

ENTER FORTHWITH *cd/jsc*

At Commercial Division, Part 1 of the Supreme Court of the State of New York held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of May, 20 11.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of	:	
	:	ORDER
THE LONG ISLAND COLLEGE HOSPITAL	:	
For an Order Approving the Sale of the	:	Index No. 9188/11
Assets of The Long Island College Hospital,	:	
pursuant to Sections 510 and 511 of the	:	
Not-for-Profit Corporation Law.	:	
-----X	:	

WHEREAS, Petitioner, The Long Island College Hospital, filed a petition for relief under Section 510 and 511 of the Not-for-Profit Corporation Law verified on April 20, 2011; and,

WHEREAS, Petitioner proposes, pursuant to the Asset Purchase Agreement between it and SUNY-Downstate signed April 18, 2011 and annexed to the Petition as Exhibit 5, to convey to the State University of New York, through its Health Sciences Center at Brooklyn ("SUNY-Downstate") substantially all, other than the Excluded Assets described therein, of Petitioner's non-real estate assets (the "Transaction"), which include furniture and equipment; inventory; assumable prepaid expenses; claims for refunds and rights to offset; non-endowment funds; contracts; government licenses and permits; intellectual property; computers and data processing equipment; goodwill and other intangible assets; applicable books and records; personnel files; policies, procedures and manuals; rights to payment from private and government payors; rights to employ current workforce; and restricted funds and endowment funds; and,

WHEREAS, Petitioner proposes to convey all of its real estate assets to Downstate at LICH Holding Company ("Holding Company"), a controlled affiliate of SUNY-Downstate, said real estate assets as set forth in the list of real estate block and lot numbers annexed as Schedule A; and,

WHEREAS, in consideration of the proposed conveyance of assets to SUNY-Downstate and Holding Company, SUNY-Downstate will assume substantial liabilities of the Petitioner including: approximately \$135.4 million in mortgages and capital leases (\$132.8 million of which is held by the Department of Housing and Urban Development ("HUD") and the Dormitory Authority of the State of New York), an anticipated \$137 million in liability to the Othmer Funds endowment, and known (\$7 million) and unknown amounts in Medicare and Medicaid liabilities; and,

WHEREAS, upon the closing of the Transaction, SUNY-Downstate will continue Petitioner's operation as a hospital; and,

WHEREAS, pursuant to the Asset Purchase Agreement, Petitioner will retain only the following assets (the "Excluded Assets") to fund certain liabilities not assumed by SUNY-Downstate: \$26.8 million borrowed from the unencumbered principal of the Othmer Funds; \$63 million from the Othmer Funds currently pledged as partial security for a HUD mortgage; \$22 million in grant funds pursuant to the Health Care Efficiency and Affordability Law for New Yorkers; accounts receivable of approximately \$45.4 million as of February 28, 2011; and operating cash of approximately \$5.3 million as of February 28, 2011 (as modified by a \$3.4 million appropriation of income from the Othmer Funds); and,

WHEREAS, Petitioner will use the Excluded Assets to meet the following liabilities that will not be assumed by SUNY-Downstate ("Excluded Liabilities"): (i) Petitioner's share of Combined Coordinated Council, Inc., insurance program obligations; (ii) medical malpractice liabilities; (iii) certain employee wage and benefit liabilities; (iv) routine trade payables; and (v) costs related to the conveyance of Petitioner's assets to SUNY-Downstate and Holding Company and future dissolution of Petitioner; and,

WHEREAS, Petitioner will create a Malpractice Trust as described in the Petition, funded with \$85.7 million from the Othmer Funds retained by Petitioner, for the management and satisfaction of Petitioner's liabilities resulting from any medical malpractice claims against the Petitioner; and,

WHEREAS, Petitioner will transfer to SUNY-Downstate any remainder of the Excluded Assets after satisfaction of the Excluded Liabilities; and,

WHEREAS, notice to all malpractice claimants and notice to those trade creditors who are owed more than \$50,000 by LICH have been given pursuant to N-PCL § 511(c); and,

WHEREAS, the Court finds that the Petitioner has shown:

- (1) that on April 22, 2011 this Court entered an Order To Show Cause and on April 25, 2011 this Court entered a Supplemental Order to Show Cause as to why this relief requested herein should not be granted.
- (2) that a hearing was conducted on May 12, 2011; and,

WHEREAS, the Court finds the proposed conveyance and distribution of Petitioner's assets as described in the Petition and Schedule A pursuant to the Asset Purchase Agreement signed on April 18, 2011 (Exhibit 5) to be fair and reasonable and in furtherance of the purposes of the Petitioner.

NOW THEREFORE, it is hereby

ORDERED, that the Court approves the conveyance of all or substantially all of Petitioner's non-real estate assets to SUNY-Downstate, except those Excluded Assets that Petitioner will be retaining, in accordance with the terms of the Asset Purchase Agreement; and it is further

ORDERED, that the Court approves the conveyance of all of Petitioner's real estate assets as provided in Schedule A to Holding Company; and it is further

ORDERED, that the Petitioner shall create and implement the Malpractice Trust to administer and pay medical malpractice claims against the Petitioner. The Court orders that the Malpractice Trust be funded with \$85.7 million from the assets retained by the Petitioner; and it is further

ORDERED, that the Court appoints Dominic J. Lodato ^{Esq., as} trustee for the Malpractice Trust; and it is further

ORDERED, that the Court approves the transfer of any remaining funds from the Excluded Assets to SUNY-Downstate after the complete satisfaction of the Excluded Liabilities; and it is further

ORDERED, that this Court shall be provided with an accounting as to the funds remaining prior to transfer to SUNY-Downstate;

ORDERED, that all donor restricted funds shall continue to be used by SUNY-Downstate in accordance with the donor restrictions upon transfer to SUNY-Downstate; and it is further

ORDERED, that Petitioner shall serve a copy of the signed Order on the Attorney General, and that this Court and the Attorney General shall receive written notice that the transaction has been completed, if the transaction has been abandoned, or if it is still pending 90 days after the Court's approval; and it is further

ORDERED, that the Court will retain jurisdiction of this matter for purposes of enforcing this Order.

ENTER

Dated:



J.S.C.

HON. CAROLYN E. DEMAREST

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN, HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE, AND DEMANDS SERVICE OF ALL PAPERS SUBMITTED HEREIN INCLUDING ALL ORDER, JUDGMENTS AND ENDORSEMENTS OF THE COURT. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

Paula Gelman 5-12-11
ASSISTANT ATTORNEY GENERAL DATE
Paula Gelman

Pursuant to A-PCL §§ 510-511 only.

Schedule A
Owned Real Property; Improvements

	STREET ADDRESS	BLOCK	LOT
1.	339-357 Hicks Street, aka 70-84 Atlantic Avenue, aka 320-326 Henry Street, aka 67-105 Pacific Street / Fuller and Othmer Pavillions	284	001
2.	328-346 Henry Street, aka 79-113 Amity Street, aka 359-377 Hicks Street, aka 68-106 Pacific Street (Polak Pavilion)	290	013
3.	336 Flatbush Avenue	1058	0030
4.	43 Columbia Place	259	008
5.	74 Amity Street, aka 379-383 Hicks Street	295	007
6.	82 Amity Street	295	011
7.	86 Amity Street	295	013
8.	88-98 Amity Street	295	014
9.	124-134 Atlantic Avenue, aka 121-125 Pacific Street (Cobble Court Condominium)	285	1001
10.	184 Sterling Place	1058	028
11.	347-353 Henry Street, aka 115-121 Amity Street	291	001
12.	112 Pacific Street	291	008
13.	113 Congress Street	295	038
14.	348-352 Henry Street, aka 100-108 Amity Street	295	021
15.	350-352 Hicks Street	282	050
16.	385-389 Hicks Street	295	003
17.	76 Amity Street	295	008
18.	78 Amity Street	295	009