

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA  
FAMILY DIVISION**

|                  |   |                  |
|------------------|---|------------------|
| NANCY JENNINGS,  | ) |                  |
|                  | ) |                  |
| Petitioner,      | ) | Civil Action No. |
| vs.              | ) | 2020CV337822     |
|                  | ) |                  |
| JEFFREY GALLUPS, | ) |                  |
|                  | ) |                  |
| Respondent.      | ) |                  |

**RECEIVER’S STATUS REPORT IN ADVANCE OF NOVEMBER 18, 2024, STATUS  
CONFERENCE**

S. Gregory Hays, solely in his capacity as Receiver herein (the “**Receiver**”), appointed pursuant to the Court’s *Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief* entered in this civil action on August 16, 2023 (the “**Receivership Order**”),<sup>1</sup> files this *Receiver’s Status Report in Advance of November 18, 2024, Status Conference*. To assist the Court and interested parties and in the interest of expedience, the Receiver reports the following:

1. Response to Respondent Jeffrey Gallups’s (“**Respondent**”) objection to the Southside Sale Motion: Respondent objects to the *Receiver’s Motion for Approval and Authorization of Sale of Assets of the Receivership Estate and Petition for Confirmation of Sale* (the “**Southside Sale Motion**”) on the grounds that Respondent is being denied his right to due process. Respondent’s argument is defeated by the very authority Respondent relies upon in his written objection. *See CML-GA Smyrna, LLC v. Atlanta Real Est. Invs., LLC*, 294 Ga. 787, 788 (2014) (“The constitutionally-guaranteed right to due process of law is, at its core, the right of notice and the opportunity to be heard”) (*quoting Cobb Cnty. Sch. Dist. v. Barker*, 271 Ga. 35, 37

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<sup>1</sup> Unless otherwise indicated, capitalized terms in this Motion will have the meanings attributed them in the Receivership Order.

(1999)). That case also involved a receiver's sale of property and an objection by the purported owner of the property who had appealed the trial court's order confirming the receiver's sale. On appeal, the Georgia Supreme Court Found that the appellant had received notice of the sale and had an opportunity to be heard on the receiver's motion to confirm the sale. Accordingly, the Georgia Supreme Court found that the appellant's due process rights had not been violated. *Id.*

Here, as in that case, Respondent received notice of the proposed sale *via* service on Respondent's counsel of record. Respondent has been given an opportunity to object and has in fact filed a written objection. Respondent will be given an opportunity to be heard at the November 18, 2024, Status Conference and Hearing.

Respondent's due process rights are not being violated. Respondent is not entitled to confer with the Receiver or direct the Receiver's marketing efforts respecting the Receivership assets. Respondent is entitled to notice of the proposed sale and an opportunity to be heard. That being satisfied, Respondent's objection is without merit.

The Court's Receivership Order authorizes the Receiver to take all actions to manage, maintain, and/or wind- down business operations of the Receivership. Receivership Order, p. 31, ¶ 44. Respondent has had notice of the Receivership Order since August 16, 2023, when it was entered on the Court's docket and sent to Respondent's counsel of record via email from Rupal Naik Romero, Senior Staff Attorney to the Honorable Craig L. Schwall, Sr. Respondent has known that the Receiver has been marketing the Receivership Assets. He has had every opportunity to seek out potential purchasers and direct them to the Receiver but has never done that. He does not propose any satisfactory alternative to the proposed transaction under the Southside Sale Motion and has made no showing that the transaction is improper or deficient.

Further, and as discussed in greater detail in the Affidavit of Scott Wilkins ("Wilkins Aff.")

Attached to this status report as Exhibit “A,” the assets to be sold pursuant to the Southside Sale Motion are burdensome to the Receivership Estate. Wilkins Aff., ¶¶ 9-18. The transaction proposed by the Southside Sale Motion will benefit the Receivership Estate by eliminating approximately \$3.4 million in landlord claims. Wilkins Aff. ¶ 23. The removal of those claims from the pool of unsecured creditor claims will result in an increase in distributions to the remaining unsecured creditors.

Respondent’s due process rights have been protected. The transaction under the Southside Sale Motion will benefit the Receivership Estate. The Court should grant the Southside Sale Motion and the relief requested in that motion.

2. Correction to September 6, 2024, Receiver’s Third Interim Report: The Receiver in his September 6, 2024, *Receiver’s Third Interim Report* states that the Receiver anticipates recovering the \$750,000 held in escrow subject to the sale to Northside Hospital **by November 1, 2024**. The Receiver corrects that statement and shows that, pursuant to the terms of the Northside Hospital APA, the escrow break date is January 26, 2025. While the escrow break date is relevant to the Receiver’s pending *Receiver’s Motion for Approval of Claims Procedures* (the “**Claims Procedures Motion**”), the January 26, 2025, escrow break date will occur prior to, and will not cause any delay respecting, distributions made on account of allowed claims and pursuant to Court-approved procedures.

3. Status of Respondent’s Chapter 7 Bankruptcy Case: The Receiver has continued to communicate with the Chapter 7 Trustee in Respondent’s bankruptcy case. The Trustee reports that, as of Monday, November 11, 2024, she is under contract to sell the bankruptcy estate’s Florida real property for \$3.6 million in a cash transaction, subject to the U.S. Department of Justice’s (“**DOJ**”) agreeing to a reduction of its criminal restitution judgment. The Trustee is awaiting the

DOJ's response to that request.

The Trustee is not yet able to estimate what distributions will be available to creditors/creditor classes. Distributions will depend on the DOJ's willingness to reduce its claims and the Trustee's ability to recover on other claims. The Trustee continues to explore litigation claims and other avenues of recovery for the benefit of the bankruptcy estate's creditors.

4. Resolution of ESRP Dispute: In September 2024, the Receiver received a notice from the IRS demanding \$185,094.43 for 2016 and 2017 Employer Shared Responsibility Provision ("ESRP") tax obligations. ESRP is a tax penalty under the Affordable Care Act for employers not providing health care coverage in accordance with the larger employee mandate that requires 95% of full-time employees to be provided health care coverage. This was the Receiver's first knowledge of this significant IRS claim. Resolution of the claim is necessary before the Receiver can make distributions to creditors.

The Receiver investigated the claim by researching the MHSA electronic files, organizing all available relevant documents, identifying and consulting with Steven Kahlenberg, the attorney who previously represented MHSA in disputing these assessments with the IRS, and contacting and negotiating with the IRS's Taxpayer Advocate, disputing the assessments and requesting all records from the IRS. The Receiver is optimistic that the Taxpayer Advocate will assist in removing or reducing these taxes and penalties. The taxes and penalties have escalated by approximately \$70,000 since initially assessed in 2020. Mr. Kahlenberg states he had not been paid for his work disputing the assessment and is owed approximately \$6,000.

Additionally, the Receiver discovered a July 7, 2023, (pre-Receivership) letter from the IRS indicating that \$38,997.22 may have been improperly levied by the IRS and offering to refund the money to MHSA. The Receiver has not been able to identify a deposit and filed Form 3911

with the IRS requesting information on this refund.

Resolving these matters with the IRS is a high priority of the Receiver.

5. Current Activity, Next Steps and Closing of the Receivership: The Receiver continues to work with Iron Magnolia LLC in anticipation of closing the transaction under the Southside Sale Motion, respond to inquiries by creditors and other interested parties, and address remaining business and operational issues. The Receiver's team has now moved all remaining IT services to the Receiver's name, enabling the Receiver to maintain control of key email records respecting the pre-Receivership management of MHSA. This migration involved extensive time working with the legacy IT provider, Brightside, Godaddy and Google. These efforts will result in extensive cost savings to the Receivership Estate and will facilitate the Receiver's ongoing investigation into potential claims against third-parties.

Estimated accounts payable are the same as reported in the Receiver's 3rd Interim Report-\$3.5 million-plus the \$185,000 IRS claim discussed above. Upon Court approval, the Receiver will begin the claims process, starting with the distribution of notice to creditors of the deadline to file proofs of claim, assessing the validity and amount of claims, and working to resolve claims disputes. The Receiver anticipates that this process will conclude in late Q1/early Q2 2025, with distribution anticipated shortly thereafter upon further Court approval. The Receiver anticipates that third-party claims will take longer to resolve. If the Receivership Estate recovers on third-party claims, there may be subsequent distribution(s) to creditors.

Respectfully submitted, November 15, 2024.

TAYLOR ENGLISH DUMA LLP

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*Attorney for S. Gregory Hays, Receiver*

# **Exhibit “A”**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
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| Respondent.      | ) |                  |
| _____            | ) |                  |

**AFFIDAVIT OF C. SCOTT WILKINS**

BEFORE the undersigned officer, duly authorized to administer oaths, personally appeared C. Scott Wilkins who, after being duly sworn, deposes and says:

1. My name is C. Scott Wilkins, and this Affidavit is made on the basis of my personal knowledge. I am over 18 years of age, and I am otherwise competent to give this Affidavit.
2. I affirm and incorporate into this affidavit my April 22, 2024, my *Affidavit of Scott Wilkins* attached as Exhibit "B" to the *Receiver's Petition for Confirmation of Sale* filed April 23, 2024.
3. This Affidavit is made in support of the *Receiver's Motion for Approval and Authorization of Sale Of Assets of the Receivership Estate and Petition for Confirmation of Sale* (the "Southside Sale Motion").
4. On March 14, 2024, the Receiver moved the Court for approval of the sale of assets to Northside Hospital.
5. The sale was closed May 31, 2024, following the Court's approval and confirmation of that sale transaction,
6. The sale of assets to Northside Hospital included all the assets of the Business



originally.

7. However, over the course of negotiations of the Northside Hospital APA, Northside Hospital decided not to acquire certain assets, primarily located in the Southside, although the sale price under the Northside Hospital APA did not change.

8. Thus, Northside Hospital elected not to acquire the assets identified in the Southside Sale Motion as the “Southside Facilities.”

9. This presented the Receiver and his team with immediate and time-sensitive challenges. Relative to the Northside operations, the Southside operations faced important challenges including the departure of its lead physician after the Receiver’s appointment.

10. Concurrently, the arrival of a new lead physician was not well received, which resulted in immediate operational and managerial challenges.

11. Cash flow from the Southside Facilities was constrained, and we were cognizant that any attempt to prolong the operations in the Southside would have precipitated further financial losses for the Receivership.

12. The Southside Facilities lease liabilities at the four locations, employee challenges, and patient care issues. Maintaining high quality patient care was central to all discussions; but other important factors contributed to complications. For example, upon learning Southside assets would not be acquired by Northside Hospital, the Receiver was faced with the near impossible task of maintaining a business *status quo* without the benefit of very key pillars to any healthcare business: an RCM (revenue cycle management) company, phones, an email system, data management system, front office for scheduling, lack of HR department, insurance issues, and staffing challenges. In brief, the generous gesture by Northside Hospital to return some assets to the Receiver at the last minute was both a potential recovery as well as a costly burden to maintain

until it could be sold.

13. In addition, the Receiver was challenged by communicating with patients that were not aware of the potential change in ownership. With the objective of maintaining high-quality patient care and complying with required notices to patients, the Receiver struggled to find a solution to maintain continuity while the business could be marketed. Significant care was taken to ensure that communication to employees and patients was compliant and consistent. In addition, the receiver faced a required 30-day notice to patients if the operations closed, and we were already within the 30-day window.

14. The medical practice was managed as one business with approximately 140 employees and 14 locations. The back office and senior staff managed the business as one operation. There was no geographic business divide between the Southern and Northern facilities. Service providers serviced the entirety of the business as whole. Therefore, to carve out to sell four locations was infinitely challenging.

15. The Receiver and I were concerned with employee retention to maintain quality patient care as these Southside Facilities were in transition. Employees thought they would be employed by Northside Hospital, and this changed mere weeks before the planned closing. This challenge was amplified given the arrival of a new physician, Dr. Matthew Karen, who was also the Medical Director for the Southern clinics. Dr. Karen was hired by the previous CEO, Melissa Moritz. The Receiver successfully negotiated a "settlement" with him that was sufficiently satisfactory to retain his services in an economically viable manner. This \$85,000 settlement was significantly less than Dr. Karen's assertion of \$157,000.

16. While the operational issues transpired, the Receiver and I pursued options to attempt to monetize the assets in the South. I approached parties who had contemplated the entire

practice, and contacted new potential buyers. These groups and individuals included doctors, family offices, private equity groups, and high net worth individuals.

17. There was limited interest from these potential buyers for various reasons including the limited team of doctors, the historic underinvestment in the facilities, the lingering onerous financial obligations, and the fact there was no back-office support as the business had been managed in the North and the staff, records, and systems were all being moved to the control of Northside Hospital. In sum, buyers looking for turn-key operations with positive cash flow immediately discarded this “opportunity” after initial due diligence.

18. With the need for quick sale, lack of a third-party buyer, and the high costs to operate, the Receiver and I determined there were limited alternatives and the Southside Facilities would likely have to be shut down. The costs to try to maintain and/or acquire new accounting, phone, IT, and patient management system was enormous and the Receiver had no support staff after the Northside Hospital sale.

19. Concurrently, the Receiver and I began discussions with Iron Magnolia, LLC and Magnolia ENT, LLC (“Iron Magnolia”) to determine how we could continue operations long enough for Iron Magnolia to acquire the operations. It quickly became apparent they were the only possible buyer and if Iron Magnolia could reestablish the business, they would resolve significant patient and landlord liabilities for the Receivership Estate.

20. The Receiver and I began negotiating the Management Services Agreement (“MSA”) and the Asset Purchase Agreement (“APA”) with Iron Magnolia. We initially demanded cash consideration to resolve the receiver estates obligations with Dr. Karen who would become an employee of the new business. Iron Magnolia was not willing to accept this liability. The Receiver nevertheless determined that the Iron Magnolia MSA was by far the best option to resolve

the numerous and immediate patient, employee, and insurance issues.

21. I have worked closely with the Iron Magnolia management team for the past six months and made certain that all payroll, insurance, and other obligations of the business have been paid. I monitor the receivable collections as Iron Magnolia funds are being deposited into the MHSA operating account pursuant to the MSA.

22. I reviewed the schedule of equipment at the Southside Facilities and reviewed the book value of the remaining medical equipment. The equipment had been picked over by MHSA over the years and the remaining medical equipment in the Southside was old and fully depreciated. I reviewed information on book value and determined the book value was less than \$50,000. The Receiver and I discussed that if the Iron Magnolia transaction did not happen, the equipment would be simply sold at auction, and we needed to move quickly before the landlords seized the equipment as rent had not been paid.

23. As discussed in the Southside Sale Motion, the Receivership Estate anticipates eliminating \$3.4 million in landlord liabilities by entering into this transaction.

24. The Iron Magnolia group has invested a great deal of time and money into reestablishing this practice.

25. The four medical practice locations would have been closed in June if Iron Magnolia had not agreed to manage the practice pursuant to the MSA and take on the patient care obligations.

26. By entering into the Magnolia MSA and the APA that is the subject of the Southside Sale Motion, the Receiver and Iron Magnolia have been able to preserve the Southside Facilities as operating businesses, save the jobs of the employees at the Southside Facilities, and maintain medical care for patients who rely on the Southside Facilities.

I hereby declare that the information provided above is true and correct under penalty of perjury.

This 15<sup>th</sup> day of November, 2024.

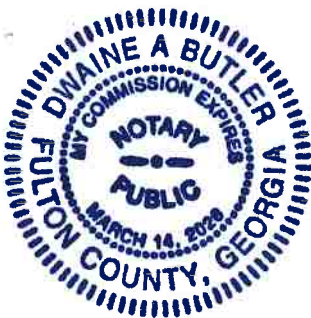


C. Scott Wilkins

Subscribed and sworn to before me  
this 15<sup>th</sup> day of November, 2024.

Notary Public

My commission expires: 3-14-2026



**CERTIFICATE OF SERVICE**

This is to certify that I have on this day served a copy of the *Receiver's Status Report in Advance of November 18, 2024, Status Conference* upon the following persons by e-mail, as follows:

C. Knox Withers <Knox.Withers@agg.com>;  
Elizabeth Green Lindsey, Esq. <elindsey@harrisonllp.com>;  
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November 15, 2024.

By: /s/ John K. Rezac  
JOHN K. REZAC