

**Affidavit of Chris Mazurkewich  
Sworn July 5, 2010**

**Bankruptcy No. BK01-094004**

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY  
OF NETWORK HEALTH INC.**

**AND BETWEEN:**

**Action # 1001-06509**

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**ALBERTA HEALTH SERVICES**

**Plaintiff**

**-and-**

**NETWORK HEALTH INC.**

**Defendant**

**AFFIDAVIT OF CHRIS MAZURKEWICH  
(Re: Advice and Directions, and Lifting of Stay)**

I, **Chris Mazurkewich**, Corporate Officer, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Executive Vice President and Chief Financial Officer of Alberta Health Services ("AHS"), a creditor of Network Health Inc. ("Network"). As such, I have personal knowledge of the facts hereinafter deposed to except where stated to be on my information and belief, and where so stated I verily believe such information to be true and correct.

2. On May 11, 2010 this Honorable Court granted an Amended Consent Receivership Order in this action (the "Interim Receivership Order"), which, inter alia, appointed PricewaterhouseCoopers Inc. as interim Receiver (the "Interim Receiver") of Network.
3. The Interim Receiver has filed two reports in this matter. The first report of the Interim Receiver is dated May 11, 2010 (the "First Report"), and the second report of the interim receiver is dated June 8, 2010 (the "Second Report").
4. Since the granting of the Interim Receivership Order, AHS has been in constant contact with the Interim Receiver and with representatives of Network to assist the Interim Receiver in ensuring that the provision of health services by Network continue uninterrupted.
5. There have been extensive discussions between AHS and the Interim Receiver about the volume of surgical procedures required by Network to enable it to function on a cash flow positive basis. In this regard I refer to the contents of the Second Report.
6. As appears from the Second Report, the Interim Receiver has prepared a revised cash flow projection for the period May 3, 2010 to January 15, 2011 (the "Revised Projection") for the operations of Network. Prior to filing the Second Report, the Interim Receiver discussed with AHS the demand by Network that provision for significant legal expenses relating to Network's retention of two law firms be included in the Revised Projection. It is my understanding from my discussions with the Interim Receiver that such legal expenses include significant amounts for projected legal costs to be incurred by Network in an attempt to restructure itself and to restore itself to solvency. AHS objects to the use of the proceeds of the increased surgical procedures to be put to such use. Provision was made in the Interim Receivership Order for payment of Network counsel's reasonable fees and disbursements relating to the Interim Receivership. AHS has never agreed to directly or indirectly fund any restructuring costs which the management and shareholders of Network may wish to embark upon. In addition, the Revised Projection does not provide for any repayment to AHS in its capacity as the secured creditor of Network. It is AHS's position that any excess cash generated by the

increased surgical procedures done by Network should first be applied to repay such secured debt.

7. Subsequent to the Interim Receivership Order being granted, meetings have taken place between representatives of AHS and Network to discuss Network's plans for the future. Such meetings were conducted on a without prejudice basis. AHS has carefully considered the submissions made to it by Network. AHS is however not prepared to directly or indirectly fund any restructuring of Network. In addition, AHS has resolved to terminate the Agreement for the Provision of Orthopaedic Surgical Services between AHS and Network (the "Surgical Services Agreement") which is Exhibit "B" to my Affidavit sworn April 29, 2010. Network has been informed of this intention.
8. I attach hereto marked as **Exhibit "A"** an extract from the Surgical Services Agreement containing the provisions relating to termination thereof. For the reasons set out in my prior affidavits, Network is in default of the Surgical Services Agreement. In addition, AHS has the contractual right to terminate the Surgical Services Agreement without cause upon giving 180 days written notice of termination to Network. AHS also has the contractual right to suspend or terminate the Surgical Services Agreement without notice should Network become insolvent, bankrupt or is placed in receivership or commits any act of insolvency.
9. AHS intends to terminate the Surgical Services Agreement without cause by giving 180 days written notice of termination to Network in accordance with the draft notice which is **Exhibit "B"** hereto. AHS intends giving such notice without prejudice to its right to terminate the Surgical Services Agreement without notice as a result of Network having become insolvent, having being placed in receivership, or having committed acts of insolvency.
10. Because of the events since February 2010 there has been a fundamental change in the relationship between AHS and Network, and in the interest of public health, AHS had to plan for the future on the basis that the Surgical Services Agreement would be terminated. To ensure a proper transition of surgical proceedings from Network to AHS,

and to properly wind the interim receivership down, it is necessary for the stay to be lifted to allow AHS to give notice of termination of the Surgical Services Agreement to Networkc.

11. AHS is sensitive to the position of the staff of Networkc. AHS is prepared to offer employment to most, if not all, of Networkc's salaried and casual employees effective upon termination of the Interim Receivership. Such offer would not extend to the senior executives of Networkc. AHS is involved in discussions about this matter with Networkc and the Interim Receiver. There is considerable urgency for AHS to be allowed to proceed with a proposal to Networkc's staff. AHS is concerned that staff may leave Networkc once it becomes known that AHS will be terminating the Surgical Services Agreement, which in turn may negatively affect public health. AHS would prefer to do a so-called "program move" of the staff with the cooperation and approval of the labour unions involved. AHS believes that the labour unions will be supportive of a program move because it is to the advantage of the staff of Networkc to do so rather than to apply individually for positions advertised by AHS. AHS has requested Networkc's consent to be allowed to put in motion steps to achieve a program move, namely to contact all Networkc staff and the labour unions. AHS is awaiting Networkc's response. As soon as AHS is able to take such steps, it will be in a position to provide Networkc, the Interim Receiver and the Court with a detailed proposal setting out the labour unions' requirements, which staff are prepared to accept offers, which staff are not so prepared and how they are to be dealt with.
12. AHS has made good progress with the completion of the new facilities at the McCaig Building, and effective from November 15, 2010, AHS will be in a position to perform all of the surgical procedures currently being performed by Networkc in-house at the McCaig Building. AHS is hopeful that it can negotiate a consent termination of the Interim Receivership with Networkc effective November 15, 2010, but failing such an agreement will make an application to the Court for appropriate relief.

13. I make this Affidavit in support of an application by AHS for advice and directions by the Court, and for leave to lift the stay to enable AHS to terminate the Surgical Services Agreement.

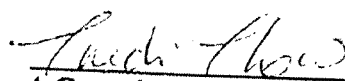
SWORN BEFORE ME at the City of )  
Calgary, in the Province of Alberta, this 5 )  
day of July, 2010. )

Trudi Thew )  
A Commissioner for Oaths in and for the )  
Province of Alberta )

my commission expires July 14, 2011  
TRUDI THEW

Chris Mazurkewich  
Chris Mazurkewich

**THIS IS EXHIBIT "A"**  
referred to in the Affidavit of  
**CHRIS MAZURKEWICH**  
Sworn before me this 5  
day of July, A.D. 2010.

  
A Commissioner for Oaths in and  
for the Province of Alberta  
my commission expires  
July 14, 2011  
TRUDI THEW

6.2 Invoicing and Payment

- (a) Subject to the provisions of Schedule "C", the total anticipated annual Fixed Service Fees per Procedure shall be paid by the Region to the Operator in advance, on the first day of each month in equal monthly amounts.
- (b) Subject to the provisions of Schedule "C", the Variable Service Fees per Procedure shall be invoiced by the Operator, in the form prescribed by the Region from time to time, on a semi-monthly basis on the fifteenth (15<sup>th</sup>) and thirtieth (30<sup>th</sup>) of each month for all Procedures performed since the submission of the preceding invoice, and shall be paid by the Region within forty-five (45) days after the receipt of an invoice for the amount payable.
- (c) Subject to the provisions of the *Excise Tax Act* (Canada), the Operator shall not charge the Region the Federal Goods and Services Tax in respect of the Services on the basis that the Region represents and warrants that the Services are being purchased by the Regional Health Authority Number 3, operating as the Calgary Health Region which is on the Alberta Government's Goods and Services Tax-Free entity list, and therefore is not subject to the Federal Goods and Services Tax.

7.0 Term and Termination

7.1 Term

Subject to both delays in commencement and earlier termination as contemplated by this Agreement, the Term shall be for the period as outlined in Schedule "C".

7.2 Ministerial Approval a Condition Precedent

The Parties agree that it is an expressed condition precedent to this Agreement and the engagement of the Operator by the Region having any force or effect that the Minister shall have approved this Agreement before the Commencement Date. Notwithstanding any other provision to the contrary, this Agreement shall not come into effect unless and until the Minister's said approval is granted and neither Party shall have rights or obligations relative to this Agreement until that time.

7.3 Rights of Termination

- (a) Subject to Subsection 7.3(b), a Party in default of any of its obligations under this Agreement shall have fourteen (14) Business Days from the day of receipt of written notice of such default to remedy the default. The Party not in default may, without affecting any other right or remedy at law, terminate this Agreement if the Party in default fails to remedy the default within the said fourteen (14) Business Days.

- (b) If, in the opinion of the Party not in default, acting reasonably, the default set out in the written notice of default provided pursuant to Subsection 7.3(a) cannot reasonably be remedied within fourteen (14) Business Days, the Party not in default shall provide such extra period or periods of time to allow the Party in default to remedy the default if in the opinion of the Party not in default, the Party in default takes material action and expeditiously works to remedy such default immediately after the receipt of the written notification of such default. If the Party not in default is of the opinion, acting reasonably, that the Party in default has not remedied or taken such necessary material action to expeditiously remedy such default, the Party not in default may terminate this Agreement within thirty (30) Business Days after the date of receipt of the written notification of termination by the Party in default.
- (c) Each Party shall have the right to terminate this Agreement without cause, costs, penalty or process of law, upon giving one hundred and eighty (180) days' written notice of termination to the other Party. Notice may be waived by mutual agreement in writing of both Parties.
- (d) The Region shall have the unfettered right to suspend or terminate this Agreement without notice, costs, penalty or process of law if:
  - (i) the Operator becomes insolvent, bankrupt, is placed in receivership or commits any act of insolvency;
  - (ii) the Region is reasonably of the view that the provision of the Services pose any materially unacceptable risks to the safety of the patients receiving the Services;
  - (iii) the Operator is in breach of any of its obligations pursuant to Section 13.0.

7.4 Obligations after Termination

Unless as agreed to otherwise between the Parties, if this Agreement is terminated, cancelled or ends for any reason, the Operator shall on the date of termination or ending of this Agreement, promptly forward to the Region or any alternate service provider designated by the Region, records or patients who are receiving the Services and other information or records required pursuant to this Agreement or that may be reasonably requested by the Region.

7.5 Continuity of Care

In all circumstances causing the termination of this Agreement, the Parties shall cooperate to ensure continuity of care for patients during the transition period while the Region is replacing the Operator with a new operator (notwithstanding reference herein to the Term), unless the Region and the Operator otherwise agree in writing. In the event of termination of this Agreement, the Operator shall notify all patients impacted by such termination, including patients receiving the Services and those referred to the Operator

but who have not yet received the Services, in accordance with such procedure and protocol agreed to between the Parties.

8.0 Compliance Requirements

8.1 Compliance Commitment

In the provision of the Services, the Operator shall comply with and take all such steps and do all such things as may be necessary to ensure the compliance by all persons involved in the provision of the Services with all of the following:

- (a) this Agreement;
- (b) all Applicable Laws, orders, rules, regulations and bylaws in force and applicable to the Services, the Facility and the Operator, including but not limited to those decreed by federal, provincial and municipal governments and without limiting the generality of the foregoing, the Operator, at its sole cost, shall comply with all requirements related to employment insurance, the *Workers' Compensation Act* (Alberta), income tax, Canada Pension Plan, occupational health and safety, and environmental protection legislation;
- (c) all directives, rules, policies, standards, performance expectations, clinical requirements and guidelines established from time to time by any Professional Governing Body having jurisdiction and the Minister in relation to the provision of the Services;
- (d) the requirements of all permits, licenses, certificates and approvals applicable to the Operator, all persons working within the Facility, the Services and the Facility;
- (e) the requirements of the Medical Staff Bylaws; and
- (f) all Applicable Region Policies. The Operator shall be responsible to become aware of the requirements of the Applicable Region Policies provided to the Operator from time to time by the Region or the Orthopedic Review Committee. The Operator's compliance to such Applicable Region Policies shall be effective from the date the Region or the Orthopedic Review Committee provides any Applicable Region Policy to the Operator.

8.2 Responsibilities

The Operator shall be aware of and be compliant with all changes affecting its obligations under Subsections 8.1(a) through (f).

**THIS IS EXHIBIT "B"**  
**referred to in the Affidavit of**  
**CHRIS MAZURKEWICH**  
**Sworn before me this 5**  
**day of July, A.D. 2010.**

*Trudi Thew*

**A Commissioner for Oaths in and  
for the Province of Alberta**

*my commission expires July 14, 2011*

*TRUDI THEW*

**DRAFT**

July \_\_, 2010

Network Health Inc.  
c/o Health Resources Centre  
#110, 1402 – 8<sup>th</sup> Avenue N.W.  
Calgary, AB T2N 1B9

**Attention: Chief Operating Officer**

Dear Sir:

**Re: Alberta Health Services and Network Health Inc.**

We are writing to you in connection with that agreement for the provision of orthopaedic surgical services between Alberta Health Services (successor to Calgary Health Region) ("AHS") and Network Health Inc. ("Network") operating as Health Resources Centre dated December 20, 2006, as amended by amending agreements dated January 17, 2007, May 1, 2007 and January 18, 2010 (collectively, the "Orthopaedic Surgical Services Agreement"). Pursuant to paragraph 7.3(c) of the Orthopaedic Surgical Services Agreement, AHS give you notice that it is exercising its right to terminate the Orthopaedic Surgical Services Agreement and the effective date of such termination is December 28, 2010 being 180 days following the date of this notice of termination.

This exercise by AHS of its right of termination of the Orthopaedic Surgical Services Agreement under paragraph 7.3(c) does not imply or mean that AHS has waived its rights of termination of the Orthopaedic Surgical Services Agreement pursuant to Section 7.3(d) thereof.

If you have any questions please feel free to contact our legal counsel, Borden Ladner Gervais LLP Attention: Larry Kwinter or Josef Kruger.

Yours truly,

**ALBERTA HEALTH SERVICES**

Per:  
Chris Mazurkewich  
CFO

c.c. Osiers, Attention: Mr. Robert Anderson  
Borden Ladner Gervais, Attention: Larry Kwinter and Josef Kruger

CAL01: 774492: v1

Action No.: BK01-094004  
QB 1001 - 06509

2010

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ALBERTA HEALTH SERVICES

Plaintiff

-and-

NETWORK HEALTH INC.,

Defendant

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AFFIDAVIT OF CHRIS MAZURKEWICH  
(Re: Advice and Directions, and Lifting of Stay)  
sworn July 5, 2010

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BORDEN  
LADNER  
GERVAIS

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors

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Calgary, Alberta T2P 4H2

Attention: Josef G.A. Krüger

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File No. 014758-000314