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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
Case No. 14-70593(AST)

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In the Matter of:

LONG BEACH MEDICAL CENTER, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
Alfonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, New York

May 12, 2014
11:06 AM

B E F O R E:
HON. ALAN S. TRUST
U.S. BANKRUPTCY JUDGE

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2 Sale Hearing [13]

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1 P R O C E E D I N G S

2 THE CLERK: Case number 14-70593, Long Beach Medical
3 Center.

4 THE COURT: We'll take appearances please. First in
5 the courtroom.

6 MR. WEST: Good morning, Your Honor. Burton Weston,
7 Garfunkel Wild, PC, together with my colleagues Afsheen Shah
8 and Adam Berkowitz, for the debtors.

9 MR. OSWALD: Your Honor, Frank Oswald, Togut, Segal &
10 Segal for South Nassau Community Hospital. I believe on the
11 phone is my colleague Mr. Brian Moore, Scott Griffin, and I
12 think also Mr. Zall, of Proskauer, our co-counsel in healthcare
13 and on bankruptcy.

14 MR. ZALL: Yeah, this is Richard Zall from Proskauer,
15 also for South Nassau.

16 MR. SOUTHARD: Good morning, Your Honor. Sean
17 Southard of Klestadt & Winters, on behalf of the official
18 committee of unsecured creditors.

19 MR. SCHEIN: Good morning, Your Honor. Michael
20 Schein, Vedder Price, on behalf of Northstar Recovery Services.

21 MR. DIMINIO: Good morning, Judge. Alfred Dimino for
22 the Office of the United States Trustee.

23 MR. MCFARLAND: Thomas McFarland, Assistant U.S.
24 Attorney for the Department of Health and Human Services.

25 MR. SILVERMAN: Good morning, Your Honor. Kevin

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1 Silverman for the City of Long Beach with Corey Klein.

2 MR. KLEIN: Corey Klein, Corporation Counsel for the
3 City of Long Beach. Good morning, Your Honor.

4 THE COURT: And then --

5 MS. GLICK: Good morning, Your Honor. Carol Glick
6 representing Windsor Healthcare, who is the backup bidder for
7 the assets of the nursing home.

8 THE COURT: And then on the telephone?

9 MR. GOLDSTEIN: Good morning, Your Honor. Arthur
10 Goldstein of Spizz Cohen & Serchuk, representing First Central
11 Savings Bank.

12 MR. GRIFFIN: Good morning, Your Honor. It's Scott
13 Griffin and Brian Moore from Togut, Segal & Segal, co-counsel
14 for South Nassau.

15 MR. BOONE: Good morning. This is Merrill Boone,
16 Pension Benefit Guaranty Corporation.

17 MR. BARKAN: Good morning, Your Honor. This is Lee
18 Barkan from Proskauer Rose.

19 THE COURT: All right, anyone else?

20 All right, Mr. Weston.

21 MR. WESTON: Thank you, Your Honor.

22 Good morning, Your Honor. If I might, contemporaneous
23 with the filing of this Chapter 11 case, Your Honor, we filed a
24 sale motion, which, as an initial matter, sought entry of an
25 order approving bid procedures and bidder protections,

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1 scheduling an auction, and, as well, scheduling this hearing to
2 approve the sale of acquired assets.

3 The bid procedures order was entered by Your Honor on
4 March 14th, and with input from the committee provided for the
5 prospect of bids on the whole or a portion of the assets, and
6 if need be, an allocation of a termination fee and expense
7 reimbursement that was approved as part of the bid procedures
8 order.

9 The bid procedures order and notice of auction were
10 served on all required parties on March 19th, and was published
11 in the New York Times on April 9th. Affidavits of service are
12 on file with the -- affidavits of service and publication are
13 on file with the court.

14 Consistent with that bid procedures order, a marketing
15 effort was undertaken by the debtor and the committee. The
16 hospital systems, which we had previously contacted, were
17 resolicited consistent with the Court's direction, and as well,
18 nursing home owners and operators were contacted.

19 Bids were due on April 24th, 2014. And by the bid
20 deadline we had received five offers for the nursing home
21 assets alone. We received no bids for the whole or the
22 combined assets of the hospital and nursing home.

23 Four of the bids on the nursing home assets were
24 qualified, those being the bids of Long Beach Rehabilitation
25 Care Center, Windsor Healthcare LLC, Centers for Specialty Care

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1 Group, and MLAP Acquisition LLC, which is an entity formed by
2 Michael Melnicke, Leo Friedman, Alex Solovey and Pat
3 DeBenedictis.

4 The auction, originally scheduled for April 29th, was
5 held on May 6th, and the auction resulted in the following:

6 South Nassau ultimately revised its bid to carve out
7 the nursing home assets, and purchased only the hospital real
8 property and personal property, and certain avoidance actions
9 and causes of action. In consideration, South Nassau has
10 agreed to pay 10.25 million of cash, the assumption of up to a
11 million dollars of employee paid time off, or vacation accrual
12 of former hospital employees, excluding senior management.
13 We've provided a schedule this morning of those PTO claims
14 which aggregate approximately 1.5 million. And a minimum of
15 500,000 for the hospital's furniture, fixtures and equipment,
16 plus any proceeds derived from the auction sale of those assets
17 which will promptly follow the closing of the sale to South
18 Nassau.

19 So the total consideration to South Nassau is
20 approximately 11.75 million, plus any additional proceeds that
21 the auction sale might derive.

22 The debtors and the committee, between them, have
23 agreed to allocate 1,250,000 of those proceeds to substantially
24 all the avoidance actions, which previously were an excluded
25 asset, which are now being acquired by South Nassau. These

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1 include Chapter 5 claims related to FEMA payments pre-petition,
2 as well as ordinary ninety-day payments within the pre-petition
3 period, excluding certain claims against certain secured
4 creditors. And, in part, as part of that arrangement, South
5 Nassau will not pursue those claims for their own benefit.

6 They will -- South Nassau will receive a credit
7 against the purchase price in the amount of the DIP financing,
8 4.5 million dollars. And upon the sale of the nursing home,
9 assuming that it is for the amount of proceeds which I'll
10 describe in a moment, South Nassau will be paid its pre-
11 petition secured debt of 1.5 million dollars plus a breakup
12 fee, in a compromise amount that we've agreed to of 450,000.

13 Your Honor will recall that you approved a breakup fee
14 of 630,000 and an expense reimbursement of up to 210,000 as
15 part of the bid procedures order. The bid procedures order
16 provided that if we could not reach agreement on an allocation
17 of bid procedures that we would bring that matter before the
18 Court. We've agreed amongst the parties to a compromise of
19 that breakup fee of 450,000, payable only on the closing of the
20 nursing home assets.

21 We are also trying to finalize details regarding the
22 continuation of DIP financing by South Nassau. And what we
23 intend to do following today's hearing, we're in the process of
24 preparing and finalizing a stipulation which incorporates these
25 terms and modifies the asset purchase agreement to reflect

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1 these changes in the transaction.

2 An auction of the nursing home assets was conducted,
3 as I indicated, on April 20 -- on May 6th, excuse me, of the
4 four qualified nursing home bidders. The ultimate successful
5 bidder for the nursing home property and assets, was MLAP
6 Acquisition, and the entity formed as I indicated by Messrs.
7 Melnicke, Friedman, Solovey, and DeBenedictis.

8 Their bid was 15.6 million cash, the assumption of 1.1
9 million dollars to cover known and unknown government
10 liabilities, amounts of overpayments and the like that may be
11 due Medicare and Medicaid in connection with the assumption and
12 assignment of the provider agreements, as well as the
13 assumption of all PTO, paid time off, of current nursing home
14 employees, which we estimate to be about 600- to 750,000
15 dollars, which will be paid in the ordinary course, as well as
16 the assumption of severance pay obligations. The total value
17 is approximately 17.2 million.

18 The nursing home buyer has also agreed to provide a
19 debtor-in-possession facility of up to 1.5 million dollars if
20 required by the debtors after the hospital closing.

21 The nursing home closing will not occur probably for
22 twelve months, because of a need to go through the state
23 regulatory approval process. A nursing home buyer needs
24 approval by the Department of Health and the Public Health and
25 Health Planning Council. In the interim, it's anticipated that

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1 MLAP will apply to the Department of Health to become receiver
2 in advance of the closing, something that's typically done in
3 nursing home scenarios in order to allow the prospective buyer
4 to preserve its asset while it's going through the approval
5 process. And it obviously gives an advantage to the estate of
6 avoiding continuing losses in connection with those operations.

7 They operate as receiver for their own account. They
8 accrue any profits, but they also cover any losses. That is
9 subject to Department approval. The receivership agreement is
10 a form we've used in past transactions, indeed, in the
11 Peninsula Nursing Home transaction in this district.

12 Thus, the total consideration was increased from
13 twenty-one million, which was the original price under the
14 South Nassau contract for hospital and nursing home assets, to
15 approximately twenty-nine million dollars or more, an increase
16 of eight million dollars, by virtue of the auction.

17 Now, I think what I'd like to do is make a proffer of
18 the factors in connection with the need for a 363 sale. I have
19 in court this morning Mr. Melzer, who is the president and CEO
20 of Long Beach Hospital and Long Beach Nursing Home, who could
21 at the end affirm the accuracy of the statements that I've put
22 on the record as part of the proffer, if that's acceptable to
23 the Court.

24 THE COURT: That would be fine. Before we get to Mr.
25 Melzer's proffer, just walk though -- and if this would be part

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1 of Mr. Melzer's proffer, that's fine -- just the timing,
2 mechanics, and the steps to closing on the South Nassau
3 proposed purchase.

4 MR. WESTON: The anticipated closing on South Nassau
5 will be probably around June 30. We do not need Department of
6 Health approval because there's no hospital operating asset
7 that's being conveyed. It really is a real estate transaction.
8 We will need Attorney General approval since Long Beach, as a
9 not-for-profit, is selling substantially all of its assets, so
10 it is subject to approval under 510 of the not-for-profit law.
11 That application is currently being drafted by my office. We
12 would anticipate that that approval can be obtained in thirty
13 to forty-five days after the sale order is entered. Title has
14 been ordered on the real property with respect to Long Beach,
15 so I anticipate the hospital closing around June 30, maybe July
16 15th. So that's the timing of that piece.

17 THE COURT: What about the FEMA aspect?

18 MR. WESTON: FEMA aspect; they will acquire as part of
19 the acquired assets, future FEMA claims. Any existing claims
20 under the project worksheets for work already done, will be
21 retained and paid by the debtor to the extent there are
22 outstanding project worksheets, at the time of closing, they'll
23 be acquired by South Nassau, but they, in turn, assume the
24 obligation to pay the underlying liabilities. They will be
25 filing their own alternative use plan. We anticipate to obtain

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1 FEMA -- the FEMA funding.

2 My understanding is FEMA and the debtors, and South
3 Nassau, have not yet agreed on the aggregate pool of money that
4 will be available for the alternative use. My understanding
5 is, is that's still in negotiations and discussion. The
6 outside date for that, I believe, has been extended. The
7 designation of a successor to FEMA monies has already been
8 obtained by South Nassau.

9 THE COURT: All right. All right. So then if --
10 let's have Mr. Melzer, if you'll come forward and join Mr.
11 Weston.

12 Can you identify yourself, please.

13 MR. MELZER: Yes. I'm Douglas Melzer, I'm the
14 president and CEO of Long Beach Medical Center.

15 THE COURT: All right. So Mr. Weston is going to make
16 a proffer of your testimony. I ask that you listen very
17 carefully, because at the end of that proffer you're going to
18 be asked whether or not those statements constitute your
19 testimony under oath, all right.

20 MR. MELZER: Yes, sir.

21 THE COURT: All right. Mr. Weston.

22 MR. WESTON: Very good. If Mr. Melzer could have a
23 seat, because he does have a bad leg.

24 MR. MELZER: I'm okay.

25 MR. WESTON: It's going to be a while, so have a seat.

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1 THE COURT: You can take a chair right over there to
2 your right.

3 MR. WESTON: I think the need for a sale is based in
4 the historical operations of this debtor. It has historically
5 been beset by financial pressures and losses which we've
6 described before the Court in our initial filing, largely
7 caused by cuts in reimbursement rates, changing demographics,
8 progressive decline in patient volume and discharges, reduction
9 in acuity and case mix. Operating revenues have declined
10 steadily, and this is going back to probably 2009, 2008.
11 Losses in 2010 were approximately 4 million; in 2011, 3.3
12 million; and losses in 2012, largely aggravated because of the
13 storm, about 6 million.

14 Given these historical losses, the Department of
15 Health urged the debtors to partner with a financially viable
16 healthcare system. Going back to 2008, on our own, Long Beach
17 had engaged in periodic discussions with the likes of South
18 Nassau, NYU, North Shore, Long Island Jewish, Mount Sinai, and
19 Catholic Health Services. And while some of these discussions
20 resulted in clinical affiliations, none of them, over time,
21 expressed any interest in acquiring the Long Beach assets.

22 On a parallel track, I mean we didn't sit idle, we
23 undertook a number of initiatives to address internally
24 liquidity issues: upgrading technology, upgrading our
25 physician staff, adding electronic medical records, focusing on

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1 community needs and discontinuing underutilized services.

2 And while we were making inroads in terms of
3 performance, October of 2012, come super-storm Sandy, and that
4 utterly devastated the Long Beach Barrier Island. It totally
5 incapacitated the hospital and nursing home. Our entire
6 systems were compromised: boilers, mechanical systems,
7 electrical distribution systems, fire alarm, communications,
8 food, laundry, everything was wiped out in both buildings.

9 Emergency repair efforts ultimately resulted in the
10 reopening of the nursing home in January of 2013 allowing us to
11 move back about 120 or 130 patients, but the hospital remained,
12 and continues to remain, shuttered.

13 We have accessed FEMA dollars over the course of the
14 last year and a half to make emergency repairs. We've made
15 more than twenty-five million dollars that's been expended at
16 the hospital to fund emergency repairs and restoration. But
17 funds have not yet been accessed for permanent repairs for the
18 reason I'll get to in a second.

19 The department made it clear early in the process that
20 given our financial weakness and historical underperformance
21 that it would not resurvey the hospital and allow us to reopen
22 as a 162-bed acute care facility. It urged us to retain
23 consultants to develop -- remodel a -- a plan to remodel
24 healthcare at the site, which we did. We retained outside
25 consultants in or around January of 2013, who developed a model

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1 based on a twenty-four-hour, seven-day-a-week emergency
2 department, a reduction of the medical surgical bed count, an
3 increase in detox and ambulatory services; and plans were
4 submitted to DOH and twice rejected. Ultimately, it was made
5 clear to us that before they proceeded they wanted us to
6 partner.

7 So we renewed our efforts to find a financially viable
8 healthcare system to partner with. In March of 2013, with the
9 input from our consultants, we issued an RFP for an affiliation
10 and tried to gauge those hospitals that might have interest in
11 the geographical fit or with Long Beach. And requests went to
12 NYU, to Mount Sinai, to New York Presbyterian Hospital, to
13 North Shore, to Catholic Health Services, as well South Nassau
14 Community Hospital.

15 We received no responses from the city hospitals, from
16 Sinai, and NYU, or Presyby, and we received no response from
17 North Shore. Catholic Health System has expressed initial
18 interest, but after several meetings amongst the executive
19 management staffs, they ultimately determined that the
20 geographical match wasn't sufficient to permit it to capture
21 the Long Beach patient base. With South Nassau between Mercy
22 Hospital and Long Beach they were concerned that there was no
23 geographical fit.

24 The only serious interest came from South Nassau
25 Community Hospital, which neighbors the Long Beach facility in

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1 the adjacent town of Oceanside and certainly has financial
2 strength, and I think is best positioned to assure the
3 continuity of healthcare in the Long Beach area.

4 In August of 2013, at the urging of the Department, we
5 executed a memorandum of understanding to explore a proposed
6 sale of all of the medical centers and nursing home assets, and
7 real property to South Nassau, changes in the healthcare
8 delivery model, restructuring of the existing indebtedness, and
9 a financing arrangement until the transaction could be
10 completed. The MOU was submitted to the Department for the its
11 review and, ultimately, we were asked to pursue negotiations
12 for an asset purchase agreement.

13 The overriding concern at that point was that: (1) we
14 deal with creditor issues; (2) we also deal with our not-for-
15 profit mission, and that the not-for-profit mission be
16 respected; and third, obviously it was critical that
17 healthcare be restored to the barrier island, which, certainly,
18 has no ability to obtain the healthcare of the proportion and
19 magnitude that the hospital and nursing home previously
20 provided.

21 South Nassau's interest presented this opportunity.
22 It presented the opportunity for a 24/7 emergency department on
23 the island, which is needed and certainly wanted by the
24 community, and remodeled healthcare. Whether it be ambulatory
25 care, whether it be clinics, whatever South Nassau ultimately

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1 decides to implement.

2 As a not-for-profit is also afforded South Nassau
3 access to the sizeable amount of FEMA funding that we believe
4 is available to rebuild the facility, which would be lost if
5 the hospital property were marketed to for-profit developers.
6 The large portion of the FEMA dollars is really allocable to
7 the hospital, some to the nursing home, but the real large
8 magnitude is allocable to the hospital property.

9 As well, we have the need to get Attorney General
10 approval if we're going to sell substantially all the debtors'
11 assets. And we believe that the not-for-profit mission, at
12 least in part, had to be respected in order to gain Attorney
13 General approval.

14 So after several months of negotiations, as the Court
15 is aware, we executed an APA with South Nassau for twenty-one
16 million dollars to purchase the hospital and nursing home
17 assets. They agreed, too, to provide four and a half million
18 dollars of DIP financing to fund the costs of the Chapter 11
19 and the sale process. The DIP facility, of course, was
20 approved by Your Honor shortly after the filing, and we went --
21 and the sale motion was filed contemporaneously with the filing
22 of the Chapter 11.

23 As noted earlier, in setting up the bid procedures,
24 the committee pressed for a separate marketing effort of the
25 nursing home property hoping to reach out to the for-profit

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1 community, at least with respect to the nursing home, who might
2 provide added value. And as I indicated before, that resulted
3 in four qualified bids, and at the conclusion of the auction
4 ultimately a bid of approximately 17.2 million for the nursing
5 home.

6 Windsor Health Care LLC, who's represented in court
7 this afternoon -- this morning, by Ms. Glick, had the second
8 highest bid, which was on the same economic terms, save for a
9 cash component which was 15.5 million, instead of the 15.6 that
10 was bid by the MLAP group. They've been designated under the
11 terms of the bid procedures order as backup bidder and will
12 remain as such until the closing.

13 In light of this, rather than pursue a combined bid,
14 South Nassau at that point in the auction process, determined
15 to revise its bid, carve out the nursing home, and acquire the
16 hospital assets only. And that led to the negotiation of the
17 11.75-million-dollar agreement that I outlined earlier with
18 South Nassau.

19 Together, the bids represent approximately twenty-nine
20 million dollars, eight million more than the starting point.
21 And we believe together they represent the highest and best
22 bids on a combined basis.

23 The essential terms and conditions, and obviously I
24 won't elaborate the full terms and breadth of the APAs, but the
25 essential terms and conditions of the APAs are as follows:

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1 With respect to South Nassau, as I indicated before,
2 it's 10.25 million of cash consideration; the assumption of up
3 to a million of unpaid employee obligations, and we've provided
4 a scheduled, I believe that was to be in excess of a million-
5 five, so we expect to reach the full million; and a guaranteed
6 minimum of a half a million dollars for the hospital's FF&E,
7 which they will undertake to auction promptly after the
8 closing.

9 I believe, and Mr. Oswald can confirm, Great American
10 has been in to appraise those assets, and I believe South
11 Nassau will use Great American as part of the sale process.
12 That remains to be seen. What they have agreed is whatever
13 sale process be implemented that it be certainly commercially
14 reasonable with standard costs and expenses of the sale.

15 Credited against the purchase price, as I indicated,
16 will be the DIP facility. And the parties are continuing in
17 discussions about continuation of the DIP facility post-
18 closing.

19 At the closing of the sale of the Komanoff assets,
20 again, assuming that it derives the magnitude of proceeds that
21 are represented by the current offer, the waterfall will be
22 sufficient to pay South Nassau's pre-petition secured claim in
23 the amount of 1.5 million, plus interest and expenses. We have
24 agreed upon an interest schedule post-closing with them, where
25 there's a reduction of the interest rate through December 1,

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1 before the interest rate returns back to seven percent.

2 The acquired assets being purchased by South Nassau
3 include all the real and personal property of the hospital,
4 including mixed assets, and FF&E, the future FEMA claims, and
5 FEMA advance funds, and any claims and causes of action arising
6 under Chapter 5, related to the FEMA payments, and other
7 Chapter 5 claims, except as may be expressly excluded by the
8 parties. The committee and the debtor may carve out certain
9 potential Chapter 5 claims against some of the secured
10 creditors. We -- South Nassau, as part of that, has agreed
11 that it will not pursue any of the avoidance actions for its
12 own benefit.

13 The excluded assets continue to be the same, in
14 effect, all cash, cash equivalents, they're not -- certainly
15 not taking the Medicare and Medicaid provider agreements, as
16 they're not acquiring an operating hospital, no rights to pool
17 payments or GME pool distributions, no medical records,
18 organizational documents; those are all being excluded.

19 Assumed liabilities; but for the employee PTO of up to
20 a million dollars, it's doubtful there'll be any assumed
21 contracts. If they are, then obviously they'll be responsible
22 for the cure amounts.

23 It is an as-is transaction and where-is transaction.
24 There is a provision that there be no liability as successor or
25 otherwise, be it for breach of collective bargaining agreement,

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1 nor arrears and payments to employees or employee benefit
2 plans, except as we've just agreed.

3 The closing conditions are as previously has been
4 outlined by the Court. Regulatory approvals by the Attorney
5 General, that they receive reasonably acceptable assurances
6 that there's no successor liability, FEMA, having confirmed
7 them as a successor, which has already happened, and FEMA
8 providing such funding to implement their alternative use plan.

9 Lastly, that they have received the proceeds of the
10 HEAL grant from the state in the a mount of 21.9 million
11 dollars. My understanding is, and Mr. Oswald can confirm this
12 to the Court, that that HEAL grant has been awarded, and I
13 believe, funded, at this point.

14 MR. OSWALD: Yeah.

15 MR. WESTON: So it's clear, certainly, that South
16 Nassau has the financial capability to effectuate the purchase,
17 certainly, the logistical resources to acquire and integrate
18 the assets and implement a remodeled healthcare delivery system
19 for Long Beach Barrier Island. As I said, they've already been
20 designated the successor to FEMA dollars, and are developing
21 their alternative use plan. I believe the DOH's advocacy and
22 support for the plan should facilitate the approval process.
23 And as I've indicated, we already have in the works our 510
24 application to the Attorney General for approval under the not-
25 for-profit law.

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1 That's the essential terms and conditions of the South
2 Nassau Agreement as modified.

3 The MLAP agreement is not largely dissimilar. They
4 are purchasing, as I said, the assets of the nursing home, as
5 well as the operating assets, for 15.6 million of cash, the
6 assumption of up to 1.1 million of known or unknown liabilities
7 relating to governmental healthcare programs -- healthcare
8 programs, Medicare and Medicaid, unpaid employee obligations,
9 PTO, severance of current nursing home employees, excluding
10 senior management.

11 They're acquiring all of the operating assets of the
12 nursing home, as well as the real property, FF&E, designated
13 assigned contracts, serving the Medicare and Medicaid provider
14 agreements and provider numbers, intellectual property, all
15 files, patient records and the likes.

16 Excluded from their transaction too, are pre-closing
17 accounts receivable, cash and cash equivalents, contracts which
18 don't get designated to be assumed by them, any refunds or
19 settlements that pre-closing that we're entitled to under
20 Medicare and Medicaid, and corporate records. They also are
21 taking patient security deposits, and resident trust funds.

22 The assumed liabilities, as I indicated before, are
23 obviously anything under assigned contracts. They're
24 responsible for the cure payments, liabilities incurred after
25 the commencement of the receivership, which we would anticipate

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1 to be probably within thirty to sixty days after the entry of
2 the sale order, the known and unknown and contingent healthcare
3 program liabilities of up to 1.1 million dollars. Any other
4 obligations pre-receivership, are obligations of the debtors.

5 This too is an as-is, where-is transaction. They're
6 not assuming any collective bargaining agreements, but have
7 agreed to bargain in good faith with any applicable union. And
8 they will offer employment to all employees of the nursing
9 home, other than senior management, and assume, as we
10 indicated, PTO obligations of such employees.

11 An expeditious sale is absolutely necessary. Not only
12 will it ensure continuation of healthcare services to the
13 barrier island, which, as I said, has no other healthcare
14 services of this proportion, but it certainly will optimize
15 value of the assets, it will lead to a prompt closing,
16 preservation of asset values, and preservation of critical
17 cash, which is short at this time to say the least.

18 All of this, at the end of the day, Your Honor, inures
19 not only to the benefit of the debtors, but to the employees,
20 patients, creditors and certainly the community at large.
21 Absent a prompt sale, I think we face a critical liquidity
22 crisis. We have no operations at the hospital, there still are
23 ongoing costs to fund the maintenance of the structure itself.
24 We are operating the nursing home. There have been losses,
25 which we're close to stabilizing that, but we've been losing

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1 approximately about 100,000 dollars a month.

2 We have limited cash resources, really reflected by
3 the DIP. That will carry us through, probably, the July,
4 August, maybe longer period. We're doing our best to preserve
5 the cash, but it is, certainly, not going to carry us for a
6 long period of time.

7 We believe that the purchase agreements are certainly
8 fair and reasonable. They've been tested by a fulsome
9 marketing and bid process, and in the end, we believe,
10 represents highest and best value for the assets of these
11 estates.

12 The debt structure, which is -- was outlined in our
13 first-day motions, reflects about 138,000 of first mortgage
14 indebtedness on the nursing home, which is owed to HFA. That
15 is secured by cash collateral accounts of greater than 350,000.
16 So they are certainly covered. The only other secured
17 creditors of the nursing home are PBGC, which has a blanket
18 lien on the assets of nursing home and the hospital, covering
19 the termination of the pension plans at both facilities, for
20 termination, underfunding, unpaid premiums, and the excise
21 taxes in the approximate amount of nine million dollars.
22 That's, as I said, secured by blanket lien on the assets of
23 both the nursing home and the hospital.

24 DASNY holds a 1.25-million-dollar secured claim,
25 secured by a first mortgage on the hospital parking lot, which

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1 is part of the South Nassau sale. And First Central, a 2.6-
2 million-dollar claim secured by a first mortgage lien on the
3 offsite residential properties.

4 None of the secured creditors have objected to the
5 sale -- I'm sorry, there's two more, my apologies.

6 The New York State Department of Labor has a lien, a
7 tax lien, to secure the unreimbursed unemployment benefits paid
8 out by the Department. Currently, that claim is 3 million
9 dollars -- 3.3 million, and we're in negotiations with the
10 Department regarding that. And South Nassau, as you know, has
11 the DIP for 4.5, and the pre-petition secured claim of 1.5
12 million dollars, secured by subordinate liens on all assets.

13 None of the secured creditors have objected to the
14 sale, and we believe under 363(f) to have deemed to have
15 consented to the sale.

16 I think it goes without saying that the sale
17 represents the reasonable business judgment of the debtors, and
18 sound reasons, as I've described before, given the urgency of
19 our cash position, the deteriorating nature of unoccupied
20 assets at the hospital, continuing losses at the nursing home,
21 that reasons exist for the sale outside of a plan of
22 reorganization.

23 The decision to sell, as I've indicated, is certainly
24 one of necessity. At this point we believe there's a lack of
25 any remaining viable alternatives. DOH, as I indicated before,

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1 would not permit us to reopen without a financially viable
2 partner, would not resurvey the hospital. We could not sustain
3 operations in a multiyear rebuilding effort even if we could
4 access the FEMA funds to rebuild, on our own.

5 So we believe, absent a sale of the hospital to
6 another system, a forced liquidation would realize
7 significantly less and certainly would mark the death knell of
8 healthcare on Long Beach Barrier Island, as well as the death
9 knell for the rebuilding of any facility, because it would mean
10 the loss of the FEMA dollars.

11 We have -- similarly at the nursing home, given in the
12 continuing losses, it's imperative that we get a sale approved,
13 and we get a receivership agreement in place within the thirty,
14 sixty or the ninety-day time frame that we're talking about.
15 That will obviate any responsibility for day-to-day operating
16 expenses on the part of the estate, as those would be assumed
17 by the prospective purchaser of the nursing home assets.

18 Absent approval, as I said, we'll exhaust cash
19 resources, and we would otherwise be compelled to close the
20 nursing home.

21 As I said before, the sale realized eight million more
22 than the original contract price, or about thirty percent of
23 what the original contract price -- thirty percent more than
24 the original contract price was, and we believe represents fair
25 value for the assets.

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1 Section 363(d) will also be satisfied. As a not-for-
2 profit, we're required to satisfy nonbankruptcy requirements in
3 connection with the transfer. We will seek and expect to
4 obtain Attorney General approval, for both the sale of the
5 hospital assets, as well as the sale of the nursing home
6 assets. It's a process my firm has been through before on
7 many, many occasions, and certainly the application for the
8 hospital assets is in the works, and the application for the
9 nursing home assets will have to await Department of Health and
10 PHHPC, as we call it, Public Health and Health Planning Counsel
11 approval, but that will be readied, certainly, in anticipation
12 of both of those.

13 As I said, Department of Health approval for the
14 hospital sale is not otherwise required. So we submit the
15 terms of the purchase agreements comply with applicable non-
16 for-profit laws, and applicable nonbankruptcy laws, and satisfy
17 the requirements of 363(d).

18 The assets, we believe, should and need to be sold
19 free and clear. As I've indicated before, all parties holding
20 liens have been provided notice of the sale, have been afforded
21 an opportunity to object, have not objected. And we believe
22 that as a consequence, it deemed to have consented to the sale
23 under 363(f)(2). Certainly, the secured creditors of the
24 nursing home, the price captured there is more than sufficient
25 to pay creditors at the nursing home. And, indeed, if PBGC is

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1 satisfied out of the nursing home proceeds, there's more than
2 sufficient proceeds to satisfy creditors at the hospital, as
3 well. So we believe we meet the requirements of 363(f)(3), as
4 well as 363(f)(5), as any party holding liens can be compelled
5 to accept the monetary satisfaction of its lien.

6 We are, as I said, seeking to sell the acquired assets
7 free and clear of success or liability. That is a condition of
8 both agreements. We believe absent that, significant value
9 will be lost. Under New York State law, as we outlined in our
10 sale motion, as well as principles of traditional common law, a
11 purchaser will be found liable only for the seller's
12 liabilities where they expressly are implied and they assume
13 them, where there's a merger of the entities, where there's a
14 mere continuation, or, of course, if the transaction is
15 fraudulent. We don't believe any of those are present here,
16 and except for liabilities expressly assumed, there should be
17 no basis to attach successor liability to either of the buyers.

18 We believe, as well, that protections under 363(m) are
19 warranted in both cases. These deals -- these transactions
20 have been the product, in both circumstances, of good-faith
21 negotiations, hard bargaining to say the least. There's no
22 insider transaction, there's certainly no semblance of
23 collusion here. As I said, they've been the product of
24 extensive good-faith arm's-length negotiations between the
25 debtor and its advisors, and South Nassau on the one-hand, and

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1 the nursing home buyers on the other. Further, these
2 agreements have been tested by the marketing bid process, which
3 I think evidences the good-faith nature of both transactions,
4 and both warrant a 363(m) finding.

5 There were assignment procedures approved as part of
6 the bid procedures order. We -- as part of the initial sale,
7 we have not filed an assumption schedule indicating any assumed
8 contracts. As Your Honor is aware, to the extent we do under
9 the procedures, any party whose contract is being assumed has
10 the right to come in and contest cure amount, come in and
11 contest adequate assurance. We believe, certainly, there's
12 adequate assurance of future performance by South Nassau; and
13 given their financial resources we could demonstrate adequate
14 assurance of the nursing buyer as well.

15 So we would ask that the assignment procedures be
16 approved, subject, of course, to filing any kind of assumption
17 schedules and affording anybody the right to come in and
18 object.

19 Lastly, we believe that waiver of the automatic stay
20 of 6004(h) is warranted, that we have the need to immediately
21 pursue closure of the transactions, certainly, where there's
22 been no objection to the procedure. And given the extremely
23 limited cash position that we have, we need to move forward as
24 promptly as possible with closing. So we would ask for a
25 waiver of the Rule 6004 stay.

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1 That completes my proffer. I believe it touches on
2 all the elements of the proposed sale.

3 THE COURT: Mr. Melzer, would you rejoin Mr. Weston at
4 the podium.

5 MR. MELZER: Yes, sir.

6 THE COURT: Would you raise your right hand to be
7 sworn by the court reporter.

8 (Witness sworn)

9 THE COURT: Would you restate your name, please?

10 MR. MELZER: Douglas Melzer.

11 THE COURT: And what is your capacity with Long Beach
12 Medical and/or Komanoff Nursing Home?

13 MR. MELZER: President and chief executive officer.

14 THE COURT: Of each entity?

15 MR. MELZER: Yes.

16 THE COURT: And you're familiar with the operations of
17 each entity?

18 MR. MELZER: Yes, I am.

19 THE COURT: Have you heard the proffer of your
20 testimony made this morning by Mr. Weston?

21 MR. MELZER: Yes, I did.

22 THE COURT: Do you accept his statements as your own
23 testimony?

24 MR. MELZER: Yes.

25 THE COURT: And are those statements true and correct

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1 to the best of your knowledge and belief?

2 MR. MELZER: Yes, they are.

3 THE COURT: Does any party-in-interest present wish to
4 cross-examine Mr. Melzer on his proffer?

5 You may return to your seat, thank you.

6 MR. MELZER: Thank you.

7 MR. WESTON: Thank you, Your Honor. We would ask for
8 entry of sale orders in connection with both transactions.
9 We're in the process of finalizing the sale orders. We would
10 intend to circulate and finalize those amongst the parties over
11 the course of the next day or two. And if Your Honor grants
12 the requested relief, we would file them sometime midweek.

13 THE COURT: Let me just ask one mechanical question.

14 MR. WESTON: Sure.

15 THE COURT: In terms of MLAP structure.

16 MR. WESTON: Yes.

17 THE COURT: Is there a provision being built in for
18 escrow of any portion of the closing proceeds? How is that to
19 be handled?

20 MR. WESTON: Well, there's a -- they have deposited
21 five percent of the purchase price as well as the 450,000-
22 dollar breakup fee. We're holding that in our escrow account.
23 So they had an initial deposit based on their opening bid.
24 They have supplemented that deposit based on cash component of
25 their revised bid. And they've also deposited with my firm the

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1 450,000-dollar breakup fee. We've also received an increased
2 deposit from the backup bidder as well.

3 THE COURT: All right, thank you.

4 All right. Mr. Southard, let me ask from the
5 committee's vantage point, and one issue also in terms of the
6 mechanics, other than the overall sales proposed. Mr. Weston
7 had spoken with a mechanic to be built in on the proposed
8 conveyance of some of the Chapter 5 actions, which were --
9 actually, originally, were neither included nor excluded assets
10 under the APA, so by default excluded. So how are those --

11 MR. SOUTHARD: Yeah. I can take that first, and then
12 give you some of my more wide-ranging thoughts on the process.

13 But in terms of the sale or transfer of causes of
14 action, from our perspective, and our initial read of the APA,
15 the definition of acquired assets was sufficiently broad so as
16 to include all causes of action. And it's an issue that we
17 raised in our initial objection and various discussions
18 throughout. Ultimately, the proposed structure involved now
19 provides that the FEMA-related avoidance actions, meaning
20 Chapter 5 causes of action, are to be transferred to South
21 Nassau as part of the hospital transaction. And in addition to
22 that, the majority of the hospital ninety-day payment potential
23 avoidance actions will, likewise, be transferred. The
24 understanding is that in accordance with Second Circuit law,
25 those causes of action will not, in fact, be pursued by South

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1 Nassau for its own benefit or for anyone's benefit but,
2 essentially, extinguished. And I believe that is consistent
3 with Second Circuit law on the subject.

4 The debtors and the committee have agreed upon an
5 allocated value associated with that transfer, and we've agreed
6 that that amount be not less than a million-250, 1.25 million.
7 So that is the mechanic associated with the avoidance actions.

8 The balance of causes of action will, in fact, be
9 excluded assets, so they are not picking up the balance of any
10 causes of action. And that is one of the details to be worked
11 out in the final deal documentation, which is ongoing.

12 So backing up just momentarily, Your Honor. It's fair
13 to say that there were a lot of discussions and negotiations
14 and analysis that went into this morning's hearing, and that
15 all of which was done outside of -- was not done in a formal
16 way in front of Your Honor. And the details on some of these
17 items are subject to further discussion and documentation.
18 There's a sale order that we all have to go through, there's a
19 DIP order that needs to be worked through, and there's a
20 stipulation. But I think, by and large, we are there on the
21 major deal points. And I think by doing so, we've saved the
22 estate a good deal of resources that would otherwise be
23 consumed in litigation concerning many of these matters.

24 The committee, I will say for the record, is by no
25 means happy about the results on the sales and overall in terms

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1 of the expected recoveries. And as Your Honor knows, we've
2 been critical of various aspects and decisions that have led to
3 this point here before Your Honor in this sale. But, overall,
4 based upon the circumstances and the negotiations that have
5 taken place, the committee has no objection to the sales going
6 forward today based upon the results of the auction.

7 The next work for the committee to engage in, together
8 with the debtors, is going to be to review and negotiate,
9 hopefully, with many of the secured creditors and some of the
10 unsecured creditors, the larger unsecured creditors, to try and
11 come up with an appropriate allocation of value, both with
12 regard to the sale and also with regard to how those claims sit
13 on the various asset classes. And until that process plays
14 out, one of the things that I wanted to be clear about is there
15 will be no payments made out of these sale proceeds directly,
16 unless Your Honor has a further order that specifies that.

17 The one exception to that is the debtor-in-possession
18 financing which is expected to be credited at a closing, which,
19 again, we understand will take place on or about June 30th.

20 One of the items I do want to mention for the record,
21 that is yet to be decided, is exactly how that DIP facility
22 will continue or not and how it will be paid off. And the
23 interest and the fees and expenses associated with that, are
24 matters that the committee and the debtors expect to review.
25 Hopefully we'll have some resolution on that to present to Your

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1 Honor, but that is something that's yet to be fixed in stone.

2 And then, overall, from that point of a closing
3 forward, the debtors and the committee are going to work on
4 planning for a wind-down of these estates and consideration of
5 plans at some point in the near future. And, overall, that's
6 sort of how the committee has viewed the sale. Thank you, Your
7 Honor.

8 THE COURT: All right, thank you.

9 Mr. Oswald.

10 MR. OSWALD: Good morning, Your Honor. Frank Oswald,
11 Togut, Segal, special counsel to South Nassau. As I indicated,
12 my co-counsel, Mr. Zall and Mr. Barkan, are on the phone,
13 together with my colleagues. Also, Your Honor, in the
14 courtroom with me is our CEO and president, Richard Murphy, our
15 senior vice-president and CFO, Mark Bogen, who has lived with
16 the case from day one.

17 I think as he usually does, Mr. Weston has made a
18 comprehensive and accurate proffer, as well as Mr. Southard.
19 As Mr. Southard indicated, there was quite a bit of activity in
20 between entry of the Court's bid procedures and sale timeline
21 order and the auction, and -- as we recognized at the bid
22 procedures order there might well be independent interest in
23 the nursing home. And we recognized that and worked with the
24 committee and the debtor to afford that process to continue.

25 As both Mr. Weston and Mr. Southard indicated, it

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1 wasn't until sort of late in the day at the auction that South
2 Nassau concluded to bifurcate the nursing home, frankly, for
3 the good of the creditors. That decision, as the Court will
4 recall from the first two hearings in the case, was with some
5 trepidation, because the full revitalization plan for bringing
6 healthcare back to the area, has not yet been formulated. That
7 will be a continuing project among South Nassau, the City of
8 Long Beach, other community leaders, obviously, with the
9 Department of Health. I do know that's continued to be of
10 major concern to the residents there, the issue of the
11 emergency room. And it is my understanding, we will be working
12 expeditiously to get the free-standing urgent care center up
13 with 911 response time, state of the art facilities there.
14 It's going to include laboratory services, radiology services,
15 things of that nature dealing with the things that you would
16 expect to be prioritized.

17 As Mr. Weston indicated, we have gotten the
18 confirmation letter from FEMA that South Nassau would be deemed
19 an eligible successor. With respect to the funding issues,
20 those discussions continue as, frankly, we thought they would.
21 We are hopeful that those will be far enough along that the
22 June 30 timeline to close our transaction will be met. Quite,
23 frankly, Your Honor, the South Nassau transaction does become
24 quite a bit more streamlined since its focus is with respect to
25 the hospital assets, things as Mr. Weston alluded to, the

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1 provider agreement and discussions, negotiations, that come
2 with the assignment of that, which sometimes in these cases can
3 hold up things. That won't be part of this deal. So which
4 means it won't be holding up the FEMA discussions and the
5 revitalization plan. So that's all good news.

6 The purchase price for these assets, as Mr. Weston
7 indicated, is a base of just a little below twelve million
8 dollars. It does have an ability to go up, based upon the
9 ultimate sale of the FF&E. I think we do intend to use the
10 Great American firm, they've been a firm that's been used in
11 other hospital cases, they have particular expertise in the
12 area. Certainly in all events a liquidation would be done in a
13 commercially reasonable manner.

14 The issue as to the breakup fee, the expense
15 reimbursement, which Your Honor had approved as part of the bid
16 procedures order, clearly we had all reserved our rights to
17 revisit that if the -- if we only acquired a portion of the
18 assets. Fortunately, the parties worked that out.

19 Again, I think Mr. Bogan had supported my proffer at
20 that bid procedures hearing. South Nassau has, and continues
21 to expend, significant resources, both some being funded,
22 others out of its own pocket to fulfill the whole transaction.
23 Obviously, we're moving forward with a global offer here, and
24 at that point I think we were over one million dollars. I
25 would think by this point we're probably over two million

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1 dollars.

2 That being said, we did agree with the debtor and the
3 committee to limit the breakup fee to 450,000 out of the, I
4 think, the total percentage. It was four percent or 880,000,
5 something along those lines. So we thought that was a fair
6 compromise.

7 As Mr. Weston indicated, we've also agreed to leave
8 our DIP line open until December 1. We have a repayment
9 obligation to DASNY and we wanted to keep that along the same
10 lines. We are refining the mechanics of that, some of the
11 other aspects of what has been characterized as a stipulation
12 which will amend the APA that accompanied the motion,
13 obviously, because that APA deals with a sale of all of the
14 assets. So I think we're very, very far along on that. We
15 were discussing some open points before the hearing, and
16 hopefully, we can wrap those up after the hearing and get that
17 circulated to the other parties, including Mr. Dimino, and to
18 Your Honor, so that we can get that approved.

19 Again, as Mr. Weston indicated, and I think the Court
20 can take judicial notice of the good faith of the parties here,
21 the offer has been tested by the market. Again, the offer that
22 was teed up as the stalking-horse offer was not subject to,
23 itself, a competing offer, because nobody else made an offer
24 for all of the assets. And I think Mr. Southard was kind in
25 saying vigorous discussions, they were quite a bit more than

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1 vigorous. Very hard-fought negotiations, we understood that
2 from day one in light of the asset values here, and the
3 creditor claims, so we ultimately think that the process has
4 worked the way that we all hope these processes work.

5 Is there anything else I was supposed to confirm for
6 Mr. Weston, I don't think so, was there? Mr. Southard?

7 So, with that, Your Honor, we support entry of the
8 order approving the sale of the hospital assets to South Nassau
9 on the terms that Mr. Weston has described. And I have
10 affirmed, again, Mr. Murphy and Mr. Bogen are here, to confirm
11 my statements with respect to good faith, and of course, if the
12 Court has any other discussions. But presuming the Court gets
13 the order within the next day or two and that's entered
14 promptly thereafter, we are all going to work very hard to get
15 this sale closed by June 30 deadline.

16 THE COURT: Again, mechanically, if the Court approves
17 the sale of the hospital, the nonoperating hospital facility,
18 to South Nassau, then the next step is to seek New York State
19 Attorney General approval, for the transfer of that asset.

20 MR. OSWALD: That's correct. And, again, we've worked
21 with the Garfunkel firm on several of these deals. And
22 fortunately, the folks of the charities bureau and the state
23 side have seen us, and they've seen the applications. Frankly,
24 they feel a lot of comfort, Judge, having gone through a 363
25 process because a lot of what is required under the state

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1 statute to sell these types of assets, a not-for-profit, notice
2 to creditors, fair consideration, you've taken the burden to do
3 all that. And I would be remiss again without thanking the
4 Court for the timeline that you've allowed this case to proceed
5 to sale. You could have held us to the bid procedures order,
6 the May 21 date, and I think we all appreciate picking up the
7 ten days we're having today, as the sale approval hearing.

8 THE COURT: All right.

9 MR. OSWALD: Thank you.

10 THE COURT: Mr. Dimino.

11 MR. DIMINO: Thank you, Judge. Alfred Dimino from the
12 Office of the United States Trustee.

13 The United States Trustee has no objection to the sale
14 in terms of the fact that it appears to have been necessary.
15 The sale process was adhered to, and the highest bidders have
16 come forth.

17 There are three items, and I gave Mr. Weston a heads-
18 up on this on Friday, that don't deal with the sale itself,
19 more implementation.

20 The first being with regard to the South Nassau
21 portion, the inclusion now, of the sale of certain of the
22 Chapter 5 potential causes of action. That sale, in essence,
23 for that discrete piece has not been noticed to anyone. In
24 fact, it was excluded from any liens or anything else in terms
25 of cash collateral and/or borrowing. And it was, at least to

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1 my reading of the original APA, excluded as an asset from the
2 sale. So I think that in order to complete that portion --
3 and, again, Judge, they haven't even identified what it is that
4 they've sold. They've said there's some excluded pieces, but
5 we don't know what those are. So I think that there should be
6 another step here where creditors get notice that this has now
7 become part of the sale, here's what's, in essence, either not
8 being sold or being sold, and here's the purchase price. I
9 think that that is required in terms of how the original sale
10 was set up.

11 It's my understanding, just to go over to the nursing
12 home sale, that I'll assume that since no one has stated it,
13 that there are no Chapter 5 causes of action in that case being
14 sold. And I get nods, so I assume that that means that's the
15 case.

16 With regard to the termination fee and the expenses,
17 although the amount that it has been reduced to may appear
18 reasonable the Court specifically reserved judgment in the
19 order as to the appropriateness and the amount. And, in fact,
20 the expense portion of whatever that termination fee is, or I
21 don't know if it's included, it's not included, was an up-to
22 figure. And the reason it was up-to was that there was going
23 to be a determination of what those expenses actually were. So
24 it's the U.S. Trustee's position that there may be need for one
25 small additional step in order to get the approval of that.

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1 And, lastly, and maybe somewhat more difficult, is
2 with regard to the nursing home, and, again, this is a term
3 that was not included in any of the agreements, and we only
4 became aware of how they wanted to proceed with this from the
5 e-mails that we received recently, and that's the imposition of
6 the state court receiver. It's fraught with some problems.

7 One, there's obviously a stay in effect, and no one
8 would go and do anything with regard to the assets of the
9 debtor. The sale is not going to close before the imposition
10 or potential imposition of a receiver. And I think that issue
11 may need to be determined by the Court on the appropriateness
12 of that. Assets won't transfer. Debtor continues -- or in
13 this case, the nursing home will continue to own all of the
14 assets. It will only be operated by some other entity. That
15 other entity, although is, according to my understanding, a
16 newly formed entity. The debtor will still have certain
17 obligations and still have potential exposure for expenses.
18 Therefore, there has to be some form of protection for the
19 estate against potential claims made against the debtor. That
20 hasn't been fleshed out, I haven't seen -- and, again, these
21 documents haven't been completed, so we haven't even had an
22 opportunity to review what would be the final sale proposal
23 and, ultimately, the orders.

24 So that has some concern for the U.S. Trustee on how
25 we go about, in essence, allowing some third party to operate

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1 the debtors' assets, while the debtor remains in Chapter 11.
2 It's not pursuant to a confirmed plan, where they can do some
3 things post-confirmation. So the timing and how that's
4 implemented is, I believe, an issue that has to be resolved.

5 THE COURT: All right.

6 MR. DIMINO: Thank you, Judge.

7 THE COURT: Thank you. Let me ask Mr. McFarland from
8 the Department of Health and Human Services.

9 MR. MCFARLAND: Thank you, Your Honor.

10 Unless I misunderstood Mr. Weston, the -- I'm speaking
11 with referral to the sale of the nursing home. And I also
12 wanted to say that I am only speaking about Medicare benefits,
13 not Medicaid benefits, that's the responsibility of New York
14 State. But if I understood Mr. Weston correctly, he was saying
15 that this sale would -- successor liability would not be --
16 would not transfer, or at least in the case here on the
17 Medicare/Medicaid, it would only transfer to the extent of 1.1
18 million dollars.

19 Your Honor, several months ago we put in objections on
20 this very point. And it is the law that successor liability
21 must be part of a sale of a Medicare provider agreement. And
22 HHS does not and cannot consent to anything less than that.
23 Basically, the system is if you're taking over the Medicare
24 provider agreement, the Medicare -- you take the good with the
25 bad, or the bad with the good.

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1 I'm unable to say to the Court in truth that I know
2 what the debt is. There might not even be a debt, because
3 Medicare is determining the nursing home's liabilities, because
4 as you might be aware, Your Honor, the payments are up front,
5 and then each year the payments are audited. And there's
6 recoupment, if necessary, or there's payment of additional
7 monies to the facility.

8 But for the reasons stated in our objections, there
9 can't be any limit. If you're going to assume the Medicare
10 provider agreement, you take it all. So our objections remain
11 in force, Your Honor.

12 THE COURT: Just a couple of questions. In terms of
13 the timeline issue, if it's a twelve-month process -- if this
14 Court approves any transaction involving the sale of the
15 nursing home, and that includes the transfer of the Medicare
16 provider agreement or agreements, and if there's going to be a
17 twelve-month, or so, window, which I guess is a year, until the
18 necessary nonbankruptcy court approvals flow, would the
19 quantification or monetization of this Medicaid -- potential
20 Medicare liability, be determined in that pre-closing period,
21 pre-ultimate closing period?

22 MR. MCFARLAND: I would love to tell you yes, Your
23 Honor, but I'm really not certain --

24 THE COURT: I was hoping you would.

25 MR. MCFARLAND: That's the question. But I can check

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1 to find out, but I do not know for sure. And it's also my
2 understanding that the audit for 2013 -- I'm not even sure that
3 they're required -- they might not have filed it yet, because
4 they might not be required to file it. I'm not sure when the
5 filing is required, but I can find out about that as well; but
6 I have no answer for you right now.

7 THE COURT: Is the -- is the DHHS objection to the
8 transfer of the Medicare authorizations of Medicare provider
9 number, or numbers, or is it to that transfer without the
10 attendant successor liability to the extent that the audits
11 reveal any reimbursement obligations?

12 MR. MCFARLAND: It's without the attendant
13 liabilities.

14 THE COURT: Okay.

15 MR. MCFARLAND: It can be done, and it's done all the
16 time, and it makes a lot of sense, but you can't take half the
17 loaf, you have to take the whole loaf.

18 THE COURT: Thank you.

19 MR. MCFARLAND: Thank you, Your Honor.

20 THE COURT: I know we've got PBGC, I think, on the
21 phone. Mr. Boone, is it?

22 MR. BOONE: Yes, Your Honor. I really wasn't planning
23 to comment on the sale at all, except we haven't objected, and
24 so we're willing to let the sale go through.

25 THE COURT: All right, thank you.

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1 Mr. Schein.

2 MR. SCHEIN: Yes. Good afternoon, Your Honor.

3 Again, we have no objection to the sale, we just want
4 to make clear on the record, my client, Northstar Recoveries
5 Services, has mechanics liens against the hospital assets that
6 weren't mentioned in Mr. Weston's proffer. And, obviously, we
7 get a number of our payments from FEMA, but that doesn't cover
8 a hundred percent of those payments. And we'd also note that
9 post-petition we continue to accrue an administrative claim
10 that's up to 1.8 million already, that was three-quarters of a
11 million last month, to preserve the value of the hospital
12 assets pending a closing of the sale. And while hopefully,
13 FEMA will pay the majority of that, it's not going to pay a
14 hundred percent of that. So we wanted the Court to be aware of
15 those costs and expenses. But we have no objection to the sale
16 going through, we just want to make sure our liens are
17 preserved, and our claims are preserved.

18 THE COURT: So, in other words, Mr. Weston, I take it
19 it would be liens that would attach to the proceeds of the sale
20 to the extent valid --

21 MR. WESTON: That's --

22 THE COURT: -- enforceable and not paid from other
23 available --

24 MR. WESTON: That's absolutely correct.

25 MR. SCHEIN: Thank you, Your Honor.

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1 THE COURT: Thank you.

2 MR. KLEIN: Your Honor, Corey Klein, corporation
3 counsel with the City of Long Beach. Thank you for the time.

4 Judge, I'm here not only as the City Attorney, but I
5 guess in looking at the room, I'm here as the only resident of
6 the barrier island, whose family and friends all live on the
7 Long Beach Island.

8 Your Honor's well aware that this is, and everybody is
9 aware, this is the transfer of a hospital. And the hospital,
10 Your Honor, is in a unique position for the residents of the
11 city. It's crucial and critical that we maintain a hospital
12 and we have a fully functioning hospital in the city.

13 On any given day, Judge, there's tens of thousands of
14 residents who are on our barrier island. And as the summertime
15 approaches, Judge, if you were on the boardwalk this weekend
16 you would have seen hundreds of thousands of people.

17 So it's with that in mind, Judge, that I thank the
18 Court for its expeditious nature in proceeding with this
19 matter. And I ask the Court to continuing holding both Long
20 Beach Medical Center, South Nassau, their feet to the fire to
21 move forward as quickly as the Court allows, and as quickly as
22 bankruptcy law requires them to do so. It's critical that we
23 see this process move forward quickly, because there's a sense,
24 Judge, that we need the hospital back in Long Beach. And, with
25 that, I urge the members of the Long Beach Medical Center and

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1 South Nassau to continue to move forward to bring back the
2 hospital that's needed for the safety of all the people in Long
3 Beach, and for the residents of the city. Thank you, Judge.

4 THE COURT: Thank you. All right. So, then, Mr.
5 Weston, just on --

6 MR. WESTON: Very briefly, Your Honor. If I could?

7 With respect to the points raised by Mr. Dimino.
8 First, with respect to the breakup fee, I think the bid
9 procedures order and the bid procedures was clear that to the
10 extent the parties could not agree upon an allocation of the
11 breakup fee, in the event less than a hundred percent of the
12 assets were sold, we would seek this Court's input and
13 guidance. I believe agreement, as we said, has been reached
14 between the debtor, the committee, and South Nassau, with
15 respect to the breakup fee amount, which is approximately fifty
16 percent of what was originally approved by the Court.

17 Second, with respect to the receivership agreement,
18 and, certainly, we'll share that with Mr. Dimino, and get him
19 comfortable, because it's certainly not the first time a
20 receivership arrangement has been entered into by a prospective
21 purchaser, nor the first time this has happened in bankruptcy.
22 We did this very same thing in the Peninsula bankruptcy in this
23 district.

24 The receiver enters into operation for its own
25 account. So any agreement it enters into, it enters into in

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1 the name of the receiver. The estate has no liability with
2 respect to any vendor who sells goods and services to the
3 receiver or any contract party who enters into a contract with
4 the receiver. We filed notice of that fact to the community --
5 to the vendor community at large, everything is done in their
6 own name, so no claims spill back against the estate. They're
7 responsible for insuring the property, providing proof of
8 insurance, and the like, and assuming all operating
9 responsibility.

10 I trust I'll be able to get Mr. Dimino comfortable.
11 We'll certainly provide him with a copy of the receivership
12 agreement; we'll walk through it with him, and to the extent
13 the Court requires as part of the sale process, we can get
14 approval of that receivership agreement. No problem with that.

15 THE COURT: Is the state court going to require bond?

16 MR. WESTON: The Department of Health -- it's approved
17 by the Department of Health, and I'm not sure -- if I could,
18 one of the things I was remiss in doing was introducing to the
19 Court Messrs. Melnicke, DeBenedictis and Mr. Friedman, who are
20 three of the four principals of MLAP, who are here to answer
21 questions of the Court. I don't believe a bond is required by
22 the Department in connection with the receivership arrangement.

23 The last point I wanted to address was Mr.
24 McFarland's. Typically, what we have done in this scenario is
25 we have dealt with Medicare. Here -- I won't say I have the

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1 luxury -- but do have a much longer window than we typically
2 do, to try and close out open years. Medicare, is a very
3 limited part of the reimbursement at the nursing home, very
4 different from the hospital. So, historically, my CFO tells me
5 that the amount of overpayments and underpayments relative to
6 Medicare at the nursing home, are relatively insignificant or
7 small.

8 What we would do is work with CMS and work with
9 counsel, Ms. Kozak (ph.), and try and frame a stipulation which
10 addresses all of these issues, we've done that before in every
11 case.

12 THE COURT: Essentially, turning that into a pre-
13 closing --

14 MR. WESTON: Yes, Your Honor.

15 THE COURT: -- requirement, that as long as -- unless
16 and until that issue is resolved, buyer isn't obligated to
17 close, debtor isn't obligated to sell.

18 MR. WESTON: Well, with buyer -- I mean, the debtor
19 has agreed to assume, as I said, up to 1.1 million of those
20 known or unknown liabilities. So it's not a condition of
21 closing. But as I said, historically, we have been successful
22 in getting a stipulation in place with CMS fixing open years,
23 so that we don't walk into a closing with unknown liabilities.
24 Here I think it should be easier.

25 THE COURT: The present issue, though, is whether the

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1 proposed form of order will provide that the Medicaid provider
2 agreements may be conveyed at closing free and clear of, or if
3 there's some other pre-closing wiggle that needs to be built in
4 there to get past the present objection of DHHS.

5 MR. WESTON: Well, Medicare has consistently taken a
6 position that this is not an asset that can be conveyed under
7 363, but is an executory contract that is conveyed under 365,
8 so it needs to be assumed and assigned. So, typically, we'd
9 have to file an assumption notice, give them the right to come
10 in and contest any opportunity -- any cure amounts. And we
11 have, I think, agreed with CMS from case-to-case to concede,
12 for purposes of this case, that it's not a 363 asset that gets
13 conveyed. And I think CMS has been comfortable in dealing with
14 this on a case-to-case basis so they don't get an adverse
15 ruling with that.

16 THE COURT: So, Mr. McFarland, if on a nonprecedential
17 basis, the debtor treated the Medicare provider agreements as
18 365s and shifts those agreements from the part I sale protocol
19 to the part II 365 protocol, which I'll address the timing
20 mechanics of, because we're not doing that today, would that
21 resolve the DHHS objection to the sale of the nursing home?

22 MR. MCFARLAND: I would have to check with CMS, Your
23 Honor.

24 THE COURT: All right.

25 MR. MCFARLAND: I'd rather do that.

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1 THE COURT: Fair enough. Thank you. But from the
2 Court's vantage point it would be -- the Court would be
3 prepared to treat, on a nonprecedential basis, this issue as
4 any assumption and assignment of the Medicare provider status
5 rights and agreements under 365. And as I briefly indicated,
6 we have not yet started the 365 protocol. The sale order or
7 the bid procedures order, provided for a mechanic for tracking
8 of any requests by the debtor to assume and assign contracts to
9 any purchaser or purchasers. There's a notice and opportunity
10 to object window in that mechanic. The debtor has not yet
11 requested that the Court authorize the assumption and
12 assignment of any contracts as incident to a sale, so those
13 timing mechanics have not yet started.

14 And the Court's intention was to roll, if you will,
15 365 timing mechanics over to a post-sale authorization. So to
16 the extent that I approve any sale or sales today, that does
17 not include the assumption and assignment of any executory
18 contracts, because those have not yet been teed up by either
19 debtor.

20 MR. MCFARLAND: Very well, Your Honor.

21 THE COURT: Just in terms of a couple of the issues as
22 raised by the United States Trustee's Office, it would seem
23 appropriate, and it would seem that the parties can do this
24 without slowing down the process of having the Court approve
25 the sales of the nonoperating hospital and the operating

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1 nursing home, to have a statement filed by the debtor outlining
2 the specific causes of action, specific, at least, by category:
3 claims against -- any claims against FEMA, any claims against
4 vendors who were paid within the ninety days prior to
5 bankruptcy by the hospital entity. Identifying those in a
6 statement filed with the Court, and then served on the parties
7 who've requested notice in the case, that those are the assets
8 which are included -- proposed to be included in the sale as
9 described today, purely for purposes of extinguishment of those
10 claims as of closing. They're not being assigned for
11 prosecution purposes, they're being assigned -- proposed to be
12 assigned for extinction purposes -- extinguishment purposes.
13 And it would seem to the Court that those can be outlined in a
14 statement filed by the debtor along with a statement of
15 expenses incurred by South Nassau, which would be part of the
16 breakup fee, so that the Court and the parties-in-interest
17 could then have a fuller record of the amounts that were then
18 compromised down to the 450,000-dollar proposed agreement,
19 between the parties today, that can be memorialized, Mr.
20 Oswald, in a summary statement form. South Nassau estimates it
21 incurred X dollars, which would otherwise be arguably
22 reimbursable under the breakup arrangement. That's, from the
23 Court's vantage point, a paragraph. Whether it's a two-page
24 paragraph or a one-paragraph paragraph I would leave up to
25 South Nassau.

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1 In terms of the receiver issue, part of the sale
2 protocol would be that the debtor -- the nursing home debtor is
3 essentially asking for authority to then enter into an
4 operating agreement with the proposed purchaser, which is not
5 unusual or unheard of in the sale setting. The precise
6 mechanics of that would need to be outlined in a proposed
7 motion to be filed by the debtor to then authorize -- as the
8 Court is receiving the announcement, it's essentially to
9 authorize the proposed purchaser to operate the assets of that
10 bankruptcy estate pending closing with all liabilities incurred
11 to be the obligations of the operating entity, and with any
12 profits or losses to also fall to the proposed operating entity
13 pending closing.

14 Given that it is the desire of all constituencies to
15 have this matter continue to move on an expedited track, and
16 not just because the parties wish it to do so, but the
17 exigencies of the circumstances require that it do so. But
18 since I had, initially, reserved time for these cases on May
19 21st, that, Mr. Weston, as quickly as you all can get those
20 matters filed, and served, and I'm assuming that that's no
21 later than the end of the day this Wednesday, they're not --

22 MR. WESTON: The receivership agreement may take a
23 couple of more --

24 THE COURT: Well, not in terms of --

25 MR. WESTON: Oh.

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1 THE COURT: I don't need an agreement at this point in
2 terms of receivership, but the basic outlines of the nursing
3 home debtor desires to enter into an agreement --

4 MR. WESTON: Oh.

5 THE COURT: -- with X which would provide for the
6 following. If that gets out fully noticed to creditors --

7 MR. WESTON: That's fine.

8 THE COURT: -- along with the notice of the proposed
9 Chapter 5s and the statement of South Nassau, and I would take
10 those matters up at noon on May the 21st.

11 The Court's anticipation is that the parties will be
12 finished with proposed sale orders by May 21st, but maybe not
13 by a lot. So having this protocol for those issues, as raised
14 by the United States Trustee's Office, while the parties
15 continue to work through iterations of the sale order, should
16 not, from the Court's vantage point, slow the process down. So
17 to come May 21st, hopefully I will have before me proposed
18 forms of sale order, and we can make chambers review on, the
19 parties-in-interest will have had a chance to see them as well.
20 If necessary, we can have an on-record discussion about issues
21 in the proposed forms of sale order, and get those resolved May
22 21st as well. All right?

23 MR. WESTON: That's good.

24 THE COURT: In terms of the overall proposed sales,
25 while I intend to make more detailed findings and proposed --

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1 in orders that I will subsequently enter, it does appear to the
2 Court that the sale of each of these debtors' assets are
3 necessary, that the debtors have each exercised reasonable
4 business judgment in seeking a sale of these assets, that these
5 estates are not in a financial condition to continue to operate
6 these assets while preserving value for the benefit of the
7 various constituencies: secured creditors, unsecured
8 creditors, employees; that there is also a public interest in
9 this process continuing to move expeditiously to authorize the
10 sales, in plural, which have been proposed to the Court.

11 It's clear to the Court -- as you all probably know,
12 or those of you who may not be the attorneys may not know, the
13 Court sees the disputes in the case, but doesn't see all of the
14 things that goes on in the conference rooms, in the hallways,
15 on telephone discussions, and that's part of the process by
16 which the Court operates. But it's clear to the Court, and as
17 the parties summarized to some extent here today, that there
18 have been ongoing, substantial and meaningful discussions had
19 between the debtors, the creditors' committees in these
20 estates, South Nassau, as the original sole proposed purchaser,
21 and of the other parties-in-interest, which expressed an
22 interest in purchasing the assets of the nursing home. So
23 while I know I have seen in here vigorous good-faith and
24 meaningful debate, I know from my own experience and from
25 hearing the things that happen during hearings, that that

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1 debate, and those dialogues, and those discussions went on, I
2 believe, vigorously, Mr. Oswald termed, as an understatement.

3 So it is clear to the Court that the process by which
4 these assets have been offered for sale has been meaningful, it
5 has been open, and it has generated the best sale values that
6 are available to these bankruptcy estates for the assets that
7 are to be sold.

8 Because of Section 363(d)'s requirement that sales be
9 held in accordance -- in a non-profit -- be held all in
10 accordance with nonbankruptcy law applicable to the case, as
11 well, there will be a nonbankruptcy regulatory oversight of
12 approval of, at least the nonoperating hospital by the New York
13 State Attorney General's office, there has otherwise been, and
14 will continue to be, dialogue with the Department of Health,
15 New York State Department of Health, on the ongoing future
16 specific operations at the currently nonoperating hospital
17 facility. But the Court does find that each of the
18 requirements of both Section 363(f) and of 363(d) have been
19 satisfied by each debtor in these cases, and that approval of
20 the sales, as outlined on the record today, with the follow-up
21 to be conducted at the May 21 hearings, are appropriate under
22 the statute, necessary under the circumstances and will be
23 approved by the Court.

24 So in terms of the follow-up mechanic, again, Mr.
25 Weston, I'll direct that the debtors file by the end of the day

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1 this Wednesday, May 14th, a statement specific to the causes of
2 action to be assigned for extinguishment purposes to South
3 Nassau; by South Nassau a statement of the expenses incurred
4 which would otherwise be allocable to and authorized under --
5 or at least sought authorized under the breakup fee buyer
6 protections; and then a proposed -- an outline of the
7 circumstances, and the terms under which the nursing home
8 debtor would seek appointment of a receiver to operate post
9 this Court's approval, pending closing. All right.

10 MR. WESTON: Thank you very much, Your Honor.

11 MR. OSWALD: Your Honor, just a point of
12 clarification. Frank Oswald for South Nassau.

13 I fear, although as Mr. Weston indicated, the
14 receivership agreement is something fairly common in these
15 distressed situations -- Mr. Dimino should have a little time,
16 and the creditors, to look at that -- our sale should be very
17 quick and streamlined. And as I indicated before, we're sort
18 of happy to have today's hearing, even if it is only to pick up
19 ten days. I'd just hate to see a situation where the South
20 Nassau piece of the deal being approved gets held up certainly
21 for the receivership.

22 Secondly, I just want to note the breakup fee that
23 was approved had a straight breakup fee component of 600 --
24 over 600,000 dollars, then an expense component of 200,000 was
25 compromised out of 450. Certainly happy to put a statement on

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1 the record of the category of expenses, which I indicated will
2 be well over a million dollars. But, again, that in and of
3 itself shouldn't hold up getting an order approving our deal
4 approved if the parties can agree on the form of order, which,
5 frankly, again, I thought within the next day or two we could
6 do.

7 And then, finally, with respect to the avoidance
8 action piece, and, again, notice is fine, sort of an ancillary
9 piece there. I'd like to at least preserve the opportunity,
10 Judge, if those components are done in the South Nassau, we can
11 come back and submit that order, so as not to lose any time.
12 And, again, the reason for that is, that order becomes
13 important for the 510/511 application that the Garfunkel firm
14 will file for the state court.

15 So, I want to be separated from the nursing home. I'm
16 happy they're getting a lot of money there, but I don't want to
17 be tripped up with the nursing home. The breakup fee, again,
18 you've already approved 600- just as a usual expense -- I'm
19 sorry, usual breakup fee. It was four percent at that time,
20 it's a little less than four percent now. No hesitation to put
21 on the record today or tomorrow, a breakdown of expenses, but I
22 think you already approved enough to cover the 450, and the
23 item of the avoidance action we can deal -- even if I have to
24 deal with that as a supplemental or amended order, I prefer to
25 do that if this time -- if we're losing time for that, because

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1 I do want to get this 510 application filed with the state
2 authorities as soon as Your Honor enters the sale order
3 approving the South Nassau deal.

4 THE COURT: All right.

5 MR. OSWALD: I don't know anyone would support that.

6 MR. WESTON: We will -- I certainly have no objection.
7 And if the Court's inclined we will work as quickly as we can
8 to try and get a sale order in, and get the statement on the
9 record.

10 If Mr. Oswald requires bifurcating the allocation
11 issue into a separate order, that's fine, because I understand
12 the Court's desire to have notice go out to creditors.

13 Frankly, it's eight days away, I mean --

14 MR. OSWALD: Okay. I just want to reserve the right.
15 Listen, eight days in a case where they want emergency room
16 means something.

17 MR. WESTON: I understand.

18 THE COURT: Well, just on that issue, I mean, I
19 would -- the part -- the thing that binds you at this moment,
20 the thing that binds South Nassau to the order on the nursing
21 home is the breakup fee, because the breakup fee is only going
22 to be paid if and as when the nursing home sells, because
23 that's the genesis of the money. The receiver aspect is part
24 of the nursing home as well, so that's somewhat separate. The
25 part that binds you is the assignment for extinguishment

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1 purposes of the causes of action. So either that is severed
2 out of this order and then dealt with on follow-on basis, or
3 it's dealt with in one -- in one fell swoop.

4 MR. OSWALD: I just wanted to keep the option open,
5 Judge, appreciate that. Thank you.

6 THE COURT: Okay.

7 MS. GLICK: Yes, Judge, Carol Glick, Certilman Balin,
8 for Windsor Healthcare.

9 I just would like some clarification also, and that is
10 the timing of the nursing home approval order: that would come
11 after the hearing on the receivership agreement?

12 THE COURT: The Court's inclination is that once
13 notice is given of the receivership -- proposed receivership
14 agreement, the nuts and bolts of such an agreement, that
15 there's no substantive basis to not approve that at May 21st.
16 That on May 21st, or very quickly thereafter, the Court will be
17 in a position to enter an order authorizing the sale of the
18 nursing home assets as well.

19 MS. GLICK: Okay. And at that time the stand-by --
20 the backup bidder's position will be confirmed at the same
21 time?

22 THE COURT: Well, unless you all tell me otherwise,
23 the Court's intention was to enter an order authorizing the
24 debtor to close to the first, and if the first doesn't, to
25 expeditiously close then in the second -- into the second, the

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1 backup bidder, recognizing that expeditious here could be a
2 year from now. But it would seem appropriate to the Court for
3 the debtor to have the authority to close into the backup
4 bidder if, for any reason, following the necessary
5 nonbankruptcy court approvals, the primary bidder is not able
6 or willing to then close.

7 MS. GLICK: Well, that seems to be the --

8 MR. WESTON: We have no objection to that, Your Honor.

9 MS. GLICK: Well --

10 MR. WESTON: And I don't think the backup bidder does.
11 But we can talk to them afterwards.

12 MS. GLICK: And we are going to see a proposed
13 order --

14 MR. WESTON: Sure.

15 MS. GLICK: -- in the interim.

16 MR. WESTON: Absolutely.

17 MS. GLICK: Okay, thank you.

18 THE COURT: All right.

19 MR. OSWALD: Thank you, Judge.

20 THE COURT: All right. Thank you all. But it may --
21 Mr. Weston, when you all believe -- "you all" meaning the
22 buyer/seller parties, along with input from the committee, the
23 United States Trustee's Office, DHHS and Northstar, have what
24 you think is the final order, whether it's tomorrow, or Friday,
25 or Monday, whatever day that be, go ahead and docket those as

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1 notices of proposed orders, one in each case, or one for each
2 case. And then all parties-in-interest will be able to see it
3 at the same time the Court's been able to look at it.

4 MR. WESTON: Very good, Your Honor.

5 THE COURT: All right. All right. Then we'll be
6 adjourned on Long Beach Medical and Komanoff Nursing. And the
7 Court appreciates the parties' work leading to today, and we
8 will see some, if not all, of you back on May 21st at noon.

9 IN UNISON: Thank you very much, Your Honor.

10 MR. WESTON: We appreciate your efforts, Your Honor.

11 THE COURT: Very well. Court will then be in recess,
12 and we'll go off the record.

13 (Whereupon these proceedings were concluded at 12:40 PM)

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I N D E X


RULINGS

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Sales approved as outlined in record, and	61	23
with follow-up to be conducted.		

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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.



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United States Bankruptcy Court

Eastern District of New York
290 Federal Plaza
Central Islip, NY 11722

IN RE:

CASE NO: 8-14-70593-ast

Long Beach Medical Center
fka Long Beach Memorial Hospital

SSN/TAX ID:

CHAPTER: 11

11-1635084

DEBTOR(s)

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on May 12, 2014 was filed on May 20, 2014 .

The following deadlines apply:

The parties have until May 27, 2014 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is June 10, 2014.

If a Transcript Redaction Request is filed, the redacted transcript is due June 20, 2014.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is August 18, 2014 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber eScribers, LLC at (973) 406-2250 or you may view the document at the public terminal at the Office of the Clerk.

Dated: May 21, 2014

For the Court, Robert A. Gavin, Jr., Clerk of Court

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