

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

May 25, 2012

Brian D. Long, Esquire
Rigrodsky & Long, P.A.
919 North Market Street, Suite 980
Wilmington, DE 19801

Ryan M. Ernst, Esquire
O'Kelly Ernst Bielli & Wallen, LLC
1000 North West Street, Suite 1200
Wilmington, DE 19801

Re: *Coyne v. Catalyst Health Solutions, Inc.*; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.;
C.A. No. 7506-VCN
Date Submitted: May 24, 2012

Dear Counsel:

These actions have been brought to contest the acquisition of Catalyst Health Solutions, Inc. ("Catalyst") by SXC Health Solutions Corp. ("SXC"). Counsel for the Plaintiffs have not been able to agree upon an organization structure that would

Coyne v. Catalyst Health Solutions, Inc.; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.; C.A. No. 7506-VCN
May 25, 2012
Page 2

allow them to pursue their clients' claims effectively. Thus, the Court has been asked to designate a lead plaintiff, lead counsel, and liaison counsel.¹

The two sides of the debate are: Plaintiff—Haverhill Retirement System (“Haverhill”); liaison counsel, Rigrodsky & Long, P.A.; lead counsel, Wolf Popper LLP v. Plaintiff—Ira Lindell (“Lindell”); liaison counsel, O’Kelly Ernst Bielli & Wallen, LLC; and lead counsel, Levi & Korsinsky, LLP. The other two plaintiffs have endorsed Haverhill and its counsel for the positions at stake.

Factors to be considered by the Court in selecting lead plaintiffs and lead counsel were set forth in *Hirt v. U.S. Timberlands Service Company, LLC*.² Those factors include:

- the quality of the pleading that appears best able to represent the interests of the shareholder class and derivative plaintiffs;
- the relative economic stakes of the competing litigants in the outcome of the lawsuit (to be accorded great weight);

¹ All parties agree that the four actions should be consolidated. The motion to consolidate will be granted.

² 2002 WL 1558342, at *2 (Del. Ch. July 3, 2002).

Coyne v. Catalyst Health Solutions, Inc.; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.; C.A. No. 7506-VCN
May 25, 2012
Page 3

- the willingness and ability of all the contestants to litigate vigorously on behalf of an entire class of shareholders;
- the absence of any conflict between larger, often institutional, stockholders and smaller stockholders;
- the enthusiasm or vigor with which the various contestants have prosecuted the lawsuit;
- competence of counsel and their access to the resources necessary to prosecute the claims at issue.³

Several of these factors afford the Court no basis for differentiating between the two sides of the present debate. The willingness and ability of the two sets of lawyers to pursue this action with enthusiasm and vigor, their competence, and their access to resources are for both sides clearly adequate to meet the needs of the Plaintiffs and the proposed class and are substantially similar.

The amended pleadings submitted by Haverhill are marginally better than the amended pleadings submitted by Lindell. The Court notes Haverhill's argument with respect to Catalyst's failure to disclose, in its S-4, certain financial metrics that were prepared by it and provided to one of its financial advisors, which seems to be

³ See also *Se. Pa. Transp. Auth. v. Rubin*, 2011 WL 1709105, at *1-2 (Del. Ch. Apr. 29, 2011) (applying *Hirt* factors).

Coyne v. Catalyst Health Solutions, Inc.; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.; C.A. No. 7506-VCN
May 25, 2012
Page 4

far more developed than what appears to be a similar argument presented by Lindell.⁴

Haverhill has a significantly greater financial interest than does Lindell. Haverhill is a larger, institutional stockholder, with roughly \$200,000 of Catalyst stock. Lindell, by contrast, is an individual owning 100 shares of Catalyst, worth less than \$9,000. This factor marginally supports Haverhill.⁵

Another area of concern is whether there is conflict between the institutional and individual stockholders. That Haverhill is supported in its quest for lead plaintiff status by two individual stockholders suggests that Haverhill is better positioned than Lindell. In fairness, however, there is no indication of any conflict between Haverhill, the institutional shareholder, and the individual shareholders, and, indeed, it appears that their interests are well-aligned.

⁴ Of course, on the other hand, the Defendants have suggested that there is no factual basis for this argument.

⁵ Relatively, Haverhill's Catalyst holdings may not be material to it, but the record does not explain whether Lindell's holdings are any more important to him.

Coyne v. Catalyst Health Solutions, Inc.; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.; C.A. No. 7506-VCN
May 25, 2012
Page 5

The Court is confronted with a question for which there probably is no “right” answer. Assessing the factors is an inaccurate endeavor. Nonetheless, a conclusion must be reached, and, as set forth above, a review of the *Hirt* factors leads to the conclusion that, only narrowly, the Rigrotsky & Long-Wolf Popper arrangement would likely provide the most benefit to the potential class members. This is not to say that the O’Kelly Ernst-Levi & Korsinsky pairing would not also do a fine job. It is simply that the interests of the plaintiff class are best served by a unitary and cohesive litigation platform.⁶

For the foregoing reasons, an order will be entered designating Haverhill as the lead plaintiff, Rigrotsky & Long, P.A. as liaison counsel, and Wolf Popper LLP as lead counsel.

⁶ Although Haverhill and its attorneys filed a motion to expedite, I have given that effort no weight in this analysis. It would be easy to conclude that that motion to expedite was filed as much for these purposes as for the purpose of moving the case along, especially since time does not yet seem to be of the essence.

Coyne v. Catalyst Health Solutions, Inc.; C.A. No. 7448-VCN
Witmer v. Catalyst Health Solutions, Inc.; C.A. No. 7449-VCN
Lindell v. Blair; C.A. No. 7474-VCN
Haverhill Retirement System v. Catalyst Health Solutions, Inc.; C.A. No. 7506-VCN
May 25, 2012
Page 6

Although the order of consolidation does not give any role to the attorneys who have been unsuccessful, the Court encourages Lead Counsel to attempt to incorporate them into the case management structure.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Jessica Zeldin, Esquire
Kurt M. Heyman, Esquire
Gregory P. Williams, Esquire
Register in Chancery-K