

At a Term of this Court, held in and for the County of Erie at the City Court Building in Buffalo, New York, on the 24 day of February, 2006.

PRESENT: HONORABLE JOSEPH G. MAKOWSKI, J.S.C.
Justice Presiding

FILED
ACTIONS & PROCEEDINGS

FEB 24 2006

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF ERIE

ERIE COUNTY
CLERK'S OFFICE

ERIE COUNTY MEDICAL CENTER CORPORATION

Plaintiff,

v.

CONSENT DECREE
INDEX NUMBER:
I2005-1853

COUNTY OF ERIE, NEW YORK

Defendant.

By verified complaint dated February 17, 2005, the plaintiff in the above-captioned matter, Erie County Medical Center Corporation [hereinafter "ECMCC"], commenced suit against the County of Erie, New York [hereinafter the "County"] regarding the respective rights and obligations of ECMCC and the County under the Public Authorities Law pertaining to an annual contribution of operating funds to ECMCC by the County, among other things. ECMCC and the County have agreed to the entry of a decree of the court, upon consent, to resolve the issues between them concerning the annual contribution of operating funds to ECMCC and other issues.

Upon consent of the parties, it is hereby ordered:

1. That section 3632(3) of the Public Authorities Law requires that "[i]n addition to any other powers granted to it by law and consistent with the constitution and

other provisions of law, the county shall appropriate sums of money to defray project costs or any other costs or expenses of the corporation, including operating expenses.” ECMCC and the County acknowledge that the above-quoted language from section 3632(3) is not ambiguous. ECMCC and the County acknowledge that the above-quoted language from section 3632(3) creates a statutory obligation on the part of the County to appropriate funds to ECMCC for project and other costs of ECMCC in an amount or amounts that may be determined in the County’s discretion.

2. That section 3632(5) of the Public Authorities Law requires that “[t]he county shall maintain its efforts to provide annual operating funding to the corporation to permit it to serve all uninsured and under-insured patients, foster its role as a teaching hospital, and provide tertiary care services that are unavailable at other health care facilities in the western New York region. The county shall maintain and provide an operating contribution to the corporation in an annual amount that is the difference between the corporation's total revenues minus total expenses. For purposes of this section, total revenue and total expenses shall include amounts attributable to the corporation, any subsidiary of the corporation, and any entity providing health care services thereto.” ECMCC and the County acknowledge that the above-quoted language from section 3632(5) is not ambiguous. ECMCC and the County acknowledge that the above-quoted language from section 3632(5) creates a statutory obligation on the part of the County to provide an annual operating contribution to ECMCC that is the difference between total revenues and total expenses, consistent with the language quoted in paragraph 3 below and the other language in the ECMCC Act.

3. That section 3632(5) of the Public Authorities Law further provides that the “manner of calculating the County’s annual maintenance of effort of [ECMCC] shall be the process followed by the County in determining the maintenance of effort for the network.” ECMCC and the County acknowledge that they cannot agree on the application of this above-quoted language and each of them fully reserve their rights to seek a judicial determination of this language, in accordance with paragraph 14 of this Consent Decree.

4. That ECMCC participated in the 2005 budget process and estimated that the difference between total revenues and total expenses for 2005 would be \$29,897,000. Actual results in 2005 have differed from this initial projection. ECMCC and the County agree that the difference between 2005 total revenues and total expenses is now estimated by ECMCC to be \$23,390,000, before consideration of any County operating contribution.

5. That the County has appropriated \$19 million as an operating contribution to ECMCC for 2005.

6. That ECMCC participated in the 2006 budget process and estimated that the difference between total revenues and total expenses for 2006 will be \$24,187,000.

7. That the County has appropriated \$6 million as an operating contribution to ECMCC in 2006.

8. That the Court has issued a Memorandum Decision dated December 30, 2005. Both ECMCC and the County agree that this Consent Decree shall supersede the Memorandum Decision, and any order entered thereon as the result of an appeal or otherwise, for the years 2005 through 2009. Both parties reserve their respective right to appeal the Memorandum Decision, or any order entered thereon, because the Memorandum Decision may impact the parties’ rights and obligations for the year 2010 and the years

thereafter. Notwithstanding any appellate decision to the contrary, in no event shall the rights and obligations of the parties for the years 2010 and thereafter be other than as agreed to in paragraphs 1 and 2 of this Consent Decree. Neither party shall rely on any appellate statutory or discretionary stay of proceedings to delay the relief provided in this Consent Decree or this Court's enforcement of this Consent Decree. ~~This Consent Decree shall not be included in any Record on Appeal in any appeal of the Memorandum Decision dated December 30, 2005, or any order entered thereon.~~ ECMCC agrees to discontinue with prejudice its claim for consequential damages as described in count VII of the verified Complaint.

9. For the year 2005, the County and ECMCC agree to an operating contribution in the amount of \$19 million. ECMCC acknowledges that this amount is less than the difference between total revenues and total expenses for 2005.

10. For the year 2006, the County and ECMCC agree to an operating contribution in the amount of \$20 million. ECMCC acknowledges that this amount is less than what ECMCC currently estimates as the difference between total revenues and total expenses for 2006, before agreeing to this annual subsidy. The County agrees to make the necessary appropriation in the event that funds are not otherwise available to the County from Tobacco settlement proceeds. The County agrees to wire transfer the full amount of the 2006 operating contribution to the ECMCC Master Trustee on or before March 10, 2006. ECMCC is hereby awarded a judgment in the amount of \$14 million (representing the difference between the \$6.0 million that is currently appropriated and the \$20 million that is required by this Consent Decree) that may be entered separately after February 15, 2006 and enforced as such. In the event that the County misses the March 10 funding

deadline, interest shall accrue on any unpaid balance at the rate of nine (9) percent per annum from January 1, 2006.

11. For the year 2007, the County agrees to appropriate, and ECMCC agrees to accept, \$14 million as an operating contribution to ECMCC. ECMCC acknowledges that this amount is less than what ECMCC currently estimates as the difference between total revenues and total expenses for 2007, before agreeing to this annual subsidy. The County agrees to wire transfer the full amount of the 2007 operating contribution to the ECMCC Master Trustee on or before March 10, 2007. In the event that the County misses the March 10 funding deadline, interest shall accrue on any unpaid balance at the rate of nine (9) percent per annum from January 1, 2007.

12. For the year 2008 and for each year thereafter, the County agrees to appropriate an operating contribution to ECMCC at least sufficient to pay the total annual debt service as described in section 12.1 of a certain Sale, Purchase and Operation Agreement between the County and ECMCC dated as of January 1, 2004, as amended. The County agrees to wire transfer the full amount of the annual operating contributions to the ECMCC Master Trustee on or before March 10 of each year. The County agrees to be responsible for any interest or penalty imposed as the result of the County's failure to timely transfer funds as called for in this Consent Decree.

13. For the years 2008 and 2009, ECMCC agrees that the County is not obligated to provide an operating contribution to ECMCC beyond that called for in paragraph 12 above.

14. For the year 2010 and the years thereafter, ECMCC has reserved all of its rights under sections 3632(3) and 3632(5) of the Public Authorities Law. By no later than

December 1, 2008, ECMCC and the County agree to commence good faith negotiations that are intended to yield an agreement on the process by which the County will fulfill its obligations under the Public Authorities Law to provide an operating contribution to ECMCC for the year 2010 and the years thereafter, beyond that called for by paragraph 12 of this Consent Decree. In the event that the parties fail to execute an agreement by June 1, 2009, either party may seek a judicial determination concerning the language quoted in paragraph 3 of this Consent Decree to the extent that it has not been finally determined through the appellate process involving this Court's Memorandum Decision dated December 30, 2005, or any order entered thereon. Notwithstanding any appellate decision to the contrary, in no event shall the rights and obligations of the parties for the years 2010 and thereafter be other than as agreed to in paragraphs 1 and 2 of this Consent Decree. The parties agree that the Supreme Court of the State of New York shall retain jurisdiction of this action for this purpose.

15. ECMCC and the County agree that the amounts set forth in paragraphs 9, 10, 11 and 12 of this Consent Decree are not intended to reflect the difference between total revenues and total expenses, but instead are compromise amounts. In the event that the actual annual financial performance of ECMCC (including any County operating contribution) results in a surplus of revenues over expenses, ECMCC shall be entitled to retain the surplus. ECMCC and the County agree that the amounts set forth in paragraphs 9, 10, 11 and 12 of this Consent Decree are inclusive of debt service associated with the financing of the purchase price for those assets purchased by ECMCC from the County, as described in section 12.1 of a certain Sale, Purchase and Operation Agreement between the County and ECMCC dated as of January 1, 2004, as amended.

16. ECMCC and the County acknowledge that the foregoing annual operating contribution amounts are based on existing terms in collective bargaining agreements between the County and its labor unions. The County agrees to include a representative of ECMCC in all collective bargaining proceedings of any kind affecting ECMCC employees from 2006 through 2009 and to seek the approval of ECMCC before any change in the terms of any collective bargaining agreement affecting ECMCC. The approval of ECMCC to any such change shall not be unreasonably withheld and the County shall have the right to petition the court in the event that the County believes that the withholding of ECMCC consent is unreasonable. In the event that any collective bargaining agreement applicable to ECMCC is changed, or a new agreement is executed, with terms that increase the wages or benefits of any part of the ECMCC labor force through 2009 without the consent of ECMCC, the difference (calendar year over calendar year) shall be added to the annual operating contribution amounts payable by the County to ECMCC. ECMCC and the County agree that the difference resulting from an increase in wages or benefits shall be agreed upon by ECMCC and the County. In the event that ECMCC and the County cannot agree upon the amount of the increase within ten (10) days of the effective date of any new or modified agreement, the parties will retain an independent accounting firm to calculate the impact on ECMCC. The firm will be selected jointly by ECMCC and the County. The firm will be required to calculate the impact within ten (10) days of being retained and the County agrees to wire transfer the amount owed to ECMCC within fifteen (15) days after the parties receive the accounting firm's calculation.

17. In addition to the amounts required to be paid as capital in and for 2004 and 2005, the County agrees to provide, at the County's cost, capital funds to ECMCC in the

following respective amounts: 2006: \$11,351,750; 2007: \$15,000,000; 2008: \$15,000,000; and 2009: \$8,000,000. For the year 2006, capital funds shall be transferred to ECMCC no later than June 30, 2006. For all other years, the capital funds shall be bonded no later than the last day of the calendar year preceding the year in which the funds are payable. The capital funds shall be provided to ECMCC by the County by wire transfer within fifteen (15) days of closing on any bond issuance undertaken to generate the capital funds. In the event that the County fails to make payment in accordance with this paragraph, the County agrees to pay \$150,000 as interest for each calendar month that all or any part of the capital funds remains unpaid. ECMCC will apply capital bond proceeds in the years 2007 through 2009 to capital expenditures having an aggregate average period of probable usefulness of at least seven (7) years. ECMCC agrees to cooperate with the County by providing an explanation of the business purpose for the capital expenditures and other information that may be needed in order to complete any bond issuance undertaken to generate the capital funds. ECMCC agrees to comply with reasonable covenants that may be required by law, including those to protect the tax-exempt status of County bonds.

18. ECMCC acknowledges that the capital funding called for by paragraph 17 is in fulfillment of the County's obligations under section 3632(3) for the years 2006 through 2009. For the year 2010 and the years thereafter, ECMCC has reserved all of its rights under sections 3632(3) and 3632(5) of the Public Authorities Law. Moreover, nothing in this Consent Decree shall waive the right of ECMCC under section 3632(3) of the Public Authorities Law after 2009. By no later than December 1, 2008, ECMCC and the County agree to commence good faith negotiations that are intended to yield an agreement on the process by which the County will fulfill its obligations under section 3632(3) of the Public

Authorities Law for the year 2010 and the years thereafter. In the event that the parties fail to execute an agreement by June 1, 2009, either party may seek a judicial determination of such rights to the extent that it has not been finally determined through the appellate process involving this Court's Memorandum Decision dated December 30, 2005, or any order entered thereon. Notwithstanding any appellate decision to the contrary, in no event shall the rights and obligations of the parties for the years 2010 and thereafter be other than as agreed to in paragraphs 1 and 2 of this Consent Decree. The parties agree that the Supreme Court of the State of New York shall retain jurisdiction of this action for this purpose.

19. The County will make up to an additional \$15 million available to ECMCC as a workforce incentive. The disbursement of these funds by ECMCC will be made only as a result of changes to work rules, collective bargaining units and collective bargaining agreements that significantly improve the financial performance of ECMCC. ECMCC and the County agree that the disbursement of these funds will be the subject of one or more separate agreements executed on or before December 15, 2006 by ECMCC, the County and the respective unions representing the ECMCC workforce. The County agrees to reasonably cooperate in achieving the workforce reforms contemplated by this paragraph and ECMCC shall have the right to petition the court in the event that the County fails to so cooperate. The County agrees to secure financing of the workforce incentive obligation within 90 days of the execution of such agreement or agreements. The County shall wire transfer funds to ECMCC fifteen (15) days after the County's issuance of a five (5) year tax-exempt general obligations bond for the purpose of paying this incentive. ECMCC is hereby awarded a judgment in the amount of up to \$15 million that may be entered

separately and enforced as such to fund the agreements reached by ECMCC, the County and the unions representing the ECMCC workforce.

20. The County agrees to indemnify ECMCC for malpractice liability up to \$1.0 million per year in the aggregate for conduct occurring during calendar years 2006 and 2007. The County will have the right to defend ECMCC in accordance with a certain letter agreement signed by ECMCC and the County dated July 9, 2005. The County shall provide reasonably prompt notice of any claim or suit that has a reserve value exceeding \$250,000 or whenever there is a reasonable likelihood that the aggregate limit of \$1.0 million may be reached for either year of exposure. ECMCC may, in its discretion, choose to receive regular reports from County counsel or otherwise participate in the defense of the matter at its own cost. The parties acknowledge that malpractice liability for conduct occurring before January 1, 2004 remains the sole responsibility of the County, as provided for in a certain Sale, Purchase and Operation Agreement between the County and ECMCC dated as of January 1, 2004, as amended..

21. The parties acknowledge that ECMCC has significantly overpaid the County for health benefits for retirees of the former Erie County Medical Center Healthcare Network. The parties acknowledge that the County owes ECMCC the amount of the overpayment. ECMCC waives any right it may have to collect or receive the full amount of the overpayment through June 30, 2005. The County agrees to correctly charge or debit, as the case may be, ECMCC for retiree health benefits effective July 1, 2005. The County agrees that the correct charge shall include only those persons who retired from ECMCC employment on or after January 1, 2004. The County agrees to remit to ECMCC any additional overpayment for the period after July 1, 2005 no later

than February 28, 2006. At least annually, ECMCC and the County shall agree to a list of those persons who were employed by ECMCC and who have retired since January 1, 2004.

22. The matters set forth in this decree are without prejudice to any other claim or defense that ECMCC may have against the County or the County may have against ECMCC under the Public Authorities Law, any contract between the parties or otherwise.

23. Except as otherwise set forth in this Consent Decree, the matters set forth in this decree do not constitute a waiver of any other rights that ECMCC or the County may have under the Public Authorities Law or any agreement between the parties.

24. This Consent Decree is intended to have binding effect on the parties and all or any part of it may be reduced by either of the parties to a judgment and entered in the Office of the Clerk of the County of Erie. This Consent Decree shall be appended to the judgment before entry and the terms of this Consent Decree shall be enforceable terms of the judgment to the fullest extent permitted by law. The parties agree that any action or proceeding seeking to enforce the terms of this Consent Decree may be brought by Order to Show Cause and that neither party shall object to any request to expedite resolution of the action or proceeding.

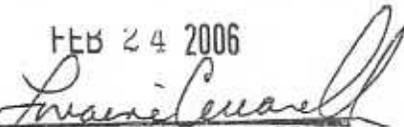
Upon the consent of the parties, as noted below, it is SO ORDERED.


J.S.C. Justice Joseph G. McKeown

GRANTED:

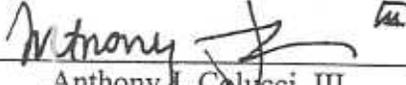
GRANTED

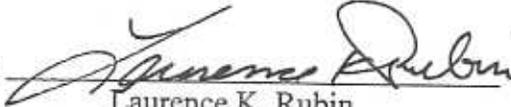
FEB 24 2006

BY 
LORRAINE R. CECCARELLI
COURT CLERK

UPON CONSENT:
Erie County Medical Center Corporation

UPON CONSENT:
County of Erie, New York

By: 
Anthony J. Colucci, III
Counsel for Plaintiff

By: 
Laurence K. Rubin
Erie County Attorney