COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. SJ-2010-0453

CARITAS CHRISTI

vs.

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

MEMORANDUM AND JUDGMENT

A complaint has been brought by Caritas Christi ("Caritas") for itself and on behalf of its affiliates (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 of the complaint, against the Attorney General of the Commonwealth of Massachusetts, 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. 231, § 1), seeking a declaratory judgment that Caritas may sell and cause the Affiliates to sell substantially all of their operations and assets ("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 ("APA") dated October 5, 2010, each by and among, among others, Caritas and Steward, and filed with this court as Exhibit B to the complaint. Such sale is hereinafter referred to as the "Transaction."

The Attorney General conducted a review of the proposed Transaction, pursuant to G. L.

c. 180, § 8A (*d*), and made detailed findings that are set forth in her Statement. Her ultimate findings as to the factors set forth in § 8A (*d*) (*i-v*) are as follows:

> (i) "Caritas is in a precarious and unsustainable financial situation and faces an increasingly challenging and turbulent environment. Health care industry factors are only likely to exacerbate the situation (*e.g.*, changes in health care delivery, as well as future reimbursement increases that are projected to be lower than expense inflation). It is likely that, despite management's efforts, Caritas will continue to struggle financially and, ultimately, will be unable to meet its demands for capital in light of its aging facilities, the underfunded pension liability, and its debt obligations.
>
> "In addition, Caritas' market positions for its various services are stagnant or declining. Caritas' facilities, equipment, and technology continues to deteriorate. Caritas has neither the resources nor the independent access to external funding that is necessary to adequately invest in its facilities and operations. Moreover, if the impact of the pension obligation is accounted for, Caritas is unlikely to generate a sufficient margin, and is projected to run out of cash and cash equivalents within approximately three years or less. In the absence of the Transaction, Caritas would need to divest major assets, or close major facilities or services, in the hope of achieving and maintaining performance at levels that would be sufficient to survive.
>
> "In sum, based on a review of relevant financial, operations, utilization, and market data, the Attorney General finds that it is impracticable, if not impossible, for Caritas to continue to operate the system as a public charity. To do so would likely require (i) leaving the pensions of some 13,000 current and former employees substantially underfunded, uninsured, and at risk and (ii) closing at least one of the Caritas Hospitals. In addition, the Attorney General finds the financial capacity of Steward, in light of its anticipated debt-free operation of the health care system and its affiliation with Cerberus, to be a reasonably viable alternative, from a financial perspective, for the continued operation of the Caritas Hospitals."[1]
>
> (ii) "In total, the Attorney General finds a clear, deliberative progression of the Board in its exploration of potential alternative transactions, ultimately and not unreasonably leading to the Transaction. Throughout negotiations with the various third parties, the Board identified and communicated to senior management its priorities (*e.g.*, unqualified commitment to fund the pension liability, commitment not to sell within a defined period of years post-Closing, capital contribution, and commitments to its Catholic identity, community benefits, and charity care). The Board reasonably relied on

[1] Steward will operate the health system essentially debt free, which translates into approximately $70 million in annual expenses and payments that burden the Caritas Hospitals.

the advice of qualified, independent consultants and advisors, working with Navigant to assess its viability and market options, working with Cain Brothers to assess its access to capital markets and to solicit private equity firms, and engaging Nutter, McClennen & Fish, LLP for separate Board legal counsel and advice. Likewise, to confirm compliance with the statutory standard requiring that Caritas receive fair value for its assets, the Board reasonably relied on the fairness opinion from Navigant Capital, which concluded that the purchase consideration for the Transaction 'is fair from a financial point of view.'"

"The record reviewed by the Attorney General demonstrates engaged and committed Board involvement over an extended period of time. The Board carefully evaluated all options, including the Transaction, and acted diligently, deliberatively, and in the best interests of Caritas, consistent with the fiduciary duty of care."

(iii) "The Attorney General finds that conflicts of interest were properly disclosed and managed and that the Board acted in the interests of Caritas in establishing the criteria for, negotiating, and entering into the APA and the Transaction."[2]

(iv) "The Attorney General finds that the Transaction affords Caritas, and the public it serves, fair value for the assets and operations of Caritas. In short, the Board and senior management, after exercising due care, reasonably concluded that the Transaction purchase consideration offered by Cerberus was stronger in value than any market alternative to date."

(v) "While there are risks to the public inherent in any transfer of ownership of a hospital, under any tax or ownership structure, those risks are outweighed in this case by the known and quantifiable risks of not proceeding with the Transaction. On that basis alone, the Attorney General finds that the Transaction is in the public interest."

The Attorney General also considered whether the Transaction was inconsistent with the fiduciary duties of the Archbishop to Caritas. She found that "[n]either the Archbishop nor RCAB [Roman Catholic Archbishop of Boston, a corporation sole] is receiving any compensation, direct or indirect, on account of, or as a condition of, issuing its approval for the Transaction. In the event of any Termination Contribution, the

[2] As a result of negotiations for local participation and some continuity of governance on the successor governing entity, two community members of the current board of Caritas will serve on the Steward board. Offers were made to specific board members after the APA was executed. In addition, Steward approached Dr. Ralph de la Torre, President and CEO of Caritas, about possibly serving in a similar capacity for Steward. No direct or indirect financial relationship or business interest was established, and Dr. de la Torre abstained from the vote approving the APA.

> Attorney General expects that such funds will not simply replace funds previously committed from RCAB's own accounts. On the basis of the foregoing, the Attorney General finds that the terms and conditions of the Stewardship Agreement are not inconsistent with the Archbishop's fiduciary obligations to Caritas under the Governance Agreement or Massachusetts law."

In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and G. L. c. 180, § 8A (*d*), has required the various parties to enter into the following ancillary agreements to better ensure compliance with Transaction matters related to the public interest.

(a) An Enforcement Agreement, materially in the form attached to the "Statement of the Attorney General as to the Caritas Christi Transaction" ("Statement"), dated October 6, 2010, and filed with the court as Exhibit V (a), by and among the Attorney General, Caritas, and Steward with respect to the enforcement of certain post-closing provisions of the APA. Subsequent to the closing and its provision for the continued use of remaining assets and endowments, Caritas may not be in a position, nor have the resources, to monitor and enforce the post-closing obligations of Steward. The Attorney General's findings of public interest are expressly predicated on those obligations and, as such, she obtained from Steward and Caritas the right to enforce those provisions on behalf of the public.

(b) A Pension Enforcement Agreement, materially in the form attached to the Statement as Exhibit V (b), by and among the Attorney General, the Roman Catholic Archbishop of Boston, a corporation sole (RCAB), and the trustees of the RCAB Retirement Trust with respect to monitoring and enforcement of the RCAB Retirement Trust funding obligations of Steward, as set forth in the Pension Transfer Agreement by and among Steward, the RCAB Retirement Trust, and RCAB.

(c) An Assessment and Monitoring Agreement, materially in the form attached to the Statement as Exhibit V (c), between the Attorney General and Steward with respect to the scope, content, and funding of a five-year monitoring program of the impact of the Transaction on health care services, access, and cost, certain aspects of which will be conducted by the Department of Public Health consistent with G. L. c. 180, § 8A (*d*) (5).

(d) A Transition, Windup, and Reorganization Agreement, materially in the form attached to the Statement as Exhibit V (d), by and among the Attorney General, Caritas, and Steward with respect to identification, segregation, and future use of donor-restricted funds, and other corporate transition, windup, and reorganization matters concerning charitable entities and assets. While much of the Attorney General's and the public's focus has been on the assets to be transferred as part of the Transaction, there are assets that will not be transferred, including donor-restricted funds to be held and used for charitable purposes. Because Caritas and the other surviving Caritas entities will not have the resources or staff to assure an orderly reorganization and provision for future use of those assets, Steward has agreed to participate in that process and to fund it.

The Attorney General, being the only other party in this action, having appeared, answered, and assented to the complaint, and it appearing, based on the complaint and the assent and answer of the Attorney General filed herein, that: (1) the Transaction complies with applicable general nonprofit and charities law, (2) due care was followed by Caritas, (3) conflicts of interest were avoided or managed at all phases of decision making, (4) fair value will be received for the Purchased Assets, (5) the Transaction is in the public interest, and (6) that the terms negotiated by the RCAB in the Stewardship Agreement (copy attached as Exhibit I to the complaint) are consistent with the fiduciary obligations of the RCAB and the Roman Catholic Archbishop of Boston ("Archbishop") to Caritas under Massachusetts law and the Governance Agreement entered into between the Archbishop and the Attorney General dated May 22, 2008 (copy attached as Exhibit E to the complaint), it is hereby DECLARED, ORDERED, and ADJUDGED:

1. That the court hereby approves the Transaction, including the transfer of substantially all of Caritas' and the Affiliates' assets, liabilities, and operations in accordance with the terms of the APA and the four ancillary agreements aforesaid; and further, that Caritas and the Affiliates have full power and authority to convey the Purchased Assets to Steward, all in accordance with the terms and provisions of the APA and further subject to the terms and conditions of the four ancillary

agreements aforesaid; and further,

2. That Caritas and the Affiliates may approve and cause to be executed any and all documents and instruments that they deem reasonably necessary to effectuate the Transaction and perform their respective obligations in accordance with the APA, including the four ancillary agreements aforesaid. Fully executed attested copies of all agreements attached to the Complaint herein as exhibits shall be filed with the court within thirty (30) days of the closing; and further,

3. Pursuant to my authority under St. 2000, c. 141, § 34, all agreements attached to the Complaint herein as exhibits, including but not limited to, the APA and all schedules and amendments thereto, the four ancillary agreements, the Governance Agreement, and the Stewardship Agreement with schedules, are hereby incorporated by reference into this judgment, and all obligations thereunder shall become orders of this court at the time of closing; and further,

4. The parties may apply to this court from time to time for such further directions or orders as may be necessary.

By the Court, (Spina, J.)

Maura S. Doyle

Maura S. Doyle, Clerk

ENTERED: October 29, 2010