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.	)	COMPLAINT

INTRODUCTION

1. 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 attached hereto, brings this action, consistent with G.L. c. 180, § 8A(d), pursuant to this Court's equity jurisdiction (G.L. c. 215, § 6), and its jurisdiction to enter declaratory judgments (G.L. c. 231A, § 1), seeking a declaratory judgment that Plaintiff may sell and cause the Affiliates to sell substantially all of their operations and assets (the "Purchased Assets") to Steward Health Care System LLC ("Steward"), an affiliate of Cerberus Capital Management, L.P. ("Cerberus"), 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 (the "APA") (such sale is, hereinafter, the "Transaction"). *See* Exhibit B. Caritas, the Caritas Hospitals, and other affiliated entities are referred to herein, collectively, as the "System."

2. The System is a comprehensive, integrated health care delivery network that provides community-based care primarily in eastern Massachusetts. Caritas is a Massachusetts non-profit, charitable corporation established in 1985 by the Roman Catholic Archbishop of Boston, a corporation sole ("RCAB"). While the Roman Catholic Archbishop of Boston (the "Archbishop") retains certain reserve powers with respect to Catholicity, certain governing body appointments, and major transactions, since the adoption of Caritas governance reforms on May 22, 2008, neither the Archbishop nor RCAB has any membership in, or other corporate role in the ownership, governance, or operations of, Caritas. The System employs more than 12,000 individuals.

3. Steward is a Delaware limited liability company. Steward was established by Cerberus to acquire substantially all of the assets, liabilities, and operations of Caritas and the Affiliates. Cerberus is a private investment firm that, together with its affiliates, maintains investment interests in a variety of companies in the United States and around the world.

4. Plaintiff comes to this Transaction out of necessity. The System has struggled financially and become significantly, and increasingly, capital constrained. It has aging facilities, substantially-underfunded pension plans covering approximately 13,000 current and former employees,[1] and more than $40 million in annual debt service obligations. Accordingly, Caritas identified the need for a significant capital investment to enable the System to survive and to continue its mission of providing community-based health care services, including services to the indigent and other community benefit activities. Based on these considerations, the Board of Governors of Caritas (the "Board") concluded that the only way the System could continue to carry out its mission would be to find a strategic partner who could supply the necessary capital to meet the System's needs.

5. With the guidance of its outside, qualified, independent consultants and advisors, Caritas engaged in a multi-year search for such a strategic partner. The Board

[1] The pension funds for certain current and former employees of the System 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 component of a Church pension plan. Caritas has provided funding for this component of the RCAB's pension plan, even though the liability does not technically belong to Caritas and does not appear on its financial statements. As described below, Steward has agreed under the APA to assume the obligation, among others, to fund this component of the RCAB pension plan.

concluded, based upon an evaluation of the alternatives, that the Transaction is the best available option for Caritas, is in the best interest of Caritas, and is consistent with the health care needs of the communities served by the System. Of all the proposals considered, the Board determined that Steward submitted the offer that best met Caritas' principal objectives, which include: (a) continuation of Caritas' mission of providing community-based health care services; (b) discharge of its debt obligations; (c) assumption of pension obligations to protect current and former employees of the System; (d) improved access to capital for investment in facilities and operations; (e) preservation of Caritas' Catholic identity; and (f) continued local participation in the governance and operation of the System.

6. Because Plaintiff believes that the Transaction is necessary for Caritas' survival, is in Caritas' best interest, is consistent with the public interest, and is otherwise appropriate and proper, Plaintiff respectfully seeks the issuance of a declaratory judgment approving the Transaction pursuant to the terms and conditions of the APA.

PARTIES

7. Plaintiff is a Massachusetts non-profit, charitable corporation, and the parent corporation of the System. The System includes the six Caritas Hospitals, each a Massachusetts non-profit, charitable corporation, and other affiliates providing community-based health care services primarily in eastern Massachusetts, including the Massachusetts non-profit, charitable Affiliates listed in Exhibit A.

8. Defendant, Martha Coakley, as the Attorney General of the Commonwealth of Massachusetts (the "Attorney General" or the "Defendant"), is named as a party to this action pursuant to G.L. c. 12, § 8G.

FACTS

Due Care: Leading to Governance Reforms (2006-2008)

9. By fiscal year 2006, Caritas faced a significant shortfall in the funding of current and former employees' pension plans and in updating facilities that were significantly older than those of its competitors. Caritas estimated that it faced a $360 million to $550 million capital shortfall for its facilities alone.

10. In 2006, RCAB, which controlled Caritas at that time, engaged Navigant Consulting, Inc. ("Navigant") to review Caritas' strategic options. Navigant's report dated November 9, 2006, outlined four strategic options for Caritas: (a) remain independent, but with restructured operations and empowered governance; (b) affiliate with a national Catholic health care system; (c) affiliate with a local, non-profit health care system; or (d) sell to a for-profit entity. *See* Exhibit C (the "Navigant 2006 Report"). The Navigant 2006 Report concluded that the best option for Caritas was either affiliation with a national Catholic system or sale to a for-profit entity.

11. The Board reviewed all four options, and, consistent with Navigant's recommendation, determined that affiliation with a national Catholic system was the preferred approach to meet Caritas' need for capital consistent with its mission.

12. RCAB, on behalf of Caritas, pursued an affiliation with a national Catholic health care system. A Request for Proposals ("RFP") was issued. In December 2006, initial responses to the RFP were received from Catholic Health East, Ascension Health ("Ascension"), and Catholic Health Initiatives ("CHI").

13. Caritas focused on both Ascension and CHI. In January 2007, RCAB decided to pursue an affiliation with Ascension. While Ascension conducted due diligence, the parties exchanged drafts of a Change of Sponsorship Agreement concerning the terms of a transaction under which Caritas would join Ascension. By the summer of 2007, negotiations had stalled, in part because Ascension was concerned about Caritas' continuing financial deterioration. These negotiations confirmed for Caritas that Ascension, similar to other non-profit systems, could not provide the immediate access to capital that Caritas needed, particularly the capital needed for its underfunded pension plans and aging facilities, within the framework of Ascension's operating model. Instead, capital for Caritas would come in the form of better access to the debt markets on the basis of Ascension's strong credit rating.

14. On September 17, 2007, in response to a request from the Attorney General, RCAB sent a letter to Ascension asking Ascension to resume negotiations. In October 2007, Ascension declined.

15. In November 2007, CHI, after preliminary due diligence and for reasons similar to those expressed by Ascension, also declined to pursue an affiliation with Caritas.

16. The Attorney General then engaged Health Strategies & Solutions, Inc. ("HS&S") to evaluate the System. In its March 6, 2008 report, HS&S found that Caritas had, as a result of its poor financial performance, been forced to delay or forego capital and reinvestment initiatives. *See* Exhibit D (the "HS&S Report"). The HS&S Report confirmed that capital constraints remained a major challenge to the success of Caritas. HS&S also recommended significant governance restructuring at Caritas so that the Board would be vested with independence and authority, which would improve its ability to attract strong Board members and high-quality senior management. HS&S noted that Caritas needed strong, dynamic leadership whose accountability and reporting obligation ran only to the Board and recommended that the new leadership be effective, visionary, and stable. HS&S concluded that Caritas' failure to address successfully those financial, governance, and management issues in a timely manner would result in the further deterioration of Caritas' competitive and financial positions. *Id.*

17. On May 22, 2008, the Archbishop entered a governance agreement with the Attorney General, *see* Exhibit E (the "Governance Agreement"), which resulted in the governance reforms embodied in the May 22, 2008 amended and restated Caritas bylaws. *See* Exhibit F. These governance reforms increased the independence and authority of the Board, consistent with the Navigant 2006 Report and the HS&S Report recommendations.

Due Care: Post-Governance Reforms (2008 – 2010)

18. By May 2008, Caritas had hired Ralph de la Torre, M.D., as its new President and Chief Executive Officer. Also, a new Executive Committee of the Board (the "Executive Committee") was formed. The Executive Committee and Dr. de la Torre established the following priorities for Caritas: (a) hire a new management team, (b) restructure Caritas' operations, and (c) address Caritas' growing capital shortfall by finding a capital partner. At that time, Caritas was projecting a $50 million total loss, a $20 million operating loss for fiscal year 2008, and a declining cash position that threatened Caritas with insolvency.

19. Throughout 2008, Caritas continued to consider alternatives to address its capital needs, including non-profit affiliations. There are few multi-state non-profit systems and, in Caritas' experience, none likely to have an interest in the competitive eastern Massachusetts market. Caritas concluded that the only local non-profit system that might have had the capital resources to meet Caritas' needs was Partners HealthCare System, which is the largest health care system in the Commonwealth. As the System is the second largest health care system in the Commonwealth, the Board was advised that an effort to combine the two largest systems, both concentrated in eastern Massachusetts, would likely raise insurmountable market concentration issues.

20. In 2008, Caritas also had discussions with Ascension and Vanguard Health Systems ("Vanguard"), a national for-profit hospital system doing business in Massachusetts, concerning the possibility of a joint Vanguard/Ascension acquisition of Caritas, but the parties were unable to develop a mutually-acceptable arrangement. In addition, Ascension offered a credit facility to Caritas, but Caritas was unable to accept this offer due to deteriorating market conditions.

21. Caritas then hired Cain Brothers & Company, LLC ("Cain Brothers"), an investment bank specializing in health care, to assist Caritas with obtaining capital, including evaluating Caritas' ability to access needed capital through traditional non-profit borrowing. At an all-day Board meeting on October 23, 2008, Cain Brothers made a presentation to the Board on the current state of the capital markets. Cain Brothers concluded that public financing would be very expensive for Caritas and that its current financial position would not support significant additional debt. Therefore, Caritas had limited access to capital.

22. During the October 23, 2008 Board meeting, the Board also focused on: (a) the underfunding of the pension plans, which was far more serious than previously understood; (b) Caritas' debt service obligations of approximately $40 million annually; and (c) Caritas' worsening operating margins and investment losses for 2007 and 2008, leading to further deterioration in its facilities and cash reserves. Because the largest of the pension plans is structured as a non-electing Church plan, it is not insured by the federal government. Moreover, this pension plan is not an obligation of Caritas, and, therefore, the plan's beneficiaries would

have no recourse against Caritas in the event that Caritas filed for bankruptcy or was otherwise incapable of funding the plan. These factors, in the context of the sharp economic downturn and market collapse, made it clear to the Board that Caritas had a critical and increasing need for capital.

23. With no viable options among non-profit health care systems, and before reaching out to for-profit companies, the Board wanted to confirm the finding of the Navigant 2006 Report, which were consistent with the 2008 HS&S Report and Cain Brothers' 2008 analysis, that continuing as a stand-alone system was not a viable option for Caritas. In the meantime, Caritas was forced to operate under a complete capital freeze, including no additional funding of the pension plans.

24. In a report dated February 9, 2009, Navigant concluded that there was no reasonable way for Caritas, on its own, to meet its debt obligations, continue funding the pension plans, and survive. *See* Exhibit G (the "Navigant 2009 Report"). Navigant presented five different scenarios based on varying operational and financial assumptions. Four scenarios projected Caritas defaulting on its existing debt covenants (i.e., less than 30 days cash-on-hand) within one year. One rather aggressive and generally unsustainable scenario projected such a Caritas default in less than two-and-a-half years. The Navigant 2009 Report confirmed that meeting pension and debt obligations alone presented an insurmountable obstacle to Caritas' ongoing viability and would ultimately lead to insolvency. For example, in March of 2009, Caritas was operating with 44 days cash on hand.

25. Due to its operational turn-around plan, Caritas' earnings were increasing, but the Board recognized that Caritas still had no realistic prospect of generating margins sufficient to fund the pension plans and Caritas' capital shortfall without significant outside investment.

26. Based on this information, and having explored its other options, on September 8, 2009, the Board approved entering into a letter of intent with Vanguard to sell the System (the "Vanguard LOI").

27. During the Vanguard negotiation process, as well as during the subsequent private equity solicitation described below, the Executive Committee and Board identified and

communicated to management the Board's priorities concerning any transaction with a for-profit entity, which included: (a) a commitment to meet the pension plans' obligations to the pensioners; (b) a commitment not to sell within a defined period of years post-closing; (c) a capital contribution sufficient to discharge the debt and upgrade the outdated facilities; (d) a commitment to the Catholic identity of the six hospitals; (e) commitments to community benefits and charity care; and (f) a commitment to governance and operational continuity to promote stability.

28. Recognizing the inherent and unavoidable conflicts associated with directing management to participate in negotiating transactions in which it had a future economic interest, in November 2009, the Board engaged separate legal counsel, Nutter, McClennen & Fish, LLP, to advise the Board regarding the System's strategic alternatives, including the exploration of a transaction with a for-profit entity, as well as advising the Board members with respect to their fiduciary duties.

29. Caritas and Vanguard signed the Vanguard LOI on November 4, 2009. However, after further negotiations, the parties were unable to reach agreement on material terms, including the increasing underfunded pension liability and a no-sale period. Consistent with the mutual agreement of the parties, the Executive Committee voted to terminate the Vanguard LOI in December 2009, in order to explore other options. Cain Brothers was engaged to assist Caritas with this process.

30. As before, the Board was involved in setting the parameters for Caritas' negotiations with a for-profit entity. The Board's priorities, as described above, remained essentially unchanged. The Board authorized Cain Brothers to identify private equity firms with an interest in hospital systems, the funds required to make and stand by a significant, long-term investment in the System, and the willingness to embrace Caritas' vision and mission. These priorities meant that the Board was not looking to incorporate Caritas into an existing hospital operating company, but rather, sought an investor who would enable Caritas to retain its own culture and business philosophy, management team, and preferably, its eastern Massachusetts headquarters.

31. In light of Caritas' priorities at this stage, Cain Brothers recommended directly approaching private equity firms. Of the five approached, three responded. Of these three, two firms, including Cerberus, participated in full day presentations in January 2010. After initial due diligence, the Executive Committee voted to negotiate with Cerberus on an exclusive basis. Cerberus was chosen because of its commitment to the Caritas vision and mission, its diligent approach to the evaluation process, its resources, its commitment to Caritas' negotiation priorities, including the pension liability and the no-sale period, and its high level of interest in entering the health care sector. Caritas and Cerberus signed a letter of intent dated January 23, 2010.

32. The Executive Committee and Board were aware of and actively involved in the APA negotiation process. Two Board committees were established to oversee the negotiation process, one focusing on negotiations with Cerberus concerning the Transaction and one focusing on negotiations with RCAB concerning Caritas maintaining its Catholic identity (which is discussed below).

33. The Board concluded that selling the System's operations and assets to Steward was necessary for Caritas' survival and was the best option for Caritas to be able to continue its mission to provide community-based health care services, as well as the best option for meeting its capital needs and debt and pension obligations. On March 19, 2010, the Board voted to approve the Transaction, including execution of the APA.

Conflicts of Interest Avoided

34. The Board members, officers, and senior management employees responded to interrogatories from the Attorney General with respect to conflicts of interest and other matters concerning the Transaction.

35. Prior to execution of the APA, no Board member, officer, senior management employee, or any family member of such an individual, had any direct or indirect financial relationship with, or business interest in, Cerberus. Likewise, no such individual will receive any financial or other benefit or reward for completing the Transaction or for any activity in furtherance of the Transaction prior to its closing (the "Closing").

36. In light of his potential future employment by, and board service with, Steward, Dr. de la Torre, Caritas' President and Chief Executive Officer, abstained from the March 19, 2010 vote by the Board to approve the Transaction.

37. As stated in interrogatory responses from Caritas representatives, no member of the Caritas senior management team will receive an increase in salary, incentive payment or bonus, or other form of compensation from Caritas in return for identifying, finding, negotiating, or entering into the Transaction. Moreover, as further stated in interrogatory responses from Caritas representatives, any incentive compensation granted to members of the senior management team hired by Steward will be designed so as to solely reward individuals based on their post-Closing performance. Because of Cerberus' desire to invest in an operating company, a condition to Steward's obligation to close the Transaction is that Steward shall have entered into post-Closing employment contracts with Caritas' current Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer; however, this condition may be unilaterally waived by Steward. To date, no financial or other terms or conditions have been negotiated between Steward and members of Caritas senior management with respect to future employment.

38. Similarly, in order to maintain local participation and provide some continuity in governance, three of the seven members of Steward's initial management board (the "Steward Board") will be persons who are currently members of Caritas' current Board, including Dr. de la Torre, who will serve *ex officio* in the event he is employed as the President and Chief Executive Officer of Steward. As stated in interrogatory responses from Caritas representatives, any compensation for such service on the Steward Board will be in accordance with Steward's policies and procedures with respect to the compensation of its board members generally. To date, no financial or other terms or conditions arising out of their service on the Steward Board have been negotiated.

Fair Value

39. The Purchased Assets consist of substantially all of the assets and properties of Caritas and the Affiliates as more specifically set forth in Section 1.2 of the APA. The Transaction will bring approximately $895 million of value to the System, as set forth below.

40. As described in Section 1.6 of the APA, the consideration for the sale of the Purchased Assets, which is approximately $495 million, consists of: (a) the repayment, discharge, defeasance, or release of liability from virtually all of the System's outstanding indebtedness; (b) the assumption of all pension obligations for the System's current and former employees pursuant to Sections 1.6(a)(ii) and 4.18 of the APA, the total underfunded component of which was estimated to be approximately $260 million as of July 1, 2010; and (c) the assumption of certain liabilities set forth on Schedule 1.6(a)(iii) of the APA.

41. In addition to assuming and discharging the foregoing, Steward is required to cause the Steward health care system to spend, or commit to spend, at least $400 million within four years of the Closing on capital expenditures, including an immediate investment of over $110 million in facility improvements at the six hospitals. If Steward fails to cause its affiliates to spend or commit such $400 million within four years of the Closing, Steward is required to donate such shortfall to a charitable foundation selected by the Attorney General.[2]

42. Under G.L. c. 180, § 8A(d), Steward must pay fair value for the assets and operations of the System. To confirm its compliance with this standard, the Board sought a fairness opinion from Navigant Capital Advisors, LLC. *See* Exhibit H (the "Fairness Opinion"). The Fairness Opinion was based on the then-estimated consideration for the Purchased Assets of between $430 million and $450 million (current consideration, as noted above, is $495 million, due to the increases in estimated pension liabilities since execution of the APA). The Fairness Opinion concluded that the purchase consideration for the Transaction "is fair from a financial point of view."

Catholic Identity

43. Steward has entered into a Stewardship Agreement with RCAB, which requires that the six hospitals continue to be operated in accordance the Ethical and Religious Directives for Catholic Health Care Services (the "Directives"). *See* Exhibit I (the "Stewardship Agreement," including Schedule 1.1 thereto, the Directives).

[2] The Attorney General has stated that, in the unlikely event that this occurs, she will establish a selection committee to advise her and the membership of that committee will include representatives of the Department of Public Health and health providers from, and representatives of, the affected communities. *See* Exhibit M (the Attorney General's Statement) at fn. 2.

44. Under the Stewardship Agreement, the interpretation of the Directives, as they apply to the six hospitals, will be determined by RCAB in its sole discretion. Steward may terminate the Stewardship Agreement if Steward determines, in its sole discretion, that observance of any of the Directives would be materially burdensome to Steward or any of the six hospitals. In the event of such a termination by Steward, Steward would be obligated to pay $25 million to a Massachusetts public charity designated by RCAB that is subject to the jurisdiction of the Attorney General (the "Termination Contribution"). RCAB has the right to terminate the Stewardship Agreement if, in its sole discretion, any of the six hospitals is being operated in a manner inconsistent with the Directives. In the event of such a termination by RCAB, Steward would be obligated to pay the Termination Contribution, unless such non-compliance with the Directives is a result of a legal requirement to which Steward is subject.

45. RCAB received a letter, dated August 17, 2010, confirming no objection from the Vatican. Consistent with the Caritas bylaws, the Archbishop approved the Transaction by letter dated August 27, 2010.

Public Interest: Post-Closing Operations and Steward Obligations

46. As set forth above, the Transaction will: (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, and (c) commit no less than $400 million in Caritas capital expenditures within four years from Closing, with $116 million already allocated towards priority capital projects at the six hospitals. *See* APA, Sections 1.6, 4.18, and 8.8. These elements of the Transaction, along with the other Transaction elements set forth in paragraphs 47 through 65, below, are in the public interest.

47. Steward will not close, or limit the general purpose of, or close or reduce the number of any inpatient psychiatric or detoxification beds at, any of the six hospitals for a minimum of five years after the Closing, subject to certain performance criteria in years four and five post-Closing. *See* APA, Section 8.12.

48. Steward has also committed that it will 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. *See* APA, Section 8.11.

49. Steward will adhere to and comply with Caritas' current policies regarding indigent and charity care set forth in Schedule 8.10 of the APA, a copy of which is attached hereto as Exhibit J. *See* APA, Section 8.10. Caritas estimates that its current level of indigent and charity care is approximately $37 million annually.

50. Steward will maintain Caritas' community benefit expenditures at the current level for Caritas Hospitals as set forth in the community benefits policy and reports in Schedule 8.9 of the APA, a copy of which is attached hereto as Exhibit K. *See* APA, Section 8.9. Caritas estimates that its current level of community benefit expenditures is approximately $26 million annually, with an additional $3 million annually for pastoral care and related services.

51. Steward will comply with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals. *See* APA, Sections 8.10.

52. Steward will ensure that each of the six hospitals continues to: (a) accept Medicare and Medicaid patients, (b) accept in its emergency room all patients who are in need of emergency services, as defined under and in accordance with the requirements of the federal Emergency Medical Treatment and Active Labor Act, regardless of ability to pay, and (c) provide culturally and linguistically appropriate interpretive services consistent with those currently provided at the Caritas Hospitals. *See* APA, Section 8.9.

53. Community benefit and charity care provisions set forth in the APA will apply to any successor-in-interest to Steward; further, 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. *See* APA, Sections 8.17 and 8.18

54. Steward will offer employment to substantially all of the employees of the System at positions, salaries, and wages consistent with the position, salaries, and wages of each such employee immediately prior to the Closing. *See* APA, Section 8.6. Moreover, Steward is

required, for at least 12 months after the Closing, to provide benefits to employees accepting such employment that are substantially similar, in the aggregate, to those in effect immediately prior to the Closing. *Id.*

55. Steward will recognize, assume all responsibilities under, and be bound by the terms of the System's current collective bargaining agreements. *See* APA, Section 8.6(f).

56. Steward will preserve the function and general composition of the local boards of each of the six hospitals. *See* APA, Section 8.7.

57. Steward will honor commitments made in the past to the System's donors, including maintaining the names of any portions, wings, or departments of any of the six hospitals. *See* APA, Section 8.15.

58. The Attorney General shall have the right to enforce the pension transfer agreement among Steward, RCAB, and the RCAB Retirement Trust, as well as certain post-Closing provisions of the APA related to the public interest. *See* paragraph 71, below, and Exhibit N (Enforcement Agreement) and Exhibit O (Pension Enforcement Agreement).

59. Any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements (described in paragraph 71, below) shall be brought solely in the courts of the Commonwealth of Massachusetts. *See* Exhibits N-Q

60. Steward will assure and fund the orderly reorganization, dissolution, and windup of the Caritas entities, to assure that remaining assets, including endowment funds, are appropriately segregated and use for appropriate purposes. *See* paragraph 71, below, and Exhibit Q (Transition, Windup, and Reorganization Agreement).

61. Steward and any successor-in-interest to Steward will, notwithstanding its for-profit status, fully cooperate 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. *See* APA, Section 8.16.

62. 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. Certain aspects of this monitoring will be conducted by the Attorney General and certain other aspects of this monitoring will be conducted by the Department of Public Health consistent with G.L. c. 180, § 8A(d)(5). *See* paragraph 71, below, and Exhibit P (Assessment and Monitoring Agreement).

63. Steward will be a health care system with its headquarters in the greater Boston area. Current Caritas' senior management is expected to remain in place. In addition, three of the seven members of the initial Steward Board are currently members of the Caritas Board, and one additional Massachusetts based person is expected to be appointed. Such local governance and operational participation and continuity are anticipated to promote stability.

64. Caritas estimates that the capital expenditures required by the Transaction will create approximately 3,000 to 4,000 new jobs in Massachusetts.

65. Steward and its affiliates will be subject to federal, state, and local taxes. Caritas estimates that total state and local tax payments to be made by the Steward and its affiliates could be as much as $100 million over the next five years.

LEGAL REQUIREMENTS, ATTORNEY GENERAL FINDINGS, AND REGULATORY APPROVALS

66. Pursuant to G.L c. 180, § 8A(d), a non-profit acute care hospital must provide written notice not less than 90 days to the Attorney General (unless notice is waived by the Attorney General) before it enters into a sale or other disposition of a substantial amount of its assets or operations with a person or entity other than a public charity. Caritas provided written notice of the Transaction to the Attorney General dated May 5, 2010, a copy of which is attached hereto as Exhibit L.

67. Pursuant to G.L. c. 180, § 8A(d), when investigating this Transaction, the Attorney General shall consider any factors she deems relevant, including whether: (a) the Transaction complies with applicable general non-profit and charities law; (b) due care was taken by the Board and senior management; (c) conflict of interest was avoided by Caritas at all

phases of decision-making; (d) fair value will be received for Caritas' assets; and (e) the Transaction is in the public interest.[3] As set forth above in this Complaint, the Board and senior management have adhered to and complied with these standards in connection with the actions and events leading to the Transaction.

68. Pursuant to G.L. c. 180, § 6C, the Board members and senior management of Caritas must perform their duties with respect to the Transaction in good faith and in a manner that they reasonably believe to be in the best interests of Caritas (and not any private interest), and with such care as an ordinarily prudent person in a like position with respect to a public charity would use under similar circumstances. Furthermore, it is consistent with the fiduciary obligations of a Board member, including the duty of care, to rely on information, opinions, and reports of professional third parties as to matters which the Board member reasonably believes to be within the competence of such professional or expert. *Id.* As set forth above in this Complaint, the Board and senior management have adhered to and complied with these standards in connection with the actions and events leading to the Transaction.

69. After conducting her investigation, the Attorney General issued a "Statement of Attorney General as to the Caritas Christi Transaction" dated October 6, 2010. *See* Exhibit M (the "Attorney General's Statement"). The Attorney General's Statement includes an overview of the Transaction, a description of the statutory background, a summary of the questions posed by the Attorney General, a description of the Attorney General's review and investigation process, including a public hearing in the catchment area of each of the six Caritas Hospitals, a summary of comments received by the Attorney General and the Attorney General's response thereto, and the Attorney General's conclusions and findings, including the information forming the bases thereof. *Id.*

70. As set forth in the Attorney General's Statement, the conclusions and findings of the Attorney General included the following: (a) that it is impracticable, if not impossible, for Caritas to continue to operate the System as a public charity and that the Transaction complies

[3] In this case, the Attorney General also considered a sixth factor, namely, whether the terms and conditions of the Stewardship Agreement are consistent with the Archbishop's fiduciary obligations to Caritas under Massachusetts law and the Governance Agreement; she found that they were not inconsistent with such fiduciary obligations. *See* Exhibit M (the Attorney General's Statement) at Section 4.6.

with applicable charities law; (b) that the Board and senior management complied with standards of due care; (c) that the Board and senior management appropriately disclosed and managed such conflicts of interest as existed and that the Board acted in the best interests of Caritas in establishing criteria for, negotiating, and entering into the APA and the Transaction; (d) that the consideration for the Purchased Assets is fair and that the Transaction affords Caritas fair value for its operations and assets; (e) that the Transaction serves the public interest and that, on balance, the public is better served with the Transaction than without it; and (f) that the terms negotiated by RCAB in the Stewardship Agreement are not inconsistent with the Archbishop's obligations to Caritas as a fiduciary under Massachusetts law and the Governance Agreement. *Id.*

71. In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and pursuant to G.L. c. 180, § 8A(d), also will enter into the following four ancillary agreements with Caritas and Steward, 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): (a) an Enforcement Agreement (to be materially in the form attached hereto as Exhibit N), (b) a Pension Enforcement Agreement, to which RCAB and the trustees of the RCAB Retirement Trust are also parties (to be materially in the form attached hereto as Exhibit O), (c) an Assessment and Monitoring Agreement (to be materially in the form attached hereto as Exhibit P), and (d) a Transition, Windup, and Reorganization Agreement (to be materially in the form attached hereto as Exhibit Q). *See id.*

72. Consistent with her findings and conditions in the Attorney General's Statement, the Attorney General has assented to this Complaint. *See* Answer and Assent of the Attorney General, filed herewith.

73. On October 13, 2010, the Public Health Council considered the Massachusetts Department of Public Health staff's recommendations for approval, with conditions, of Steward's subsidiaries' applications for Determinations of Need for the transfer of ownership of the six hospitals and approved such applications, with conditions.

REQUEST FOR RELIEF

74. As described above, Caritas' continued existence in its current non-profit, charitable form is impracticable, if not impossible, and consequently, Caritas' charitable purposes, for which Caritas was established and is operated, will ultimately fail. The Transaction is the best available option and most practicable means the Board has identified, after diligent inquiry over a four-year period and with the advice of qualified, independent consultants and counsel, to enable the health care system to continue to survive and meet the current and future health care needs of the communities it serves.

75. The members of the Board and senior management have complied with their respective duties of care and loyalty under Massachusetts law with respect to the actions and events leading to the Transaction. Conflict of interest was avoided or managed during the decision-making process, fair value will be received for the Purchased Assets, and the Transaction is in the public interest.

WHEREFORE, Plaintiff respectfully prays that this Court enter an Order that would, *inter alia*:

1. Approve the Transaction, including the transfer of substantially all of Plaintiff's and the Affiliates' assets, liabilities, and operations in accordance with the terms of the APA.

2. Enter such other and further relief as this Court deems just and proper.

Respectfully submitted,

Caritas Christi
By its attorneys,
McDermott Will & Emery, LLP

By: ______________________________

Christopher M. Jedrey (BBO# 292620)
MCDERMOTT WILL & EMERY LLP
28 State Street
Boston, MA 02109-1775
T: 617. 535.4405
F: 617.535.3800

Table of Exhibits

Exhibit A	Plaintiff Affiliates
Exhibit B	Asset Purchase Agreement
Exhibit C	Navigant 2006 Report
Exhibit D	HS&S Report
Exhibit E	Governance Agreement
Exhibit F	Amended and Restated Caritas bylaws (May 22, 2008)
Exhibit G	Navigant 2009 Report
Exhibit H	Navigant Fairness Opinion
Exhibit I	Stewardship Agreement, including Schedule 1.1 containing the Ethical and Religious Directives for Catholic Health Care Services
Exhibit J	Asset Purchase Agreement Schedule 8.10
Exhibit K	Asset Purchase Agreement Schedule 8.9
Exhibit L	Caritas' Written Notice of Transaction
Exhibit M	Statement of Attorney General as to the Caritas Christi Transaction
Exhibit N	Enforcement Agreement
Exhibit O	Pension Enforcement Agreement
Exhibit P	Assessment and Monitoring Agreement
Exhibit Q	Transition, Windup, and Reorganization Agreement

CERTIFICATE OF SERVICE

I, Charles Buck, hereby certify that on October 14, 2010, I caused a copy of Plaintiff Caritas Christi's Complaint and its accompanying exhibits to be served by hand to:

David G. Spackman
Chief, Non-Profit Organizations/Public Charities Division
Office of Massachusetts Attorney General Martha Coakley
Mailing Address: One Ashburton Place, 18th floor
Street Address: 100 Cambridge Street, 11th floor
Boston, MA 02108

Steward Health Care System LLC
c/o Elissa Flynn-Poppey
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Charles Buck