
From: Turnbull, Andrew
Sent: Monday, August 04, 2014 5:51 PM
To: 'Gertler, Gary'
Cc: Chesley, John O.; Bergeron, Christina (Christina.Bergeron@ropesgray.com); Dr. Prem Reddy (premeddy@premeddy.com); Troy Schell; Mike Sarian (MSarian@primehealthcare.com); Mike Heather (MHeather2@primehealthcare.com); Beauvais, Michael; 'Balalian, Steve'; Jackson, Scott; Ligibel, Geoffrey; Ilhardt, Benjamin
Subject: RE: Prime/DCHS Definitive Agreement Follow-Up

Gary,

Thanks for your note – I too am a believer in frank communications. My comments interlineated below in caps.

Thanks, Andrew

Andrew Turnbull
Managing Director

HOULIHAN LOKEY
312.456.4719 **Direct**
312.543.5198 **Cell**
ATurnbull@HL.com

From: Gertler, Gary [mailto:ggertler@mwe.com]
Sent: Monday, August 04, 2014 6:44 PM
To: Beauvais, Michael; Turnbull, Andrew
Cc: Chesley, John O.; Bergeron, Christina (Christina.Bergeron@ropesgray.com); Dr. Prem Reddy (premeddy@premeddy.com); Troy Schell; Mike Sarian (MSarian@primehealthcare.com); Mike Heather (MHeather2@primehealthcare.com)
Subject: Re: Prime/DCHS Definitive Agreement Follow-Up

Michael / Andrew --

It will be 3-weeks tomorrow since our “all-hands” conference call on July 15th. At that meeting I was under the positive impression that there were less than 10 outstanding material items to resolve, but no real progress has been made since that discussion, and given the amount of time that has passed, I would recommend that another conference call be scheduled for this week. I AM A PROPONENT OF GETTING ON THE PHONE AND MAKING SURE THAT WE ARE ALL OF THE SAME PAGE – AS A MATTER OF FACT I AM IN FAVOR OF A STANDING PERIODIC CALL. WHILE I AGREE THAT THE DOCS HAVE NOT ADVANCED MATERIALLY, THE BUSINESS FOLKS HAVE BEEN IN COMMUNICATION AND THE ACTIVITY OF THE LAST COUPLE OF WEEKS HAS BEEN IMPORTANT IN ESTABLISHING THE PATH FORWARD. OF NOTE, WE ARE HOPING TO HAVE A NEW TURN OF THE AGREEMENT IN YOUR HANDS BY THE END OF THIS WEEK.

On July 23rd, I sent to you the below e-mail and the attached document, but we have not heard anything from you or your client regarding whether these changes were acceptable and/or whether you had any follow-up questions. I HAVE DISCUSSED SOME PRELIMINARY THOUGHTS WITH PRIME MANAGEMENT ON THE PROPOSALS THAT YOU CIRCULATED. I KNOW OF ISSUES WE HAVE WITH EACH OF 2.5, 6.2 AND 6.3 AND CONSIDER THEM EACH OPEN POINTS – I NEED TO DISCUSS 6.5(b) WITH THE COMPANY In this regard, the revised definitive document remains in DCHS’ possession. AGREE

More recently, on July 31st (last Thursday), I received the attached document from your associate, as well as the e-mail reproduced at the bottom of this e-mail trail. With regard to that e-mail, I have the following initial thoughts:

1. The attachment makes no sense. Neither the section nor schedule references relate in any manner to Section 7.4 of the definitive agreement with Prime nor any other provision contained in that document. The attachment appears to have been copied from an asset purchase agreement (probably from another potential deal being negotiated), but the transaction with Prime is a membership substitution so there is no assumption of CBAs PERHAPS BELT AND SUSPENDERS BUT I EXPECT (AND THINK DCHS FEELS THE SAME) THAT THE DEF. DOC. WILL SPECIFICALLY NOTE THAT THE CBA'S ARE BEING ASSUMED – THIS IS A VERY IMPORTANT POINT FOR DCHS AND I UNDERSTAND FROM A BUSINESS PERSPECTIVE THERE IS AGREEMENT HERE or employment agreements SAME, they come to Prime by operation of law. The only issue that was discussed 3-weeks ago during our conference call regarding Section 7.4 was Prime's deletion of the DCHS severance policies to apply for 18-months post-closing. AS OF THE TIME OF OUR LAST TURN OF THE DEF. DOC. THE DCHS EXPECTATIONS FOR EMPLOYEE TREATMENT WERE NOT COMPLETE – SINCE THIS TIME WE HAVE BEEN ABLE TO FINALIZE THIS AND WHAT CHRISTINA WAS COMMUNICATING TO YOU WAS THE RESULT OF THIS DELIBERATION (AGREED THAT IF YOU ARE TRACKING THROUGH THE SECTION REFERENCES THIS ASPECT DOES NOT TRANSPORT). NOTE AS TO SCHEDULES: THESE ARE SOMETHING DCHS HAS BEEN WORKING HARD ON TO CATCH-UP – THERE IS AN INTERNAL DRAFT OF SEVERAL SUCH SCHEDULES AND WE HOPE TO CIRCULATE THESE TO YOU SOON (I'D LIKE TO GIVE YOU A BETTER ESTIMATE BUT NEED INPUT FROM SOME OTHERS) Based upon those discussions, I understood that DCHS was going to provide (within 48-hours) copies of the severance policies they wanted Prime to accept for 18-months I WILL FOLLOW UP WITH THE INTERNAL FOLKS SO THAT WE CAN BE RESPONSIVE ON THIS REQUEST, and a spreadsheet showing the estimated severance costs from accepting this policy SAME. Prime received neither.

2. We have searched the data room and still cannot find the policies that DCHS would propose to include as Schedule 7.4 Please provide those policies to us (so we know exactly which ones you want Prime to accept), together with the document showing DCHS' severance cost estimate. SEE NOTE ABOVE.

3. The other severance list was understood to be a list of the corporate employees who were not going to continue with Prime (*i.e.*, DCHS' corporate overhead personnel). The discussion was that there were potentially \$18 million of severance payments for these individuals, but based upon Christina's e-mail to me DCHS' estimate is closer to \$5 million (plus non-qualified benefits). The result appears good, but we need to see the list of those employees with their estimated severance and benefit costs as well. UNDERSTOOD – IT IS MY UNDERSTANDING THAT THE AMOUNT HAS MOVED FAVORABLY FROM OUR INITIAL EXPECTATIONS – AGREED THAT WE OWE YOU THE DETAILS.

4. DCHS' proposed change to the knowledge definition is mostly acceptable to Prime, but we would at least want to understand why DCHS does not believe that the CEOs of the individual hospitals should not also be included in the definition (I would think that they are senior enough executives that they could easily have information that is not known to either the CEO or CFO of the organization). OPEN POINT – WE WILL DISCUSS ON OUR SIDE

5. I would also like to better understand where the \$75 million threshold (which is net of insurance proceeds) comes from. That amount is a huge out of pocket expense if one of the hospitals is substantially damaged and the damage for some reason is not covered by insurance. OPEN POINT – WE WILL DISCUSS ON OUR SIDE

Gary

Gary B. Gertler
Partner

McDermott
Will & Emery

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218
Tel +1 310 551 9328 | Mobile +1 818 421 0116 | Fax +1 310 277 4730

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

Only Tier 1 National Law Firm – Healthcare

Chambers USA “Health Team of the Year” (2010, 2013)

Chambers USA (2010-2013)

Legal 500 USA (2013)

Law360 (2013-2014)

U.S. News-Best Lawyers (2012-2013)

From: Gertler, Gary

Sent: Wednesday, July 23, 2014 2:17 PM

To: Beauvais, Michael

Cc: ATurnbull@HL.com; Chesley, John O.; Bergeron, Christina (Christina.Bergeron@ropesgray.com); Dr. Prem Reddy (premreddy@premreddy.com); 'Troy Schell'; Mike Sarian (MSarian@primehealthcare.com); Mike Heather (MHeather2@primehealthcare.com)

Subject: Re: Prime/DCHS Definitive Agreement Follow-Up

Michael --

During our conference call last Tuesday we went through your summary of key business and legal issues in connection with your further revision of the definitive document. Prime agreed to follow-up on a couple of items and to provide you with our further thoughts. Attached please find Prime’s further changes to Section 2.5 (deposit amount), Section 6.2(b) (CBA renegotiations), Section 6.3(a) (AG approval standard), and Section 6.5(b) (delivery of audited financials), together with a redlined copy marked to show our additional changes to those provisions.

DCHS also agreed to provide us with several follow-up items of information and materials, but to my knowledge they have not yet been received. Please forward such information and materials to me as soon as possible as they are material to a couple of the remaining outstanding business issues.

Gary

Gary B. Gertler

Partner

**McDermott
Will & Emery**

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218

Tel +1 310 551 9328 | Mobile +1 818 421 0116 | Fax +1 310 277 4730

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

Only Tier 1 National Law Firm – Healthcare

Chambers USA “Health Team of the Year” (2010, 2013)

Chambers USA (2010-2013)

Legal 500 USA (2013)

Law360 (2013-2014)

U.S. News-Best Lawyers (2012-2013)

From: Bergeron, Christina [<mailto:Christina.Bergeron@ropesgray.com>]

Sent: Thursday, July 31, 2014 3:17 PM

To: Gertler, Gary

Cc: Troy Schell; Beauvais, Michael; Glazer, Howard S.; Chesley, John O.; Balalian, Steve (SteveBalalian2@dochs.org); ATurnbull@HL.com

Subject: Prime - Response to Outstanding Issues

Gary,

Thanks for your patience while we gathered your outstanding requests. Please see below our responses:

1. **Treatment of Employees** – I have attached DCHS’ proposal with respect to the post-closing treatment of employees
2. **Employee Severance** – The estimated amount of severance to be paid out at closing is under \$5 million; we will send the estimated amount of nonqualified benefits soon
3. **Severance Policies** – The Houlihan Lokey team will post the severance policies to the extent they are not already posted
4. **Knowledge Standard** – Our standard for knowledge is the actual, then current knowledge of the CEO and CFO of DCHS based on reasonable inquiry
5. **Casualty** – The casualty amount is \$75 million

Please let us know if you have any additional questions or would like to set up a time to discuss.

Best,

Christina

Christina M. Bergeron

ROPES & GRAY LLP

T +1 617 951 7027 | F +1 617 235 9264

Prudential Tower, 800 Boylston Street

Boston, MA 02199-3600

Christina.Bergeron@ropesgray.com

www.ropesgray.com

This message is a PRIVILEGED AND CONFIDENTIAL communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

Please visit <http://www.mwe.com/> for more information about our Firm.