

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, SS.

NO. SJ-2010-453

CARITAS CHRISTI,

Plaintiff,

v.

MARTHA COAKLEY, as she is the
Attorney General of the
Commonwealth of Massachusetts,

Defendant.

ASSENT AND ANSWER OF THE ATTORNEY GENERAL

The defendant, the Attorney General, admits the allegations contained in paragraphs 1 through 75 of the Plaintiff's Complaint in equity and assents to the relief requested by the Plaintiff.

Further answering, the Attorney General states that she, principally through her Non-Profit Organizations/Public Charities Division, has carefully considered the matters raised in the Complaint, including its appended Exhibits A-R, concerning the proposal of the Plaintiff, Caritas Christi ("Caritas" or the "Plaintiff"), for itself and on behalf of its affiliates (the "Affiliates"), including six acute care hospitals (i.e., Caritas St. Elizabeth's Medical Center of Boston, Inc., Caritas Carney Hospital, Inc., Caritas Norwood Hospital, Inc., Caritas Good Samaritan Medical Center, Inc., Caritas Holy Family Hospital, Inc., St. Anne's Hospital Corporation (each a "Caritas Hospital"), and the other affiliated entities listed on Exhibit A to the Complaint, to sell and cause the Affiliates to sell substantially all of their operations and assets to Steward Health

Care System LLC (“Steward”), an affiliate of Cerberus Capital Management, L.P., on the terms and conditions set forth in the Asset Purchase Agreement, dated March 19, 2010, as amended by Amendment No. 1 to Asset Purchase Agreement, dated October 5, 2010, each by and among, among others, Caritas and Steward (as so amended, the “APA”) (such sale is hereinafter referred to as the “Transaction”).

The Attorney General's assent to the relief requested by the Plaintiff is predicated on the terms of the Transaction and provisions for commitments subsequent to the Transaction closing (the “Closing”), as described in Plaintiff's Complaint and appended Exhibits A-R.

The Attorney General is mandated by G.L. c. 180, § 8A(d) to review the proposal of any non-profit, charitable hospital to sell substantially all of its assets to a for-profit buyer. In accordance with the provisions of G.L. c. 180, § 8A(d) the Attorney General, principally through her Non-Profit Organizations/Public Charities Division, conducted an investigation analyzing whether: (1) the Transaction complies with applicable general nonprofit and charities law, (2) due care was followed by Caritas, (3) conflict of interest was avoided by Caritas at all phases of decision making, (4) fair value will be received for the Caritas assets, and (5) the Transaction is in the public interest. In this case, consistent with her statutory authority, the Attorney General also considered whether the terms negotiated by the Roman Catholic Archbishop of Boston, a corporation sole (“RCAB”) in the Stewardship Agreement (copy attached as Exhibit I to the Complaint) (the “Stewardship Agreement”) are consistent with the fiduciary obligations of the Roman Catholic Archbishop of Boston (the “Archbishop”) to Caritas under Massachusetts law and the Governance Agreement entered into between the Archbishop and the Attorney General dated May 20, 2008 (copy attached as Exhibit E to the Complaint) (the “Governance Agreement”).

In conducting her investigation, the Attorney General took the following actions:

(1) Engaged the services of independent consultants and outside counsel to, collectively, provide financial analysis supported by industry and market research to test whether it is impracticable or impossible for Caritas to continue to operate as a public charity, to consider the reasonableness of the purchase price to be paid by Steward for the assets of Caritas and the Affiliates, to consider the potential impact of the Transaction on health care costs and services within the communities served by Steward, and to assist the Attorney General in reviewing the process which led to the Plaintiff's decision to enter into the Transaction, in light of her statutory obligations; and,

(2) Engaged in extensive discovery, and other public notice, information gathering, and investigative efforts, including the following:

(a) submitting requests for production of documents concerning the Caritas' Board of Governors (the "Board") due care in deliberations leading it to enter into the Transaction, the value of the assets of Caritas and the Affiliates, the business terms of the Transaction, and the post-Closing structure and operations of the six hospitals, and reviewing the produced documents, including financial records, minutes, and reports;

(b) submitting interrogatories to be answered under oath to all twelve members of the Caritas Board and to eight senior managers of Caritas, addressing issues of due care and adherence to the fiduciary duty of loyalty, as well as issues concerning the Transaction negotiation, terms, fair value, and post-Closing commitments;

(c) interviewing three members of the Caritas Board, including the Chair and Vice Chair, as well as the Caritas President and Chief Executive Officer and its General Counsel;

(d) publishing notice of a public hearing and a summary of the Transaction in the following newspapers: the Brockton Enterprise , the Boston Herald, the Fall River Herald News, and the Eagle Tribune. Key Transaction documents were posted on the Attorney General's website, together with the notices of the public hearings and the opportunity to speak and submit written comments;

(e) holding a public hearing in the catchment area of each of the Caritas Hospitals, as follows: on June 8, 2010, at Manthala George Jr. Elementary School in Brockton, on June 16, 2010, at Coakley Middle School in Norwood, on June 22 at Brighton High School in Brighton, on June 24, 2010, at Bristol Community College in Fall River, on June 29, 2010, at Tenney Medical School in Methuen, and on July 1, 2010, at Local No. 103 IBEW in Dorchester;

(f) accepting comments from public interest groups, other providers, insurers, and members of the public;

(g) obtaining information from providers and insurers potentially impacted by the Transaction;

(h) holding meetings and discussions with interested parties; and

(i) consulting with other state agencies, including but not limited to the Department of Public Health, and with local and state officials.

As a result of her review, the Attorney General requested and obtained certain amendments to the APA relating to: (1) an increase in the purchase consideration of \$45 million to \$495 million to cover, among other increased liabilities, increases in the underfunded pension liabilities,¹ (2) an expansion in the scope of transactions in which Steward will not engage for

¹ The pension funds for certain current and former Caritas employees are held and managed by the Archdiocese Health and Pension Benefit Trust (the "RCAB Retirement Trust"), and are not federally insured because they are a

(continued...)

three years post-Closing to include selling or transferring a majority ownership interest in, or all or substantially all of the assets of, any of the acquired hospitals, (3) a conditional extension of the three-year period during which Steward will not close any of the six hospitals by two years, during which period Steward may not undertake such actions unless the hospital has experienced two consecutive years of negative operating margins, an eighteen-month review and reporting period has been completed, and a six-month closure notice has been provided, (4) a commitment not to close or reduce the number of inpatient psychiatric or detoxification beds at the six hospitals for the same five-year period, (5) compliance with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals, (6) the application of the community benefit and charity care provisions set forth in the APA to any successor-in-interest to Steward and a commitment that any Massachusetts hospital acquired post-Closing by Steward from a for-profit entity will, at a minimum, comply with the for-profit hospital's then-existing community benefit and charity care obligations, and (7) an agreement by Steward (and any successor-in-interest) to cooperate fully with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if Steward were a public charity.

Also as result of her review, the Attorney General will enter into four ancillary agreements with the Plaintiff and Steward, each materially in the form attached to the Statement of the Attorney General attached hereto as Exhibit A, to help ensure post-Closing compliance with Transaction matters in the public interest, including monitoring conditions consistent with G.L. c. 180, § 8A(d)(5), which are: (1) an Enforcement Agreement, giving the Attorney General

component of a Church pension plan. Caritas has provided funding for this component of RCAB's pension plan, even though the liability does not technically belong to Caritas and does not appear on its financial statements.

the right to enforce certain post-Closing provisions of the APA related to the public interest, (2) a Pension Enforcement Agreement (to which RCAB and the trustees of the RCAB Retirement Trust are also parties) giving the Attorney General the right to enforce the provisions of the agreement transferring the pension obligations to Steward, (3) an Assessment and Monitoring Agreement, whereby Steward will cooperate with, and fund with a Closing payment of \$1.5 million, a five-year monitoring, assessment, and evaluation of the impact of the Transaction on health care costs and services within the communities served by Steward, and (4) a Transition, Windup, and Reorganization Agreement, which requires and funds the orderly reorganization, dissolution, and windup of the Caritas entities. Further, any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought solely in the courts of the Commonwealth of Massachusetts.

As a result of the forgoing, the Attorney General has reached the following conclusions with respect to the relief requested by the Plaintiff:

(1) that it is impracticable, if not impossible, consistent with the standard imposed by the doctrine of *cy pres*, for Caritas to continue to operate as a public charity, and that the Transaction complies with applicable charities law;

(2) that the Board and senior management of Caritas complied with standards of due care in the determination process which culminated in the Board's decision to enter into the Transaction;

(3) that the Board and senior management of Caritas appropriately disclosed and managed such conflicts of interest as existed and that the Board and senior management acted in the best interests of Caritas in establishing criteria for, negotiating, and entering into the APA and the Transaction;

(4) that the consideration for the purchased assets is fair and that the Transaction affords Caritas and the Affiliates fair value for their operations and assets;

(5) that the Transaction serves the public interest and that, on balance, the public is better served with the Transaction than without it, as the Transaction will, in addition to factors set forth above in this Assent and Answer of the Attorney General: (a) fund the pensions of approximately 13,000 current and former Caritas employees, which currently are at risk, (b) satisfy outstanding Caritas debt and certain liabilities, (c) commit no less than \$400 million in capital expenditures within four years from Closing, with \$116 million already allocated towards priority capital projects at the six hospitals, (d) keep the six hospitals open and maintain the current number of inpatient psychiatric or detoxification beds for a minimum of five years after the Closing, subject to certain performance criteria in years four and five, (e) require Steward to refrain from making an initial public offering, issuing debt for the purpose of making dividends or distributions, or selling or transferring control of the Steward health care system or any of the six hospitals acquired from Caritas to a third party, for at least three years after the Closing, (f) maintain Caritas' current policies regarding indigent and charity care, which Caritas estimates to be approximately \$37 million annually, (g) maintain Caritas' community benefit expenditures at the current level, which Caritas estimates to be approximately \$26 million annually, plus an additional \$3 million annually in pastoral care and related services, (h) ensure that each of the six hospitals continues to accept Medicare and Medicaid patients, accept in its emergency room all patients who are in need of emergency services regardless of ability to pay consistent with relevant law, and provide culturally and linguistically appropriate interpretive services consistent with those currently provided at the Caritas Hospitals, (i) offer employment to substantially all of the 12,000 employees of Caritas and the Affiliates at positions, salaries,

and wages consistent with the position, salaries, and wages of each such employee immediately prior to the Closing, and provide such employees with substantially similar benefits, to those in effect immediately prior to the Closing, (j) continue the terms of Caritas and the Affiliates' current collective bargaining agreements, (k) preserve the function and general composition of the local boards of each of the six hospitals, (l) honor commitments made in the past to Caritas' donors, including maintaining the names of any portions, wings, or departments of any of the six hospitals, and (m) preserve the Catholic identity of the six hospitals, consistent with the Stewardship Agreement.

The Attorney General also notes that Caritas will remain headquartered initially in the greater Boston area; current Caritas senior management is expected to stay in place; two current Board members have agreed to serve on the initial Steward board, in addition to the President and Chief Executive Officer who serves *ex officio*, and one additional Massachusetts based Steward board member is expected to be appointed, all with the expectation that such local participation and continuity will help promote stability; and,

(6) that the Stewardship Agreement between RCAB and Steward is not inconsistent with the Archbishop's fiduciary obligations to Caritas under Massachusetts law or the Governance Agreement.

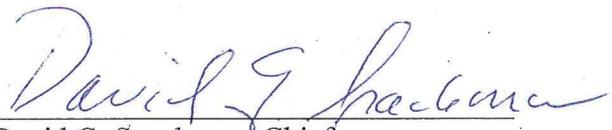
A copy of the Statement of the Attorney General as to the Caritas Christi Transaction dated October 6, 2010, which includes her conclusions and findings, including the information forming the bases thereof, is attached to this Assent and Answer as Exhibit A.

Entering judgment as requested by the parties will allow the Plaintiff and the Affiliates to proceed with the Transaction. The public interest will be served by a smooth, timely transition.

For the reasons set forth above, the Attorney General believes that the Transaction serves the public interest and requests this Honorable Court approve the Transaction and issue the parties' proposed Order of the Court.

Respectfully submitted,

MARTHA COAKLEY, ATTORNEY GENERAL

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Dated: October 14, 2010.

EXHIBIT A

Statement of the Attorney General as to the Caritas Christi Transaction dated October 6, 2010