

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

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:   
DISTRICT OF COLUMBIA : Docket Number: 2012 CA 008227  
:   
Plaintiff, :   
:   
vs. :   
:   
DC CHARTERED HEALTH PLAN, :   
:   
Defendant. :   
: Friday, March 1, 2013  
----- x Washington, D.C.

The above-entitled action came on for a hearing  
before the Honorable MELVIN R. WRIGHT, Associate Judge, in  
Courtroom Number 519.

APPEARANCES:

On Behalf of the Plaintiff:

LOUISE PHILLIPS, Esquire  
DANIEL WATKINS, Esquire  
CHARLES RICHARDSON, Esquire  
Assistant Attorney General  
for the District of Columbia

On Behalf of the Defendant:

DAVID B. KILLALEA, Esquire  
JENNIFER SINCAVAGE, Esquire  
Washington, D.C.

13-01151

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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Your Honor, calling the  
3 matter of the District of Columbia versus D.C. Chartered  
4 Health Plan, Inc., 2012 CA 8227. Parties please state  
5 your names for the record.

6 MS. PHILLIPS: Louise Phillips, Assistant  
7 Attorney General for the District of Columbia, and with me  
8 is Daniel Watkins and Charles Richardson. Daniel Watkins  
9 is a special deputy to the rehabilitator and Mr.  
10 Richardson is counsel to the rehabilitator.

11 THE COURT: Good afternoon.

12 MR. KILLALEA: Good afternoon, Your Honor.  
13 David Killalea on behalf of D.C. Health Care Systems,  
14 Inc., from Manatt, Phelps and Phillips with my colleague  
15 Jennifer Sincavage.

16 THE COURT: Good afternoon to you as well.

17 MR. KILLALEA: Thank you, Your Honor.

18 THE COURT: All right. We're here at the, this  
19 is a request for an expedited hearing. Is this something  
20 that someone just filed? Is this the order?

21 MS. PHILLIPS: No. Your Honor, that is the,  
22 something new that's happened since we submitted the  
23 second status report. I believe it might be the dismissal  
24 of the CAB action that we discussed in the second and the  
25 first status report.

1 I believe that's what it is, and I handed it up  
2 because that's the only thing that's happened that's new  
3 with regard to the litigations, other litigations that I  
4 know about, and that's happened since we filed last  
5 Friday.

6 THE COURT: I see. Okay. I just saw it sitting  
7 on here and it had the same names, so I just wondered.  
8 Okay. All right, I've received the, the request by the  
9 District of Columbia. I've seen the opposition that's  
10 been filed, and the response, and I have a couple of  
11 questions for both sides actually.

12 One of the reasons that the, the approval of the  
13 plan is opposed is an allegation that the need for the  
14 contract to be completed by April 1st. So, let's address,  
15 and then the other, one of the other questions that I have  
16 is, if I remembered reading from the prior status reports  
17 that there were some bids placed, or sought for the sale  
18 of the, of the, of the business, and I think this is  
19 clear, but I just want to make sure. There was only one  
20 contract as a result of those submissions of bids.

21 MS. PHILLIPS: Your Honor, if I may have this,  
22 the special deputy to the rehabilitator speak on all your  
23 questions that are substantive like this?

24 THE COURT: Sure.

25 MS. PHILLIPS: Thank you. Mr. Watkins.

1 THE COURT: Yes.

2 MR. WATKINS: Your Honor, on the first, on the  
3 second question on bids, the Department of Health Care  
4 Finance, and the Office of Contracts and Procurements set  
5 up a process for a new five year contract. Bids were due  
6 on December 3rd. The Department of Health Care Finance  
7 said that they were going to select three MCO's with which  
8 to contract, and that the intended to make decisions in  
9 the middle of January, and submit contracts to the counsel  
10 in February.

11 THE COURT: Okay, and so this, and so what was  
12 the result of the bids that were requested?

13 MR. WATKINS: We don't know. That's a  
14 confidential process run by ICP.

15 THE COURT: I see. So, it's run by a third --

16 MR. WATKINS: And AmeriHealth Mercy is the one  
17 who submitted the bid utilizing Chartered employees, and  
18 expertise, and so they are the ones who bid, and who would  
19 be involved in negotiations with the District if they were  
20 selected as one of the contractees.

21 THE COURT: Okay. All right, and can you  
22 address the issue regarding the time period?

23 MR. WATKINS: Yes, Your Honor. We're trying to  
24 transition. If all of the conditions at closing are met,  
25 one of which and the first is the approval of a contract.

1 THE COURT: Right.

2 MR. WATKINS: We're trying to transition 100,000  
3 beneficiaries, 5000 provides and 160 employees to a new  
4 entity that would be starting a new contract May 1st. So,  
5 you can't do that overnight. All of the conditions that  
6 are required, this being the most important one to get an  
7 approval, also requires an assignment of a contract  
8 approved by the Department of Health Care Finance. It has  
9 many other closing conditions, some of which are set up in  
10 the second status report.

11 THE COURT: Okay. All right. In regards to the  
12 opposition to this expedited hearing, and the approval of  
13 a contract. I have read your opposition. If I understand  
14 it correctly you're saying that, well, if I understand  
15 correctly the sole income for the corporation is Medicaid  
16 contract, right?

17 MR. KILLALEA: Derivatively from that, Your  
18 Honor, the, our client, Department of D.C. Health Care  
19 Services, Inc., or DCHSI has one source of revenue, and  
20 that is Chartered.

21 THE COURT: Right.

22 MR. KILLALEA: It's sources, it has two sources  
23 of revenue with regard to Chartered.

24 THE COURT: Uh-huh.

25 MR. KILLALEA: One is DCHSI is the lessor of the

1 building that Chartered presently occupies.

2 THE COURT: Uh-huh.

3 MR. KILLALEA: The proposed agreement attempts  
4 to affect essentially a breach of that contract in the  
5 middle of the lease term it will leave DCI without that  
6 income stream. So, DCHSI is a creditor in this  
7 proceeding.

8 In addition DCHSI is the sole shareholder of  
9 Chartered, and so to the extent there are --

10 THE COURT: So, you're the parent company?

11 MR. KILLALEA: In effect.

12 THE COURT: Right.

13 MR. KILLALEA: So, we're entitled to dividends.  
14 So, to the extent there are dividends to be had.

15 THE COURT: Well, that was going to be my  
16 question. Where do you get the dividends from if your  
17 company, if the, as I understand the pleadings, the income  
18 that's derived by Chartered is from the Medicaid contract.

19 MR. KILLALEA: Correct.

20 THE COURT: And the Medicaid contract is not  
21 going to be honored by the District, it's not, the  
22 submission of a bid by Chartered to the District for that  
23 contract is not going to be approved unless Chartered is  
24 either, sell, gets a new owner, right, or corrects its  
25 financial situation, right?

1 MR. KILLALEA: That is what apparently the  
2 Health Care Finance group has said.

3 THE COURT: All right.

4 MR. KILLALEA: It's not what's in the RFP, but  
5 it's what they've said.

6 THE COURT: So, you won't have this income  
7 stream anyway, right?

8 MR. KILLALEA: No, Your Honor, and let me back  
9 up if I may. Number one the opposition that we filed to  
10 which you refer is not in our opposition on the merits.  
11 That's what we've asked for the opportunity to file.

12 THE COURT: So, what are the merits?

13 MR. KILLALEA: Well, the merits are, this is,  
14 this is kind of interesting. This is in my experience,  
15 and in our research, an absolutely unprecedented situation  
16 in the annals of the United States rehabilitation  
17 proceedings. I thought that would interest you and it's  
18 true.

19 THE COURT: Yes, but --

20 MR. KILLALEA: And here's why.

21 THE COURT: -- that's what is in compliance with  
22 the statute.

23 MR. KILLALEA: It is not. It is dead --

24 THE COURT: Why is it not in compliance with the  
25 statute?

1 MR. KILLALEA: -- dead contrary to the statute.  
2 Well, here's the interesting thing. This is a problem of  
3 the District Government's making in the entirety, and the  
4 reason is because the rehabilitator has now shown us in  
5 his filing that the District owes Chartered \$60 million  
6 for services rendered under the contract.

7 THE COURT: But that's disputed isn't it?

8 MR. KILLALEA: I don't know if it's disputed.  
9 It's a claim that they've made pursuant to the process.

10 THE COURT: Well, they're not handing you a  
11 check for \$60 million.

12 MR. KILLALEA: The District Government has never  
13 in its history simply handed over Government, over, excuse  
14 me, handed over a check in response to a repeated decades  
15 of history of these retrospective rate adjustments.

16 I mean what happens is a third party Mercer  
17 comes in and sets rates under these contracts for what,  
18 the work to be performed. It's not negotiated really  
19 between the District and Chartered, or United, or the  
20 other providers. It's set by Mercer, and Mercer has come  
21 out and said that when the district council in 2010  
22 imposed new costs on the health care providers by taking  
23 very high risk populations and putting them on the  
24 Chartered rolls, and by requiring pretty expensive  
25 medications and the like to be provided for this high risk

1 population, that that wasn't within the rates that they  
2 initially set.

3 That's how Chartered got into financial troubles  
4 was because financial demands were required. New, tens of  
5 millions of dollars of financial obligations were imposed  
6 unilaterally by the District onto Chartered, and they  
7 haven't been paid for that yet. That's where the hole  
8 came from.

9 THE COURT: Why wouldn't the remedy then be to  
10 file a lawsuit against the District of Columbia when that  
11 occurred?

12 MR. KILLALEA: Well, because there is an  
13 administrative process, which has been followed, and the  
14 rehabilitator has now filed that claim for, what the count  
15 as \$60 million, but if that \$60 million is due and  
16 collected, Chartered isn't even close to being short on  
17 its capital requirements.

18 There's, there would be excess money. Indeed  
19 even if --

20 THE COURT: Why isn't that speculative? You're  
21 talking about if you recover. The question isn't if you  
22 recover. We're talking about an operation, a health care  
23 organization, which isn't going to operate why we wait for  
24 the 60 million that you say is owed to you, and so why  
25 wouldn't that be a lawsuit that you could claim, or file

1 and claim damages if the District has done what you have  
2 said?

3 MR. KILLALEA: Well, Your Honor, I think it may  
4 be important to note, and this is again disclosed in the  
5 rehabilitators, the audited financial statements that the  
6 rehabilitators had done as of the end of 2011 that  
7 Chartered at that time met or exceeded the minimum net  
8 worth, the insolvency reserve and the deposit balance  
9 requirements set by the District.

10 THE COURT: This is when?

11 MR. KILLALEA: This was as of the end of 2011,  
12 and, no, and the picture's gotten better since.

13 THE COURT: Okay.

14 MR. KILLALEA: The reserves have increased  
15 since.

16 THE COURT: Well, that's not what the --

17 MR. KILLALEA: Sure. It was \$5.9 million at the  
18 end of 2011. If you --

19 THE COURT: It was how much?

20 MR. KILLALEA: \$5.9 million. If you look at  
21 the, at the 2011 audited financial statement, which was an  
22 exhibit to the first status report I believe, and if you  
23 look at the September 30th financial statement that was  
24 submitted --

25 THE COURT: September 30th of what year?

1 MR. KILLALEA: 2012.

2 THE COURT: Uh-huh.

3 MR. KILLALEA: That was submitted I believe with  
4 the second status report, you'll see that Chartered's  
5 reserves during that period went from 5.9 million to 9  
6 million.

7 THE COURT: But does that meet the statutory  
8 requirement?

9 MR. KILLALEA: The statute requires that there  
10 be a minimum net worth. That there be an insolvency  
11 reserve. That there be a deposit balance requirement, and  
12 Chartered meets or exceeds all of those.

13 There is also this thing called risk based  
14 capital, which is a sliding scale calculation, and we  
15 haven't seen the calculation. That hasn't been disclosed  
16 to us by the rehabilitator, and it sets different sort of  
17 levels of Government involvement if you will, or  
18 regulatory oversight involvement at different numbers.

19 So, one of the things that we would be prepared  
20 to do in our opposition paper, Your Honor, is, on the  
21 merits that is, is to show that what Chartered's historic  
22 capital reserves, or what the auditors call stockholders  
23 equity have been over the years, and it ranges --

24 THE COURT: What relevance does that have? What  
25 relevance does past historical reserves have in terms of

1 what the situation is today?

2 MR. KILLALEA: Because Chartered continues to  
3 meet its obligations today to enrollees, to providers.  
4 Enrollees are being provided for. Providers are being  
5 paid. This I not a situation where the community --

6 THE COURT: But that's not, that's not what the  
7 Court is to look at, not whether they are being -- the  
8 question that the statute talks about is whether you have  
9 the reserves --

10 MR. KILLALEA: Actually, Your Honor --

11 THE COURT: -- that are required by the  
12 statutes.

13 MR. KILLALEA: -- again, when we have the  
14 opportunity to brief this on the merits what we will  
15 show --

16 THE COURT: Well, you better give me something  
17 right now because you may not have an opportunity to brief  
18 this.

19 MR. KILLALEA: Well, Your Honor, then, I mean  
20 we'll have to take immediate action because we're entitled  
21 to as a matter of law. As a matter of law the  
22 rehabilitators singular goal, this is the statute and the  
23 order, is to use reasonable, all the reasonable best  
24 efforts he can to rehabilitate the company.

25 THE COURT: Correct. I agree with you there.

1                   MR. KILLALEA: He within six weeks having  
2 conducted a two-day bidding process to try to sell  
3 Chartered, a two-day bid went on his own and liquidated  
4 the company by deciding not to bid on the, on the Medicaid  
5 contract.

6                   He was not entitled to do that. As a matter of  
7 law he needed to first come to the Court and explain,  
8 Judge, you know we've spent, we've spent, you know, a good  
9 30 minutes looking at this situation, and we've concluded  
10 its futile. We can't fix it even though we have a \$60  
11 million claim against the Government, which if we  
12 collected would solve the problem outright.

13                   So, what we would like to do is we would like to  
14 convert this proceeding to a liquidation, and here is what  
15 we intend to do in the liquidation, and that would be done  
16 on notice, and interested parties, creditors,  
17 stockholders, could come in to Your Honor and object.

18                   We have been stripped of that ability by their  
19 actions in doing this in the dark, and frankly, Your  
20 Honor, you have been striped of your obligation, and duty,  
21 and privilege to review and make an independent assessment  
22 of what was being proposed before it was done was in the  
23 best interests of the interested parties.

24                   All of this has happened, and been set in motion  
25 without any due process, and that's the problem. They as

1 a matter of statute are not entitled to run off and  
2 convert the case into liquidation.

3 THE COURT: Okay. So, run me through the  
4 statute, and you've made some certain allegations. So,  
5 lay out for me, based upon the statute, where you feel  
6 that your due process rights have been violated.

7 MR. KILLALEA: Well, Your Honor, I wish I knew  
8 we were here on the merits today. I thought we were here  
9 on, on the request for a schedule.

10 THE COURT: Well, let me just say your own, part  
11 of the problem with your argument is that you gave me a  
12 page and a half opposition, which basically said very  
13 little.

14 MR. KILLALEA: Well, that's because we were simply  
15 asking for a status conference to set a schedule so we  
16 could file a brief, Your Honor, and I appreciate that but  
17 we got --

18 THE COURT: Well --

19 MR. KILLALEA: -- something on Friday that, I  
20 mean here's what happened. We got something on Friday at  
21 some point in the day that said we're asking for an  
22 emergency decision on the merits for a hearing schedule  
23 when I'm out of the country. So, I wanted Your Honor to  
24 immediately know that wait a minute we need to take a time  
25 out. There is interested parties here.

1                   This isn't a situation where there is no  
2 objection. We need to have an opportunity to be heard,  
3 and that's all, that's all I asked for was an opportunity  
4 to be heard.

5                   THE COURT: So, you are --

6                   MR. KILLALEA: Indeed the Government said, if  
7 I'm, the Government said okay if Killalea's going out of  
8 town let's let him file a brief a little later. Even they  
9 don't object to me filing a brief next week, and let's  
10 have a hearing the following week.

11                   THE COURT: Okay, and you are here on behalf of  
12 who?

13                   MR. KILLALEA: The shareholder, DCHSI.

14                   THE COURT: And are they a party to this  
15 lawsuit?

16                   MR. KILLALEA: They are a party in interest.  
17 When the initial pleading was filed, by the Government,  
18 they said DCHSI is a party in interest in this case, and  
19 typical in bankruptcy and insolvency proceedings that  
20 means yes.

21                   THE COURT: All right. So, what about --

22                   MR. KILLALEA: And we're a creditor.

23                   THE COURT: -- what about their contention that  
24 it requires, in their minds, immediate action in order to  
25 protect the policyholders and the servicers who have a

1 contract with D.C.

2 MR. KILLALEA: Well, a couple of things in that  
3 regard, Your Honor. Number one, there is, in fact the  
4 rehabilitator said it multiple times. The enrollees, the  
5 equivalent of policyholders in a commercial setting, if  
6 you will, are being, the analogy would be paid, they are  
7 being cared for.

8 Okay, the services are being provided, and the  
9 providers are being paid. So, you'll see, we have, we  
10 have case law that says the singular, it's in the context  
11 of a commercial policy rather than a, so what the case law  
12 will say is that the key thing is here is not a focus on  
13 reserves. In a rehabilitation the key thing is not a  
14 focus on reserves, it's a focus on are the policyholders  
15 being paid. The analogy here of course is are the  
16 enrollees being served, are the providers being paid, and  
17 the answer to that is yes number one.

18 Number two in terms of the timing, if the  
19 District awards this contract and it goes effective April  
20 30th, it will be, I think, the first time in 25 years that  
21 the contract has become effective on the originally  
22 announced effective date.

23 These contract extensions have happened annually  
24 almost without exception. So, this is not in any way  
25 extraordinary, and I'd also note, Your Honor, Ms. Phillips

1 handed up the decision on the bid protest that our client  
2 had filed.

3 That bid protest as a matter of law, under D.C.  
4 procurement law, or regulations I think maybe, affected an  
5 automatic stay of, of the bid, of the award process. So,  
6 if I have the date's right, I think from December 17th,  
7 2012 until two days ago, three days ago, federal process  
8 was stayed.

9 So, and by the way as you can imagine DCHSI is  
10 going to be appealing that and seeking to consolidate that  
11 before Your Honor because we think this Court ultimately  
12 has the jurisdiction, and should, can take, take control  
13 over the entire question.

14 That is the question of how the Medicaid  
15 contract should be awarded number one, and how, how  
16 Chartered should be handled number two. So, I just, just  
17 to give you a preview of where we're going.

18 THE COURT: So, your request is an opportunity  
19 to file a brief?

20 MR. KILLALEA: Yes, Your Honor.

21 THE COURT: Addressing these issues.

22 MR. KILLALEA: Yes, and then to be heard with  
23 respect to them.

24 THE COURT: When would you file that brief?

25 MR. KILLALEA: We asked for the 12th, which is

1 right after I get back in the country.

2 THE COURT: March 12th?

3 MR. KILLALEA: I'm sorry, Your Honor, March  
4 12th, and Ms. Phillips offered the 6th I believe, when I'm  
5 out of the country. If we have to do it the 6th when I'm  
6 away we'll do it. We'll do what Your Honor, what works  
7 best for Your Honor of course.

8 THE COURT: Let me hear from Ms. Phillips on the  
9 rehabilitative --

10 MR. KILLALEA: Thank you, Your Honor.

11 THE COURT: -- chooses to address it.

12 MR. WATKINS: Your Honor, I think our status  
13 reports have laid out the considerations that we had  
14 clearly. What the holding company is trying to do is  
15 unring several bells that can't be undone. Okay, and they  
16 are trying to suggest that the Court had, take control  
17 over a process of contracting for a new contract of which  
18 is not before it. Okay.

19 We don't have control over what the Office of  
20 Contracts and Purchasing and Health Care Finance is doing,  
21 and they are proceeding to award contracts, and start a  
22 new contract by May 1st.

23 They stuck with their schedule from the  
24 beginning, from December 3rd. The contract process was  
25 not stayed by the protest. That contract process went on.

1 the protest has been dismissed. Contracts will be  
2 awarded.

3 We don't know, we are, a part of our solution,  
4 of course, is that AmeriHealth get a contract with the  
5 district. We are hoping that that will happen. Again,  
6 that's outside this process here, but some of the things  
7 that Mr. Killalea brought up about the assets of the  
8 company, and the balance sheet.

9 What we have here is a company that's got a  
10 highly illiquid balance sheet, so all the numbers that are  
11 above zero are not cash. They are not something that we  
12 can use to pay claims.

13 We have claims against the district, and our  
14 duty as rehabilitator is to marshal assets, and to pursue  
15 claims on behalf of the company. That's what we're doing.  
16 We've filed the claims with the District, but the holding  
17 company knows, they've had these claims before, and they'd  
18 settled them for about 50 cents on the dollar when they've  
19 been successful.

20 As you know they are speculative. They're not  
21 speculative, but they are, there is risk. There is  
22 uncertainty involved in terms of what the ultimate  
23 resolution on those claims is going to be. We're pursuing  
24 a resolution to those claims as part of the reorganization  
25 plan and our solution to Chartered's problems, but the

1 fact of the matter is at the time the rehabilitation  
2 started, and at the time contract proposals were due in  
3 front of the Court, or in front of OCP, Chartered could  
4 not qualify financially to submit a bid.

5           They had audit questions. They didn't have a  
6 completed audit for 2011. That was completed the first of  
7 January this year. There are under corrective action  
8 orders from Healthcare Finance, and we had a requirement  
9 by Healthcare Finance that Chartered have a new owner, and  
10 be out of rehabilitation by the time contracts were  
11 awarded.

12           So, we would have to have a definitive agreement  
13 approved by the Court and be out of rehabilitation,  
14 practically impossible, but the fact of the matter is that  
15 this contract is not done. It's not done until this Court  
16 approves it, okay, and we have to have something to put in  
17 front of the Court for it to be approved.

18           The holding company suggests we don't have  
19 authority to do that. The order gave us authority to  
20 pursue a plan of rehabilitation through this company, and  
21 that's what we're doing.

22           THE COURT: What about his argument about lack  
23 of due process?

24           MR. WATKINS: This is due process here, Your  
25 Honor, and what, we did not have a two-day process to find

1 a suitable counter party for Chartered. We had, we hired  
2 an investment banker the first week that we were in  
3 rehabilitation. That investment banker went through a  
4 thorough process, found 17 prospective parties, got  
5 non-disclosure agreements from 13, received proposals from  
6 seven, selected three to have more in depth discussions  
7 and negotiations with, gave them access to an electronic  
8 data room with the company's information.

9 And we selected, at the end of the day, through  
10 that process, a leading managed care company that operates  
11 in 13 states, and serves 5 million people and that we  
12 think will serve the District of Columbia well. So,  
13 that's part of the solution that we're proposing for  
14 Chartered.

15 THE COURT: How do you address his argument that  
16 the policyholders and the providers have been, being paid,  
17 and they are not at risk?

18 MR. WATKINS: Well, the contract ends on April  
19 30th. So, after that the policyholders will be served by  
20 a new managed care company. We're hopeful that that will  
21 be AmeriHealth, but the providers, because this balance  
22 sheet is so liquid, the company is meeting its obligations  
23 with its each monthly payment, and it has incurred, but  
24 not reported liabilities, claims of providers that total  
25 about \$45 million that will not be able to be paid in a

1 timely fashion absent resolution of the claim with the  
2 district and marshalling of further assets.

3 Now, we'll have some assets from the sale, from  
4 other income that comes in through payments from  
5 Healthcare Finance, but at the end of the day we're not  
6 going to have liquid assets to pay those providers claims  
7 without resolution of the claims against the district.

8 THE COURT: That will be after April 30th?

9 MR. WATKINS: We are pressing for an expedited  
10 determination on that from Healthcare Finance, just like  
11 we need an expedited determination on this purchase  
12 agreement from the Court.

13 THE COURT: All right. Last word Mr. Killalea.

14 MR. KILLALEA: Thank you, Your Honor.

15 THE COURT: What about that? He's saying that  
16 as, as of May 1st, as such essentially, you won't have any  
17 assets to pay any providers.

18 MR. KILLALEA: We will certainly not have any  
19 assets to pay providers as of May 1st and here's why. We  
20 won't have a contract so we'll have no on going  
21 operations. We won't have, they're still talking about  
22 it as though it's a plan of rehabilitation. We won't  
23 have --

24 THE COURT: So, how are you going to get a  
25 contract under any scenario?

1 MR. KILLALEA: That's what we're going to  
2 address in our paper with you, Your Honor. Number one  
3 this Court will have jurisdiction to enjoin the issuance  
4 of a contract. I find it actually remarkable that when  
5 the law imposes a stay on the process of bidding we find  
6 out for the first time this bidding process has been on  
7 going, but we will be asking, Your Honor, to enjoin the  
8 issuance of an award, okay, number one.

9 So, Mr. Watkins speaks about we want to unring  
10 several bells that can't be unring. The problem is he  
11 rung those bells on his own without coming to the Court  
12 and asking for leave to ring them, and I'm not talking  
13 about the AmeriHealth deal now, which if it were a  
14 rehabilitation deal that would be exactly the right  
15 procedure. Unfortunately it's a liquidation deal.

16 We're being left, Chartered I should say is  
17 being left with no contract, key employees gone under the  
18 contract, furniture, desks, chairs, office supplies,  
19 accounting records, phone numbers and even its name.  
20 Okay.

21 This is a liquidation that they put in sheep's  
22 clothing. This is not what they are statutorily to do in  
23 the first instance. There are circumstances under which  
24 they could get there, but they have a burden of proof, and  
25 we haven't had discovery or disclosure.

1 DCHSI has asked since the day they took over,  
2 under the misguiding, misleading statements that DCHSI I  
3 would be entitled to information, and information would be  
4 shared. No meaningful information was shared. So, we  
5 learn this only now. Any information that was --

6 THE COURT: You learn what only?

7 MR. KILLALEA: Only the information about the  
8 details of the proposed transaction, that we certainly  
9 aware after they announced publicly December 3rd that they  
10 weren't bidding on the contract. That's why DCHSI, even  
11 though the CAB ruled that DCHSI didn't have standing,  
12 because DCHSI wasn't itself a bidder, but that's why DC,  
13 excuse me, DCHSI went to the CAB to complain about that,  
14 that the process was collusive and unfair.

15 So, with respect to the investment banker in  
16 that process, again, we haven't had disclosure, but here's  
17 what we do know. We have a letter dated November 9th,  
18 Friday, November 9th, 2012 from the investment banker to,  
19 again, we don't know to whom it was sent. We know some of  
20 the people to whom it was sent. I don't know where in the  
21 process that came, but that turns out to be Veteran's Day  
22 weekend.

23 So Friday on Veteran's Day weekend this letter  
24 goes out from the rehabilitators investment banker to some  
25 interested parties, and it says, give us a whole bunch of

1 information including your precise details as to how  
2 you're going to capitalize Chartered, \$30 million, who  
3 your financing is, all your bank loans, da, da, da, and  
4 give us a response by close of business Wednesday,  
5 whatever the following Wednesday was.

6 Well, that gives them, based from whatever time  
7 they got it Friday, Saturday, Sunday, Monday are weekend  
8 and a holiday, that gives them from a business day  
9 perspective Tuesday and Wednesday until close of business.

10 That's why I said, Your Honor, that this was a  
11 two-day process. I don't suggest that there weren't  
12 things before.

13 THE COURT: But this is not -- well, you say  
14 it's a two-day process, but this is something that's been  
15 on going for months, hasn't it?

16 MR. KILLALEA: Well, the rehabilitator starts  
17 fresh on October 19th. He comes in and his duties begin  
18 on that day, not before. His duty on that day is to  
19 attempt to rehabilitate. So --

20 THE COURT: By rehabilitate you mean what?

21 MR. KILLALEA: By rehabilitate I mean, this was  
22 a, this was a, this was a singular problem. He had to  
23 find a solution to an under capitalization.

24 THE COURT: Right.

25 MR. KILLALEA: And, and he needed, number one,

1 to examine all the possible ways of doing that. He did  
2 have, I agree, a timing issue with the Medicaid contract.  
3 All right, that was something external, but let's talk  
4 about how external that really was because for the prior  
5 six months the rehabilitator, who is really the insurance  
6 commissioner. Mr. Watkins is acting on his behalf, and  
7 the director of the Department of Healthcare Finance,  
8 which is the contracting agency for the Medicaid contract,  
9 works hand-in-hand to bring about this, this  
10 rehabilitation.

11           They did it by first saying we insist, together,  
12 hand-in-hand, we insist that DCHSI's owner, Mr. Thompson,  
13 stepped down as chairman of the board of Chartered. We  
14 insist. I don't know the legal authority for that  
15 requirement. There is none, but Mr. Thompson agreed. He  
16 cooperated, okay.

17           Second they said we insist, again this is the  
18 contracting agency together with the insurance regulator,  
19 we insist that DCHSI no longer owned the company, and  
20 again, I'm not sure that there is any legal authority for,  
21 in fact I'm sure there is no legal authority for that  
22 requirement. Be that as it may at the end of the day  
23 Chartered consented to that sale process.

24           There was a lot of back and forth over a period  
25 of months. At the end of the day those same

1 rehabilitators hand-in-hand came to Chartered's board and  
2 said we want you to consent to rehabilitation. Chartered  
3 during this period, or I should say the insurance  
4 commissioner during this period had retained Mr. Watkins  
5 and Mr. Richardson.

6 Chartered spent a lot of time and energy during  
7 that period objecting to the retention of Mr. Watkins  
8 because, and here's another remarkable aspect about this,  
9 a very nice from everything I've met. His brother was the  
10 COO of Chartered, the company he was brought in to  
11 rehabilitate and to inspect.

12 Pretty remarkable stuff. Out of a world of  
13 people that could have been brought in with the background  
14 to conduct a rehabilitation, they brought in the guy whose  
15 brother was, conduct was under review. That's part of  
16 what ultimately we would complain about again, Your Honor,  
17 that this, the process that was set up here was improper.

18 There were other conflict allegations made that  
19 frankly I'm not going to repeat here because I personally  
20 am not comfortable, and familiar enough with the facts at  
21 this point, but there may be other allegations that we  
22 would want to bring to light as well, as we dig a little  
23 deeper, not concerning Mr. Watkins.

24 The, so, so the rehabilitation started. When  
25 the rehabilitation started, I'm sorry, I should say, so

1 Chartered's board consented. Chartered's board consent  
2 under the Chartered's articles of incorporation was  
3 ineffective unless DCHSI also consented, which DCHSI also  
4 did.

5 At that time, just before DCSHSI consented,  
6 representations were made by the rehabilitator that there  
7 would be transparency, that information would be shared  
8 that was meaningful in effect that DCHSI would have a seat  
9 at the table. Would know what was happening with, what is  
10 after all its company.

11 What happened after the 19th was and --

12 THE COURT: The 19th --

13 MR. KILLALEA: I'm sorry October --

14 THE COURT: -- months and years.

15 MR. KILLALEA: I'm sorry, Your Honor, October  
16 19th --

17 THE COURT: So, the record is clear.

18 MR. KILLALEA: I'm sorry.

19 THE COURT: Because somebody is going to be  
20 looking at this.

21 MR. KILLALEA: Yes, October 19th, 2012, which  
22 was the date of the rehabilitation order and the day this  
23 proceeding commenced. What happened after that was,  
24 certainly over a half a dozen requests for information and  
25 cooperation from DCHSI went frustrated.

1           DCHSI in fact didn't get meaningful information.  
2 I don't want to call it meaningful that says too much.  
3 Didn't get an agreement to provide information until a  
4 couple weeks ago when, after about a month of, no, two,  
5 three weeks of negotiating an agreement with, with the  
6 rehabilitator we entered into a confidentiality agreement  
7 and they gave us some documents, most of which were  
8 public, some of which were not, and many of which don't  
9 answer our questions yet. So, we've been kept in the  
10 dark. So, that's --

11           THE COURT: So, if they didn't provide it  
12 voluntarily, why didn't you file a request of the Court to  
13 compel them to provide you with the information?

14           MR. KILLALEA: We could have but, you know, it's  
15 one of these, one of these situations where a judgment  
16 call is made when they didn't give a definite no. They  
17 just kept putting us off, and so we would follow up with  
18 another request, and, and that process went until,  
19 frankly, January 13th when I became involved, and sat in  
20 the back of this courtroom and approached them after the  
21 hearing, and said look we're going to come to the Court if  
22 we can't get information, and then we sat upon a period of  
23 negotiating a confidentiality agreement and got some  
24 information.

25           So, not all the information we want, and not all

1 the information we'll ultimately need, but that was the  
2 process. I just, just to make Your Honor clear. So --

3 THE COURT: You would be objecting to the sale  
4 of this because of what?

5 MR. KILLALEA: The sale of this because number  
6 one it's an unauthorized liquidation. Number two it  
7 doesn't give fair value for a company that has a 25 year  
8 history of providing service, good will alone from the  
9 name, which they recognize by including the name in the  
10 transaction has to be worth more.

11 THE COURT: So, if there isn't a sale then what  
12 would happen?

13 MR. KILLALEA: Well, what we're going to ask,  
14 Your Honor, is, and I think ultimately there will be a  
15 number of ways of slicing this, okay, but the first thing  
16 we're going to ask is that this Court enjoin, call a time  
17 out in effect on, on both contracts. We're dealing with  
18 two separate contracts. The Medicaid contract, which this  
19 Court has jurisdiction to enjoin, and the proposed  
20 contract with AmeriHealth.

21 THE COURT: If the contract expires, what  
22 authority do I have if the contract expires?

23 MR. KILLALEA: We'll give you that case law,  
24 Your Honor.

25 THE COURT: Well, tell me what, you've read the

1 case law.

2 MR. KILLALEA: Yes.

3 THE COURT: Are you saying that I have the  
4 authority to tell the district to continue with the  
5 contract that is expired?

6 MR. KILLALEA: Yes. Yes. They, yes. You have,  
7 you have, you have jurisdiction to enjoin the issuance of  
8 a new contract, and what happens in those cases.

9 THE COURT: What would be the basis for you  
10 doing that?

11 MR. KILLALEA: Well, that the, this is, this is,  
12 this is stuff that we're looking at, which is why we've  
13 asked for time to brief all of this, but the bases include  
14 that the contracting process is fundamentally unfair,  
15 affected by conflicts, affected by collusion between  
16 bidders and incumbents, which is unlawful, and possibly  
17 other grounds.

18 It will be our burden, obviously, to prove our  
19 entitlement to that, to convince Your Honor. I'm not  
20 prepared to do that fully today, but I'm advised by people  
21 who know more about that area of the law than I that we  
22 have very solid arguments.

23 THE COURT: All right.

24 MR. KILLALEA: And ultimately, Your Honor, it's  
25 also an equitable argument, and we think this Court has

1 equitable jurisdiction in a rehabilitation proceeding,  
2 which is fundamentally an equitable proceeding. To make  
3 sure that the proceeding is done right, and that when the  
4 rehabilitator rings a bell impermissibly that, that the  
5 answer is the Court is powerless to unring it.

6 MR. KILLALEA: Do you wish to be heard?

7 MR. WATKINS: Yes, Your Honor.

8 THE COURT: Okay.

9 (Pause.)

10 MR. WATKINS: Mr. Killalea correctly notes that  
11 he is recent to these developments, January 13th. Our  
12 status reports lay out clearly the chronology of what's  
13 gone on here, and it shouldn't be forgotten that the  
14 holding company had complete control of this company until  
15 October 19th, 2012.

16 They worked, tried to find a buyer for six  
17 months at least, to capitalize this company, and to put it  
18 in a position to bid for a contract. They couldn't do it.  
19 They didn't do it. They, the rehabilitator took control  
20 of the company, and had six weeks left in which to come up  
21 with the solution for the company.

22 The reason, and I'd like to straighten a couple  
23 of things out. The insurance commissioner and the  
24 regulator did not require a new buyer, or a deadline for  
25 the company. That's the Department of Healthcare Finance,

1 which determines who it's going to contract with, and the  
2 grounds that they used for that were the fact that an  
3 audit finding said that there were related party  
4 transactions that they questioned and did not have  
5 sufficient information from the holding company, and were  
6 not going to contract with them without a new owner.

7           The chairman of the company stepped down in  
8 April because of the very same issues. These things are  
9 not new. They've been going on for a year, a year ago  
10 this week as a matter of fact, and the holding company  
11 sought for a year to find solutions themselves to the  
12 problems, and the fact of the matter is no one was going  
13 to buy the stock of this company.

14           The holding company hasn't filed tax returns, so  
15 there is tax uncertainty and liabilities. There is  
16 questions about related party transactions. There is all  
17 kinds of issues that are set out in our status reports, in  
18 the audit that's attached to the status report. We are  
19 dealing with the hand we've been dealt, and what Mr.  
20 Killalea is suggesting is a year long trial for the  
21 holding company to try to do in the next year what it  
22 couldn't do in the last year.

23           And other officials, not the rehabilitator, but  
24 the District of Columbia, is seeking managed are companies  
25 to start a new contract May 1st. Those are the deadlines

1 we have. We brought a transaction to the Court that's  
2 fair. Given all the circumstances, and the position this  
3 company finds itself in, with its assets, which are  
4 illiquid, that Mr. Killalea wants to have it both ways.

5 He wants to say it's a liquidation, that the  
6 balance sheet is okay because of their assets. You know  
7 that doesn't compute that way. If the assets are there we  
8 can rehabilitate this company. We can reorganize it, and  
9 that's what we've asked the Court to look at is that plan.

10 So, ask, it's remarkable that he is asking this  
11 Court to tell the district to stop everything because this  
12 holding company needs a year to look at things that the  
13 OAG looked at in terms of conflict of interest.

14 Now, I'm the oldest of 14 children, so I've got  
15 a few brothers and sisters around, and it is ironic that  
16 as an insurance receiver specialist I get requested to  
17 come in here, that was the first thing I told them was my  
18 brother worked for that company. They didn't know that,  
19 okay. They checked it with the OAG. The OAG said we  
20 don't see a conflict here. There has been no allegation  
21 at all of any involvement, or problems with my brother's  
22 involvement with the company.

23 We are dealing a very complex situation,  
24 multi-faceted contracts, transactions, deadlines, and this  
25 holding company has had a year to get this in order. They

1 didn't do it. Now, they want this Court to stop it.

2 We respectfully request the Court to expedite  
3 it's review of this, and not take months to sort through  
4 issues that have already been looked at by the OAG.  
5 They've been looked at by the contract appeal board and  
6 dismissed, and been looked at for a year by everybody who  
7 regulates this company, and said this company should not  
8 control the managed care company anymore because of the  
9 situation its in.

10 So, we'd ask for your expedited review, and  
11 approval of the contract, the transaction with  
12 AmeriHealth, and the plan of reorganization that's been  
13 presented to the Court. So, we're hopeful that you're not  
14 going to set a schedule that doesn't allow this  
15 transaction to take place, doesn't allow 160 employees to  
16 transition to a new company, and gums up the healthcare  
17 continuity for 100,000 people.

18 THE COURT: The Court has reviewed all the  
19 pleadings, and the documents that had been made a part of  
20 the file. The Court is going to deny the objection, or  
21 the opposition. I will not strike it as the district  
22 requested because I think it's an important part of the  
23 record.

24 However, I believe that there has, despite the  
25 allegation of due process violations are in process, I

1 don't, I don't agree with that contention. I believe the  
2 fact that you had a hearing on this, and the fact that  
3 there was an order, which the court signed that gave the  
4 rehabilitator the right, based upon the statute, to  
5 marshal the assets, and to seek rehabilitation as you have  
6 argued, I think they've acted appropriately.

7 I think that the fact that, I disagree with your  
8 contention that the Court can continue a contract, which  
9 expires, and if I had the discretion to do so I would  
10 choose not to do so.

11 As a result I agree with you that there is no  
12 income from the company, but the fact that you don't have  
13 income means that the policyholders, and the providers  
14 will be severely affected if this, if this sale isn't  
15 approved, and the Court is going to approve,  
16 preliminarily, the sale. There are certain conditions  
17 that have to be made, but the Court is going to authorize  
18 the sale to go forward.

19 One of the reasons that I'm, that I'm doing this  
20 is that you certainly have the right to note an appeal  
21 now, and I think if you decide because this would be a  
22 final order conditioned on the, the provisions of the  
23 contract haven't been met, obviously if those provisions  
24 aren't met the sale doesn't go through.

25 But as I have had reviewed the proposed

1 contract, it appears to be fair based upon all the facts  
2 and circumstances that have been addressed in, in the,  
3 what do you call the, the first and second report. I  
4 forgot the term that you used. I want to be accurate.

5 I think the need for action now is appropriate  
6 because of the fact that the parties who are involved, the  
7 providers and policyholders, and I use that term  
8 policyholders loosely, in order to understand what their  
9 obligations, and an opportunity to opt out of the program  
10 should someone decide to do so.

11 With the expiration of the contract on April  
12 30th, I think that leaves little time in order to make the  
13 transition and the notification that will be required.

14 As regard to the \$60 million that you claim that  
15 the District of Columbia owes to the corporation. In my  
16 view that is speculative at best. You may be correct,  
17 but, but until that money is actually recovered, and I  
18 assume the District didn't address, but I assume that they  
19 are not handing over a \$60,000 check otherwise we wouldn't  
20 be here.

21 I believe that, that that argument doesn't save  
22 you from the Court's ordering the contract to go forward.  
23 So, the Court will not strike the opposition because it is  
24 part of the record. I think it's important if this matter  
25 goes before the Court of Appeals that the Court of Appeals

1 get to see that order, and the opposition.

2           However, I am going to approve the sale, or the  
3 proposed sale providing the conditions that were laid out  
4 are met.

5           MR. KILLALEA: Your Honor, may I ask a few  
6 clarifying questions?

7           THE COURT: Sure.

8           MR. KILLALEA: Number one to clarify one thing  
9 you said, I just want to make sure we're clear on this.  
10 It's not DCHSI that claims that the \$60 million it's owed,  
11 it's the Department of Insurance. It's the district of  
12 Government, it's the District Government itself that's  
13 claimed that the \$60 million is owed by the district  
14 government. So, I just wanted to make sure Your Honor  
15 understood that.

16           THE COURT: Okay.

17           MR. WATKINS: That's not correct.

18           MR. KILLALEA: Well, the rehabilitator --

19           MR. WATKINS: The rehabilitator is making the  
20 claim on behalf of Chartered to the district, and that  
21 claim is before the district --

22           THE COURT: So, you are saying that Chartered,  
23 you're making the argument to D.C. that Chartered is  
24 entitled to it.

25           MR. WATKINS: Right.

1 THE COURT: And the district has disagreed with  
2 that position.

3 MR. WATKINS: But we filed a new claim, and  
4 asked for an expedited determination of that. They may  
5 say no. They may agree with part of it. They may, but  
6 we've asked again, like in front of this Court, for an  
7 expedited determination. Whether we'll get it or not, I  
8 don't know.

9 We're going to pursue it. That's our duty as  
10 rehabilitator. I wanted to say one other thing, Your  
11 Honor.

12 MR. KILLALEA: I'm sorry. Could I finish?

13 THE COURT: Okay. Yes, let him finish and then  
14 I'll --

15 MR. KILLALEA: Yes.

16 THE COURT: But that still doesn't change the  
17 speculative nature --

18 MR. KILLALEA: I understand Your Honor's point.  
19 I just wanted to make sure we were clear on the facts --

20 THE COURT: Okay. Yes.

21 MR. KILLALEA: -- that Mr. Watkins is pursuing  
22 presumably pursuant to all the rules of good faith that  
23 apply to stating a claim, on behalf of the director, of  
24 the commissioner of the insurance department, which his  
25 only power derives standing in the shoes of the

1 rehabilitator himself, the insurance company is saying  
2 that he believes this claim is valid. So, I just wanted  
3 to be clear on that, number one.

4 THE COURT: All right.

5 MR. KILLALEA: Number two I think this is, this  
6 is abundantly clear, but let me make it, ask you for the  
7 record, that the brief that we seek to file on the merits,  
8 which the Government said that they had no objection to us  
9 filing on March 6th, Your Honor, is depriving us that  
10 right.

11 THE COURT: Well, I think I am.

12 MR. KILLALEA: Okay, and --

13 THE COURT: I think by implication I am.

14 MR. KILLALEA: I think that's right. I just  
15 wanted to make clear.

16 THE COURT: And I think, and the problem is,  
17 because here's the bottom line from my point of view. The  
18 bottom line is the lack of income that's going to come to,  
19 it's pretty clear to me that there isn't going to be any  
20 income coming to Chartered when this contract terminates,  
21 and so if there is on income coming on, then I'm not sure  
22 what the brief would do to change that scenario. That's  
23 not going to change that scenario is it?

24 MR. KILLALEA: Well, what the brief could do,  
25 Your Honor, is when we move to enjoin the award of the

1 contract we would have the opportunity to file a brief  
2 that shows you why we have legal grounds to enjoin the  
3 award of the contract. Now, granted the automatic stay of  
4 the award of the contract was just lifted a couple of days  
5 ago.

6 The decision, which Mr. Watkins suggested was on  
7 the merits was, as I mentioned earlier, on procedural  
8 grounds, lack of standing that would not, and some grounds  
9 that wouldn't necessarily apply in this Court.

10 So, we think if we had the opportunity to  
11 convince, Your Honor, with the opportunity to actually  
12 brief the law, that Your Honor might decide that, and Mr.  
13 Watkins also said something about we were asking for a  
14 year long process.

15 As Your Honor would see from our brief we're  
16 actually asking for what we think could be a pretty brief  
17 process of a matter of months, which would --

18 THE COURT: But their point that they made  
19 earlier was that you've had, and the record is pretty  
20 clear, that you've had time to do all of this. This is  
21 not something that's just occurred within the last two  
22 weeks.

23 MR. KILLALEA: Well, Your Honor, with all due  
24 respect you say the record shows. There are no facts.  
25 Right now, right now when we move to enjoin the award of

1 the contract we would have the opportunity to file a brief  
2 that shows you why we have legal grounds to enjoin the  
3 award of the contract. Now, granted the automatic stay of  
4 the award of the contract was just lifted a couple of days  
5 ago.

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7 the merits was, as I mentioned earlier, on procedural  
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11 convince, Your Honor, with the opportunity to actually  
12 brief the law, that Your Honor might decide that, and Mr.  
13 Watkins also said something about we were asking for a  
14 year long process.

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16 actually asking for what we think could be a pretty brief  
17 process of a matter of months, which would --

18 THE COURT: But their point that they made  
19 earlier was that you've had, and the record is pretty  
20 clear, that you've had time to do all of this. This is  
21 not something that's just occurred within the last two  
22 weeks.

23 MR. KILLALEA: Well, Your Honor, with all due  
24 respect you say the record shows. There are no facts.  
25 Right now, right now there are their allegations. There

1 has been no testimony. There has been no affidavit  
2 proffered I don't believe. There has been nothing  
3 evidentiary put before this Court except for an assertion  
4 of fact, and as Your Honor would see from the case law --

5 THE COURT: Well, do you dispute that the  
6 contract conditions in order to be awarded to Chartered  
7 was that there be a, either capital, the \$30 million in  
8 capital, or a new owner, wasn't that, is that undisputed?

9 MR. KILLALEA: I'm sorry, Your Honor. Well,  
10 yes, that is disputed. So, --

11 THE COURT: And what, and how is it disputed?

12 MR. KILLALEA: Well, it is, the, it is  
13 undisputed that the director of DHCF said that. What is  
14 disputed is whether those would be legitimate requirements  
15 in a government contracting process. In other words  
16 there, whether it would be, as a matter of law,  
17 permissible for him to impose those conditions that are  
18 found nowhere in the RFP itself.

19 So, that's one question, and you know the  
20 question of capitalization ultimately had to be solved.  
21 Mr. Watkins said that, that Chartered had to be, had to  
22 get to some level. He didn't explain what level. I can  
23 tell Your Honor, you asked about the historical  
24 capitalization. Chartered was entitled to re-bid when it  
25 had \$14 million and when it had \$16 million of capital

1 reserves.

2 So, it now has nine without counting a big chunk  
3 of the claim.

4 MR. WATKINS: No, it does count those.

5 MR. KILLALEA: It counts a small chunk of the  
6 claim, not the big chunk of the claim, and so, you know,  
7 we think that that would not have been all that difficult  
8 to have, to a problem to have solved.

9 The process that we would ultimately lay out for  
10 Your Honor that we think should happen, as I say call,  
11 call a short time out, which we would have to persuade  
12 Your Honor had jurisdiction, both had jurisdiction to do  
13 and had good cause to do. That it was something not only  
14 you had the power to do, but something that Your Honor  
15 would conclude is a good idea to do, number one.

16 And then to simply have a bidding process, and  
17 it could be done a lot, a lot of different ways, but we  
18 think a two-day bidding process, and to be clear we've had  
19 indications of interest from people calling us saying  
20 what's happening here. We were interested.

21 THE COURT: So, well, and the thought that comes  
22 to mind when you say all of this is where are those  
23 people. I mean I don't, you didn't submit any affidavit  
24 that you have a prospective buyer. You didn't submit --

25 MR. KILLALEA: Your Honor, it's sort of

1 irrelevant because Chartered --

2 THE COURT: You could have attached to your  
3 opposition.

4 MR. KILLALEA: Well, my opposition was to the  
5 expedition. It wasn't to the, to the merits. We hadn't  
6 had an opportunity to address the merits, I think as we've  
7 established.

8 THE COURT: All right.

9 MR. KILLALEA: But the, the, I lost my track.

10 THE COURT: But your original question was to  
11 clarify something. So, what is it --

12 MR. KILLALEA: Yes, well I wanted, so and I  
13 wanted to, I wanted to clarify number one, well, I already  
14 clarified it.

15 THE COURT: Okay.

16 MR. KILLALEA: And the second thing I wanted to  
17 clarify was that we're not going to be given the  
18 opportunity to create a factual record.

19 THE COURT: Let me hear from the defendants on  
20 that.

21 MR. WATKINS: Your Honor.

22 THE COURT: Yes, sir.

23 MR. WATKINS: First of all you have to be a  
24 financially qualified applicant to get a contract, and  
25 Chartered wasn't. So, under the RFP requirements,

1 Chartered couldn't have qualified for a contract on  
2 December 3rd, and you can't change your status after you  
3 submit a contract, okay.

4           So, whether or not the Department of Healthcare  
5 Finance was saying certain things, they had a requirement  
6 in their contract that you had to be a financially capable  
7 company, and at which time Chartered wasn't.

8           Second, what has been proffered today is a  
9 request for this Court to look at this whole process, and  
10 the allegations that are made is that there is collusion  
11 in the district between the rehabilitator and the  
12 departments of the district, and that this whole process  
13 ought to be redone, and that the holding company get  
14 another chance at a bid process for a company it doesn't  
15 control.

16           So, the proffer that they have made, that what  
17 they want you to look at is collusion, conflict of  
18 interest, other things that they have other avenues to  
19 take this I think to make that case to people.

20           THE COURT: All right.

21           MR. WATKINS: We'd ask that you expedite it as  
22 you suggested.

23           THE COURT: And if I, if we do do factual  
24 findings, doesn't there have to be some prima facie  
25 showing on financial solvency before we even get into

1 those issues? Does find that lack of financial solvency  
2 in the argument?

3 MR. KILLALEA: I don't think so, Your Honor. I  
4 mean, well, the, the, Chartered, again, has annually been  
5 renewed for this contract with capital, stated capital,  
6 admitted assets, which do not have to be liquid. All of  
7 them do not have to be liquid, of an amount that we think  
8 at the end of the day we could prove Chartered now has.  
9 Okay. So, --

10 THE COURT: What would that be? Give me a  
11 proffer of what that would be.

12 MR. KILLALEA: We think Chartered now has  
13 appropriately valued admitted assets of, in the  
14 neighborhood of somewhere between, depending on how you  
15 count it, I'll give a broad range, 20 and \$37 million.

16 THE COURT: That comes from where?

17 MR. KILLALEA: That comes from their financial  
18 statements and, and the claim largely, the amounts owed to  
19 Chartered. The other thing I would say, Your Honor, is if  
20 Your, if Your Honor is going, oh, the other thing I was  
21 going to say is, you know, an affidavit that I actually do  
22 have prepared to file with our substantive brief, is one  
23 that shows that the regulators told DCHSI in order to  
24 induce DCHSI to consent to Chartered's liquidation, that  
25 Chartered would be eligible to bid.

1           Not that they would be eligible to win the bid  
2 at the end of the day if they didn't meet capital  
3 requirements, but that they would be eligible to bid. To  
4 get, throw their hat in the ring so that a sales process,  
5 or a capitalization process could be undertaken, and a  
6 fair process. Ultimately we think the two-day process  
7 wasn't fair.

8           THE COURT: Okay.

9           MR. KILLALEA: Your Honor, if Your Honor is  
10 going to issue the order that you've suggested, again, I  
11 guess we have to, we would have to give some thought to  
12 whether it's in fact a final order, it probably is.

13          THE COURT: I think it is.

14          MR. KILLALEA: If it's not I guess we're dealing  
15 with a mandamus. If it is, or an interlocutory appeal.  
16 If it is, on the assumption that it is, and I think not  
17 withstanding the conditions in the contract I think it  
18 would have to be a final order.

19          THE COURT: I think it is as well.

20          MR. KILLALEA: Then we would ask Your Honor for  
21 emergency stay pending appeal, and you know obviously then  
22 we'd ask for one from the Court of Appeals if Your Honor  
23 were not, and if Your Honor, I don't know procedurally how  
24 you would want to proceed on that, whether an oral request  
25 is sufficient, or whether you want us to brief that. It

1 would be a little ironic to brief that and not brief the  
2 merits.

3 THE COURT: Actually, I've thought about it only  
4 briefly. Ms. Phillips, what's, what's your position on  
5 this?

6 MS. PHILLIPS: My position is that Your Honor  
7 said he would sign the order. I think the order should be  
8 signed. I think there should be no stay until he asks for  
9 it in writing. I don't, I'm not exactly sure since, you  
10 know, trial attorneys don't do the appellate work in my  
11 office.

12 So, I'm not exactly sure what the procedure is.  
13 I could find that out fairly quickly, but it all depends  
14 on you signing the order, and that's the asset purchase  
15 agreement, and for the plan of reorganization. I think  
16 that's all contained in the one order we've provided.

17 THE COURT: Right, and I think I've indicated I  
18 intend to sign that.

19 MS. PHILLIPS: Right.

20 MR. KILLALEA: Right.

21 MS. PHILLIPS: And so and then there is the next  
22 step, and the next step would be for me to go back and  
23 tell the appellate division that there has been a proposal  
24 and that an appeal is going to be filed.

25 THE COURT: Yes. I certainly think the appeal

1 needs to be in writing as opposed to an oral one, which  
2 means that I'll have to --

3 MR. KILLALEA: I'm sorry. You said the appeal,  
4 you mean the request for --

5 THE COURT: For a stay.

6 MR. KILLALEA: -- for a stay. Okay.

7 THE COURT: I'm sorry. Yes, the stay. All  
8 right. Anything else by any of the parties? I think I  
9 have made the, my position clear so that if you do want to  
10 take this up they have a record here. Anything else that  
11 we need to talk about?

12 MR. KILLALEA: Maybe this doesn't have to be on  
13 the record. My question was going to be about how one  
14 gets a transcript, and whether it can be expedited. Can  
15 we do that off the record?

16 THE COURT: -- court reporter. Oh. Yes. I  
17 wish you had something. I forgot. We should have had a  
18 reporter here during this hearing, and I thought about  
19 that earlier because it would have been easier.

20 Now, we have to go through the taping system,  
21 which is much more difficult, and I feel terrible about  
22 that because I knew I should have the reporter. I just  
23 didn't think about it in my process of thinking about this  
24 motion.

25 So, but it can be done, and it can be done on an

1 expedited basis. I should have had a reporter here.

2 That's my fault.

3 MS. PHILLIPS: I'm sorry, Your Honor, because I  
4 should have thought of it too. I'm used to having court  
5 reporters.

6 THE COURT: And I'm not used to having it. In  
7 types of hearings that I've had recently I haven't had a  
8 reporter, and so I didn't, I usually think about one when  
9 we have a matter about this, but it just, it just slipped  
10 my mind, and so, so that means the Court of Appeals will  
11 have to listen to the tape, or get the, someone will have  
12 to do a transcript of the tape, but I feel terrible about  
13 that. I should have, I should have known that.

14 MR. KILLALEA: How do we get that tape, Your  
15 Honor? I mean I don't want to take your time on the  
16 bench.

17 THE COURT: No, no, no, no, no, no, I want to  
18 be, I want to assist you in being able to get this, and so  
19 what you will need to do is you need to talk to Mr. James  
20 Holland who is the chief of the court reporting division,  
21 and if he can't help you, Mr. Gregory Poss (phonetic sp.),  
22 and indicate that there wasn't a court reporter present.  
23 That you wanted to get, you want to get a transcript of a  
24 hearing, and you want it done as quickly as possible.

25 MS. PHILLIPS: Is that office still open? I

1 mean there used to be a court reporting office right on  
2 this floor.

3 MR. KILLALEA: We walked right, we walked right  
4 by it.

5 MS. PHILLIPS: So, we can --

6 THE COURT: You walked right by it --

7 MR. KILLALEA: Yes.

8 THE COURT: But I just, I normally have a  
9 reporter. I don't, it just slipped my mind. I guess I  
10 was focusing on these arguments and I just didn't think  
11 about the reporter because this is the kind of case you  
12 want to have a reporter and I normally do, and I just  
13 didn't think about it.

14 MS. PHILLIPS: Are we waiting for the order, or  
15 are you going to post it because we could wait?

16 THE COURT: You have drafted an order?

17 MS. PHILLIPS: Yes, there was a draft order  
18 attached. I probably have one in my --

19 (Pause.)

20 THE COURT: No, you can wait for the order.

21 MS. PHILLIPS: Ordering approving asset purchase  
22 agreement. I have my only copy here.

23 THE COURT: Yes, it's here.

24 MS. PHILLIPS: All right.

25 THE COURT: I've got it here. I'll need to read

1 through it again to make sure, but give me 15 minutes and  
2 I can --

3 UNIDENTIFIED: Excuse me, Your Honor. May I be  
4 heard --

5 THE COURT: No, no, no, no, no, you are not a  
6 party to this action so please be, have a seat.

7 UNIDENTIFIED: Thank you, Your Honor.

8 THE COURT: The only people who have a right,  
9 audience participation members, this is not an audience  
10 participation. The parties who have the legal right to  
11 speak are those who are here at counsel table. So, I'd  
12 love to have a conversation with you, but I cannot under  
13 our rules. All right. Court stands adjourned.

14 MS. PHILLIPS: Thank you, Your Honor. Have a  
15 nice weekend.

16 MR. KILLALEA: Thank you, Your Honor.

17 (Thereupon the hearing was concluded.)

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√ Digitally signed by Tami Pare

ELECTRONIC CERTIFICATE

I, Tami Pare, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of DISTRICT OF COLUMBIA V. DC CHARTERED HEALTH PLAN, Case No. 2012 CA 008227 in said Court, on the 1st day of March 2013.

I further certify that the foregoing 53 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 7th day of March 2013.

Tami Pare

Transcriber