

**Fill in this information to identify the case:**

Debtor 1 Fayette Memorial Hospital Association, Inc.

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of Indiana

Case number 18-07762-JJG-11

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Official Form 410

**Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?**  
The Bank of New York Mellon Trust Company, N.A., as trustee  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  
 No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**  
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
Robert J. Diehl, Jr., Bodman PLC Name	Alison Kowalski Name
1901 St. Antoine Street, 6th Floor Number Street	240 Greenwich Street, 7th Floor Number Street
Detroit MI 48226 City State ZIP Code	New York NY 10286 City State ZIP Code
Contact phone: (313) 392-7597	Contact phone: (212) 815-4066
Contact email: rdiehl@bodmanlaw.com	Contact email: alison.kowalski@bnymellon.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
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4. **Does this claim amend one already filed?**  
 No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  
 No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 14,950,311.82. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Money loaned

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: Certain personal property more specifically defined in the attachment hereto  
**Basis for perfection:** Mortgage and UCC financing statements  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ no less than \$38,957,534.95  
**Amount of the claim that is secured:** \$ no less than \$14,950,311.82  
**Amount of the claim that is unsecured:** \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ no less than \$14,950,311.82  
**Annual Interest Rate** (when case was filed) <sup>LIBOR</sup> plus 4.15%  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: Comerica Bank, as a holder of the majority of the debt set forth in the attachment, has a security interest in, and the right to setoff against, Debtor's accounts at Comerica Bank.

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

Other. Specify subsection of 11 U.S.C. § 507(a)(\_\_\_\_) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

6/7/2019  
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name Elizabeth Slaby  
First name Middle name Last name

Title Vice President

Company The Bank of New York Mellon Trust Company, N.A.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 500 Ross Street  
Number Street

Pittsburgh PA 15262  
City State ZIP Code

Contact phone (412) 236-5878 Email elizabeth.slaby@bnymellon.com

**Debtor:** FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC.  
**Case No.:** 18-07762-JJG-11  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

**NOTICE REQUEST**

Please direct any and all correspondence, pleadings, notices, and orders related to this Proof of Claim by The Bank of New York Mellon Trust Company, N.A., as trustee, to the following:

Robert J. Diehl, Jr., Esq.  
BODMAN PLC  
1901 St. Antoine Street, 6th Floor  
Detroit, Michigan 48226  
Telephone:(313) 392-7597  
Facsimile: (313) 393-7579  
rdiehl@bodmanlaw.com

-and-

Alan K. Mills, Esq.  
BARNES & THORNBURG LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone:(317) 236-1313  
Facsimile: (317) 231-7433  
Alan.mills@btlaw.com

**Debtor: FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC.**  
**Case No.: 18-07762-JJG-11**  
**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF INDIANA**

**ATTACHMENT TO PROOF OF CLAIM FOR THE BANK OF  
NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE**

**1. Note Liability**

The claim of The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), against Fayette Memorial Hospital Association, Inc. (the "Debtor") for not less than Fourteen Million Nine Hundred Fifty Thousand Three Hundred Eleven and 82/100 (\$14,950,311.82) arises out of certain unpaid amounts due on promissory notes, bond liabilities, and swap liabilities.

On October 10, 2018 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing Case No. 18-07762-JJG-11 (the "Bankruptcy Case") in the United States Bankruptcy Court for the Southern District of Indiana (the "Bankruptcy Court").

Prior to the Petition Date, the Debtor and Fifth Third Bank of Central Indiana, as trustee (the "Original Trustee"), entered into that certain Master Trust Indenture (as amended, supplemented, and revised, the "Master Trust Indenture"), dated as of November 1, 1992, whereby the Debtor agreed that it shall duly and punctually pay the principal or redemption price of, the premium, if any, and the interest on each Note (as defined in the Master Trust Indenture) issued by the Debtor. Pursuant to the Master Trust Indenture and as security for the Notes (as defined herein), the Debtor granted, bargained, sold, warranted, alienated, premised, released, conveyed, assigned, pledged, set over, and confirmed to the Original Trustee, and to its successors assigns forever, the Gross Revenues (as defined in the Master Trust Indenture) (the "Gross Revenues") of the Debtor, all moneys and securities from time to time held by the Original Trustee pursuant to the Master Trust Indenture and any and all real or personal property of every name and nature from time to time hereafter by writing of any kind conveyed, mortgaged, pledged, assigned, or transferred to the Original Trustee.

The Trustee succeeded the Original Trustee.

In connection with the Master Trust Indenture, the Debtor executed no less than four (4) promissory notes in favor of, and currently held by, the Trustee: (i) that certain Fayette Memorial Hospital Association Inc. Series 2013A Note executed as of August 21, 2013, payable to the IFA (defined below) and assigned to the Bond Trustee (defined below) (as amended, supplemented, and revised, "Note A"); (ii) that certain Fayette Memorial Hospital Association Inc. Series 2013B Note executed as of August 21, 2013, payable to Comerica Bank ("Comerica") (as amended, supplemented, and revised, "Note B"); (iii) that certain Fayette Memorial Hospital Association Inc. Series 2013C Note executed on May 27, 2016, payable to Comerica (as amended, supplemented, and revised, "Note C"); and (iv) that certain Fayette

Memorial Hospital Association Inc. Series 2002A-3 Note executed as of February 28, 2002, payable to Wells Fargo Bank, National Association, as successor to First Union National Bank (“Wells Fargo”), (as amended, supplemented, and revised, “Note A-3” and together with Note A, Note B and Note C, the “Notes”). Under the Master Trust Indenture, the Trustee is authorized to file a proof of claim on behalf of holders of the Notes.

As additional security for the Notes, in addition to the Gross Revenues, the Debtor executed that certain Continuing Collateral Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement (the “Mortgage”), whereby the Debtor mortgaged, warranted, and assigned and granted a security interest to the Trustee in the Premises (as defined in the Mortgage) (the “Premises”), which includes certain real property and buildings, improvements, and fixtures thereto, and all machinery, equipment, goods, and articles of personal property of every kind and nature now or later located upon such real property. The Mortgage was recorded on June 7, 2016, in the Office of the Recorder of Fayette County, Indiana, as Instrument No. 201600001599.

The Trustee perfected its security interest in, *inter alia*, the Gross Revenues by filing that certain UCC financing statement (the “First Financing Statement”) with the Indiana Secretary of State on August 20, 2013, as Filing No. 201300007683353. The First Financing Statement was continued pursuant to that certain UCC financing statement amendment (the “Continuation Statement”) filed with the Indiana Secretary of State on June 20, 2018, as Filing No. 20180005091490.

The Trustee perfected its security interest in the personal property referenced in the Mortgage by filing that certain UCC financing statement (the “Second Financing Statement”) with the Indiana Secretary of State on July 1, 2016, as Filing No. 201600004326983.

## **2. Bond Liability**

On or around August 1, 2013, the Indiana Finance Authority (the “IFA”) issued those certain Health Facility Revenue and Refunding Bonds (Fayette Memorial Hospital Association Inc. Project) Series 2013 (the “Bonds”). Pursuant to that certain Loan Agreement (as amended, supplemented, and revised, the “Loan Agreement”), dated as of August 1, 2013, by and between the IFA and the Debtor, the IFA agreed to loan the proceeds from the issuance of the Bonds to the Debtor.

Pursuant to that certain Trust Indenture (as amended, supplemented, and revised, the “Trust Indenture”), dated as of August 1, 2013, by and between the IFA and The Bank of New York Mellon Trust Company, N.A., as bond trustee (“Bond Trustee”), the Bond Trustee agreed to serve as trustee for the purposes of collecting any and all amounts due from the Debtor in connection with the Bonds.

In connection with the issuance of the Bonds, the Debtor and Comerica executed that certain Continuing Covenants Agreement (as amended, supplemented, and revised, the “CCA”), dated as of August 1, 2013, whereby Comerica agreed to purchase the Bonds in exchange for certain commitments from the Debtor.

In connection with the issuance of the Bonds, the Debtor and Comerica executed that certain ISDA 2002 Master Agreement (as amended, supplemented, and revised, the "Comerica Master Agreement") dated as of October 1, 2013, whereby the Debtor and Comerica entered into and/or anticipated entering into one or more swap transactions.

In connection with the issuance of the Bonds, the Debtor and Wells Fargo executed that certain ISDA Master Agreement (as amended, supplemented, and revised, the "Wells Fargo Master Agreement," and together with the Master Trust Indenture, the Notes, the Mortgage, the First Financing Statement, the Second Financing Statement, the Loan Agreement, the Trust Indenture, the CCA and the Comerica Master Agreement, the "Bond Documents"<sup>1</sup>), dated as of February 15, 2002, whereby the Debtor and Wells Fargo entered into and/or anticipated entering into one or more swap transactions.

As of the Petition Date, the Debtor owed the Trustee, the Bond Trustee, Comerica and Wells Fargo, pursuant to the Bond Documents, no less than Fourteen Million Nine Hundred Fifty Thousand Three Hundred Eleven and 82/100 (\$14,950,311.82) (the "Debt").<sup>2</sup> The Debt includes:

- (a) Indebtedness owed on the Bonds in an amount not less than \$14,404,089.77, which the Trustee seeks to collect on behalf of Comerica.
- (b) Swap liabilities, related to Note C, in an amount no less than \$203,138.14, which the Trustee seeks to collect on behalf of Comerica.
- (c) Swap liabilities, related to Note A-3, in an amount not less than \$343,083.91, which the Trustee seeks to collect on behalf of Wells Fargo.

The Debt remains due and owing from the Debtor to Trustee, the Bond Trustee, Comerica and Wells Fargo. The Debt is fully secured in accordance with the Bond Documents.

Pursuant to Section 6.02 of the Master Trust Indenture, the Debtor agreed to pay to the Trustee all amounts as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys, and counsel. In accordance with § 506 of the Bankruptcy Code, the Trustee is entitled to recover all of its costs and expenses, including attorneys' fees, incurred to the extent its collateral, including the Gross Revenues and the Premises, is worth more than the Debt.

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<sup>1</sup> True and correct copies of the Bond Documents are voluminous and not attached hereto. Requests for copies of the Bond Documents may be made to Alan Mills, whose contact information is listed above.

<sup>2</sup> The Debtor issued that certain Letter of Credit No. OSB595M ("L/C") in favor of Comerica Bank, a holder of the majority of the Notes debt. Obligations with respect to the L/C were paid in full, as authorized by, among other orders, the *Second Interim Order Authorizing Use of Case Collateral and Provisions of Adequate Protection* [ECF No. 63] (the "Order"). Further, after the Petition Date and as authorized by the Order, Comerica Bank applied the funds in account x1466 at Comerica Bank to the principal portion of the Bonds, reducing the outstanding amounts due on the Bonds by \$204,518.03, and the Trustee received an adequate protection payment of \$100,000.00.

By filing this Proof of Claim, the Trustee does not waive its right to seek further relief from the Bankruptcy Court for pre-petition or any other post-petition amounts, including, without limitation, interest, attorneys' fees, additional fees, costs, expenses, and penalties, and any other amounts which were incurred, accrued, or arose, and which are recoverable, or which may be included by the Trustee relating to its claim under applicable law.

**2. Reservation of Rights and Defenses**

The Trustee reserves the right to further supplement or amend this Proof of Claim including, for the purpose of including, specific or additional sums and to state a total amount that is, or would be, owed by the Debtor to the Trustee as of the effective date of any plan of reorganization or liquidation—in this case the date of any distribution or payment with respect to this claim, or any other appropriate date(s).

The Trustee respectfully does not necessarily consent to, and reserves the right to object to, the exercise of jurisdiction by the Bankruptcy Court over any and all aspects of, and/or any proceedings relating to any subject of, this Proof of Claim. Also, without limiting the generality of the foregoing, the Trustee respectfully retains and reserves any and all rights it otherwise may have to: (a) object and not submit to the jurisdiction of the Bankruptcy Court for any particular purpose, matter, or proceeding; (b) entry of final orders in non-core matters only after a *de novo* review by a District Judge; (c) trial by jury on any issue so triable in any contested matter or adversary proceeding arising in or related to the Bankruptcy Case; or (d) request that the District Court withdraw the reference in any matter or proceeding subject to mandatory or discretionary withdrawal. Further, the Trustee retains and reserves any rights, claims, actions, setoffs, or recoupments to which it is, or may be, entitled, in law or in equity, with respect to the Debtor or its assets in the Bankruptcy Case, and retains and reserves any and all rights, claims, actions, and remedies it has or may have with respect to all persons or entities other than the Debtor.

The claim stated on the face of this Proof of Claim is intended to be a present, good faith (non-binding) estimate of the amount of that claim, which ultimately may or will require revision to a higher or lower actual figure, as justice requires. The Trustee further reserves the right to amend, supplement, and/or modify this Proof of Claim (and the documents that accompany or support same) from time to time as may be necessary or appropriate to conform to, or to adapt to changes in, facts or law, determinations yet to be made in this bankruptcy case or in other proceedings, or otherwise to further the purposes of filing this Proof of Claim.

This Proof of Claim does not address administrative expense claims of the Trustee or Comerica Bank under § 507(b) of the Bankruptcy Code or claims with respect to the postpetition financing by Comerica Bank.



# BARNES & THORNBURG LLP

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Fax (317) 231-7433  
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June 11, 2019

## *Via FedEx Overnight*

BMC Group, Inc.  
Attn: FHMA Claims Processing  
3732 West 120<sup>th</sup> Street  
Hawthorne, CA 90250

RE: In re Fayette Memorial Hospital Association, Inc.  
Case No.: 18-07762-JJG-11

Dear Clerk:

Enclosed for filing in the above-referenced matter is one (1) original and one (1) copy of a Proof of Claim (the "Claim") for The Bank of New York Mellon Trust Company, N.A., as trustee.

Please file the original copy of the Claim and return a file-stamped copy to me in the enclosed, self-addressed, prepaid FedEx envelope.

Thank you in advance for your assistance.

Very truly yours,

BARNES & THORNBURG LLP

  
Jonathan D. Sundheimer

JDS/sap  
Enclosures