IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice Washington, D.C. 20530, Plaintiff, v. JAMES D. DONDERO, c/o Highland Capital Management, L.P. Two Galleria Tower 13455 Noel Road, Suite 1300 Dallas, Texas 75240, Defendant.	C Case: 1:07-cv-00931 Assigned To : Huvelle, Ellen S. Assign. Date : 5/21/2007 Description: Antitrus

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties against the Defendant named herein for failing to comply with the premerger reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a ("HSR Act" or "Act"), added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, to recover civil penalties for violation of that section.

2. This Court has jurisdiction over the Defendant and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant James D. Dondero ("Dondero") is a natural person with his principal office and place of business at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240. Dondero is an investor with holdings in numerous companies. Dondero is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Dondero had total assets in excess of $100 million.

OTHER ENTITIES

5. Highland Capital Management, L.P. ("Highland") is a limited partnership organized under the laws of Delaware with its principal place of business at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240. For purposes of the HSR Act and Premerger Notification Rules, 16 C.F.R. Part 800 *et. seq.* ("HSR Rules" or "Rules"), Dondero is the ultimate parent entity of Highland.

6. Motient Corporation ("Motient") is a corporation organized under the laws of Delaware with its principal place of business at 12010 Sunset Hills Road, 6th Floor, Reston, VA

20190. Motient owns and operates two-way wireless communications businesses. At all times relevant to this complaint, Motient was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Motient had total assets in excess of $10 million.

7. Neighborcare, Inc. ("Neighborcare") is a corporation organized under the laws of Pennsylvania, with its principal office and place of business at 601 East Pratt Street, Third Floor, Baltimore, MD 21202. Neighborcare operates retail and institutional pharmacies. Prior to December 2, 2003, Neighborcare was called Genesis Health Ventures, Inc. At all times relevant to this complaint, Neighborcare was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Neighborcare had total assets in excess of $10 million.

THE HART-SCOTT-RODINO ACT AND RULES

8. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Federal Trade Commission and the Department of Justice ("federal antitrust agencies") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate proposed transactions and to

determine whether to seek an injunction to prevent the consummation of transactions that may violate the antitrust laws.

9. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), Rules were promulgated to carry out the purposes of the HSR Act. 16 C.F.R. § § 801-803. These Rules, among other things, define terms contained in the HSR Act.

10. Pursuant to the HSR Act, an acquiring person who meets the jurisdictional thresholds of the HSR Act must file the required notifications before acquiring in excess of $50 million, as adjusted annually beginning in 2005, of the voting securities of certain persons who meet the jurisdictional thresholds. Pursuant to the HSR Rules, all voting securities previously held are deemed to be held as a result of the acquisition at issue.

11. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. The maximum amount of civil penalty is $11,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

PRIOR ACQUISITIONS

Acquisitions of Neighborcare Voting Securities

12. On August 26, 2003, Dondero, acting through Highland, acquired 31,000 shares of Neighborcare. As a result of that acquisition, Dondero held 2,744,682 shares of Neighborcare,

with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately $52.3 million. Dondero was required by the HSR Act to submit a notification and observe the Act's waiting period before he made the August 26, 2003, acquisition of voting securities of Neighborcare. Neither Dondero nor Highland, on behalf of Dondero, filed a premerger notification under the HSR Act prior to the August 26, 2003, Neighborcare acquisition.

13. Highland continued to acquire shares of Neighborcare through March 2004. On March 23, 2004, Highland acquired 100,000 shares of Neighborcare voting securities. As a result of this transaction, Highland, and Dondero as the ultimate parent entity of Highland, held 4,781,883 shares of Neighborcare voting securities, with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately $108.1 million. Neither Dondero nor Highland, on behalf of Dondero, filed a premerger notification under the HSR Act prior to the Neighborcare acquisitions described in this paragraph.

14. At the end of March, 2004, Highland discovered that the Neighborcare acquisitions violated the HSR Act. On April 23, 2004, Dondero made a notification to cover the Neighborcare acquisitions.

15. As part of the notification, Dondero outlined the steps Highland would take to ensure that such a violation did not occur in the future.

Acquisitions of Motient Voting Securities

16. In April 2002, Highland acquired 1,082,090 shares of voting securities of Motient in connection with a reorganization of Motient. In July 2002, Dondero was elected to the Board of Directors of Motient. From April 2004 to November 2004, Highland acquired additional shares of Motient. As of November 10, 2004, Highland, and Dondero as the ultimate parent entity of Highland, held 3,504,568 shares of Motient voting securities, with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately $33 million.

VIOLATION

17. On December 13, 2004, Motient granted to each member of its board of directors, including Dondero, options to acquire 10,000 shares of Motient voting securities at an exercise price of $8.57 per share. The options were immediately exercisable and were scheduled to expire on December 13, 2014. In December 2004, the Internal Revenue Service adopted significant changes to its deferred compensation regulations that materially impacted the tax consequences of the options issued by Motient.

18. On February 10, 2005, Motient amended the terms of the options to provide that the options would vest in full on February 28, 2005, and expire on March 1, 2005.

19. Dondero exercised his options on February 28, 2005, acquiring 10,000 shares of Motient voting securities. Because of appreciation in the value of the shares he previously held, as a result of exercising the options Dondero held voting securities of Motient valued at approximately $94 million. Dondero was required by the HSR Act to submit a notification and

observe the Act's waiting period before he made the February 28, 2005, acquisition of voting securities of Motient. Neither Dondero nor Highland, on behalf of Dondero, filed a premerger notification under the HSR Act prior to the February 28, 2005, Motient acquisition.

20. On April 23, 2005, Dondero made a notification under the HSR Act to cover the February 28, 2005 Motient acquisition described above. The HSR Act waiting period for Defendant Dondero's February 28, 2005, acquisition of voting securities of Motient expired on May 28, 2005.

21. Dondero was in continuous violation of the HSR Act during the period beginning on February 28, 2005, when he acquired voting securities of Motient that resulted in his holding in excess of $50 million, and ending on May 28, 2005, when the waiting period expired.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the February 28, 2005, acquisition by Defendant Dondero of voting securities of Motient was in violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Dondero was in violation of the HSR Act each day from February 28, 2005, through May 28, 2005.

2. That the Court order Defendant Dondero to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

3. That the Court order such other and further relief as the Court may deem just and proper.

4. That the Court award the Plaintiff its costs of this suit.

Dated: May 21, 2007.

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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