

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

**City of Las Cruces and
Doña Ana County,**

Plaintiffs,

v.

No. D-307-CV-2026-00828

Arrieta, Manuel I.

**Appollo Global Management,
LifePoint Health, and
Memorial Medical Center,**

Defendants.

COMPLAINT FOR BREACH OF CONTRACT

COMES NOW, the County of Doña Ana and the City of Las Cruces by and through their attorneys of record, Rahn & DeFillippo LLC (Samuel C. DeFillippo and Taylor S. Rahn), and hereby state the following as their Complaint for Breach of Contract (“Complaint”):

VENUE AND JURISDICTION

1. Doña Ana County is a municipal corporation located in Doña Ana County, New Mexico.
2. The City of Las Cruces is a municipal corporation located in Doña Ana County, New Mexico.
3. Appollo Global Management is a private equity firm with its principal place of business in New York City, New York and upon information and belief is the majority owner of LifePoint Health.
4. LifePoint Health is a medical group with its principal place of business in Nashville, Tennessee and upon information and belief is a subsidiary of Apollo Global Management.
5. Memorial Medical Center is a for profit hospital located in Las Cruces, New Mexico that is owned and operated by LifePoint Health.

6. Personal jurisdiction over Defendants is proper. As alleged below, Defendants conducted business in New Mexico by operating a hospital located in Doña Ana County and the breach of contract at issue occurred in Doña Ana County.

7. Venue is proper because Plaintiffs are governmental entities located in Doña Ana County, the contracts at issue are in relation to Memorial Medical Center which is located and operated in Doña Ana County, and Defendants' breach of contract occurred in Doña Ana County.

8. Jurisdiction is proper within this Court.

ACQUISITIONS

9. In May of 2004 Province Healthcare Corporation, entered into a Lease Agreement (*hereinafter* "Lease") and Asset Purchase Agreement (*hereinafter* "APA") (the "Lease" and "APA" are *hereinafter* referred to collectively as the "Contracts") with the City of Las Cruces (*hereinafter* "City") and Doña Ana County (*hereinafter* "County") (the "City and "County" are *hereinafter* referred to as the "Plaintiffs") in relation to the property commonly referred to as Memorial Medical Center (*hereinafter* the "Hospital").

10. Upon information and belief, LifePoint Health ("LifePoint") acquired Province Healthcare Corporation in April of 2005.

11. Upon information and belief, Apollo Global Management ("Apollo") acquired LifePoint in November of 2018.

12. Pursuant to these acquisitions, LifePoint and Apollo Global Management (*hereinafter* referred to as the "Lessees") assumed the terms of the Contracts.

CONTRACTS' TERMS, CONDITIONS AND REQUIREMENTS

13. The Contracts place several terms, conditions, and requirements on Lessees including, but not limited to, the following.

14. Section 6.5 (Indigent Care/Continuation of Services) of the APA requires that:
- (a) Lessee agrees to institute and maintain during the Term or any Extended Term policies for the treatment of indigent patients (those unable to pay the full cost of healthcare services rendered to them) which taken as a whole are no less favorable to the residents of the City and County than those presently maintained by MMCI. Lessee will within ninety (90) days of Closing provide a copy of its written policies on indigent care to Lessors and will provide such copies to the Operating Board promptly following its appointment, and will post a written statement of such policies in English and Spanish in an appropriate location in the main lobby and in a prominent location in the emergency room of the Hospital. Continuously throughout the Term and any Extended Term, Lessee will provide Expanded Care Services, as hereinafter defined, for the sick and injured in Doña Ana County who seek treatment at the Hospital, regardless of the cost of that care, even if it exceeds Sole Community Provider Funds. "Expanded Care Services" shall mean (i) such care to the extent defined by the scope of services currently reimbursable by New Mexico Medicaid and (ii) such care that is now provided at the Hospital. Such Expanded Care Services shall be rendered by the Hospital in the medically appropriate setting as determined in the sole discretion of Lessee. Lessee shall prepare and submit to Lessors and the Operating Board on a monthly basis a report setting forth the costs of Expanded Care Services provided during the previous month and the number of patients served.
 - (b) Lessee shall maintain the Hospital as a full-service general acute care hospital by sustaining substantially the same types and level of services as currently provided, including and without limitation, a 12-bed locked psychiatric unit, women's and children's services, obstetrics, pastoral care programs and support for the Hospital auxiliary, provided such programs continue to be supported by the medical staff of the Hospital, the Operating Board and the community, and so long as there occurs no major adverse change in funding from federal or state reimbursement agencies programs upon which Lessee relies to provide such programs and services. In the event Lessee terminates any type or level of service at the Hospital, Lessee shall notify Lessors and the Operating Board in writing at least thirty (30) days in advance of the termination of such service.
 - (c) Within a reasonable time after Closing, Lessee shall coordinate with the County on the processes and mechanisms to seek state matching funds for hospital indigent care, including a possible grant to the County from Lessee of approximately \$4 million to \$5 million annually.
 - (d) Lessee shall assist the two Federally Qualified Health Center organizations with multiple sites in the County (the "FQHC Organizations"), by:
 - i. making a single payment to Lessors of Five Million Dollars (\$5,000,000) at Closing, which funds shall be distributed in the sole discretion of Lessors to improve the integration of services provided by the clinics in the County

operated by the FQHC Organizations (the “FQHC Clinics”), the Hospital and the existing family residency program (the “Residency Program”) and to expand the service hours of the FQHC Clinics; and

- ii. continuing to sponsor the Residency Program with the anticipation that the Residency Program will become, as soon as practicable, through the federal application approval process and (with the Hospital’s sponsorship) the Accreditation Council for Graduate Medical Education, affiliated with and transferred to one or both of the FQHC Clinics, thereby bolstering the proctor coverage which will in turn allow residents to facilitate staffing for expanded service hours of such clinics; provided, that the Hospital will continue to serve as a clinical training site for the Residency Program.

(e) Lessee shall consider the following:

- i. Using residents to provide on-site physician services for routine care at Doña Ana County Detention Center;
- ii. Establishing an automated data system for tracking and directing the flow of patient care and reimbursement between the Hospital and County-wide clinics;
- iii. contracting with the Veterans Administration to allow local veterans to remain in Las Cruces for their in-patient care;
- iv. evaluating the need and economic viability of additional hospitalists;
- v. supporting the completion of the cardiac step down unit;
- vi. re-examining the need for the First Step prenatal clinic; and
- vii. taking whatever other actions it deems appropriate in its efforts to assess the manner in which healthcare services are provided generally to the residents of the Lessors at the time of Closing and to enhance the quality and cost effectiveness of the continuum of care provided in the City and the County from and after Closing.

15. Section 6.6(b) (Capital Expenditures) of the APA, requires that Lessees shall “make annual capital expenditures in connection with the operation of the Hospital which in amount shall collectively average between four percent (4%) and five percent (5%) of net patient revenue (less bad debt expense) of the Hospital as set forth on such annual financial statements, based on a rolling three (3) year average.”

BREACH OF CONTRACT

16. On June 5, 2024, NBC News published a news article indicating that patients suffering from cancer have been turned away from Memorial Medical Center.

17. The NBC News article states that “[e]ven [] cancer patients and seven current and former Memorial clinicians described a facility in which both insured and uninsured patients requiring an array of treatments were regularly met with denials of care or demands for up-front payments.”

18. On July 17, 2024, New Mexico’s attorney general, Raul Torrez, announced an investigation into Memorial Medical Center, to determine whether the facility violated state laws by turning away indigent and low-income patients seeking care.

19. On August 29, 2024, the City propounded upon LifePoint a Notice of Breach which, in part, stated “[lessees] alleged failure to provide Expanded Care Services is a material breach of the agreements per Sec. 11.1(c).”

20. Further, the Notice of Breach requested that Lessees provide the following:

- a. [Lessees] shall provide the City any and all documents relating to requests made for Expanded Care Services, as defined by the agreements, by individuals between 2018 and 2024.
- b. [Lessees] shall provide the City any and all documents relating to Memorial Medical Center’s denial of any requests for Expanded Care Services, as defined by the agreements, between 2018 and 2024.
- c. [Lessees] shall provide the City any and all documents relating to [Lessees]’s annual capital expenditures in connection with the operation of the Hospital as described in Sec. 6.6 of the Asset Purchase Agreement. These documents should include, but are not limited to, any and all documents describing “annual capital expenditures in connection with the operation of the Hospital which in amount shall collectively average between four percent (4%) and five percent (5%) of net patient revenue” as described under Sec. 6.6(b) of the Asset Purchase Agreement.
- d. [Lessees] shall provide the City any and all “report[s] setting forth the costs of Expanded Care Services provided” as required in Sec. 6.5(A) of the Asset Purchase Agreement between 2018 and 2024.

- e. Per Sec. 4.9 of the Lease Agreement, [Lessees] shall develop an annual report describing “the fulfillment of Lessee’s obligations under this Lease and the Asset Purchase Agreement” and present it to the City’s General Counsel and outside counsel on or before September 30, 2024.
- f. [Lessees] shall provide the City any and all annual reports describing “the fulfillment of Lessee’s obligations under this Lease and the Asset Purchase Agreement” developed for the years 2018 through 2024.
- g. [Lessees] shall provide the City with a detailed outline of its plans to remedy any defaults identified regarding its denial to provide Expanded Care Services within thirty (30) days or, in the alternative, a detailed explanation as to why such defaults cannot be cured within thirty (30) days.

21. Following LifePoint’s receipt of the Notice of Breach Letter, the Parties began discussions regarding the Hospital’s requirements under the Contracts.

22. Despite these discussions, Plaintiffs have received reports from citizens regarding Lessees’ failures to comply with the Indigent Care requirements described within the Contracts.

23. In addition, during several discussions the Plaintiffs requested information relating to Lessees’ compliance with their obligations pursuant to the Capital Expenditures clause of the APA.

24. On January 8, 2026, Plaintiffs provided LifePoint’s legal counsel a letter stating, in pertinent part:

As has been discussed at length, Section 6.6(b) of the Asset Purchase Agreement states:

Lessee shall make annual capital expenditures in connection with the operation of the Hospital which in amount shall collectively average between four percent (4%) and five percent (5%) of net patient revenue (less bad debt expense) of the Hospital as set forth on such annual financial statements, based on a rolling three (3) year average.

In other words, MMC is contractually required to expend between four percent (4%) and five percent (5%) of net patient revenue (less bad debt expense) on annual capital expenditures in connection with the operation of the Hospital. Further, the City and County, as parties to the Asset Purchase Agreement, are entitled to information necessary to confirm that MMC is in compliance with the terms of the agreement.

On numerous occasions, the City and County have requested information to confirm that MMC has complied with its obligations under Section 6.6(b) of the Asset Purchase Agreement. In response, MMC has provided the City and County with limited information regarding MMC's capital expenditures during the years 2021, 2022, and 2023. Although this information provides insight as to the amount MMC has spent on capital expenditures during the three (3) years mentioned, it fails to provide adequate information to confirm that these amounts equated to a collective average of between four percent (4%) and five percent (5%) of MMC's net patient revenue minus bad debt. Indeed, and despite several requests, MMC has refused to provide the City, and County, adequate financial information regarding MMC's net patient revenue and/or bad debt. Without access to such information, the City and County are unable to determine whether the requirements agreed upon by MMC in Section 6.6(b) have been satisfied. Importantly, MMC has undoubtedly been required to provide such information through either income statements or other financial records to both the IRS and MMC's shareholders.

To ensure the privacy of MMC's financial information, the City and County have previously suggested obtaining a third-party financial consultant to confirm MMC's compliance with Section 6.6(b). The City and County are hereby re-submitting this request. Should MMC refuse this request, the City and County will have no option but to seek legal intervention. We look forward to reviewing your response within ten (10) days.

25. Despite continued discussions, Lessees have failed to provide adequate information necessary for Plaintiffs to properly evaluate Lessees' obligations in relation to Capital Expenditures despite the reporting requirements described within the Contracts.

COUNT I – BREACH OF CONTRACT

26. Plaintiffs incorporate by reference all the preceding paragraphs as if fully realleged herein.

27. The City of Las Cruces and Doña Ana County entered in a valid Lease Agreement and Asset Purchase Agreement with Province Healthcare Corporation.

28. Appollo Global Management and LifePoint Health have assumed the terms and conditions of the Lease Agreement and Asset Purchase Agreement through their acquisition of Province Healthcare Corporation.

29. The Contracts were valid and enforceable.

30. Pursuant to the Contracts, Appollo Global Management and LifePoint Health were responsible for providing specific services and accommodations relating to indigent and low-income patients seeking care at Memorial Medical Center.

31. Pursuant to the Contracts, Appollo Global Management and LifePoint Health are obligated to provide documents and information necessary for the City of Las Cruces and Doña Ana County to determine Lessees' compliance with the Contracts.

32. Pursuant to the Contracts, Appollo Global Management and LifePoint Health are obligated to utilize between four percent (4%) and five percent (5%) of Memorial Medical Center's net patient revenue minus bad debt as Capital Expenditures.

33. Lessees have breached the Contracts by failing to comply with the agreed upon terms and conditions of the Contracts.

34. Plaintiffs are entitled to an award of damages caused by Appollo Global Management and LifePoint Health's breach of the Contracts.

PRAYER FOR RELIEF

Plaintiffs, the City of Las Cruces and Doña Ana County, request that this Court:

A. Determine that Appollo Global Management and LifePoint Health breached the terms of the Lease Agreement and Asset Purchase Agreement;

B. Order Appollo Global Management and LifePoint Health to comply with the terms of the Lease Agreement and Asset Purchase Agreement;

C. Award Plaintiffs all costs and fees, including attorney fees;

D. Award Plaintiffs all applicable damages under New Mexico law and as described within the Contracts; and

E. For all other relief this Court finds just and necessary.

Respectfully submitted,

RAHN & DEFILLIPPO, LLC

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