

# NIGHTHAWK RADIOLOGY HOLDINGS INC

## FORM 8-K (Current report filing)

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Address	601 FRONT AVENUE, SUITE #502 COEUR D ALENE, ID 83814
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of The  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported)  
June 30, 2010**

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**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-51786**  
(Commission  
File Number)

**87-0722777**  
(IRS Employer  
Identification No.)

**4900 N. Scottsdale Road, 6<sup>th</sup> Floor**  
**Scottsdale, Arizona 85251**  
(Address of principal executive offices, including zip code)

**(480) 822-4429**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

As previously disclosed in the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010 filed with the Securities and Exchange Commission on May 7, 2010, Nighthawk Radiology Holdings, Inc., (the "Company") and St. Paul Radiology, P.A. ("SPRPA") have been involved in a dispute regarding certain agreements entered into between the Company and SPRPA. On June 30, 2010, the Company entered into a series of related agreements which have resolved such dispute. Such agreements are described in further detail below.

*Purchase Agreement* . On June 30, 2010, the Company entered into an agreement (the "Purchase Agreement") with FutureRad, LLC, a privately-held company ("FutureRad"), pursuant to which the Company sold all of the outstanding membership interests of its wholly-owned subsidiaries, Midwest Physicians Services, LLC ("MPS") and Emergency Radiology Services, LLC ("ERS"), to FutureRad for \$2 million in cash. MPS and ERS were originally purchased in a transaction with St. Paul Radiology, P.A. ("SPRPA") in July 2007. Pursuant to the Purchase Agreement, the Company has agreed to indemnify FutureRad for customary matters. Subject to certain exceptions, the Company's indemnification obligations with respect to breaches of its representations and warranties and claims by third parties are capped at \$1 million. MPS provides business process services to SPRPA and its affiliates, including revenue cycle management, administrative and information technology services. ERS arranges for the provision of certain teleradiology services.

*Termination Agreement* . Concurrently with the sale of MPS and ERS, the Company, MPS and NightHawk Radiology Services, LLC, a wholly-owned subsidiary of the Company ("NRS"), on the one hand, and SPRPA and Midwest Radiology, LLC, an affiliate of SPRPA ("MWR"), on the other hand, entered into a termination agreement (the "Termination Agreement"), pursuant to which certain agreements between the parties, including administrative support services agreements, a professional services agreement and a data license agreement were terminated. In addition, SPRPA surrendered for cancellation a warrant to purchase 300,000 shares of the Company's common stock that it received in connection with the original transaction in 2007.

Pursuant to the terms of the Termination Agreement, SPRPA and MWR agreed to pay an aggregate of \$24 million, consisting of (i) an upfront cash payment to the Company of \$10 million (which amount includes a payment of \$2.5 million due to the Company and its affiliates for services previously rendered pursuant to the support services agreements being terminated) and (ii) periodic payments in an aggregate amount of \$14 million pursuant to a promissory note to the Company (the "Note"). Pursuant to the terms of the Note, SPRPA is obligated to make (i) 48 equal monthly payments to the Company of \$250,000 beginning August 16, 2010 and (ii) pay to the Company an aggregate of \$2 million on or prior to March 31, 2011 in one or more installments.

*Mutual General Release and Waiver* . The Company and NRS, on the one hand, and SPRPA and certain of its affiliates, on the other hand, also entered into a mutual general release and waiver (the "SPRPA Release") pursuant to which the parties released one another and their respective affiliates from any and all claims arising prior to June 30, 2010, including all claims that were the subject of the dispute between the parties. None of SPRPA and its affiliates released the Company and its affiliates from third party claims, if any, that are premised upon any omission of or action taken by the Company, NRS or certain of their affiliates prior to June 30, 2010; provided that recovery under such release for third party claims is capped at an aggregate of \$1 million.

The foregoing summaries of the Purchase Agreement, Termination Agreement, Note and SPRPA Release do not purport to be complete and are qualified in their entirety by reference to the terms of such agreements, copies of which will be filed as exhibits to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2010.

*Consent to Amended and Restated Credit Agreement* . The Company obtained the consent of the required lenders (as defined in the credit facility) under its Amended and Restated Credit Agreement, dated as of July 10, 2007 (the "credit facility") with respect to the transactions described above. As consideration for such consent, the Company agreed to repay \$26 million aggregate principal amount of indebtedness outstanding under the credit facility following the consummation of the transactions described above. The Company intends to use the net upfront proceeds of the transactions described above and cash on hand to satisfy such obligation. In addition, the Company has agreed to repay an additional \$10 million aggregate principal amount of indebtedness outstanding under the credit facility on or prior to June 30, 2011. Pursuant to the terms of the credit facility, the Company is required under certain circumstances to use excess cash (as defined in the credit facility) to repay indebtedness outstanding under the credit facility. Pursuant to the consent, the amount that the Company would otherwise be required to pay with respect to fiscal years 2010 and 2011 pursuant to such provision will be reduced by an amount equal to the prepayment amounts contemplated in connection with the transactions described above. Finally, the Company has agreed to pledge the Note as security for its obligations under the credit facility.

A press release announcing the Company's closing of the transaction described above and the entry into such agreements was issued on June 30, 2010 and is being filed as Exhibit 99.1 to this Current Report on Form 8-K.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

On June 30, 2010, the Company sold all of the outstanding membership interests of MPS and ERS to FutureRad as described in Item 1.01 above. The pro forma impact of the sale of MPS and ERS on the Company's financial statements is set forth in Exhibit 99.2 to this Current Report on Form 8-K.

**Item 9.01. Financial Statements and Exhibits.**

*(b) Pro Forma Financial Information.*

Certain unaudited pro forma financial information is filed hereto as Exhibit 99.2.

*(d) Exhibits.*

<u>Exhibit Number</u>	<u>Description</u>
99.1	Press Release dated June 30, 2010.
99.2	Pro forma financial information.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: July 2, 2010

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

By:           /s/  P A U L E. C A R T E E            
          Paul E. Cartee  
          Senior Vice President and General Counsel

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## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
99.1	Press Release dated June 30, 2010.
99.2	Pro forma financial information.

**Investor Inquiries:**

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 (866) 400-4295  
 (208) 292-2818  
 aclegg@nighthawkrad.net

**FOR IMMEDIATE RELEASE**

**N I G H T H A W K A N N O U N C E S C O M P L E T I O N O F  
 S E T T L E M E N T T R A N S A C T I O N W I T H S T . P A U L R A D I O L O G Y , P . A .**

**SCOTTSDALE, Ariz., June 30, 2010** – NightHawk Radiology Holdings, Inc. (Nasdaq: NHWK), the leading provider of radiology solutions to radiology groups across the United States, today announced that, effective June 30, 2010, it has completed its settlement transaction with St. Paul Radiology, P.A. As a result of the settlement transaction, NightHawk sold to a third party its ownership interests in Midwest Physicians Services, LLC and Emergency Radiology Services, LLC, the parties settled all disputes between them and terminated all of the agreements entered into in connection with the July 2007 transaction between the parties. Consistent with NightHawk’s previous disclosures in its Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010 filed with the Securities and Exchange Commission on May 7, 2010, NightHawk will receive aggregate consideration of \$26 million in connection with the settlement transaction, \$12 million of which NightHawk received at closing and \$14 million of which will be paid to NightHawk over the next four years. In addition, NightHawk expects to realize tax savings of approximately \$10 million related to the settlement, for a total expected value of the settlement of approximately \$36 million over four years.

In order to complete the settlement transaction, NightHawk received consent from its lenders under its credit agreement. In connection with that consent, on June 30<sup>th</sup>, NightHawk paid to the Lenders a principal repayment of \$26 million. Also, as part of the consent, NightHawk has agreed to make an additional principal repayment of \$10 million on or before June 30, 2011, for a total expected principal repayment of \$36 million.

Additional details regarding the settlement transaction, a description of the material agreements entered into in connection with the transaction, NightHawk’s principal payment to its lenders and other financial information related to the transaction will be filed on a Current Report on Form 8-K on or before Wednesday, July 7, 2010.

**Forward Looking Statements**

This press release contains statements that are forward-looking statements as defined within the Private Securities Litigation Reform Act of 1995. These include statements regarding the company’s anticipated receipt of an additional \$14 million from St. Paul Radiology over the next four years, the company’s anticipated receipt of tax benefits of approximately \$10 million, and the company’s expected additional principal repayment on or prior to June 30, 2011. These forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from the statements made, including the risks associated with the risk of non-payment from St. Paul Radiology and the risks associated with realizing the expected tax benefits. Other factors that could cause operating and financial results to differ are described in the company’s periodic reports filed with the Securities and Exchange Commission (“SEC”). Other risks may be detailed from time to time in reports to be filed with the SEC. NightHawk does not undertake any obligation to publicly update its forward- looking statements based on events or circumstances after the date hereof.

**About NightHawk**

NightHawk Radiology (Nasdaq:NHWK) is leading the transformation of the practice of radiology by providing high-quality, cost-effective solutions in the U.S. NightHawk provides the most complete suite of solutions, designed to increase efficiencies and improve the quality of patient care and the lives of radiologists. NightHawk’s team of U.S. board-certified, state-licensed, and hospital-privileged physicians are located in the United States, Australia, and Switzerland. They provide services 24 hours a day, 7 days a week, to approximately 1,600 sites, representing approximately 26 percent of all U.S. hospitals. For more information, visit <http://www.nighthawkrad.net>.

“NHWKF”

**NIGHTHAWK PRO FORMA COMBINED****FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial information gives effect to the Purchase and Termination Agreements referenced in Item 1.01 of this 8-K filing.

The following unaudited pro forma condensed combined balance sheet as of March 31, 2010 gives effect to the Purchase and Termination agreements as if the transactions were consummated on March 31, 2010. The consolidated balance sheet information included in the unaudited pro forma condensed combined balance sheet as of March 31, 2010 was derived from NightHawk's unaudited March 31, 2010 historical condensed consolidated balance sheet included in NightHawk's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010.

The following unaudited pro forma condensed combined statement of operations for the fiscal year ended December 31, 2009 gives effect to the purchase and termination agreements as if the transactions were consummated at the beginning of the fiscal year presented. The information included in the unaudited pro forma condensed combined statement of operations for the fiscal year ended December 31, 2009 includes the historical audited consolidated statement of operations of NightHawk for the year ended December 31, 2009, which was derived from NightHawk's Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

The following unaudited pro forma condensed combined statement of operations for the three months ended March 31, 2010 gives effect to the purchase and termination agreements as if the transactions were consummated at the beginning of the fiscal year presented. The information included in the unaudited pro forma condensed combined statement of operations for the three months ended March 31, 2010 includes the consolidated statement of operations of NightHawk for the three months ended March 31, 2010, which was derived from NightHawk's unaudited March 31, 2010 condensed combined statement of operations included in NightHawk's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010.

The historical financial information has been adjusted to give effect to pro forma events that are directly attributable to the transactions, are factually supportable and, in the case of the pro forma statements of operations, have a recurring impact. The following unaudited pro forma combined financial information has been prepared by NightHawk management for illustrative purposes only. The unaudited pro forma combined financial statements are not intended to represent or be indicative of the financial position or results of operations in future periods or the results that actually would have been realized had NightHawk not included the business services operations of Midwest Physicians Services, LLC ("MPS") and the operations of Emergency Radiology Services, LLC ("ERS") during the specified periods.

The assumptions and estimates used and pro forma adjustments derived from such assumptions are based on currently available information, and NightHawk's management believes such assumptions and estimates are reasonable under the circumstances. The unaudited pro forma combined financial information, including the notes thereto, is qualified in its entirety by reference to, and should be read in conjunction with, the historical financial statements included in NightHawk's Form 10-K filed with the SEC on February 25, 2010 and Form 10-Q filed with the SEC on May 07, 2010.

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

**UNAUDITED PRO FORMA COMBINED BALANCE SHEET**

**AS OF MARCH 31, 2010**

**(Amounts in thousands)**

	<u>Historical NightHawk</u>	<u>MPS</u>	<u>ERS</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 33,929	\$ —	\$ —	\$ (14,000)(1)(2)	\$ 19,929
Trade accounts receivable, net	20,808	(1,675)	(670)	—	18,463
Note receivable (current portion)	—	—	—	4,825(3)	4,825
Prepaid expenses and other current assets	9,157	(413)	—	12,897(4)(8)	21,641
Total current assets	<u>63,894</u>	<u>(2,088)</u>	<u>(670)</u>	<u>3,722</u>	<u>64,858</u>
Property and equipment, net	13,080	(2,329)	(43)	—	10,708
Intangible assets, net	43,529	(22,299)	—	—	21,230
Note receivable (non-current portion)	—	—	—	7,933(3)	7,933
Other assets, net	26,753	—	—	(12,757)(5)(8)	13,996
Total	<u>\$ 147,256</u>	<u>\$(26,716)</u>	<u>\$(713)</u>	<u>\$ (1,102)</u>	<u>\$ 118,725</u>
<b>LIABILITIES</b>					
Current liabilities:					
Accounts payable and accrued expenses	\$ 9,646	\$ (222)	\$ —	\$ —	\$ 9,424
Accrued payroll and related benefits	3,487	—	—	—	3,487
Long-term debt, due within one year	802	—	—	(269)(2)	533
Total current liabilities	<u>13,935</u>	<u>(222)</u>	<u>—</u>	<u>(269)</u>	<u>13,444</u>
Long-term debt	77,203	—	—	(25,731)(2)	51,472
Insurance reserve	4,018	—	—	—	4,018
Other liabilities	1,683	—	—	—	1,683
Total liabilities	<u>96,839</u>	<u>(222)</u>	<u>—</u>	<u>(26,000)</u>	<u>70,617</u>
<b>STOCKHOLDERS' EQUITY</b>					
Common stock—150,000,000 shares authorized; \$.001 par value; 23,590,251 shares issued and outstanding	24	—	—	—	24
Additional paid-in capital	221,621	—	—	—	221,621
Retained earnings /(deficit)	(170,854)	—	—	(1,952)(6)	(172,806)
Accumulated other comprehensive income/(deficit)	(374)	—	—	(357)(7)	(731)
Total stockholders' equity	<u>50,417</u>	<u>—</u>	<u>—</u>	<u>(2,309)</u>	<u>48,108</u>
Total	<u>\$ 147,256</u>	<u>\$ (222)</u>	<u>\$ —</u>	<u>\$ (28,309)</u>	<u>\$ 118,725</u>

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

**UNAUDITED PRO FORMA COMBINED STATEMENT OF OPERATIONS**

**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2009**

**(Amounts in thousands, except share data)**

	<u>Historical NightHawk</u>	<u>MPS</u>	<u>ERS</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
Service revenue	\$ 162,536	\$(16,774)	\$(4,663)	\$ —	\$ 141,099
Operating costs and expenses:					
Professional services	72,368	(23)	(3,307)	—	69,038
Sales, general and administrative	60,845	(9,393)	(1,134)	—	50,318
Depreciation and amortization	11,009	(3,547)	(9)	—	7,453
Goodwill impairment	68,718	(6,933)	—	—	61,785
Intangible asset impairment	—	—	—	—	—
Total operating costs and expenses	<u>212,940</u>	<u>(19,896)</u>	<u>(4,450)</u>	<u>—</u>	<u>188,594</u>
Operating income (loss)	<u>(50,404)</u>	<u>3,122</u>	<u>(214)</u>	<u>—</u>	<u>(47,496)</u>
Other income (expense):					
Interest expense	(8,466)	—	—	2,874(9)(10)	(5,592)
Interest income	164	—	—	175(11)(12)	339
Other, net	(16)	—	—	—	(16)
Total other income (expense)	<u>(8,318)</u>	<u>—</u>	<u>—</u>	<u>3,049</u>	<u>(5,269)</u>
Income (loss) before income taxes	<u>(58,722)</u>	<u>3,122</u>	<u>(214)</u>	<u>3,049</u>	<u>(52,765)</u>
Income tax expense (benefit)	(10,578)	1,186	(81)	1,159(13)	(8,314)
Net Income / (Loss)	<u>\$ (48,144)</u>	<u>\$ 1,936</u>	<u>\$ (133)</u>	<u>\$ 1,890</u>	<u>\$ (44,451)</u>
Net loss per common share:					
Basic	\$ (1.89)				\$ (1.75)
Diluted	\$ (1.89)				\$ (1.75)
Shares used to compute net loss per share:					
Basic	25,443,493				25,443,493
Diluted	25,443,493				25,443,493

**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

**UNAUDITED PRO FORMA COMBINED STATEMENT OF OPERATIONS**

**FOR THE THREE MONTHS ENDED MARCH 31, 2010**

**(Amounts in thousands, except share data)**

	<u>Historical NightHawk</u>	<u>MPS</u>	<u>ERS</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
Service revenue	\$ 36,548	\$ (3,759)	\$ (1,317)	\$ —	\$ 31,472
Operating costs and expenses:					
Professional services	17,464	(25)	(930)	—	16,509
Sales, general and administrative	15,761	(2,298)	(336)	—	13,127
Depreciation and amortization	2,809	(922)	(2)	—	1,885
Intangible asset impairment	27,326	(27,326)	—	—	—
Total operating costs and expenses	<u>63,360</u>	<u>(30,571)</u>	<u>(1,268)</u>	<u>—</u>	<u>31,521</u>
Operating income (loss)	<u>(26,812)</u>	<u>26,812</u>	<u>(49)</u>	<u>—</u>	<u>(49)</u>
Other income (expense):					
Interest expense	(3,324)	—	—	179(9)	(3,145)
Interest income	52	—	—	(4)(11)(12)	48
Other, net	10	—	—	—	10
Total other income (expense)	<u>(3,262)</u>	<u>—</u>	<u>—</u>	<u>175</u>	<u>(3,087)</u>
Income (loss) before income taxes	(30,074)	26,812	(49)	175	(3,136)
Income tax expense (benefit)	(10,879)	10,189	(19)	67(13)	(643)
Net Income / (Loss)	<u>\$ (19,195)</u>	<u>\$ 16,623</u>	<u>\$ (31)</u>	<u>\$ 109</u>	<u>\$ (2,494)</u>
Net loss per common share:					
Basic	\$ (0.81)				\$ (0.11)
Diluted	\$ (0.81)				\$ (0.11)
Shares used to compute net loss per share:					
Basic	23,576,537				23,576,537
Diluted	23,576,537				23,576,537

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**NIGHTHAWK RADIOLOGY HOLDINGS, INC.**

**ADJUSTMENTS TO UNAUDITED**

**PRO FORMA COMBINED FINANCIAL STATEMENTS**

**Pro Forma Adjustments**

The pro forma adjustments included in the unaudited pro forma condensed combined financial statements are as follows:

1. Net use of cash of \$14 million reflecting \$12 million proceeds per the agreements and \$26 million debt principal payment
2. Debt principal payment of \$26 million required by lenders to consent to transactions
3. To record note receivable from St. Paul Radiology, P.A. at net present value
4. To record current deferred tax asset resulting from adjustments to net loss
5. To record reduction of deferred loan fees resulting from \$26 million debt principal payment
6. To record impact of adjustments made to statement of operations
7. To record removal of cumulative mark-to-market adjustment credit in accumulated other comprehensive income related to ineffective hedge contracts as a result of the \$26 million debt principal payment
8. To record reclassification of deferred tax asset from non-current to current
9. To record interest expense savings due to debt principal payment
10. To record mark to market adjustments related to discontinuance of hedge accounting due to \$26 million debt principal payment
11. To record the interest income forgone due to \$14 million net use of cash
12. To record interest income from note receivable with St. Paul Radiology, P.A
13. Adjustment to reflect the income tax effects of the pro forma adjustments at the applicable tax rates