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Hearing to decide Genesee Hospital disputes

By WILL ASTOR

ViaHealth and bondholders who lent Genesee Hospital more than \$31 million in the late 1980s are scheduled to face off next week in a high-stakes court hearing.

Slated to go before state Supreme Court Justice Thomas Stander a week from today, the hearing comes as ViaHealth's second attempt to legally shut down Genesee. Stander short-circuited the first attempt last year, turning down ViaHealth's bid to use a reverse class action.

In the decisions he makes after next week's court session, Stander essentially will provide a roadmap for Genesee's dissolution, said Warren Rosenbaum of Shapiro, Rosenbaum, Liebschutz & Nelson LLP, attorney for Genesee receiver Douglas Gates of Gates and Adams P.C.

In the hearing, Stander must decide whether M&T Bank, the trustee for bondholders Allstate Insurance Co. and the Oppenheimer Funds—Rochester Division, can claim a substantial portion of Genesee's remaining cash assets or whether the bondholders will have to settle for real estate that in the wake of the hospital's shutdown has become little more than an expensive white elephant.

Stander also is slated to hear arguments over \$3.2 million in deferred compensation that physicians formerly employed by Genesee claim the hospital has withheld wrongly.

The decisions he makes in those disputes then will determine how much unsecured creditors, who have filed more than \$30 million in claims against Genesee, will get.

If the doctors and bondholders win, Rosenbaum said, unsecured creditors almost certainly will see "pretty mea-

ger" amounts.

ViaHealth closed the more-than-500-bed Genesee in April 2001, citing heavy financial losses. It continues to run the separately incorporated Rochester General Hospital. The health system needs to dissolve Genesee because the state demands that non-profits make a full accounting of assets when they shut down. It also needs to work out a way to equitably pay off the hospital's creditors.

More than a year ago, M&T's lawyer, Garry Graber of Hodgson Russ LLP in Buffalo, was hopeful that the properties securing the bonds—the hospital's parking garage and two adjacent medical office buildings—could be sold and the proceeds used to pay off the Genesee bondholders.

That hope withered after a special non-profit that was to develop a new medical center at Genesee gave up the project as financially unfeasible. Later, ViaHealth took over, laying plans to use much of the more-than-500,000-square-foot hospital building for office space.

Those too turned out to be unfeasible. ViaHealth has commissioned a study to explore options, including tearing down part or all of the Genesee complex.

The attempts to reuse the Genesee complex came out of a deal brokered by U.S. District Judge Michael Telesea. ViaHealth agreed to pay off the New York City-based Patriarch Partners group, which held a \$20 million mortgage on the hospital building, and to have Rochester General take over the hospital.

That deal came after Patriarch Partners threatened to sue ViaHealth and the health system's board members. The compromise forestalled a lawsuit, but did not deal with the remaining Genesee debt.

The state court judicial dissolution is

supposed to work something like a bankruptcy filing in a federal court. Secured creditors are paid first. Unsecured debt is paid off—at a certain number of cents on the dollar—after the debtors' assets are liquidated.

Rosenbaum has collected roughly \$18.9 million in Genesee assets, which sits in various bank accounts. That amount stands against creditor claims of \$119 million, he said.

The bulk of creditor claims in the case—more than \$60 million—have been filed by ViaHealth and its affiliates. Partly as a result of taking over the Patriarch Partners mortgage, Rochester General claims to be owed some \$57 million by Genesee. Another \$8 million in Genesee assets is in accounts that donors may have earmarked for specific purposes and which may have to be used for similar purposes such as purchasing hospital equipment. Rosenbaum has been in talks with the state attorney general's office for some months about that money, but does not expect a quick resolution.

"I don't think it's on their front burner," he said.

Bondholders' attorney Graber could not be reached for comment this week. In preliminary briefs, he has asserted M&T has valid liens on Genesee accounts totaling roughly \$6 million.

Another \$3.2 million of the amount Rosenbaum counts as Genesee assets is in the doctors' deferred-compensation account. That money represents pre-tax sums paid into retirement accounts. The doctors complain in court papers that when the hospital closed, Genesee refused to turn the money over. Fourteen are seeking to recover sums ranging from \$1,200 to \$1 million.

Rosenbaum maintains the doctors signed

away rights to the money when they agreed to have it deferred. They could have been entitled to collect when they reached retirement age or became disabled, he said, but the hospital closed before that happened.

Physicians' attorney, Nelson Thomas, of Dolin, Thomas & Solomon LLP, maintains New York debtors and creditors law requires that Genesee release the money to the doctors.

ViaHealth officials this week declined to comment on the case.

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