

Nos. 13-cv-348 & 13-cv-358

**IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS**

District of Columbia,
Department of Insurance, Securities and Banking,
Petitioner and Appellee,

vs.

D.C. Chartered Health Plan, Inc.,
Respondent and Appellee,

D.C. Healthcare Systems, Inc.,
Party in Interest and Appellant.



Appeal from an Order Approving an Asset Purchase Agreement
and Appeal from an Order denying a Stay Pending Appeal
Superior Court Civil Division Civil Action No. 2012-CA-8227-2
The Honorable Melvin R. Wright

**REPLY SUPPORTING
MOTION TO CONSOLIDATE
AND EXPEDITE RELATED APPEALS**

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I. CONSOLIDATION IS WARRANTED AND UNOPPOSED

All parties agree that as a matter of judicial economy and efficiency for this Court and the parties, these two related pending appeals (Nos. 13-cv-348 and 13-cv-358), which share the same underlying record, should be consolidated for purposes of briefing, argument and decision.

II. THESE APPEALS SHOULD BE EXPEDITED

Appellees (collectively, “the Rehabilitator”) do not oppose expediting these appeals for purposes of priority in calendaring oral argument after briefing. Briefing too, however, should be expedited.

Appellant DCHSI has already prepared a comprehensive appendix for use in both appeals that includes all possibly relevant documents and the one relevant reporter’s transcript. This three volume appendix totals 922 pages. Accordingly, the record here is not unusually voluminous. Indeed, it is worth noting that the record leading up to the first order on appeal is less than 300 pages—and consists almost entirely of the Rehabilitator’s filings, — because the trial court entered that order without notice that there would be a hearing on the merits, without briefing, without discovery, and without any formal introduction of evidence. In sum, the record here consists of the 50-page reporter’s transcript from a single hearing and the briefing for two motions; to the extent the record could be viewed as “somewhat voluminous” (Response at 3-4), that is only because certain supporting exhibits are lengthy charts and reports unlikely to require detailed examination. Further, this case is not particularly “complex” (Resp. at 3) — the two orders on appeal are only a total of eight pages long.

Because DCHSI has finished preparing its appendix, it will be able to file its opening brief within a matter of weeks. DCHSI does not request that the Rehabilitator’s briefing time be unduly “shortened” — the ordinary 30 days is appropriate. That ordinary time also should be sufficient as the parties are well familiar with the issues. Accordingly, no extensions of time should be granted absent extraordinary circumstances.

Expediting these appeals is warranted because the transfer of Chartered's key assets that the Superior Court authorized is, based on public reports, due to take place May 1, 2013. *See, e.g.,* http://www.washingtonpost.com/local/dc-politics/chartered-could-owe-dc-health-providers-85-million/2013/04/19/b2a55096-a924-11e2-a8e2-5b98cb59187f_story.html. The transaction can be unwound, but the passage of time will only make it harder to effectuate injunctive relief. As Appellant DCHSI will show, monetary relief is inadequate, but if the briefing is not expedited as proposed that may be all that is left to DCHSI.

Finally, the Rehabilitator should not be heard to complain of expediting the appellate schedule given that the Rehabilitator sought and obtained expedited treatment of its motion in the Superior Court. *See* Rehabilitator's Petition for Order Approving the Asset Purchase Agreement on or before March 5, 2013, filed February 22, 2013.¹ For the Rehabilitator to rush the trial court proceedings to get his "win," but now object to expediting the appeal of the matter is hypocritical.

III. THERE HAS BEEN NO "DELAY" IN RAISING ANY ISSUES

In a transparent attempt to preemptively poison the well with respect to the merits, the Rehabilitator's Response charges DCHSI with "delay in raising ... issues below." (Resp. at 4.) This argument is unsupported and irrelevant. Nonetheless, DCHSI cannot leave these charges unrefuted, at least preliminarily.

The Rehabilitator argues that he publicly announced that he would have Chartered not bid on a new Medicaid contract with DHCF on December 3, 2012 — but that DCHSI then delayed for over three months to seek relief in court. This portrayal is neither fair nor accurate. DCHSI acted diligently under the circumstances (as will be set forth, if necessary, in its briefing). More importantly, however, the focus of these appeals is not on the December 3 announcement, but rather on the sale of Chartered's material, revenue-generating assets without

¹ Copies of these filings are available on the D.C. Department of Insurance, Securities and Banking website at <http://disb.dc.gov/node/344592>.

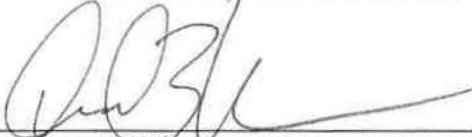
notice to or consent of DCHSI, Chartered's creditor and sole shareholder, and without due process or an adequate record.

IV. CONCLUSION

This Court should consolidate DCHSI's two appeals and order expedited briefing (barring extensions absent extraordinary circumstances) and priority calendaring for oral argument so that the consolidated appeal may be heard and resolved as quickly as possible.

April 25, 2013

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A handwritten signature in black ink, appearing to read 'DK', with a horizontal line underneath it.

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