

STATE OF RHODE ISLAND
WASHINGTON, SC.

SUPERIOR COURT

CHARLES S. KINNEY, CHIEF
EXECUTIVE OFFICER AND TRUSTEE
Plaintiff

v.

WESTERLY HOSPITAL HEALTHCARE, INC.,
THE WESTERLY HOSPITAL, ATLANTIC
MEDICAL GROUP, INC., OCEAN MYST, MSO
LLC, WOMEN'S HEALTH OF WESTERLY,
LLC, AND NORTH STONINGTON HEALTH
CENTER, INC.

Defendants

C.A. No. 2011-0781

ORDER

The Permanent Special Master's Report and Recommendation regarding a Claim Resolution Process and the Satisfaction of True-Up Claims under the Court Approved Asset Purchase Agreement ("APA") came on for hearing for hearing before this Court on the 30th day of May, 2013.¹

After consideration of the Report and Recommendation, objections and responses filed thereto, as well as presentation of counsel, it is hereby ORDERED:

1. As set forth in the Special Master's Report and Recommendation, an Allowed Claim is defined to be a claim that is allowed in full or in part by a final order of this Court, or, conversely, denied in full. An Allowed Claim may be the product of a claim presented and adjudicated during the hearing process set forth herein, through the presentment of an assented to motion to compromise by the Special Master and the Claimant, or through consent to a cure amount relative to a Material Contract.

¹ Capitalized terms herein are defined in the APA.

2. With regard to Allowed Claims against the Related Entities, the Mastership will retain the Related Entities accounts receivable and accounts payable as of the Closing. The Mastership will collect accounts receivable and utilize those proceeds to distribute on account of Allowed Claims as against the Related Entities. This does not affect the Accrued Payroll concept as set forth at Section 1.6(b)(i) of the APA.

3. As for Excluded Liabilities, the Mastership shall distribute cash retained by the Mastership post-Closing in accord with the APA on account of Allowed Claims that are Excluded Liabilities as directed by this Court.

4. In addition to the cash retained at Closing by the Mastership, Buyer shall, in satisfaction of any claim to payment pursuant to Sections 1.6(b)(vi) and 13.7(b) of the APA: (i) waive any requirement that the Mastership fund the Seller's Indemnification Account under Section 1.6(b)(ix) of the APA; and (ii) release the escrow deposit of \$500,000.00 to the Mastership at Closing. Thus, the Mastership will retain an additional \$1M to address Excluded Liability Claims. In addition, at Closing, Buyer shall pay up to \$300,000.00 to compensate the Mastership's Advisors pursuant to Section 3.2(a) of the APA.

5. In order to streamline the process and minimize expense and delay, the following post-Closing procedures for the claims resolution process are hereby approved by the Court:

- a. On or before June 13, 2013, after consultation with the Buyer before Closing, the Mastership shall report to the Court as to the status of the following: (i) claims that potentially fall under the category of Assumed A/P Liabilities as defined herein; (ii) claims submitted that are Excluded Liabilities; and (iii) claims submitted as against the Related Entities;

- b. Thereafter, the Mastership shall be allowed 30 days to proceed on behalf of the Buyer to secure agreements in which claims that potentially fall under the definition of Assumed A/P Liabilities, have the opportunity to agree to a compromise of said claims to avoid uncertainty and delay;
- c. After the timeframe for potential compromise negotiations concludes, the Mastership would update its report to the Court regarding the Assumed A/P Liabilities;
- d. In parallel with the proceedings described in subparagraph (c), above, the Mastership would submit recommendations to the Court regarding the allowance of claims that fall under the definition of Excluded Liabilities, those claims as against the Related Entities, and as to administrative claims referenced in Paragraph 11 hereof. Said report shall identify the claimant, the class of claim, whether said claim is recommended to be approved, approved in part, or denied, and the rationale therefore;
- e. After the reports and recommendations are submitted pursuant to subparagraphs (c) and (d) above, aggrieved claimants would have an opportunity to submit objections and schedule hearings thereon, if necessary;
- f. After the conclusion of the foregoing proceedings, the Court would determine the allowance of claims and then the Mastership would have forty-five (45) days to submit a report and recommendation regarding the proposed distribution of said claims based upon priority and the availability of funds in the Mastership. Said recommendations would include the proposed terms and conditions of assumption relative to Allowed claims that are Assumed A/P

Liabilities. Said report and recommendation shall set forth the specific amount of money and percentage of pro rata distribution for each claimant to be considered by the Court; and

- g. The Court would then schedule hearings, if necessary, to accommodate any objections to the proposed distribution and terms of assumption.

6. After Closing, Buyer shall record on its books the Assumed A/P Liabilities as then designated by Buyer in consultation with the Special Master. However, Buyer shall not pay any such claim until such claim is Allowed and the terms of assumption are determined by the Court in accordance with the Claim Process recommended in this Petition. Thus, the Stay shall remain in place as to all claims including the Assumed A/P Liabilities. The terms of assumption shall not exceed one (1) year from date of such claim is Allowed and the Special Master shall oversee the assumption of Allowed A/P Liability Claims up and until said Allowed Claims are satisfied pursuant to the Court approved terms of assumption.

7. In order to provide a simplified process for resolution of claims and to compensate the Mastership Estate for administration of the Claims Process as it relates to the Assumed A/P Liability and to resolve any True-up Claims, the Buyer shall pay an amount to the Special Master equal to lesser of (a) \$2,000,000 and (b) the product of: (i) any positive difference between the total Assumed A/P Liability and the Assumed A/P Liability Cap and (ii) thirty-three percent (33%) (the "True-Up Payment"). The True-Up Payment shall be paid by Buyer to the Mastership Estate in installments on September 1, 2013, December 1, 2013, March 1, 2014 and June 1, 2014. The monies paid to the Mastership Estate on account of the True-Up Payment, if any, shall be used solely for the payment of Court-approved Mastership fees and expenses

related to the Claims Process and the balance as a distribution, pro-rata, to Allowed Assumed A/P Liability Claims.

8. The Special Master reserves the right to seek such further claims procedures consistent with the procedures set forth herein and in the case of any Assumed A/P Liabilities only with the prior agreement of Buyer.

9. In accord with the response of the Tax Administrator and the Department of Health to the Special Master's Report and Recommendation regarding Claim Resolution Process, the State of Rhode Island, Division of Taxation and Dr. Michael Fine, in his capacity as the Director of the Rhode Island Department of Health, reserve their rights of their respective departments to take any such action as authorized under Rhode Island law in the event the 2012 hospital licensing fee is not satisfied in full pursuant to this Court's Order dated May 9, 2013.

10. In accord with the response of the Washington Trust Company to the Special Master's Report and Recommendation regarding Claim Resolution Process, the Washington Trust Company reserves all of its respective rights and remedies under its secured guaranty claim relative to the leasehold obligations of North Stonington Health Center, Inc. under its lease with North Stonington Properties, LLC. The Mastership shall report to the Court on this claim pursuant to the procedures relating to Excluded Liabilities

11. With regard to the Objection of North Stonington Properties, LLC to the Special Master's Report and Recommendation regarding Claim Resolution Process, the Court shall establish a supplemental bar date for those claims alleged to be administrative claims that allegedly arose since the commencement of the Mastership on December 7, 2011. The supplemental bar date for said claims shall be July 1, 2013. Said claims shall be submitted to the Mastership by electronic mail addressed to jdorsey@frlawri.com.

12. Post-Closing, the Buyer shall provide the Mastership with full access to: (i) accounts payable data and back-up regarding the Westerly Hospital's accounts payable, both pre- and post-petition; and (ii) accounts payable and accounts receivable data and back-up for the Related Entities. As such, the Mastership should be provided work space on the 3rd floor executive office space at the Westerly Hospital for at least sixty (60) days post-Closing.

Enter as an Order of this Court this 30th day of May, 2013.

Entered:

5/30/13

Deputy

Clerk

Per Order:



Submitted by:



W. Mark Russo, Esq. (#3937) as and only as Special Master
for Westerly Hospital Health Care, Inc., The Westerly Hospital,
Atlantic Medical Group, Inc., Ocean Myst MSO, LLC,
Women's Health of Westerly, LLC, and
North Stonington Health Center, Inc.

FERRUCCI RUSSO P.C.

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Dated: May __, 2013

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