ORIGINAL

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FILED
MAY 19 2006
U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re	Case No. LA 05-22627-TD
	Chapter 11
WATTSHealth Foundation, Inc. dba UHP Healthcare, a California not-for-profit corporation,	**NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER WITH RESPECT TO DISCOVERY PROPOUNDED BY DEVELOPMENT SPECIALISTS, INC. IN CONNECTION WITH PROPOSED SALE OF DEBTOR'S LINES OF BUSINESS**
Debtor.	[Hearing Requested On Shortened Notice]
Tax I.D. No. 95-2623688	

TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES BANKRUPTCY JUDGE; THE DEBTOR; THE UNITED STATES TRUSTEE; AND ALL OTHER PARTIES ENTITLED TO NOTICE:

PLEASE TAKE NOTICE that at such date and time to be ordered by the United States Bankruptcy Court for the Central District of California, the Honorable Thomas B. Donovan presiding (the "Court"), upon the "Ex Parte Motion Under Local Bankruptcy Rule 9075-1(b) For Order Shortening Time For Hearing On Motion For Protective Order With Respect To Discovery Propounded By Development Specialists, Inc. In Connection With Proposed Sale Of Debtor's Lines Of Business" (the "Ex Parte Motion"), notice of which is to be provided by WATTSHealth Foundation, Inc. dba UHP Healthcare, debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), the Court will hold a hearing on this "Motion For Protective Order With Respect To Discovery Propounded By Development Specialists, Inc. In Connection With Proposed Sale Of Debtor's Lines Of Business" (the "Motion") filed by the Debtor.

Pursuant to this Motion, the Debtor requests that the Court enter a protective order precluding certain discovery sought by Development Specialists, Inc. ("DSI"), the trustee of the WATTSHealth Foundation Creditors Trust Agreement between the Debtor and DSI dated as of November 10, 2003 (the "Creditors' Trust"). On May 18, 2006, DSI issued a subpoena (the "Subpoena") in connection with the Debtor's motion [Docket No. 345] (the "Sale Motion") seeking approval for the sale of its lines of business and certain related relief (the "Sale"). The Subpoena purports to command: (a) a representative of Care 1st Health Plan ("Care 1st"), the

proposed purchaser for the Sale, to appear at a deposition; and (b) Care 1st to produce certain documents.

As set forth in greater detail in section IV(A)(1) of the "Joint Stipulation Re: Discovery Dispute Between Debtor And Development Specialists, Inc., Filed Pursuant to L.B.R. 9013-1(c)" (the "Joint Stipulation")[1] prepared by the Debtor and DSI, the proposed discovery is irrelevant, unnecessary and inappropriate. The Debtor and Care 1st have provided the Court (and all interested parties) with an ample factual record to support the relief requested in the Sale Motion. The Subpoena is focused on a specific section of the Asset Purchase Agreement ("APA") between the Debtor and Care 1st, which section provides for a "charitable contribution" to be made by Care 1st to the Debtor. Given the Debtor's status as a California 501(c)(3) not-for-profit corporation, the nature, purpose, intent and propriety of this term of the APA is clear on its face, without the need for factual discovery. To the extent that DSI (or any other party) may assert legal theories premised this term of the APA, the Court can weigh the merits of such theories in determining whether or not to approve the Sale as a matter of law. Particularly given the tardiness with which DSI raised this issue and the heavy cost that it poses for the Debtor's estate, the Court should grant this Motion and preclude DSI from proceeding with the proposed discovery.

A copy of this Motion was served on the interested parties on May 19, 2006. This Motion is based on Federal Rule of

[1] A copy of the Joint Stipulation is attached as Exhibit "1" to this Notice and Motion.

Civil Procedure 26, Local Bankruptcy Rule 9013-1, this Notice of Motion and Motion, the Joint Stipulation, such other and further evidence as may be admitted at the hearing on the Motion and upon all of the records and files in this case.

PLEASE TAKE FURTHER NOTICE that the Debtor has requested, pursuant to the separately filed Ex Parte Motion, that this Motion be heard on shortened time pursuant to Local Bankruptcy Rule 9075. Upon the Court granting the Ex Parte motion, the Debtor will provide notice to interested parties of the date and time of the hearing on the Motion and the time by which parties must file any opposition to the relief requested in the Motion.

WHEREFORE, the Debtor respectfully requests that the Court enter a protective order: (i) precluding DSI from proceeding with the Deposition and the Document Requests; (ii) quashing the Subpoena; and (iii) granting such other and further relief as the Court may deem just and proper.

DATED: May 19, 2006

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re WATTSHealth Foundation, Inc. dba UHP Healthcare, a California not-for-profit corporation, Debtor. Tax I.D. No. 95-2623688	Case No. LA 05-22627-TD Chapter 11 **JOINT STIPULATION RE: DISCOVERY DISPUTE BETWEEN DEBTOR AND DEVELOPMENT SPECIALISTS, INC., FILED PURSUANT TO L.B.R. 9013-1(c)** [Hearing Requested On Shortened Notice]

I.

INTRODUCTION

WATTSHealth Foundation, Inc. dba UHP Healthcare, debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor") and Development Specialists, Inc. ("DSI"), solely in its capacity as trustee of the WATTSHealth Foundation Creditors Trust Agreement between the Debtor and DSI dated as of November 10, 2003 (the "Creditors' Trust"), through their undersigned counsel, hereby submit this Stipulation to the Court pursuant to Local Bankruptcy Rule 9013-1(c).

The Debtor and DSI are engaged in a discovery dispute regarding a subpoena (the "Subpoena") issued by DSI in connection with the Debtor's motion [Docket No. 345] (the "Sale Motion") seeking approval for the sale of its lines of business and certain related relief (the "Sale"). The Subpoena purports to command: (a) a representative of Care 1st Health Plan ("Care 1st"), the proposed purchaser for the Sale, to appear at a deposition; and (b) Care 1st to produce certain documents. DSI asserts its desire to conduct discovery and be heard with respect to the Sale Motion based upon its status as the holder of a disputed claim against the Debtor's estate. The Debtor asserts its right to be heard with respect to the proposed discovery based upon the potential expense to the estate and the potential impact on the Sale thereof.

The Debtor and DSI have had a "meet and confer" in compliance with L.B.R. 9013-1(c)(1), but have been unable to resolve all of their differences to date. Accordingly, contemporaneously herewith the Debtor is filing its "Motion For Protective Order With Respect To Discovery Propounded By

Development Specialists, Inc. In Connection With Proposed Sale Of Debtor's Lines Of Business" (the "Protective Order Motion").

The Debtor and DSI submit this Stipulation in accordance with L.B.R. 9013-(1)(c)(2) in order to provide the Court with a summary of (a) the facts as agreed by the parties; (b) the issues that the parties have been able to consensually resolve; (c) the issues that the parties have been unable to resolve; and (d) each party's contentions with respect to these unresolved issues.

II.

AGREED FACTS

1. On April 24, 2006, the Debtor filed the Sale Motion with the Court and served copies of the Sale Motion, via U.S. Mail, on several interested parties, including DSI and its counsel.

2. Concurrently with the Sale Motion, the Debtor filed and served the Declaration of Johnny D. Griggs in support thereof (the "Griggs Declaration"). Attached as Exhibit "1" to the Griggs Declaration was a copy of the Asset Purchase Agreement between the Debtor and Care 1st (the "APA").

3. By the Sale Motion, the Debtor is seeking approval for the Sale pursuant to the APA, subject to overbid.

4. On May 2, 2006, the Court entered an order (the "Sale Procedures Order") that, among other relief: (a) set a hearing on the Sale for 2:00 p.m. on June 7, 2006 (the "Sale Hearing"); and (b) established May 24, 2006 as the deadline for parties to file objections to the Sale (the "Objection Deadline").

5. On May 8, 2006, the Debtor served via U.S. Mail a notice of the Sale, including a copy of the Sale Procedures Order, on various interested parties, including DSI and its counsel.

6. On May 18, 2006, DSI issued the Subpoena to Anna Tran, as a representative of Care 1st.

7. The Subpoena commands Ms. Tran's attendance at a deposition to be conducted on May 22, 2006 at 10:00 a.m. (the "Deposition").

8. The Subpoena further commands Care 1st to produce, by 10:00 a.m. on May 22, 2006, documents responsive to the following requests (the "Document Production"):

> *1. Any and all Documents reflecting, referring or relating to Section 2.5 of the [APA].*
>
> *2. Any and all Documents reflecting, referring or relating to a charitable contribution to Debtor in connection with the [APA].*

9. Section 2.5 of the APA provides:

> Commencing on the thirtieth (30th) day after the closing of the Bankruptcy Case, and payable thereafter on the anniversary of that date for the next four (4) years, Buyer shall make a charitable contribution of One Hundred Thousand Dollars ($100,000) per year to Seller, for a total charitable contribution of Five Hundred Thousand Dollars ($500,000), to be used for such purposes as Seller determines to be consistent with its corporate governance documents and applicable law.

10. On May 18, 2006, counsel for the Debtor: (a) advised counsel for DSI of the Debtor's position that the discovery sought via the Subpoena was both unnecessary and inappropriate; and (b) requested that counsel for DSI "meet and confer" pursuant to Local Bankruptcy Rule 9013-1(c)(1). On May 18, 2006, counsel for the Debtor and counsel for DSI conferred by telephone in an attempt to resolve their disputes regarding the Subpoena. The parties were

not able to resolve all of their disputes, and counsel jointly prepared this Stipulation.

III.

ISSUES PREVIOUSLY RESOLVED BY THE PARTIES

A. Timing of Requested Discovery.

1. The Debtor and DSI have agreed that: (a) if the Court resolves the Protective Order Motion on or prior to May 26, 2006, then solely to the extent that the Court permits either or both of the Deposition and the Document Production to go forward, and subject to a reservation of all rights with respect to the content thereof, the date and time for the Deposition and/or the Document Production will be 11:00 a.m. on May 30, 2006; and (b) if the Court does not resolve the Protective Order Motion on or prior to May 26, 2006, then the Debtor and DSI reserve all of their respective rights with respect to the timing and any other aspect of the Deposition and the Document Production.

B. The Objection Deadline.

2. The Debtor and DSI have agreed that, notwithstanding that the Deposition and the Document Production will not proceed prior to the Objection Deadline, if at all, DSI will remain bound by the Objection Deadline as set forth in the Sale Procedures Order; provided, however, that, in the event that the Court permits the Deposition and/or the Document Production to go forward, then DSI shall be entitled to supplement any objection filed by DSI on or prior to the Objection Deadline solely by seeking to introduce any new evidence obtained from the Document Production and/or the Deposition, if any, and any argument in connection therewith, by filing with the Court and serving on the Debtor and Care 1st notice

and copies of such evidence on or prior to the first to occur of: (a) the later of (i) June 1, 2006, and (ii) two (2) business days after the Deposition and the Document Production take place; and (b) one business day prior to the Sale Hearing.

C. Request For The Protective Order Motion To Be Heard On Shortened Time.

The Debtor and DSI have agreed to request that, subject to the Court's availability, the Protective Order Motion be heard on shortened time during the week of May 22, 2006.

IV.

ISSUES UNRESOLVED BY THE PARTIES AND THE PARTIES' CONTENTIONS WITH RESPECT THERETO

A. Whether Or Not The Deposition And The Document Production Are Relevant, Necessary, And Appropriate.

1. The Debtor's Position: The facts presented, and the controlling law, unequivocally establish that the discovery sought by DSI in connection with the Subpoena is entirely irrelevant, unnecessary and inappropriate.

a. The proposed discovery is irrelevant.

By its own express terms, the Document Production focuses exclusively on the "charitable contribution" aspect of the Sale, as reflected in section 2.5 of the APA. Moreover, the Debtor understands the scope of the Deposition to be similarly limited to this one specific Sale term. Indeed, it is the Debtor's further understanding that, other than alleged legal theories solely premised on section 2.5, DSI has no objection to the Court approving the APA and authorizing the Debtor to consummate the Sale to Care 1st.

As DSI's concerns regarding section 2.5 of the APA are legal in nature, they do not require factual discovery and development. The "charitable contribution" memorialized in section 2.5 of the APA is one of numerous integrated terms that make up an extremely complex Sale transaction. The Official Committee of Unsecured Creditors (of which DSI is a member and a Co-Chair), has urged the Debtor to pursue such a Sale transaction since the very early stages of this case. The facts of this matter are that the Debtor and Care 1st negotiated the APA in good faith over the course of several months of arms' length negotiations, the proposed Sale has been approved by the Debtor's Board of Directors, and the APA is far and away the highest and best option available to maximize value for the Debtor's estate. These facts are amply supported in the record, as set forth in the Declarations of Johnny D. Griggs and Bradley A. Lang previously filed in support of the Sale Motion, and as set forth in the Declaration of Anna Tran in support of the Sale Motion (the "Tran Declaration"), which is being filed concurrently with the Protective Order Motion.

Given this extensive factual record regarding the negotiation of the APA, neither the factual background, if any, regarding a particular term of the APA, nor the past, present or future beliefs, thoughts, or intentions of the Debtor, Care 1st or any other party with respect to any particular term of the APA is relevant to the Court's ruling on the Sale Motion. The APA (including section 2.5) speaks for itself. The purpose of the Sale Hearing is for the Court to decide whether or not to approve the proposed Sale; it is not an open forum to renegotiate specific terms of the APA. Parties can make legal arguments regarding

section 2.5, and the Court can weigh the merits of such arguments in determining whether or not to approve the Sale, without reference to any historical information. No factual discovery is required for DSI to argue (if it so chooses) that the Sale should not be approved because of the charitable contribution feature of section 2.5 of the APA. Thus, the discovery sought by DSI is irrelevant to the issue that will be before the Court at the Sale Hearing - whether or not to approve the proposed Sale.

b. The proposed discovery is unnecessary.

In addition to being irrelevant, the discovery sought by DSI is unnecessary. The Debtor's status as a California 501(c)(3) not-for-profit corporation is well known, particularly to DSI (having served as trustee under the Creditors' Trust since 2003). As such, it should come as no surprise that the proposed Sale transaction includes a charitable contribution consistent with the Debtor's not-for-profit mission. DSI does not need discovery (from Care 1st or otherwise) to understand why section 2.5 is an appropriate and material part of the APA— charitable service to the community is the most fundamental aspect of the Debtor's organizational purpose.

Moreover, the Tran Declaration confirms that Care 1st (and not the Debtor) proposed the charitable contribution reflected in section 2.5 of the APA, and that the Debtor did not condition its acceptance of any offer on Care 1st making a charitable contribution to the Debtor.[1] As such, the factual record before

[1] Counsel for the Debtor informed counsel for DSI of this fact during the parties' "meet and confer" teleconference on May 18, 2006, but DSI insisted on proceeding with the Subpoena.

the Court already forecloses any insinuation that the terms of section 2.5 (or the concept of a charitable contribution in general) are anything less than perfectly appropriate. In fact, it would be strange indeed if the same community medical providers who will benefit from the Sale (i.e. the Creditors' Trust beneficiaries) were not openly supportive of the demonstrated willingness of Care 1st to make a charitable contribution to benefit the health needs of the Debtor's community. Therefore, the discovery sought by DSI is completely unnecessary.

c. The proposed discovery is inappropriate.

In addition to, and because of, the irrelevant and unnecessary nature of the discovery sought by DSI, the proposed discovery also is simply inappropriate. The Debtor served the Sale Motion and a copy of the APA on April 24, yet DSI waited for over three weeks to notify the Debtor and Care 1st of its desire to take discovery regarding section 2.5, and then provided only four days' notice of the Deposition and the Document Production. In addition, DSI deliberately chose to subpoena the Debtor's proposed purchaser, Care 1st, rather than the Debtor, regarding a provision of the APA that clearly provides its primary benefit to the Debtor.[2]

Moreover, the financial burden of the discovery propounded by DSI and directed at Care 1st has the potential to weigh heavily on the Debtor and its estate. The Debtor undeniably would need to expend valuable time and incur the expense of having

[2] The Debtor understands that Care 1st agreed to accept service of the Subpoena via email and to make Ms. Tran available for the Deposition in order to avoid the cost of engaging in a discovery dispute with DSI (and because Care 1st has nothing to hide regarding section 2.5 of the APA).

its own professionals monitor any discovery conducted pursuant to the Subpoena. The estate also would be footing the bill for the Committee's professionals to monitor the Deposition and/or Document Production. In addition, if Care 1st became entitled to a break-up fee under the Sale Procedures Order, the fees and expenses incurred by Care 1st's professionals in connection with the Subpoena also could end up being charged against the estate. Even the fees and expenses incurred by DSI's professionals in connection with the Subpoena could (in theory) effectively be borne by the estate; any expenses incurred by DSI, to the extent appropriately paid from the Creditors' Trust assets, would reduce the amount of those assets available to satisfy the claims of the Creditors' Trust beneficiaries, thereby increasing the amount of the claim asserted on their behalf against the Debtor's estate.[3]

Accordingly, because the discovery sought by DSI offers no benefit to the Court's determination of the Sale Motion, and poses a substantial burden for the Debtor's estate, the Court should grant the Protective Order Motion.

2. DSI's Position: DSI seeks to conduct very limited, tailored discovery with respect to one very unusual and troubling provision of the proposed Asset Purchase Agreement. Section 2.5, set forth verbatim above, diverts $500,000 of the proceeds of estate assets away from the estate and its creditors and to the Debtor itself after the bankruptcy case is closed. DSI believes that the provision requires very close scrutiny. Accordingly, DSI wishes to depose Anna Tran, the person most

[3] The Debtor reserves any and all rights with respect to these matters.

knowledgeable at Care 1st (and obtain documents) regarding the genesis of Section 2.5. Care 1st does not object to the deposition, although it does object to the document request.

Pursuant to Federal Rule of Bankruptcy Procedure 7026(b)(1), DSI "may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . ." Further, "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* The concept of relevancy for discovery purposes is very broad. As the Supreme Court noted, "the key phrase in this definition - 'relevant to the subject matter involved in the pending action' - has been construed broadly to encompass any matter that bears on, or that could reasonably lead other matter [sic] that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc., et. al. v. Sanders et. al.*, 437 U.S. 340, 350 (1978) (*citing Hickman v. Taylor*, 392 U.S. 495, 501 (1947)). In fact, "a matter is regarded as relevant so long as it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement of the case." *In re Advanced Interventional Systems Securities Litigation*, 1993 U.S. Dist LEXIS 21398. *See also Miller v. Pancucci*, 141 FRD 292, 296 (D. Cal. 1992) (Rule 26(b)(1) is to be construed broadly).

Factual issues surrounding the $500,000 payment to the Debtor under the Asset Purchase Agreement are relevant to Debtor's good faith in proposing the agreement, and, accordingly, to whether the Court should approve the agreement. As Debtor articulates in its motion to approve the proposed sale (the "Sale Motion"),

"although Bankruptcy Code section 363(b) does not explicitly require good faith, courts have also required that a sale be made in good faith." Sale Motion, p. 31, l8-10 (citation omitted). Further according to Debtor, "the analysis of whether a proposed sale is in 'good faith' focuses primarily on the element of special treatment of the Debtor's insiders in the sale transaction" Sale Motion, p.31, l.12-15 (citations omitted). Similarly, Debtor seeks a good faith finding under Bankruptcy Code section 363(m). In connection with its request, Debtor notes that "lack of good faith for purposes of Bankruptcy Code section 363(m) is generally determined by the existence of fraudulent conduct or insider dealing during the sale process." Sale Motion, p. 45, l.2-5 (citation omitted).

Here, the diversion of sale proceeds to the Debtor and away from creditors and the estate certainly raises the specter of "special treatment of the Debtor's insiders in the sale transaction", as well as "insider dealing during the sale process". In order to evaluate the provision and its impact on the sale process, to assist DSI in formulating an appropriate response, to help determine the ultimate issue of whether the sale should be approved, and perhaps, to facilitate a settlement of DSI's objection, it is more than appropriate and well within the broad scope of the rules to inquire regarding the genesis of the provision.

V.

CONCLUSION

The parties will seek resolution to the foregoing issues at the hearing on the Protective Order Motion.

DATED: May 19, 2006

GARY E. KLAUSNER,
MICHAEL H. GOLDSTEIN and
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DATED: May 19, 2006

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Inc.

DECLARATION OF SERVICE

I am over the age of 18 years and not a party to the within action. I am employed in an office that employs a member of the bar of this court, at whose direction the within service was made. My business address is Stutman, Treister & Glatt , Professional Corporation, 1901 Avenue of the Stars, 12th Floor, Los Angeles, CA 90067-6013.

On May 19, 2006, I served the following pleading:

NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER WITH RESPECT TO DISCOVERY PROPOUNDED BY DEVELOPMENT SPECIALISTS, INC. IN CONNECTION WITH PROPOSED SALE OF DEBTOR'S LINES OF BUSINESS

on the interested parties in this action by: (1) placing true copies thereof, enclosed in sealed envelopes for next day business delivery by Federal Express for next business-day deliver; or; (2) placing true copies thereof, enclosed in sealed envelopes, with first class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

PLEASE SEE THE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2006, at Los Angeles, California.

Cheryl R. Woods

Cheryl R. Woods, Declarant

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Request for Special Notice
SunGard Availability Services LP
Attn: Maureen A. McGreevey, Esq.
680 E. Swedesford Road
Wayne, PA 19087

Request for Special Notice
The Huntington Beach VHS LP dba Huntington Beach Hospital
c/o Greg Ozhekim
Nemecek & Cole
15260 Ventura Blvd., Suite 920
Sherman Oaks, CA 91403

Request for Special Notice
Attys for AltaMed Health Services Corp.
Waterman Convalescent Hospital
Arthur Khachatourians
Tyler & Wilson LLP
5455 Wilshire Blvd., Suite 1925
Los Angeles, CA 90036

Lester L. Jones, Esq.
Williams, Yasinski & Jones LLP
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Los Angeles, CA 90013-1010

Interested Party
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Los Angeles, CA 90067

Request for Special Notice
Steven A. Oldham, Esq.
State of Cal. Dept. of Health Services
MS 0010
PO Box 997413
Sacramento, CA 95899-7413

Request for Special Notice
VHS of Orange County, Inc. dba La Palma Intercommunity Hospital
c/o Greg Ozhekim
Nemecek & Cole
15260 Ventura Blvd., Suite 920
Sherman Oaks, CA 91403

Request for Special Notice
Attys for AltaMed Health Services
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Request for Special Notice
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