

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

In re:	§	
	§	
GAINESVILLE HOSPITAL DISTRICT	§	Case No. 17-40101
D/B/A NORTH TEXAS MEDICAL	§	
CENTER	§	
	§	
Debtor.	§	Chapter 9
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EX PARTE	§	ADVERSARY NO. 17-04072
	§	
GAINESVILLE HOSPITAL DISTRICT	§	
D/B/A NORTH TEXAS MEDICAL	§	
CENTER	§	

**RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) DEBTOR'S MOTION FOR VALIDATION AND APPROVAL OF COMPENSATION FOR SERVICES AND REIMBURSEMENT FOR EXPENSES OF NORTON ROSE FULBRIGHT US LLP, DEBTOR'S COUNSEL; AND (II) DEBTOR'S MOTION FOR VALIDATION AND APPROVAL OF COMPENSATION FOR SERVICES AND REIMBURSEMENT FOR EXPENSES OF HILLTOP SECURITIES, DEBTOR'S FINANCIAL ADVISOR**

To the Honorable Brenda T. Rhoades, U.S. Bankruptcy Judge:

The Official Committee of Unsecured Creditors (the "Committee"), the duly-appointed committee of unsecured creditors in the above-captioned bankruptcy case (the "Bankruptcy Case") of Gainesville Hospital District d/b/a North Texas Medical Center (the "Debtor"), files this its *Response to (i) Debtor's Motion* (the "NRF Motion") *for Validation and Approval of Compensation for Services and Reimbursement for Expenses of Norton Rose Fulbright US LLP ("NRF"), Debtor's Counsel; and (ii) Debtor's Motion* (the "Hilltop Motion", and together with the NRF Motion, the "Motions") *for Validation and Approval of Compensation for Services and Reimbursement of Expenses of Hilltop Securities ("Hilltop"), Debtor's Financial Advisor, and in support of which respectfully states as follows:*

1. Via the NRF Motion, NRF seeks the "validation and approval" of NRF's fees and expenses incurred for the period from June 1, 2017 through October 31, 2017, and seeks an order from this Court that such amounts "are deemed legally binding, incontestable liabilities of the District and that the District may issue Bonds to satisfy" the same. Via the Hilltop Motion, Hilltop seeks "validation and approval" of Hilltop's \$150,000 of services, and seeks an order from this Court that such amounts "are deemed legally binding, incontestable liabilities of the District and that the District may issue Bonds to satisfy" the same.

2. The Motions are atypical for a chapter 9 case because the ordinary professional retention and compensation provisions of Chapter 11 are not incorporated into Chapter 9. *See* 11 U.S.C. § 901 (omitting §§ 327, 328, 330, and 331). Nevertheless, without citing to any bankruptcy authority to support these requests, NRF and Hilltop seek an order of this Court validating and approving their fees and expenses.

3. The Committee does not object to the "validation and approval" of the fees and expenses requested by the Motions, nor does it believe that the movants should not be compensated presently. However, the Committee requests that the Court condition its approval of the Motions (assuming the Motions are granted) for the reasons set forth herein.

4. Prior to confirmation of a plan of adjustment, there is no statutory basis for this Court to either approve or reject a Chapter 9 debtor's payments to professionals for services or expenses in the case. This is because "it is the policy of chapter 9 announced in §§ 903 and 904 [to] prohibit the Court from exercising control over the expenditures of a debtor municipality .... Court review and approval of compensation to the debtor's professionals would implicate § 904." *In re East Shoshone Hospital District*, 226 B.R. 430, 432–33 (Bankr. D. Idaho 1998). *See also In re Castle Pines North Metropolitan Dist.*, 129 B.R. 233, at 233 (Bankr. D. Colo. 1991) ("It is

fairly obvious that if the Court ordered the District to make interim payments to counsel for the Creditors' Committee it would be interfering with the revenues of the District, at least insofar as it could or would affect its cash flow."). Consistent with the foregoing, this Court, in its orders approving the retention of counsel for the Committee, stated that the Committee's professionals shall be compensated "upon confirmation of any plan of adjustment filed herein, or otherwise consented to by the Debtor." *See Order Approving Application to Retain and Employ Sills Cummis & Gross P.C. as Attorneys for the Official Committee of Unsecured Creditors of Gainesville Hospital District Effective as of February 7, 2017*, Dkt. No. 108; *Order Approving Application to Retain and Employ Munsch Hardt Kopf and Harr, P.C. as Attorneys for the Official Committee of Unsecured Creditors of Gainesville Hospital District Effective as of February 7, 2017*, Dkt. No. 109. The only proper order related to professional fees in a chapter 9 case is under § 943(b)(3), which requires in connection with the confirmation of a plan of adjustment, among other things, that all amounts "paid by the debtor or by any person for services or expense in the case or incident to the plan have been fully disclosed and are reasonable." There is no other basis in the Bankruptcy Code for this Court to enter any order on professional compensation prior to confirmation.

5. Notwithstanding the above, the Committee understands that the movants are merely requesting the Court to validate and approve their respective fees and expenses in order to permit the Debtor to issue sufficient bonds to pay the approved amounts. Such a process was already done in connection with the Committee's professionals with respect to their fees and expense as of June 30, 2017. In the Declaratory Judgment entered on August 22, 2017, the Court found, among other things, that the unpaid fees and expenses of the Committee's professionals in the amount of \$140,122.53 are "legally binding, incontestable liabilities of the District . . ." (the

"Committee's Fees"). *See Declaratory Judgment*, p. 14 (Adv. Dkt. No. 22). The validated Committee's Fees were included in the bucket labeled "Prepetition and Unpaid Postpetition Obligations," which the Court stated will not exceed \$6,000,000. *Id.*

6. Even though the Court has already validated the Committee's Fees, the Committee has been advised by the Debtor that the Debtor doesn't intend to pay the Committee's fees, or any subsequent fees of the Committee's professionals in this case, prior to confirmation of the plan of adjustment. Upon information and belief, the Committee's Fees are the only validated expenses the Debtor has elected not to pay prior to confirmation. Accordingly, if the "Prepetition and Unpaid Postpetition Obligations" bucket is not sufficiently sized to fully pay all the liabilities allocated to this bucket, then the Committee's professionals have the greatest risk of non-payment of their validated fees. This approach should not be approved by the Court.

7. During this proceeding, the Debtor advised the Committee of its understanding of the total likely prepetition claims in the case. It was that understanding which the Debtor used, in part, to determine the size of the Prepetition and Unpaid Postpetition Obligations bucket. Subsequent to the entry of the Declaratory Judgment, it is the Committee's understanding that certain creditors asserted prepetition claims materially larger than anticipated by the Debtor. The Debtor is currently attempting to reconcile the differences. However, the end results are unknown at this time.<sup>1</sup>

8. If the Debtor's original estimate of its prepetition claims are materially off, and if the costs of its own professionals also exceed its original estimate (which are also included in the Prepetition and Unpaid Postpetition Obligations bucket, as noted in the Motions), the Committee is concerned that its professionals may be the only creditors with validated claims not paid or

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<sup>1</sup> The Committee has been actively assisting the Debtor in the claims reconciliation process

paid in full. Such a result is inequitable and contrary to the clear dictates of Chapter 9. Administrative professionals in a bankruptcy case are to be treated equally, including in a Chapter 9 case. *See In re Castle Pines North Metropolitan Dist.*, 129 B.R. 233 (Bankr. D. Colo. 1991) ("[If] the District wants to have a plan confirmed under § 943 it must pay *all administrative claims*" (emphasis added)).

9. In order to remedy the inequity that could result, the Committee requests that any order granting the Motions include the requirement that, in the event the bond issuance to pay Prepetition and Unpaid Postpetition Obligations is exhausted prior to payment of all obligations payable therefrom, that all payments to any professionals prior to confirmation are subject to disgorgement to the extent necessary to permit all professionals in the Bankruptcy Case to be paid *pari passu*.

Dated: December 1, 2017

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**CO-COUNSEL FOR THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1st day of December, 2017, he caused a true and correct copy of the foregoing to be served electronically on those parties requesting electronic service through the Court's ECF system.

/s/ Kevin M. Lippman  
Kevin M. Lippman