premiums due to BCBS, and in fact, the premiums were due for August, September and October. As such, Shared Services further revealed that as of October 1, 2015, BCBS had placed all of the

Employees, as well as all Shared Services employees located at each of the hospitals as well as Shared Services, on a claims hold, meaning that no claims made under the BCBS policies would be processed pending receipt of all amounts due. This total payment due is over \$2,350,000. The Debtor immediately reached out to BCBS and the insurance broker with MHBT to attempt to address the situation by paying the Debtor's portion of the premium attributable to its Employees. As of the date of this Motion, those negotiations are ongoing.

III. RELIEF REQUESTED

8. Though the Debtor and BCBS are attempting to reach an agreement which prevents the interruption of health care insurance coverage for the Employees, the Debtor asserts that if BCBS cancels the Insurance Policy, or continues the claims hold, without seeking to lift the automatic stay, such actions would be a willful violation of the automatic stay, and the Debtor would be entitled to damages arising from such violation.

9. 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. 11 U.S.C. § 362. An action is related to a bankruptcy case if the outcome could conceivably affect the bankruptcy estate. *Edge Petroleum Operating Co. v. GPR Holdings, LLC (In re TXNB Internal Case)*, 483 F.3d 292, 298 (5th Cir.2007). "Certainty is unnecessary; an action is 'related to' bankruptcy if the outcome could alter, positively or negatively, the debtor's rights, liabilities, options, or freedom of action or could influence the administration of the bankruptcy estate." *Id.* By cancelling the Insurance Policy, BCBS would be violating the automatic stay by exercising

control over property of the estate and the Debtor's business operations, all in furtherance of BCBS's attempt to collect and recover on a pre-petition claim against Shared Services.

10. Should BCBS terminate the Insurance Policy, or continue the claims hold, thus preventing Employees from making Claims against the Insurance Policy, before the Debtor can find a suitable replacement, such action would irreparably damage the Debtor's business operations, as the Employees will not continue to provide services at the Hospital if their health insurance coverage is compromised. Furthermore, the Employees are highly skilled, specialized medical professionals who are not easily replaced. Retention of the Employees is critical to the Debtor's reorganization and continued business operations.

11. "Property of the estate," defined in 11 U.S.C. § 541(a), includes all legal or equitable interests of the debtor in property as of the commencement of the case. "This definition is intended to be broadly construed and courts are generally in agreement that an insurance policy will be considered property of the estate. Insurance policies are property of the estate because, regardless of who the insured is, the debtor retains certain contract rights under the policy itself. Any rights the debtor has against the insurer, whether contractual or otherwise, become property of the estate." *Matter of Edgeworth*, 993 F.2d 51, 55 (5th Cir. 1993) (internal citations omitted).

12. Though the Insurance Policy is currently held by Shared Services, it is clear that a cancellation of, or placing a claims hold on claims made under, the Insurance Policy at this time would exercise control over property of the estate for the purpose of recovering on a pre-petition claim, and thus would constitute a willful violation of the automatic stay.

13. Section 105(a) provides that the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. §

105(a). The Debtor requests that the Court issue an order compelling BCBS to immediately reinstate the Insurance Policy, to the extent it has been cancelled, and/or immediately lift the claims lock in place on claims made under the Insurance Policy as to the Employees until such time as BCBS obtains an order from this Bankruptcy Court authorizing it to do so.

14. The Debtor further requests that the Court sanction BCBS for its willful and intentional actions taken in violation of the automatic stay, including, without limitation, awarded the Debtor damages, punitive damages and attorneys' fees. The Debtor requests that the Court set a subsequent hearing to consider this request.

IV. **NOTICE**

15. Notice of this Motion has been given by electronic mail and/or U.S. Mail, First Class to the Master Service List including the following parties or, in lieu thereof, to their counsel, if known: (a) BCBS; (b) MHBT; (c) Shared Services; (d) the Office of the United States Trustee for the Eastern District of Texas; (e) the Office of the Texas Attorney General; (f) the Office of the United States Attorney General; (g) Texas Department of State Health Services; (h) Texas Capital Bank; (i) Sabra Texas Holdings, L.P.; (j) the Official Unsecured Creditors' Committee; and (k) each of the Debtor's twenty (20) largest unsecured creditors. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

In conclusion, the Debtor respectfully requests the Court grant the Motion, and grant the Debtor such other and further relief as the Court may deem proper.

Dated: October 9, 2015.

Respectfully submitted,

/s/ William L. Medford

William L. Medford, Esq.

State Bar No. 00797060

Vickie L. Driver, Esq.

State Bar No. 24026886

Christina W. Stephenson, Esq.

State Bar No. 24049535

Lewis Brisbois Bisgaard & Smith, LLP

2100 Ross Avenue, Suite 2000

Dallas, Texas 75201

Phone: (214) 722-7100

Fax: (214) 722-7111

Email: william.medford@lewisbrisbois.com

Email: vickie.driver@lewisbrisbois.com

Email: christina.stephenson@lewisbrisbois.com

PROPOSED COUNSEL FOR THE DEBTOR

CERTIFICATE OF CONFERENCE

I hereby certify that I have been in telephone communication with Gayla Mills at BCBS on the substantive issues set forth in the Motion, since October 6, 2015, and I communicated the Debtor's needs and provided a copy of the Motion to Gayla Mills with BCBS and Ryan Franzen at MHBT on October 8, 2015. As of the time of filing this Motion, the parties have been unable to reach a resolution; however, I will continue to work with BCBS and MHBT to find a solution.

/s/ Vickie L. Driver

Vickie L. Driver

CERTIFICATE OF SERVICE

I hereby caused a true and correct copy of the foregoing pleading to be served by Donlin, Recano & Company upon the parties listed on the current Master Service List and BCBS and MHBT at the addresses below via ECF notification, e-mail, facsimile, overnight delivery, and/or courier on this 9th day of October, 2015.

/s/ William L. Medford

William L. Medford

Ursula Poley CEBS
Ryan Franza
Account Manager
MHBT, a Marsh & McLennan Agency LLC company
Ursula_Poley@mhbt.com
Ryan_Franza@mhbt.com
8144 Walnut Hill Lane, 16th Floor
Dallas, Texas 75231

Gayla Mills
Account Executive
Mid Market Sales and Marketing
Blue Cross Blue Shield of Texas
1001 E. Lookout Drive
Richardson, Texas 75082
14th Floor, Tower B
gayla_mills@bcbstx.com

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	CHAPTER 11
	§	
FOREST PARK MEDICAL CENTER AT FRISCO, LLC,	§	
	§	CASE NO. 15-41684 - BTR
	§	
DEBTOR.	§	Complex Case
	§	

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION TO ENFORCE THE
AUTOMATIC STAY AND REQUEST FOR DAMAGES FOR STAY VIOLATION**

Upon consideration of the *Emergency Motion to Enforce the Automatic Stay and Request for Damages for Stay Violation* (the “Motion”) filed by Debtor Forest Park Medical Center at Frisco, LLC, (“Debtor”) on October 9, 2015, made pursuant to Sections 105(a) and 362 of the United States Bankruptcy Code and 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”) in the above-referenced bankruptcy case, the Court finds that it has jurisdiction to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 1334(b) and 157; that due notice of the Motion has been provided as set forth in the Motion and no other or further notice need be provided; and further that the relief requested in the Motion is in the best interest of the Debtor and its creditors.

IT IS THEREFORE ORDERED that the Motion filed by the Debtor on October 9, 2015 is hereby **GRANTED**; it is further

ORDERED that placing a claims hold on claims made under the Insurance Policy as it pertains to and provides coverage for, the Employees, constitutes a willful violation of the automatic stay by Blue Cross Blue Shield (“BCBS”);¹ it is further

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that BCBS shall immediately reinstate the Insurance Policy, to the extent that such Insurance Policy has been cancelled, and to the extent that such cancellation pertains to health insurance coverage of the Employees; it is further

ORDERED that BCBS shall immediately remove any “claims hold” or other administrative hold preventing or precluding the Employees from submitting and having claims processed by BCBS; it is further

ORDERED that BCBS is prohibited from cancelling or threatening to cancel, the Insurance Policy, or placing any claims hold or other administrative hold on claims processing as it pertains to the Employees, during the course of this Chapter 11 Case unless and until it received authorization from this Court to do so; it is further

ORDERED that, for so long as the Debtor is current on the post-petition obligations for its share of the premiums due for the Insurance Policy, BCBS shall not cancel the Insurance Policy as it pertains to the Employees; it is further

ORDERED that the Court has set _____, 2015, at _____ .m. for a hearing to consider Debtor’s request for damages, punitive damages and attorneys’ fees for BCBS’ willful violation of the automatic stay.

HONORABLE BRENDA T. RHOADES
CHIEF UNITED STATES BANKRUPTCY JUDGE

PREPARED BY:

/s/ William L. Medford

William L. Medford, Esq.

State Bar No. 00797060

Vickie L. Driver, Esq.

State Bar No. 24026886

Christina W. Stephenson, Esq.

State Bar No. 24049535

Lewis Brisbois Bisgaard & Smith, LLP

2100 Ross Avenue, Suite 2000

Dallas, Texas 75201

Phone: (214) 722-7100

Fax: (214) 722-7111

Email: william.medford@lewisbrisbois.com

Email: vickie.driver@lewisbrisbois.com

Email: christina.stephenson@lewisbrisbois.com

PROPOSED COUNSEL FOR THE DEBTOR

MASTER SERVICE LIST
Forest Park Medical Center at Frisco, LLC
Case No. 15-41684-BTR-11

CASH MANAGEMENT BANK

PLAINS CAPITAL BANK
8200 DOUGLAS AVENUE
SUITE 201
DALLAS TX 75225

COUNSEL FOR COLIN PERO, M.D., BJB SURGICAL INVESTMENTS LLC, BRYAN J. BORGFELD, M.D., JEFFREY CATTORINI, M.D., GUY CULPEPPER, M.D., DPSI HOLDINGS, L.P., LOWELL T. KU, M.D., AND FRISCO PEDI ENT INVESTME

QUILLING SELANDER ET AL.
ATTN: LINDA S. LARUE
2001 BRYAN ST., SUITE 1800
DALLAS TX 75201

COUNSEL FOR COMMERCE BANK

HUSCH BLACKWELL, LLP
ATTN: BUFFEY E. KLEIN
2001 ROSS AVENUE, SUITE 2000
DALLAS TX 75201

COUNSEL FOR SABRA TEXAS HOLDINGS, L.P.

GARDERE WYNNE SEWELL LLP
ATTN: MARCUS A. HELT
1601 ELM STREET, SUITE 3000
DALLAS TX 75201

GARDERE WYNNE SEWELL LLP
ATTN: THOMAS C. SCANNELL
1601 ELM STREET, SUITE 3000
DALLAS TX 75201

COUNSEL TO CITY OF FRISCO

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
ATTN: LAURIE SPINDLER HUFFMAN
2777 N. STEMMONS FREEWAY
SUITE 1000
DALLAS TX 75207

COUNSEL TO TEXAS CAPITAL BANK

TEXAS CAPITAL BANK
C/O MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTN: J. MARK CHEVALLIER AND JAMES REA
2501 N. HARWOOD STREET
SUITE 1800
DALLAS TX 75201

GOVERNMENTAL AGENCY

UNITED STATES ATTORNEY
EASTERN DISTRICT OF TEXAS
600 EAST TAYLOR STREET
SUITE 2000
SHERMAN TX 75090

TEXAS DEPT. OF STATE HEALTH SERVICES
ATTN: LEGAL DEPT.
P.O. BOX 149347
AUSTIN TX 78714

INTERNAL REVENUE SERVICE
P.O. BOX 7346
PHILADELPHIA PA 19101

TEXAS ATTORNEY GENERAL'S OFFICE
BANKRUPTCY-COLLECTIONS DIVISION
P.O. BOX 12548
AUSTIN TX 78711-2548

TEXAS ATTORNEY GENERAL'S OFFICE
BANKRUPTCY -COLLECTIONS DIVISION
P.O. BOX 12548
AUSTIN TX 78711

OFFICE OF THE ATTORNEY GENERAL
MAIN JUSTICE BUILDING, RM. 5111
10TH and CONSTITUTION AVENUE, N.W.
WASHINGTON DC 20530

MASTER SERVICE LIST
Forest Park Medical Center at Frisco, LLC
Case No. 15-41684-BTR-11

GOVERNMENTAL AGENCY

OFFICE OF THE ATTORNEY GENERAL
MAIN JUSTICE BUILDING, ROOM 5111
10TH AND CONSTITUTION AVE., N.W.
WASHINGTON DC 20530

LITIGATION PARTY

WORMINGTON & BOLLINGER
MARIA WORMINGTON RN JD
212 EAST VIRGINIA STREET
MCKINNEY TX 75069

LANDLORD AND PROPOSED DIP FINANCING

SABRA TEXAS HOLDINGS, L.P.
C/O GARDERE WYNNE SEWELL LLP
ATTN: DEIDRE B. RUCKMAN, ESQ.
3000 THANKSGIVING TOWER
1601 ELM STREET
DALLAS TX 75201

WORMINGTON & BOLLINGER
DAVID BENFORD
212 EAST VIRGINIA STREET
MCKINNEY TX 75069

LITIGATION PARTY

HUSCH BLACKWELL LLP
AARON J. MANN
4801 MAIN STREET
SUITE 1000
KANSAS CITY MO 64112

HUSCH BLACKWELL LLP
KEVIN KORONKA
2001 ROSS AVENUE
SUITE 2000
DALLAS TX 75201

LAW OFFICE OF GLENN TUCKER, SR.
GLENN D. TUCKER SR.
8330 LBJ FREEWAY
SUITE 360
DALLAS TX 75243

HUSCH BLACKWELL LLP
JOHN POWER
4801 MAIN STREET
SUITE 1000
KANSAS CITY MO 64112

K. STEWART LAW, P.C.
KELLY STEWART
100 HIGHLAND PARK VILLAGE
SUITE 200
DALLAS TX 75205

WINSTEAD P.C.
JACLYN AUSTEIN
500 WINSTEAD BUILDING
2728 N. HARWOOD STREET
DALLAS TX 75201

LITIGATION PARTY; COUNSEL FOR CPM MEDICAL, LLC

WINSTEAD P.C.
JOSEPH P. REGAN
300 THROCKMORTON
SUITE 1700
FORT WORTH TX 76102

FERGUSON BRASWELL & FRASER, PC
ATTN: JOHN D. FRASER
2500 DALLAS PARKWAY
SUITE 501
PLANO TX 75093

OFFICE OF THE U.S. TRUSTEE

PROSPINE LLC
WILLIAM ENGLISH
5909 NEWGATE LANE
PLANO TX 75093

OFFICE OF THE U.S. TRUSTEE
ATTN: TIMOTHY W. O'NEAL
ASSISTANT U.S. TRUSTEE
BANK OF AMERICA BUILDING
110 N. COLLEGE AVE., SUITE 300
TYLER TX 75702-7231

MASTER SERVICE LIST
Forest Park Medical Center at Frisco, LLC
Case No. 15-41684-BTR-11

PROPOSED COUNSEL FOR UNSECURED CREDITORS COMMITTEE

ARENT FOX, LLP
ATTN: ROBERT HIRSH
ATTN: GEORGE ANGELICH
1675 BROADWAY
NEW YORK NY 10019-5820

STATE OF TEXAS - ATTORNEY GENERAL

ATTORNEY GENERAL - STATE OF TEXAS
ATTN: KEN PAXTON
300 W. 15TH STREET
AUSTIN TX 78701

PROPOSED LOCAL COUNSEL FOR UNSECURED CREDITOR COMMITTEE

ERIC A. LIEPINS, P.C.
12770 COIT ROAD, SUITE 1100
DALLAS TX 75251

TOP 20 UNSECURED CREDITOR

RICOH USA INC.
P.O. BOX 660342
DALLAS TX 75266-0342

SECURED CREDITOR

TEXAS CAPITAL BANK
300 THROCKMORTON
SUITE 200
FORT WORTH TX 76102

JOHNSON AND JOHNSON HEALTHCARE
5972 COLLECTIONS CENTER DRIVE
CHICAGO IL 60693

COMMERCE BANK
ATTN: GREGORY LEFTWICH
MARKET PRESIDENT
2828 NORTH HARWOOD
SUITE 1250
DALLAS TX 75201

SMITH AND NEPHEW INC.
1450 BROOKS RD.
MEMPHIS TN 38116

OLYMPUS AMERICA, INC.
3500 CORPORATE PARKWAY
CENTER VALLEY PA 18034

TOP 20 UNSECURED CREDITORS

VIBRANT MANAGEMENT
C/O GLENDONTODD LLC
TODD FURNISS & MARY HATCHER
2101 CEDAR SPRINGS RD, SUITE 1540
DALLAS TX 75201

KARL STORZ
2151 E. GRAND AVENUE
EL SEGUNDO CA 90245

INTUITIVE SURGICAL
PO BOX 39000
SAN FRANCISCO CA 94139

GENERAL ELECTRIC CAPITAL CORPORATION
ATTN: ALAN BECKMAN
20225 WATERTOWER BLVD.
BROOKFIELD WI 53045

CPM MEDICAL LLC
1565 N CENTRAL EXPWY, STE 200
RICHARDSON TX 75080

MASTER SERVICE LIST
Forest Park Medical Center at Frisco, LLC
Case No. 15-41684-BTR-11

TOP 20 UNSECURED CREDITORS

VALLEY SERVICES, INC.
P.O. BOX 742992
ATLANTA GA 30374-2992

MEDLINE
ONE MUNDELEIN PLACE
MUNDELEIN IL 60060

LIFECCELL CORPORATION
PO BOX 203888
HOUSTON TX 77216-3888

IDENTITY MEDIASERVICES, LLC
1801 ROYAL LANE, #800
DALLS TX 75229

JOHNSON AND JOHNSON HEALTHCARE
425 HOES LANE
PISCATAWAY NJ 08855

LDR SPINE USA, INC.
PO BOX 671716
DALLAS TX 75267

BELL NUNNALLY AND MARTIN, LLC
3232 MCKINNEY AVE
STE 1400
DALLAS TX 75204

TOP 20 UNSECURED CREDITORS

STRYKER INSTRUMENTS, A DIV. OF STRYKER CORP.
C/O LORI L. PURKEY, ESQ.
PURKEY & ASSOCIATES, PLC
5050 CASCADE ROAD, SE, SUITE A
GRAND RAPIDS MI 49546

STRYKER ENDOSCOPY, A DIV. OF STRYKER CORP.
C/O LORI L. PURKEY, ESQ.
PURKEY & ASSOCIATES, PLC
5050 CASCADE ROAD, SE, SUITE A
GRAND RAPIDS MI 49546

PROSILVER STAR LTD.
1 COWBOYS PARKWAY
IRVING TX 75063

INPATIENT PHYSICIAN ASSOC, PLLC
6901 SNIDER PLAZA #130
DALLAS TX 75205

RICOH USA INC.
21146 NETWORK PLACE
CHICAGO IL 60673-1211

MEDICAL INFORMATION TECHNOLOGY, INC.
1 MEDITECH CIRCLE
WESTWOOD MA 02090

SMITH AND NEPHEW, INC.
PO BOX 905706
CHARLOTTE NC 28209-5706

MASTER SERVICE LIST
Forest Park Medical Center at Frisco, LLC
Case No. 15-41684-BTR-11

TOP 20 UNSECURED CREDITORS

SIEMENS MEDICAL SOLUTIONS USA, INC.
51 VALLEY STREAM PARKWAY
MALVERN PA 19355

ALLERGEN USA, INC.
2525 DUPONT DRIVE
IRVINE CA 92612

STRYKER SPINE, A DIVISION OF STRYKER CORP.
C/O LORI L. PURKEY, ESQ.
PURKEY & ASSOCIATES, PLC
5050 CASCADE ROAD, SE, SUITE A
GRAND RAPIDS MI 49546

U.S. ATTORNEY GENERAL

U.S. DEPT. OF JUSTICE
OFFICE OF THE U.S. ATTORNEY GENERAL
ATTN: LORETTA E. LYNCH
950 PENNSYLVANIA AVENUE, NW
WASHINGTON DC 20530-0001

UNSECURED CREDITORS COMMITTEE MEMBER

SHANE REED - INTERIM CHAIRMAN
MEDLINE INDUSTRIES, INC.
1 MEDLINE PLACE
MUNDELEIN IL 60060

MATTHEW DAVIS, M.D.
INPATIENT PHYSICIAN ASSOCIATES, PLLC
6901 SNIDER PLAZA #130
DALLAS TX 75205

THOMAS WALKER
PRO SILVER STAR LTD.
ONE COWBOY PKWAY
IRVING TX 75063

UNSECURED CREDITORS COMMITTEE MEMBER

SCOTT WAY
LDR SPINE USA, INC.
13785 RESEARCH BLVD.
SUITE 200
AUSTIN TX 78750

STEVEN NUESSE
IDENTITY MEDIA SERVICES
1801 ROYAL LANE
SUITE 800
DALLAS TX 75229