

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ZEYNEL A. KARCIOGLU, M.D. * **CIVIL ACTION NO. 07-3352**
*
VERSUS * **SECTION A**
*
THE ADMINISTRATORS OF * **MAGISTRATE 4**
THE TULANE *
EDUCATIONAL FUND *
*

MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION FOR PROTECTIVE ORDER WITH RESPECT TO PRICE
WATERHOUSE COOPERS LLP SUBPOENA

MAY IT PLEASE THE COURT:

PLAINTIFF, Zeynel A. Karcioglu, through undersigned counsel, submits the following memorandum in opposition to Defendant’s Motion for Protective Order With Respect to Price Waterhouse Coopers LLP:

The Issuing Court must Quash or Modify a Subpoena

Rule 45(c)(3) of the Fed. R. Civ. P. states that the **issuing** (emphasis added) court must quash or modify a subpoena that: (1) fails to allow a reasonable time for compliance; (2) requires a person who is not a party to travel more than 100 miles from where the person resides; (3) requires disclosure of privileged or protected matter; or (4) subjects a person to undue burden.

The issuing court for the Price Waterhouse Coopers LLP subpoena is the

Southern District of New York, and not this court. Defendant has filed a Motion to Quash in the Southern District of New York. That motion is set for hearing on August 19, 2008.

Defendant cites the case of *Static Control Components, Inc. v. Darkprint Imaging*, 201 F.R.D. 431 (M.D.N.C., 2001) for the proposition that the nonissuing court may decide whether a subpoena may be quashed, contrary to the clear language of Rule 45. However, this district court decision from North Carolina, which is not binding precedent for this court, states a reason why in its particular case, the issuing court need not decide the merits of the motion to quash. In *Static Control Components* in footnote five, the court points out that

“Only the court issuing the subpoena normally has jurisdiction over all of the persons, including persons served with the subpoena. In this case, however, the Court has jurisdiction over all of the involved persons, inasmuch as they are either parties or a party's attorney, who has been admitted *pro hac vice* in this Court. Nevertheless, this fact does not permit the Court to usurp the Colorado court's authority to quash or modify the subpoena. Rather, the Court enters the fray only because a party has filed a broad motion for a Rule 26(c) protective order that discovery not be had or else be conducted on limited terms. This issue extends well beyond the matter of a specific subpoena.”

The *Static Control Components* case is easily distinguished from the case at bar. This Court does not have jurisdiction over Price Waterhouse Coopers, LLP, located in New York. The Southern District of New York does have jurisdiction over Price Waterhouse Coopers, LLP. Also, Tulane has not filed a broad motion for a protective order, but rather two (involving the Price Waterhouse Coopers, LLP subpoena and the Price Waterhouse Coopers subpoena) specific narrow motions for protective order that apply to the matters stated in the subpoenas.

The Communications between Price Waterhouse Coopers, LLP and Tulane are not Privileged from Disclosure.

Brief Statement of Material Facts

The Tulane University School of Medicine (the “Medical School” or “School of Medicine”) was one area where the University utilized the services of PricewaterhouseCoopers, LLC (“PWC”), a consulting firm retained to provide the Defendant with business advice regarding Tulane’s options for restructuring the Medical School. As seen in its November 7, 2005 Engagement Letter to Tulane, PWC was engaged to explore various operational and other topics related to retaining and reducing faculty size, making projections regarding clinical operations and demographics after the Hurricane, determining the impact of various scenarios involving accreditation of the Medical School’s residency programs, and a variety of other operational subjects.

Discovery revealed that PWC had a major role in determining the course of action taken by Tulane leading up to this action, including identification of faculty to be separated after the storm. In short, it appears that PWC evaluated the projected economic losses at the Medical School, provided input as to salary and/or faculty reductions, which clinical operations should be focused on, and other matters relating to the massive faculty layoffs. Furthermore, it appears that calculations regarding faculty's potential earning capacity and other criteria were evaluated. Importantly, this advice was not accounting, auditing or attestation advice – it was pure business consulting. The precise development of the plan on how many and which faculty to terminate is relevant both to the federal claims arising under age discrimination, and the Louisiana breach of contract claims brought by Plaintiff.

Witness after witness has testified that PWC had an integral role in determining the termination of faculty members, and PWC provided the damage assessment and financial modeling in connection with the Renewal plan. No one has mentioned Ropes and Gray, LLP, the law firm that Defendant now (for the first time since this case began) states was the true employer of PWC.

The truth is that Defendant seeks to deprive Plaintiff of essential, relevant, and non-privileged information in order to prejudice Plaintiff's case, and its claims

of privilege are disingenuous, without merit, and belied by its own intention to introduce PWC group leader David Chin as a witness in this case. See Ex. 1 attached hereto.

On June 27, 2008, Plaintiff issued a subpoena to PWC (the “Subpoena”), primarily seeking documents and things in PWC’s possession relating to PWC’s role and work in connection with the reorganization of the Medical School. The time frame the Subpoena covers is less than four months, from August 29 (the date of the Hurricane) - December 9, 2005 (the date faculty were sent their separation letters).

The time frame of these requests is narrow, and all of these documents are plainly relevant not only to PWC’s assessment of Tulane’s financial condition, but also the suggestions made by PWC vis-à-vis faculty retention, department restructuring, and the options discussed by PWC and Tulane with respect to the carrying of the Medical School’s business.

Some of the information requested includes:

1. The financial condition of Tulane, which was called into question by the Answer, which asserts that the University was in a state of “financial exigency” which is why it terminated Plaintiff and other faculty;

2. Documents relating to Tulane's ability to operate as a going concern;
3. Documents relating to Tulane's selection of School of Medicine faculty to be separated;
4. Notes and minutes of meetings during the time period between August 29, 2005-December 9, 2005;
5. A copy of PWC's document retention policy.

PWC specifically objected to only five of the Requests, mostly on the basis that Plaintiff requested "all" documents relating to the information sought.

Tulane, however, seeks to quash the entire Subpoena, and seeks to assert a blanket privilege (either under a purported attorney-client privilege or state-law accountant-client privilege) over the whole of the Requests. Notably, Defendant has failed to provide a memorandum of law with points and authorities that the Court may rely upon.

Plaintiff therefore respectfully requests that this Court deny Defendant's Motion for Protective Order.

Rule 26 and Rule 45 Standards

A party may "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." FED. R. CIV. P. 26 (b)(1). Moreover, the relevancy of the information sought by the Subpoena is to be "construed broadly to encompass any matter that bears on, or that reasonably could lead to other

matters that could bear on, any issue that is or may be in the case.” *Sierra Rutile Ltd. v. Katz*, 1994 WL 185751 at *3-4 (S.D.N.Y. 1994)(quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

Defendant, as the party seeking to prevent disclosure under a claim of attorney-client privilege, bears the burden of establishing all the essential elements of such privilege. *von Bulow by Auersperg v. von Bulow*, 811 F.2d 136, 144 (2d Cir.), *cert. denied*, 481 U.S. 1015 (1987). While the attorney-client privilege has long been recognized by the courts, the privilege applies “only to communications between lawyer and client; in general, communications between accountants and their clients enjoy no privilege.” *United States v. Adlman*, 68 F.3d 1495, 1499 (2d Cir. 1995)(citing *United States v. Arthur Young & Co.*, 465 U.S. 805, 817 (1984)). The reasoning behind attorney-client privilege is that it promotes clients to make full disclosure to their attorneys.” *Adlman*, 68 F.3d at 1499. *Fisher v. United States*, 425 U.S. 391, 403 (1976). Under limited circumstances, however, an accountant’s communications may be privileged, if “rendered in *confidence* for the purposes of obtaining *legal advice from the lawyer*. If what is sought is not legal advice . . . or if the advice sought is the accountant’s and not the lawyer’s, no privilege exists.” *US v. Adlman*, 68 F.3d at 1499 - 1500 (emphasis in original).

Federal Law Applies to the Privileges Asserted by Defendant

Where evidence sought is relevant to a federal and state law causes of action in the underlying case, claims of privilege are determined by federal law. *See von Bulow by Auersperg*, 811 F.2d 136. Furthermore, with respect to the work-product doctrine, in federal diversity cases such as the one at bar, federal law, rather than state law applies. *Bowne of New York City, Inc. v. AmBase Corp.*, 161 F.R.D. 258, 264 (S.D.N.Y. 1995). “Federal Rule of Civil Procedure 26(b)(3) provides for a qualified immunity from discovery for documents “prepared in anticipation of litigation or for trial.” Work product immunity ‘applies only to documents prepared principally or exclusively to assist in anticipated or ongoing litigation.’” *Chin v. Rogoff & Co., P.C.*, 2008 WL 2073934 at * 3 (S.D.N.Y. 2008)(quoting *Martin v. Valley National Bank*, 140 F.R.D. 291, 304 (S.D.N.Y.1991)).

As set forth below, it is clear that PWC provided Defendant with business-related consulting, not accounting or audit services; Defendant has further failed to meet its burden to show that the consultant played any role in rendering information necessary or used in connection with the rendering of legal advice – much less any advice relevant to any anticipated litigation. Defendant mischaracterizes the consultant’s role simply to prevent access to relevant, non-privileged materials, in violation of the Federal Rules.

ARGUMENT

The Information Sought Are Not Protected by Attorney-Client Privilege Or the Work Product Doctrine

The evidence discovered thus far in this action reveals that PWC provided non-accounting, business consultancy services to Defendant in restructuring the University and School of Medicine. There is no mention of litigation or anticipated litigation in the engagement letter from PWC to Tulane, setting forth the scope of services offered by PWC. See Ex. 2 (“PWC Engagement Letter”). Furthermore, there was no mention of any litigation or even attorney advice in any of the depositions to date.

In the PWC Engagement Letter, the consultant even takes great care to describe the services it will provide to Tulane, which included “Analysis of Market Context;” “Consideration of the impact of various scenarios for clinical operations on medical students, residents, LCME/ACGME accreditation;” “Impact on Research programs;” “Options for Clinical facilities;” and “develop[ing] analyses of various strategic options of continuing operations in various locations.” In rendering these services, PWC was careful to indicate that it was performing services in accordance with the Standards for *Consulting Services*, and that it would “provide no opinion, attestation or other form of assurance with respect to [its] work.” Furthermore, PWC indicated that its services to Tulane “will not constitute an examination or a review in accordance with generally accepted auditing standards or attestation standards.” PWC Engagement Letter at p. 2. In short, this was a business consulting arrangement, which conclusion is borne out in Defendant’s deposition testimony.

Larry Baudoin, the Medical School’s Associate Dean for Administration and Financial Management at the relevant time, testified that PWC was present at the initial meetings in Houston to discuss the damage to the University and formulate a plan for reopening the University. *See* Baudoin Dep. 16:2-24. Relevant portions of the Baudoin Deposition is attached herein as Ex. 3. Furthermore, discovery revealed that PWC had a specific role in modeling and projecting savings from terminations

of faculty.

When asked about an email Mr. Baudoin had sent in connection with planned terminations, Mr. Baudoin testified that:

“it would appear from this that we were trying to do some modeling as to what savings could result from having 80 percent of the faculty salaries be recurring, and this must have been a request that came by down through the consultants and through [the University’s CFO] Tony Lorino’s office to us.” Id. at 33:8-14.

Mr. Baudoin further indicated that the University, through the consultants, formulated a precise dollar amount that was to be cut out of the budget during the restructuring. *Id. at 86: 4-7 (Q: Was there a specific dollar amount that had to be cut out of the budget that related to faculty salaries? A: Yes).* However, Mr. Baudoin testified that once that number was met by the Dean of the Medical School (Dr. Ian Taylor), the consultants sought even more cut, in the amount of \$5 million:

Q Okay, and who told him that he needed to cut five million more?

A He told me that he had received a call from Gibson Hall, I assume from the president or Paul Whelton, saying that we needed to reduce five million more, because the consultants were telling him that we were not going to meet the quota for survival.

Q The consultants being Pricewaterhouse?

A I think so. There were a lot of different consultants around.
See Baudoin Dep. 86:20-25, 87:1-6.

The then-Dean of the Medical School, Dr. Taylor's deposition confirmed Mr. Baudoin's testimony:

" . . . [we were largely working with Price Waterhouse consultants brought in under David Chen and they were gathering figures and estimating the losses, potential losses from the medical school in terms of lost clinical revenue and other losses of revenue." Taylor Dep. 17: 11- 16.

"The Price Waterhouse people had calculated what the potential loss in clinical revenue would be based on not having hospitals to practice in. . . . so they were brought in to do calculations as to what the loss to the practice plan, the medical school and the university would be. I don't recall what sum they came up with, but I think they thought there would be a need to reduce the salaries by about 31 million dollars a year. . . I don't. . . want to be held to that figure." Taylor Dep. 22:18-25, 19:1-8.

A: *"We were working with the Price Waterhouse people about what our losses would be, but I didn't have access to the whole picture of the university and what the university's resources were. And we were sitting down with Price Waterhouse to see what the losses in the medical school would be since we had the worst financial picture."*

Q: So was all the financial data that you had about the losses given to you by Price Waterhouse?

A: *"It was worked out through Price Waterhouse, yes, so they asked for figures on clinical revenue and all the sources estimated what our losses would be. . . . They were the ones that estimated what the losses would be, based on the practice plan and the hospital and the school."*

Taylor Dep. 44:13-25, 45:1-8 (attached hereto as Ex. 4).

The Defendant's President Scott Cowen also expressed the view that PWC was a source of business advice, not legal advice; furthermore, no mention that PWC was

hired to help any legal advisor (or in any anticipation of litigation) is mentioned anywhere in *any* of the depositions:

“Q Now, Tulane also hired PricewaterhouseCoopers to be consultants on matters involving Tulane after Katrina; is that correct?”

A Correct.

Q And did they have any input into this renewal plan?

A I don't recall whether they had specific input into this document you showed me. I just don't recall.

Q Okay, and why were they hired?

A They were hired to assist us in issues related to the School of Medicine.

Q Okay, and what issues were those?

A They were to help us think through the way we should deal with the School of Medicine in the aftermath of Katrina in light of the depopulation of the city.

Q Okay, and did you get input from groups other than PricewaterhouseCoopers on the issue relating to the School of Medicine after Katrina?

A I don't recall other groups other than them and the Blue Ribbon Panel and the others involved in the overall discussions about the renewal of the university.” Cowen Dep. 21:22-25, 22: 1-22
Attached hereto as Ex. 5.¹

¹ As for the suggestion that Ropes & Gray, LLP retained PWC rather than the University, it is negative by Dr. Cowen's (as well as the other deponents') testimony: “Q Did you select PricewaterhouseCoopers to be your consultants? A *I'm not sure I can answer your question. The university retained them.*” Cowen Dep. 67:8-11.

Apart from Defendant's counsel's vague and self-serving Declaration in support of the Motion to Quash, and the nonspecific letter from Ropes & Gray, LLP executed two weeks before the declaration of financial exigency – likely well after PWC had rendered services for Defendant – Tulane has not put forth a scintilla of evidence that PWC provided any services apart from business consultation services to Tulane.²

Furthermore, Defendant, through its attorneys or otherwise, have never asserted any privilege in connection with any of the questions asked at deposition, nor the answers given by the deponents, who have called the underlying information into question, and have waived any claim of privilege or work product with respect to this information, such that it exists. Finally, and perhaps most tellingly, PWC's lead team member, David Chin, is listed as a trial witness to be called by Defendant in the underlying case. See Ex. 1. Defendant in essence seeks to have Dr. Chin testify on its behalf, yet would preclude discovery of the consulting work he undertook at their behest. Such a result would be a manifest injustice.

Neither the attorney-client privilege nor work product doctrine applies to the documents sought in the Subpoena. *Diversified Group Inc. v. Daugerdas*, 304 F.

² After eight depositions taken in this case, many of which involved high-level University administration personnel with intimate knowledge of the subject matter, this motion is the first time that Ropes & Gray, LLP has been mentioned in connection with the restructuring. None of the deponents mentioned that anyone but the University hired PWC, and no one has ever indicated that there was any material prepared for Ropes & Gray, or any attorney.

Supp.2d 507 (S.D.N.Y. 2003)(finding that attorney-client privilege does not apply to business advice, rather than legal advice).

No Accountant-Client Privilege Applies to the Documents Sought Under the Subpoena

There is no recognized accountant-client privilege under the federal common law. *Couch v. United States*, 409 U.S. 322 (1973). Where, as here, a case involves federal and state claims, the federal rule of privilege is applied. *See Coastal Fuels of Puerto Rico v. Caribbean Petroleum Corp.*, 830 F. Supp. 80, 81 (D.P.R. 1993)(denying motion for protective order seeking to apply state accountant-client privilege in case involving federal and state claims)(citing *Wm. T. Thompson v. General Nutrition Corp.*, 671 F.2d 100 (3d Cir. 1982). In the case at hand, the development of the plan and criteria to separate faculty relates to both the age discrimination claim, as well as the state law breach of contract claims set forth in the Complaint.

Even if state law were to apply, however, Defendant has not met its burden to show that Louisiana Code of Evidence Article 515 applies to PWC, preventing disclosure of the information sought in the Subpoena. L.C.E. Art. 515 extends to “the holder of a license issued pursuant to the Louisiana Accountancy Act and includes all persons and entities within the definition of licensee in R.S. 37:73(8),

which, for its part, defines “licensee” as a holder of a “license.” “License” means an active certificate of certified public accountant, pursuant to R.S. 37:73(3)(a), or a CPA firm's permit to practice issued in accordance with the provisions of this Part” according to R.S. 37:38(7).

L.C.E. Art. 515 provides, in relevant part that “A client has a privilege to refuse to disclose, and to prevent another person from disclosing, a confidential communication, . . . , made for the purposes of facilitating the rendition of *professional accounting services* to the client.”

PWC expressly indicated in its Engagement Letter that it was not providing professional accounting services for Tulane; furthermore, the deposition testimony set forth at length above, indicates that the services provided were business consulting services, and not accounting or attestation services, and so L.C.E. Art. 515 does not apply.

The lead consultant for PWC was David Chin, MD/MBA, who appears to be a Boston, Massachusetts-based Partner at PWC. Neither Dr. Chin, nor any of the other individuals identified in the PWC Engagement Letter to be the “team” assigned to Tulane list either a CPA license or accounting in their background profiles. Defendant further has failed to indicate whether any member of this

PWC team had a CPA or whether they qualify as holders of a license under the meaning of Art. 515.

Conclusion

In light of the foregoing, Plaintiff respectfully requests that this Court deny Defendant's Motion for Protective Order. The requested information is reasonably calculated to lead to admissible evidence in connection with both the federal and state claims brought by Plaintiff, is narrowly drafted, relevant to the issues in the case, and no recognized privilege or protections apply to its production.

Respectfully submitted,

(s) Victor R. Farrugia

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ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served electronically through CM/ECF on counsel of record this 12th day of August, 2008.

(s)Victor R. Farrugia



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November 7, 2005

Ms. Yvette Jones
Interim COO and VP External Affairs
Tulane University
New Orleans, Louisiana 70118

Subject: PricewaterhouseCoopers' Proposal to Assist the Tulane Health Sciences Center with Planning for Hurricane Recovery

Dear Yvette:

This letter confirms that PricewaterhouseCoopers LLP, a Delaware limited liability partnership ("PwC" or "PricewaterhouseCoopers" or "we") has been retained by Tulane University ("Tulane" or "Client" or "you") to provide the services (the "Services") set out below. The purpose of this letter, including the attached Terms and Conditions, is to confirm the understanding of our respective responsibilities and the terms of this engagement (the "Agreement"). If PricewaterhouseCoopers commenced the performance of the Services prior to the execution of this Agreement, this Agreement shall be effective as of the commencement of such Services.

Our Understanding, Scope of Our Services, and Our Approach

PwC has been engaged to develop programmatic, strategic and financial analysis reflecting both the current and future state for Tulane University's operations including specific analyses related to its medical school, health science center and the University as a whole. The deliverables will be limited to the internal use of Tulane University's senior management, Board of Directors and the advisory committee to the Board including advisory committee members Drs. William Brody and Harvey Fineberg.

Analyses will reflect various strategic options and underlying hypothetical assumptions developed by Senior Management. Assumptions will revolve around the expected repopulation of New Orleans, programmatic offerings by the University, structure of residency programs, etc. As we are all aware, the State of New Orleans and the associated healthcare market has undergone significant change over the last few months. As a result, most planning activities for healthcare in the region that will incorporate significant variables and hypothetical assumptions about the future population of the area, the payor mix and other demographics of the returning population, anticipated demand for healthcare services, etc. that can not be validated from historical or current experience.

These analyses will include workstreams that facilitate analysis of:

- Options for Clinical programs - Analysis to include identification of clinical practice options for faculty, analyses of options regarding clinical teaching sites, considerations regarding faculty size, clinical program analysis.



- Analysis of Market context - To include assembly of projections of changing context demographics and the impact on clinical operations. Analysis of implications of changing regulatory environment in the State (CON processes).
- Impact on Medical Education programs - Consideration of the impact of various scenarios for clinical operations on medical students, residents, LCME/ACGME accreditation.
- Impact on Research programs - Development of information regarding preservation of research operations, consideration of the implications on research of the various clinical options.
- Options for Clinical facilities - To include analysis of plans for hospitals, relationship with HCA and understanding of HCA strategies for New Orleans, scenarios for medical school facilities, plans for Charity Hospital and the VA hospitals.
- PMO - Communications, change management issues, analysis of administrative infrastructure implications of scenarios, implications for affiliation agreements, providing support staff for data analysis and financial modeling.

We will develop analyses of various strategic options of continuing operations in various locations, e.g. Louisiana vs. other sites including options in the short term and long term, and considerations of whether Tulane should partner with LSU.

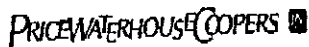
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We will perform the Services in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants ("AICPA"). Accordingly, we will provide no opinion, attestation or other form of assurance with respect to our work or the information upon which our work is based. The procedures we will be performing under this Agreement will not constitute an examination or a review in accordance with generally accepted auditing standards or attestation standards. We will not audit or otherwise verify the information supplied to us in connection with any engagement under this Agreement, from whatever source, except as may be specified in this Agreement.

The Services do not include the provision of legal advice and PricewaterhouseCoopers makes no representations regarding questions of legal interpretation. Client should consult with its attorneys with respect to any legal matters or items that require legal interpretation, under federal, state or other type of law or regulation.

Client Responsibilities

Tulane shall provide PricewaterhouseCoopers with all information relevant to the Services and any reasonable assistance as may be required to properly perform the Services. Tulane represents and warrants to PricewaterhouseCoopers that all such information will be accurate and complete in all material respects. The overall definition and scope of the work to be performed, and its adequacy in addressing Tulane's needs, is Tulane's responsibility. Tulane shall perform all management functions and make all management decisions in connection with the Services, and shall assign competent individuals to oversee the Services. Tulane is also responsible for the implementation of actions identified in the course of this engagement and results achieved from using any Services or Deliverables (as defined below). Where you are using third parties in connection with the Services to be provided in accordance with this letter, you will ensure that you have appropriate agreements with them. Unless agreed otherwise in this letter, you will be responsible for the



management of those third parties and the quality of their input and work. Any timing or fee estimate we have provided for this engagement takes into account the agreed-upon level of assistance from Tulane and commitment of Tulane resources.

PricewaterhouseCoopers has not been engaged to, nor will PricewaterhouseCoopers provide any management functions or make management decisions for Tulane under this Agreement. It is Tulane's responsibility to establish and maintain its internal controls.

Project Deliverables and Outputs

We expect as a result of this project the following project deliverables and outputs will be created:

1. Development of Strategic Options
2. Financial Analyses of Clinical Strategic Options

Subject to the restrictions in this Agreement, Client will own all tangible written material originally prepared expressly for Client and delivered to Client under this Agreement (the "Deliverables"), excluding any PwC Materials contained or embodied therein. PricewaterhouseCoopers shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property or information which may have been discovered, created, developed or derived by PricewaterhouseCoopers either prior to or as a result of its provision of Services under this Agreement ("PwC Materials"). PricewaterhouseCoopers' working papers and PricewaterhouseCoopers' Confidential Information (as defined in the attached Terms and Conditions) belong exclusively to PricewaterhouseCoopers. Client will have a non-exclusive, non-transferable license to use PricewaterhouseCoopers' Confidential Information for Client's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

All Deliverables are solely for Client's internal use and benefit. Client shall not authorize any third Party ("Third Party") to rely upon any of the Deliverables without PricewaterhouseCoopers' prior written consent. Client shall not distribute to, discuss with, or otherwise disclose the Deliverables to any Third Party without PricewaterhouseCoopers' prior written consent, and Client shall not otherwise discuss the fact or substance of the Services hereunder with Third Parties without PricewaterhouseCoopers' prior written consent. PricewaterhouseCoopers accepts no liability or responsibility to any Third Party who benefits from or uses the Services or gains access to the Deliverables. PricewaterhouseCoopers and Client may have discussions regarding the Services and/or Deliverables; provided, however, that oral or preliminary information, drafts or advice given by PricewaterhouseCoopers may not be relied upon or attributed to PricewaterhouseCoopers unless PricewaterhouseCoopers specifically confirms such information or advice or otherwise reduces such draft to a final writing. In order for Deliverables and other information related to the engagement to be shared with specific named Third Parties who are involved in the engagement, i.e. Steering Committee members, those Parties will be required to sign a PricewaterhouseCoopers release letter.

We expect to provide oral project outputs in conjunction with this project in addition to our written deliverables. The PricewaterhouseCoopers project outputs are solely for Client's internal use and benefit. Client shall not authorize any other party ("Third Party") to rely upon the project outputs without PricewaterhouseCoopers' prior written consent. PricewaterhouseCoopers shall not be held responsible for oral advice unless we confirm such advice in writing. Our oral advice and our involvement in project outputs should not be discussed with any Third Party without our prior written consent. PricewaterhouseCoopers accepts no liability or responsibility to any Third Party who benefits from or uses the project outputs.



PricewaterhouseCoopers' working papers and Confidential Information (as defined in the attached Terms and Conditions) belong exclusively to PricewaterhouseCoopers.

In order for oral project outputs and other information related to the engagement to be shared with specific named Third Parties who are involved in the engagement, i.e. Steering Committee members, those Parties will be required to sign a PricewaterhouseCoopers release letter.

Because PricewaterhouseCoopers accepts no liability to third parties with respect to the Services and Deliverables, Client agrees (without limiting any other indemnification provision set forth in this Agreement) to indemnify and hold PricewaterhouseCoopers harmless from and against any and all Third Party claims, suits and actions, and all associated damages, settlements, losses, liabilities, costs, and expenses, including without limitation reasonable attorneys fees, arising from or relating to the Services and/or Deliverables under this Agreement, except to the extent (finally determined to have resulted from the gross negligence or intentional misconduct of PricewaterhouseCoopers relating to such Services and/or Deliverables.

Our Team

Our ability to deliver high-quality services is predicated upon the credentialed individuals assigned to this engagement and their relevant experience. The project will be staffed by professionals with deep industry experience and requisite consulting skills. The individuals below will have direct responsibility for various components of the project and will advise on an as needed basis.

DAVID CHIN

Partner, will serve as the engagement partner and lead the project team, serving as the primary point of contact with Tulane leadership. Dr. Chin is a physician executive with more than 22 years of experience in managed care operations, hospital/physician network development, and the management of large medical group practices.

JERRY BIELAK

Partner, will lead the financial modeling elements of the project team, serving as the primary point of contact with Tulane leadership for financial analysis. Jerry is the national leader of the Finance and Controls group of PricewaterhouseCoopers' health care consulting practice with over twenty-five years of health care experience in the areas of hospital finance/planning, management consulting, investment banking and managed care.

GERRY MCDONUGALL

Partner, will lead the project team regarding research operations considerations. Gerry is national leader of the Health Sciences practice and is responsible for the overall coordination of the range of PwC services to academic medical centers, research institutes, universities and other research organizations.

BARBARA WALSH

Managing Director, will serve as project engagement director, serving as a daily liaison to Tulane leadership and client personnel. Working with PwC Managers, Barbara will also direct the PwC working teams assigned to this engagement. Barbara has 26 years of experience in academia and has led a number of major academic medicine projects.

PRICEWATERHOUSECOOPERS

MARGARET STOVIER Director, will lead the project team regarding faculty practice and medical education elements. Margaret has more than 16 years of experience in faculty group practice governance, management, operations, finance, revenue cycle, business development, compliance, and customer service.

RYDER SMITH Director, will lead the project team regarding clinical facility visioning. Bridging the gap between strategic, financial, operations and facility planning, his deep experience emphasizes multi-site health system integration and development.

MATTHEW LUSNAR Director, will lead the financial analysis team. Matt's concentration is in the financial analysis of healthcare organizations and preparation of financial feasibility studies to support public debt offerings.

Any additional appropriate staff will be identified to support the engagement team. We will give you prompt notice of any personnel change and, on request, you may review the qualifications of and approve any replacement personnel.

Project Timing and Fees

Based on our current scheduling, we anticipate beginning this effort in November 2005. We are prepared to begin immediately upon completion of our engagement acceptance procedures including execution of this engagement letter.

Our fee is based on the time required by our professionals to complete the engagement. Our average hourly rates are indicated in the table below:

Associates	\$165
Senior Associates	\$200
Managers	\$325
Directors	\$375
Partners	\$650

Individual hourly rates vary according to the experience and skill required. Hourly rates may be revised from time to time, and the adjusted rates will be reflected in billings.

We estimate that total fees will range between \$600,000 and \$650,000.

We also will bill you for our reasonable out-of-pocket expenses and our internal per ticket charges for booking travel. Our internal per ticket travel charge is an allocation of estimated costs of running our travel department in a manner to maximize cost savings and minimize total costs.

Bills will be presented on a biweekly basis. \$120,000 (20% of the low range of estimated professional fees) is due upon execution of this agreement; collection of the remainder will be deferred until March, 2005.

PricewaterhouseCoopers will use all reasonable efforts to perform the Services in accordance with the

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timeframe set out herein; however, dates are targets used for planning purposes and, depending on circumstances and Client cooperation, may need to be adjusted.

Choice of law and forum

This Agreement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Louisiana, without giving effect to the provisions relating to conflict of laws. The federal or state courts of the state of Louisiana shall have exclusive jurisdiction of any claims arising out this engagement.

* * * * *

This letter and the attached Terms and Conditions set forth the rights and responsibilities of the parties with respect to the Services. The attachment is an integral part of this agreement.

We are pleased to have the opportunity to provide our services to Tulane University and appreciate your confidence in us. If you have any questions about the contents of this letter, please discuss them with David Chin at (617) 530-4381 or at david.chin@us.pwc.com or with Barbara Walsh at (404) 272-2018 or at barbara.c.walsh@us.pwc.com. If the Services and terms outlined herein are acceptable, please sign one copy of this letter in the space provided and return it to me.

Very truly yours,



PriceWaterhouseCoopers LLP
By David C.K. Chin, Partner

David C.K. Chin
Partner

PRICEWATERHOUSECOOPERS

ACKNOWLEDGED AND AGREED:

TULANE UNIVERSITY

Signature of client official:

Yvette M. Jones

Please print name:

Yvette M. Jones

Title:

Interim COO

Date:

11/14/05



Terms and Conditions

These Terms and Conditions and the engagement letter (and any attachments) (the "Engagement Letter"), and any subsequent amendments or addenda thereto, to which these Terms and Conditions are attached (collectively, the "Agreement") constitute the entire agreement between the client to which such engagement letter is addressed ("Client") and PricewaterhouseCoopers LLP, a limited liability partnership organized under the laws of the State of Delaware ("PricewaterhouseCoopers"), regarding the project described in the Engagement Letter. Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Engagement Letter.

Timing. PricewaterhouseCoopers shall not be responsible for any delay, cost increase or other consequences due to Client's failure to perform any of its obligations under this Agreement or otherwise due to factors beyond PricewaterhouseCoopers' reasonable control. PricewaterhouseCoopers will use commercially reasonable efforts to mitigate such costs or expenses. Any PricewaterhouseCoopers deadline that is affected by any Client default or factors beyond PricewaterhouseCoopers' reasonable control shall be extended by an amount of time equal to the length of such failure plus an additional period of time, if reasonably necessary, to compensate for such default or factors.

Electronic Mail Communications. Each party shall use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

Acceptance. The passage of ten (10) working days from the date when a Deliverable is provided to Client without receipt by PricewaterhouseCoopers of notice of non-acceptance by Client, or use by Client of a Deliverable will constitute final acceptance by Client.

Termination. Either party may terminate this Agreement at any time by giving the other written notice of termination. In the event of termination, Client will be responsible for fees earned and expenses incurred through the effective date of termination. PricewaterhouseCoopers may also resign from performing all or any portion of the Services and terminating this Agreement immediately upon written notice in the event that circumstances arise that would make continuation of all or any portion of the Services by PricewaterhouseCoopers in conflict with any independence or other professional regulations, standards or guidelines to which PricewaterhouseCoopers conforms.

Warranty. PricewaterhouseCoopers warrants that it has the requisite power and authority to enter into and perform its obligations under this Agreement. PricewaterhouseCoopers further warrants that the Services will be performed by qualified personnel. PricewaterhouseCoopers will provide Services in a manner consistent with the terms and conditions of this Agreement and in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants ("AICPA"). THE WARRANTIES IN THIS SECTION, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Confidentiality. All data relating specifically to a party's business and any other information which reasonably should be understood to be confidential in nature are confidential information of such party. PricewaterhouseCoopers' proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how and any other information which reasonably should be understood to be confidential to PricewaterhouseCoopers are confidential information of PricewaterhouseCoopers. Client confidential information and PricewaterhouseCoopers confidential information are collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any Third Party without the other party's prior written consent. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise its employees of the confidential nature of the Confidential Information and of the confidentiality provisions and use prohibitions herein.

Notwithstanding anything to the contrary contained in this Agreement, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (i) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (ii) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (iii) is independently developed by the recipient without any use of or reliance on Confidential Information; or (iv) is or later



becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any nonparty. Notwithstanding the foregoing, either party may disclose Confidential Information of the other to a Third Party as may be required by law, statute, rule or regulation, including any subpoena or other similar form of process, provided that (and without breaching any legal or regulatory requirement) the party to which the request is made provides the other party with prompt written notice thereof and, if practicable under the circumstances, allows the other party to seek a restraining order or other appropriate relief. In addition, PricewaterhouseCoopers may disclose Confidential Information pursuant to requirements of any professional self-regulatory authority. Subject to PricewaterhouseCoopers' confidentiality obligations in this Agreement, nothing herein shall preclude or limit PricewaterhouseCoopers from providing services similar to the Services to other PricewaterhouseCoopers clients.

Indemnification and Liabilities. Subject to the provisions hereof, each party shall indemnify, defend and hold harmless the other from and against any and all amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible personal property, but only to the extent the foregoing arise out of the indemnitor's negligence or intentional misconduct in the performance of this Agreement.

PricewaterhouseCoopers agrees to indemnify, defend and hold harmless Client from and against any and all amounts payable under any judgment, verdict, court order or settlement for Third Party claims of infringement of any trade secrets, copyrights, trademarks or trade names alleged to have occurred and arising from the Deliverables. Should Client's use of such Deliverables be determined to have infringed, or if, in PricewaterhouseCoopers' judgment, such use is likely to be infringing, PricewaterhouseCoopers may, at its option: (i) procure for Client the right to continue using such Deliverables provided, or (ii) replace or modify them to make their use non-infringing while yielding substantially equivalent results. If neither of the above options are or would be available on a basis that PricewaterhouseCoopers finds commercially reasonable, then, PricewaterhouseCoopers may terminate this Agreement. Client shall return such Deliverables provided to PricewaterhouseCoopers and PricewaterhouseCoopers will refund to Client the fees paid for the Deliverables provided, less a reasonable allowance for use. This infringement indemnity does not cover claims arising from: the combination of such Deliverables with products or services not provided by PricewaterhouseCoopers; the modification of such Deliverables by any person, other than PricewaterhouseCoopers; Deliverables complying with or based upon: (1) designs provided by or at the direction of Client or (2) specifications or other information provided by or at the direction of the Client; or use of systems, materials or work performed in a manner not permitted or contemplated hereunder or by another obligation of Client to PricewaterhouseCoopers.

Client agrees on behalf of all of its business operations in which Client has a direct or indirect controlling interest (and that are receiving Services or Benefits of Services under this Agreement ("Service Recipients"), that they are bound by these provisions as if they were parties to this Agreement. Without limiting any other indemnification provision set forth in this Agreement, Client agrees to indemnify and hold harmless PricewaterhouseCoopers and the Beneficiaries from and against any claim that is asserted by any Service Recipient other than Client arising out of or relating to the Services and/or Deliverables provided under this Agreement, and all liabilities, costs, damages and expenses imposed or incurred in connection therewith, including reasonable attorneys' fees.

EXCEPT TO THE EXTENT FINALLY DETERMINED TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF PRICEWATERHOUSECOOPERS, PRICEWATERHOUSECOOPERS' LIABILITY TO PAY DAMAGES FOR ANY LOSSES INCURRED BY CLIENT AS A RESULT OF BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT COMMITTED BY PRICEWATERHOUSECOOPERS, REGARDLESS OF THE THEORY OF LIABILITY ASSERTED, IS LIMITED TO NO MORE THAN THE TOTAL AMOUNT OF FEES PAID TO PRICEWATERHOUSECOOPERS UNDER THIS AGREEMENT. IN ADDITION, PRICEWATERHOUSECOOPERS WILL NOT BE LIABLE IN ANY EVENT FOR LOST PROFITS OR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES. In addition, PricewaterhouseCoopers shall have no liability to Client arising from or relating to any Third Party hardware, software, information or materials selected or supplied by Client.

Changes; Additional Services. PricewaterhouseCoopers will not be responsible for work that is beyond the scope of Services set forth in this Agreement. Either party may request changes to the Services. Changes must be agreed in writing between the parties.

Other Matters.

For the duration of the Assignment, and for 12 months after its termination or completion, Client will not solicit, directly or indirectly, any PricewaterhouseCoopers employee who has taken part in the performance of the Services, without PricewaterhouseCoopers' prior written consent. PricewaterhouseCoopers, in furnishing Services to Client, is acting only as an independent contractor and is not acting as a fiduciary of Client. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns, and, except as

PRICEWATERHOUSECOOPERS

expressly provided herein, nothing in this Agreement shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Neither party may, nor shall have the power to, assign or transfer this Agreement or any rights or obligations hereunder or claims arising hereunder, without the prior written consent of the other party. This Agreement supersedes any prior understandings, proposals or agreements with respect to the Services. Client accepts and acknowledges that any legal proceedings arising from or in connection with the Services must be commenced within one year from the date Client became aware or ought reasonably to have become aware of the facts which give rise to PricewaterhouseCoopers' alleged liability and in any event no later than two years after any such cause of action accrued. The terms and conditions of this Agreement shall be considered Confidential Information and neither party may disclose the terms and conditions of this Agreement without the other party's prior written consent. However, Client agrees that PricewaterhouseCoopers may use Client's name in experience citations. The provisions of this Agreement, which expressly or by implication are intended to survive its termination or expiration, will survive and continue to bind both parties. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law. Except as expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise. Where agreement, approval, acceptance, consent or similar action by Client or PricewaterhouseCoopers is required, such action shall not be unreasonably delayed or withheld. Headings in this Agreement are for convenience only, and shall not be used in interpreting this Agreement. Neither party shall be liable to the other for any delay or failure to perform any of the Services or obligations set forth in this Agreement due to causes beyond its reasonable control.



ROPE & GRAY LLP
ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-651-7000 F 617-651-7050
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

November 16, 2005

Michelle M. Garvin
(617) 951-7495
michelle.garvin@ropesgray.com

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

David Chin
PricewaterhouseCoopers, LLP
300 Madison Avenue
New York, NY 10017

Re: Retention Concerning Tulane University

Dear Mr. Chin:

Ropes & Gray ("Counsel") has been engaged by Tulane University ("Tulane") to provide legal advice relating to certain issues relating to the potential restructuring of its medical school and faculty practice plan (the "Medical School") in the aftermath of Hurricane Katrina. In connection with our representation of Tulane, Ropes & Gray wishes to secure the assistance of PricewaterhouseCoopers LLP ("Consultant") to perform certain tasks at our direction to assist us with our representation of Tulane. Such tasks will include undertaking a comprehensive review with respect to Tulane's Medical School structure.

Our engagement will involve the discussion of confidential and/or privileged information. We believe it will be necessary for you, your employees and your agents to communicate with us and our designated agents on a regular basis. Accordingly, because you will be assisting us with our representation of Tulane, you and your employees and agents, will function as members of Counsel's team. It is agreed and understood that the terms and conditions under which you will perform the services, the scope of your services and your fee arrangements will be in accordance with the terms set forth in your agreement with Tulane dated November, 2005 and attached hereto. It is further agreed and understood that you will look solely to Tulane for the payment of your fees and expenses. Invoices should be sent to us, but our client will be responsible for payment.

The discussions that we will have and the services Consultant personnel will perform are integral to our ability to provide legal advice to our client. Moreover, both presently and in the future, we envision that it will be necessary for you and your colleagues to meet with us and communicate with us on a number of issues that we deem to be vital in our representation of Tulane. In the event that there have already been some efforts or communications concerning

ROPES & GRAY LLP

David Chin

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November 16, 2005

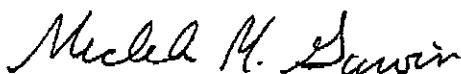
this project, we have expressly agreed that these acts are within the scope of this request for assistance from counsel.

Because Consultant personnel will be working for and at the direction of counsel, our communications are confidential and are intended to be, and shall be, within the scope of attorney/client privilege, attorney work product doctrine and all other applicable privileges. Any documents sent at our direction or any documents, such as reports, that are generated, or any communications with us or with our designees at Tulane, including, without limitation, Scott Cowen, Yvette Jones, Tony Lorino, Paul Whelton, Allen Miller and Ian Taylor and in-house counsel at Tulane, concerning matters relating to this engagement, are privileged and confidential. Furthermore, any documents Consultant personnel may generate, such as proposals, reviews, work papers, reports or drafts, should be marked prominently with the notice "Prepared for Counsel" or some similar designation. Because of their privileged nature, our communications and work product must not, and shall not, be disclosed to any third parties except as required by law. Reports or other communications should be sent to us, and, in the interests of time, copies of such communications should be simultaneously sent to Tulane.

Kindly acknowledge your confirmation of the terms outlined above by executing a copy of this letter and returning it to me. We thank you for your willingness to assist us in our representation of Tulane.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



Michele M. Garvin

AGREED AND UNDERSTOOD:



David Chin
PricewaterhouseCoopers

Enclosures

cc: Victoria Johnson, Esq.