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## HOUSTON BUSINESS JOURNAL

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# Hospital lawsuit continues to simmer in court

Houston Business Journal - by [Monica Perin](#)

### THEN

**Date: June 22, 2007**

**Headline: "Litigation lingers as doctors leave the building"**

### THE STORY

Doctors vacating a medical office building owned by **Memorial Hermann Healthcare System** have filed two lawsuits against the hospital giant as part of their departure.

Memorial Clinical Associates is moving out of the former Town & Country Hospital medical office building on the Katy Freeway at Beltway 8 and into a nearby facility being developed by Hospital Partners of America.

Memorial Clinical Associates was the largest lessee in the office building. The seven-physician group also was lead investor in a partnership of 105 doctors who invested \$70 million to develop Town & Country Hospital in late-2005. The hospital closed in January 2007 after only about a year in operation.

Two lawsuits filed by the partnership allege Memorial Hermann kept the hospital from getting managed care contracts from major insurers.

All tenants in the medical office building were hospital investors -- and many were preparing to relocate.

"We are choosing to move out, as are most of the doctors here," said Dr. Richard Pohil, an internist with Memorial Clinical Associates. "We believe HPA will be a partner for the long-term and will help us provide quality and much-needed additional health services to the west Houston, Spring Branch and Memorial area. It's an exciting opportunity with a progressive system."

Two lawsuits filed in state court by Memorial Clinical Associates and the partnership allege that pressure from Memorial Hermann deterred insurance companies from doing business with Town & Country Hospital.

The first suit was filed on June 1 by attorney Richard Zook of the Thompson & Knight LLP law firm. Houston attorney Rusty Hardin filed the second on June 18.

### NOW

January 2008 will mark one year since the physician-owned Town & Country Hospital closed its doors, allegedly due to unfair competitive pressure from Memorial Hermann.

That is the issue in the two lawsuits filed by the former Town & Country physicians and their limited partnership against Memorial Hermann Hospital System and Medical Properties Trust.

The case was supposed to go to trial in January 2008 but has now been moved back to September 2008.

As the end of 2007 approached, the two sides were arguing over the confidentiality of documents produced by Memorial Hermann in the pre-trial discovery process.

Lawyers for Memorial Hermann had proposed what Judge John Donovan termed an "overly-broad" protective order to keep much of the information produced during the course of the litigation from becoming public.

Donovan, of the 61st District Court of Harris County, approved a competing motion filed by lawyers for the Town & Country physicians that would protect only information that could cause commercial harm to Memorial Hermann.

The judge ordered lawyers on both sides to work out how they will define "commercial harm" and other key terms in the protective order.

Memorial Hermann's lawyers, led by David Beck of the firm Beck, Redden & Secrest, had been designating all of the documents "attorneys' eyes only," which meant that opposing attorneys could not show or discuss the materials with their clients or witnesses without first seeking approval from opposing counsel and the court.

Beck says the first batch of documents have since been redesignated.

But Zook, who represents seven Town & Country physicians, said 60 percent of the documents remain "attorney's eyes only" and the rest are still designated "confidential."

The judge agreed with Memorial Hermann attorneys by allowing some of the hospital's proprietary documents to be protected.

Memorial Hermann said in court filings that its purpose is "to prevent unnecessary and sensational disclosure to the media or other third parties" of information in the case.

And Beck's argument in court was that Memorial Hermann has a right to protect the confidentiality of business plans and strategies from competitors.

Zook and attorney Rusty Hardin of Hardin & Associates, who represents the Stealth Group partnership of physician-investors in Town & Country Hospital, countered that the whole case is about competition.

Meanwhile, the doctors of Memorial Clinical Associates are scheduled to move to a new office at 1201 Dairy Ashford on Feb. 1.

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