

## Batch Print Document Cover Sheet

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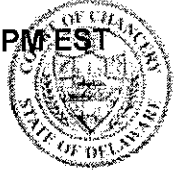
**Authorizer:** Michael J Barry

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**Court:** DE Court of Chancery Civil Action

**Case Number:** 6230-

**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CLEVELAND BAKERS AND  
TEAMSTERS PENSION FUND,  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY, and  
SOUTHWEST OHIO REGIONAL  
COUNCIL OF CARPENTERS PENSION  
PLAN, on behalf of themselves and all other  
similarly situated shareholders of Emergency  
Medical Services Corporation,

Plaintiffs,

v.

KEVIN E. BENSON, STEVEN B.  
EPSTEIN, PAUL B. IANNINI, JAMES T.  
KELLY, ROBERT M. LEBLANC,  
WILLIAM A. SANGER, MICHAEL L.  
SMITH, CDRT ACQUISITION  
CORPORATION, CLAYTON, DUBILIER  
& RICE LLC, CDRT MERGER SUB, INC.,  
ONEX CORPORATION, BANK OF  
AMERICA CORPORATION and MERRILL  
LYNCH, PIERCE, FENNER & SMITH INC.

Defendants.

C.A. No. \_\_\_\_\_

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiffs Cleveland Bakers and Teamsters Pension Fund, Southeastern Pennsylvania Transportation Authority, and Southwest Ohio Regional Council of Carpenters Pension Plan ("Plaintiffs"), on behalf of themselves and all other similarly situated public shareholders of Emergency Medical Services Corporation (hereafter, "EMS" or "the Company") (the "Class"), bring the following Verified Class Action Complaint (the "Complaint") against the members of the board of directors of EMS (the "EMS Board" or "Board") and EMS's controlling shareholder Onex Corporation

("Onex"), for breaching their fiduciary duties, and against Clayton, Dubilier & Rice LLC, CDRT Acquisition Corporation, and CDRT Merger Sub, Inc. (together "CD&R"), Bank of America Corporation, and Merrill Lynch, Pierce, Fenner and Smith Incorporated (together "Bank of America Merrill Lynch" or "BAML") for aiding and abetting the same. The allegations of the Complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

### **INTRODUCTION**

1. This action arises from the breaches of fiduciary duty by the EMS Board in connection with a sale of the Company to CD&R for a steep discount. Determining that now was the time to cash out of its investment in the Company, Onex, EMS's controlling shareholder, convinced the controlled EMS Board to put the Company up for sale and accept a less than value-maximizing offer. The Board then ensured consummation of the Proposed Transaction by allowing CD&R and Onex to "lock-up" the deal through the use of a voting agreement covering Onex's voting shares while simultaneously declining to insist on minority protections that would provide EMS's public shareholders with a meaningful vote on the negative premium deal.

2. EMS is one of the nation's leading providers of airborne ambulance and outsourced physician services. The Company was formed in 2005 when Onex acquired the operating subsidiaries American Medical Response, Inc. ("AMR") and EmCare Holdings Inc. ("EmCare") from Laidlaw International, Inc. ("Laidlaw").

3. In August 2009, Onex began to reduce the level of its investment when it

sold approximately 3.5 million shares, or 25% of its equity interest in EMS for \$137 million. In November 2009, Onex sold another 3 million shares, or 35% of its remaining equity interest in EMS, for approximately \$151 million.

4. By the fall of 2010, when Onex's profits were coming in lower than expected and it reported a net loss of \$48 million through the first three quarters of the year, it decided it wanted to raise capital by cashing in its remaining holdings in EMS. But rather than settling for the profit it could realize by selling its remaining shares on the market, Onex instead decided to orchestrate a sale of the Company – which Onex could do because it controlled 82% of EMS's voting power, even though it owned only about 31% of the Company's equity.

5. Onex had one goal – to sell the Company. Accordingly, Onex directed its representatives on the EMS Board – comprised entirely of Onex nominees and loyalists – to begin the sale process. To assist in running the sales process, the EMS Board retained BAML as one of its financial advisors. However, BAML was simultaneously offering to provide financing to CD&R to fund a potential leveraged buyout of the Company. BAML was incapable of fairly and adequately playing this dual role insofar as BAML stands to earn substantial fees through its agreement to finance the Proposed Transaction. Indeed, BAML cannot disinterestedly advise EMS as to the propriety and fairness of the deal while earning fees contingent on the consummation of the Proposed Transaction. To maintain the illusion of fairness EMS hired Goldman Sachs & Co. (“Goldman Sachs”) to render an additional fairness opinion, thereby increasing the costs of the transaction to public shareholders.

6. On December 14, 2010, the EMS Board announced that it was considering “strategic alternatives” and began soliciting interest from potential suitors.

7. Despite a tepid response, the EMS Board, at the instruction of Onex and BAML, pushed forward with a sale. On February 14, 2011, the EMS Board announced an agreement and plan of merger (the “Merger Agreement”) whereby CD&R would acquire the Company for \$64 per share (the “Proposed Transaction”), a 9.4% *discount* to EMS’s closing price on the last trading day immediately preceding the announcement of the deal.

8. The Proposed Transaction also contemplates that *EMS will pay CD&R’s transaction fees, including the cost of its financial advisor*, in the amount of \$140 million. These costs, which represent approximately 5% of the deal value, essentially reduce the purchase price by approximately \$3.00 per share. There is simply no excuse for the EMS Board to have agreed to pay the buyer’s own banker’s and transaction fees other than to accede to Onex’s demand to sell the Company now, regardless of the terms.

9. Because of Onex’s 82% voting power, stemming from its ownership of high-vote limited partnership units in Emergency Medical Services L.P. (“EMS LP”) and Onex’s pledge to support the deal, EMS’s public shareholders have no ability to vote down the negative premium Proposed Transaction.

10. Despite the extraordinary level of deal certainty provided by Onex’s pledge to support the Proposed Transaction, the EMS Board acquiesced to wholly unnecessary deal protections in the form of a restrictive no-shop provision (the “No-Shop”), unlimited recurring matching rights (the “Matching Right”), and a 3.6%

termination fee (the "Termination Fee").

11. Due to the dramatic overhaul of the U.S. healthcare system, the aging population, primary care physician shortage, and increased outsourcing of health, the EMS Board had substantial leverage to negotiate for a significant premium in an all-cash sale of the Company. If no suitor was willing to pay an adequate premium for the Company, the Board should have continued running EMS as a stand-alone entity. There was simply no need for the Board to heed the wishes of Onex and BAML and hastily sell the Company for less than full value.

12. Onex's domination of the EMS Board and BAML's conflict caused the Board to breach its fiduciary duties of good faith and loyalty by agreeing to the Proposed Transaction. As discussed in detail below, the Proposed Transaction is not a value maximizing transaction, is not the product of reasonable conduct by the EMS Board, and is not subject to the approval of the majority of EMS's public shareholders other than Onex.

#### **THE PARTIES**

13. Plaintiff Cleveland Bakers and Teamsters Pension Fund is a shareholder of EMS, and has owned shares of EMS common stock throughout the relevant time period.

14. Plaintiff Southeastern Pennsylvania Transportation Authority is a shareholder of EMS, and has owned shares of EMS common stock throughout the relevant time period.

15. Plaintiff Southwest Ohio Regional Council of Carpenters Pension Plan is a shareholder of EMS, and has owned shares of EMS common stock throughout the

relevant time period.

16. Defendant Kevin E. Benson (“Benson”) has served as a member of the Board since October 2008. From June 2003 to October 2007, Benson served as President and Chief Executive Officer (“CEO”) of Laidlaw. From September 2002 to June 2003, he served as President and CEO of Laidlaw.

17. Defendant Steven B. Epstein (“Epstein”) has served as a member of the Board since July 2005. Epstein was nominated to the Board by Onex.

18. Defendant Paul B. Iannini (“Iannini”) has served as a member of the Board since June 2006. Iannini was nominated to the Board by Onex.

19. Defendant James T. Kelly (“Kelly”) has served as a member of the Board since July 2005. Kelly was nominated to the Board by Onex.

20. Defendant Robert M. LeBlanc (“LeBlanc”) has served as a member of the Board since December 2004. LeBlanc has served as a Managing Director of Onex Investment Corp., an affiliate of Onex Corporation, since 1999.

21. Defendant William A. Sanger (“Sanger”) has been a director, Chairman and CEO of the Company since February 2005. Sanger was appointed President of EmCare in 2001 and CEO of AMR and EmCare in June 2002.

22. Defendant Michael L. Smith (“Smith”) has served as a member of the Board since July 2005. Smith was nominated to the Board by Onex.

23. The defendants listed in paragraphs 16 through 22 above are collectively referred to herein as the “Individual Defendants.”

24. Defendant Clayton, Dubilier & Rice LLC is a leading private equity firm

founded in 1978. Since its inception, Clayton, Dubilier & Rice LLC has managed the investment of approximately \$15 billion in 48 U.S. and European businesses representing a broad range of industries with an aggregate transaction value of approximately \$80 billion. Clayton, Dubilier & Rice LLC has offices in New York and London.

25. Defendant CDRT Acquisition Corporation is a Delaware corporation, controlled or wholly-owned by Clayton, Dubilier & Rice LLC.

26. Defendant CDRT Merger Sub, Inc. is a Delaware corporation, and is a wholly-owned subsidiary of CDRT Acquisition Corporation, created for the purposes of consummating the Proposed Transaction.

27. Defendant Onex Corporation is a Toronto-based, publicly traded private equity and asset management firm with approximately \$5 billion in capital under management. Onex is EMS's largest shareholder, holding 13,724,676 LP Exchangeable Units of EMS, or, as set forth above, a 31 percent equity stake in the Company, as well as 82 percent of the Company's voting rights. Each LP Exchangeable Unit is exchangeable for one Share of Class B common stock of the Company; which, in turn, has 10 votes (as compared to one vote for each share of Class A common stock).

28. In its Form 10-K for the fiscal year ending December 31, 2010 (the "2010 10-K"), EMS states the following:

[T]he Onex entities exercise a controlling influence over our business and affairs and have the power to determine all matters submitted to a vote of our stockholders, including the election of directors, the removal of directors and approval of significant corporate transactions such as amendments to our certificate of incorporation, mergers and the sale of substantially all of our assets. The Onex entities could cause corporate actions to be taken even if the interests of these entities conflict with the interests of our other stockholders. This concentration of voting power



could have the effect of deterring or preventing a change in control of EMS[] that might otherwise be beneficial to our stockholders.

Onex holds its interest in EMS through a number of funds, and is deemed to beneficially own the units held by those funds.

29. Defendant BAML is the corporate and investment banking division of Bank of America.<sup>1</sup> It provides services in mergers and acquisitions, equity and debt capital markets, lending, trading, risk management, research, and liquidity and payments management.

#### **RELEVANT NON-PARTIES**

30. EMS is a leading provider of emergency medical services and facility-based outsourced physician services in the United States. EMS operates its business and markets its services under two brands, AMR and EmCare, and has a subsidiary known as EMS LP, which serves as a holding company. AMR, with more than 50 years of operating history, is a leading provider of ground and fixed-wing air ambulance services in the United States based on net revenue and number of transports. EmCare, with more than 35 years of operating history, is a leading provider of outsourced physician services to healthcare facilities in the United States, based on number of contracts with hospitals and affiliated physician groups. Through EmCare, the Company provides outsourced facility-based physician services for emergency departments and hospitalist/inpatient, anesthesiology, radiology and teleradiology programs. During 2009, EMS provided

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<sup>1</sup> “Bank of America Merrill Lynch” is the marketing name for the global banking and global markets businesses of Bank of America Corporation. Securities, strategic advisory, and other investment banking activities are performed by investment banking affiliates of Bank of America Corporation including Merrill Lynch, Pierce, Fenner & Smith Incorporated.

services in approximately 13 million patient encounters in more than 2,200 communities nationwide and generated net revenue of \$2.6 billion, of which AMR and EmCare represented 52% and 48%, respectively. The Company is incorporated in Delaware and maintains its principal executive offices at 6200 S. Syracuse Way, Suite 200, Greenwood Village, Colorado 80111. EMS trades on the New York Stock Exchange under the ticker symbol “EMS.”

## **SUBSTANTIVE ALLEGATIONS**

### **I. Background of the Company**

31. EMS was formed in January 2005 when an investor group led by Onex (and including members of the Company’s management) acquired AMR, the largest ambulance service provider in the United States, and EmCare, a company providing emergency department staffing and related management services, from Laidlaw, in a transaction valued at approximately \$823 million. Onex and certain related entities invested \$218 million.

32. Almost immediately after forming EMS, Onex started to realize a return on its investment by selling its equity interest piecemeal while retaining essentially absolute voting control.

33. In December 2005, a reorganization was effected pursuant to which AMR, EmCare and EMS LP became subsidiaries of EMS.

34. Concurrently with the reorganization, Onex conducted an initial public offering (the “IPO”) of approximately 19.5% of the Company, raising net proceeds of about \$117 million. As a result of Onex’s ownership of super-voting limited partnership

units in EMS LP, Onex retained 96% of the Company's voting power.

35. In August 2009, EMS conducted a public secondary offering of 8 million shares of class A common stock priced at \$40.00 per share. The shares were offered primarily by Onex, representing 25% of Onex's equity interest, with Onex retaining 57% of its equity and 92% of the combined voting power.

36. Shortly thereafter, in November 2009, EMS conducted another secondary public offering of 8 million shares, again offered primarily by Onex, priced at \$48.31 per share. At the time, Onex's shares represented approximately 35% of Onex's equity interest in EMS. After giving effect to the secondary offering, Onex retained a 35% equity interest in EMS and approximately 84% of the Company's voting power.

## **II. The Proposed Transaction**

37. About a year after the secondary offering, Onex was ready to cash-out of its investment in EMS entirely.

38. In the second quarter of 2010, Onex reported a significant loss in earnings, revenue and profit.

39. Then, in July 2010, Onex entered into a \$5 billion partnership to acquire Tomkins PLC – a deal that significantly depleted the private equity fund's cash supply. Shortly thereafter, Onex completed the acquisition of Sport Supply Group in a transaction valued at \$200 million – again leaving the company with lower cash levels.

40. In the third quarter of 2010, Onex reported a \$48 million net loss, down from net earnings of \$72 million over the same period one year earlier.

41. As a result, Onex wanted to sell its remaining interest in EMS. While

Onex could continue selling down its equity interest on the open market, Onex instead elected to use its control of the EMS Board to force a sale upon the Company's public shareholders. This provided Onex with the ability to cash out at a premium to the Company's then stock price, without regard to whether it was the opportune time for EMS to sell itself.

42. On December 14, 2010, the Company publicly announced that it was reviewing various "strategic alternatives to enhance stockholder value," clearly signaling to the world that the Company was for sale. To assist in its review, the EMS Board retained BAML, along with Goldman Sachs, as one of its financial advisors.

43. Four potential suitors submitted preliminary bids for the Company. Out of this initial group, CD&R and Bain Capital ("Bain") were selected to participate in a "second round" of bidding.

44. After CD&R and Bain submitted their second round bids, the EMS Board requested that the two private equity firms re-submit offers for the Company because their initial bids were too low.

45. Despite the fact that CD&R's final offer was \$6 less than the Company's then current trading price, Onex and BAML advised the EMS Board to sell the Company at the \$64 price.

46. Onex had already hit a home-run on its EMS investment and now seeks to return capital to its investors and/or redeploy the resources to new investments. Onex invested \$214 million in the Company and, based on CD&R's offer, will receive total net proceeds of \$1.65 billion. This results in a staggering 800% return on invested capital.

47. With such a massive unrealized return on its investment, there was little incentive for Onex to hold out for the best price reasonably available under the circumstances and even less incentive to keep EMS operating as a stand-alone company. As the Company's controlling shareholder however, Onex owed a duty to the remainder of EMS stockholders, which Onex breached by furthering its own interests at the public shareholders' expense.

48. Similarly, BAML had strong incentives to advise EMS that a negative premium transaction with CD&R was fair. BAML had agreed to provide debt financing to CD&R to fund the buyout. Thus, if BAML could convince the EMS Board to agree to a sale to CD&R, BAML could "double-dip" and receive tens of millions of dollars in advisory and buy-side financing fees.

49. In addition, because BAML was on both sides of the transaction, the Company was forced to hire an additional firm, Goldman Sachs, to provide a fairness opinion, thereby driving up the transaction costs even further.

50. On February 14, 2011, the EMS Board agreed to sell the Company to CD&R for \$64 per share. The offered consideration represents a 9.4% discount to the Company's \$70.66 closing price on February 11, 2011, the last trading day prior to the announcement of the Proposed Transaction, and a paltry 19% premium to the Company's closing price on December 13, 2010, the day before EMS announced that it was exploring its strategic alternatives.

### **III. The EMS Board Is Plagued By Conflicts of Interest**

51. The EMS Board is conflicted.

52. As mentioned above, director LeBlanc is a Managing Director at Onex. As a result, LeBlanc clearly favored the Proposed Transaction over other value-maximizing transactions (or not selling the Company at this time) because the sale fulfilled Onex's objective of cashing out of its investment in EMS.

53. Similarly, Chairman and CEO Sanger is conflicted because he owes his lofty titles and generous compensation to Onex. Following Onex's acquisition of the Company, the private equity firm retained Sanger, bestowing upon him an additional six years at the helm of the Company. In addition to his loyalty to Onex, Sanger also had an incentive to favor a sale to CD&R, which promised to retain EMS's existing management following consummation of the Proposed Transaction.

54. Director Benson is also conflicted by his prior relationship with Onex. As the former CEO and President of Laidlaw, Benson received a large payout when Onex purchased AMR and EmCare from Laidlaw.

55. The four remaining directors, Epstein, Iannini, Kelly, and Smith are conflicted because they were nominated to the Board by Onex either immediately preceding the IPO or shortly thereafter. These directors are biased because they would not have their prestigious directorships, but for the endorsement and support of Onex.

56. Director Epstein is further conflicted because his law firm, Epstein, Becker & Green, P.C. provides legal representation to the Company. In 2009, EMS paid Epstein's law firm almost \$2 million for legal services rendered. Thus, it is impossible to

expect that Epstein would go against the wishes of his important client.

**IV. The EMS Board Agreed To Sell The Company To CD&R For Less Than Full Value**

57. The offered consideration is less than full value when examined under appropriate scrutiny.

58. First, the premium offered in connection with the Proposed Transaction is inadequate for a target company with a trading history comparable to EMS.

59. Prior to EMS's announcement of the deal, analysts anticipated the price of any buyout of the Company to greatly exceed the \$64 per share. For example, on January 6, 2011, Kaufman Brothers issued a report setting the expected value at \$76 per share based on a comparable companies analysis and the strength of EMS's balance sheet, and an \$80 per share takeout price, noting that "private equity will arguably need to pay a premium to the expected potential of the core 2011 fundamental growth." Other analysts concurred with Kaufman Brothers' analysis. On January 12, 2011, William Blair priced the takeover of EMS at \$76 per share. On February 11, 2011, the last trading day preceding the deal's announcement, the Company's stock was trading at \$70.66, almost 10% above the offer price. The Proposed Transaction is not a takeover, but actually a "take-under."

60. Following the announcement of the Proposed Transaction, the response on Wall Street was a mixture of shock and disappointment.

61. "We are surprised that EMS did not command a premium valuation given its long-term growth opportunities from acquisitions and healthcare reform." said Michael Widerhorn an analyst at Oppenheimer & Co. "Most analysts and investors alike

would agree that based on the pure operational potential of the company in 2011 you could easily value it above \$70,” noted Dawn Brock, an analyst with Kaufman Bros. in New York. Jeff Hoenemann, an analyst with Feltl & Co., noted that “[t]he final price is certainly a disappointment” because “[he] had expected the range to be between \$70 and \$75.”

62. Second, the offered consideration fails to account for EMS’s impressive recent financial performance. In recent years, the Company has benefitted from strong market trends driven by the aging population, primary care physician shortages and increased outsourcing of health services.

63. During the second quarter of 2010, the Company’s net revenue increased 11.2% to \$708.8 million. During the quarter, diluted earnings per share (“EPS”) also increased 25.6% to \$0.84.

64. In connection with the earnings release, Chairman and CEO Sanger described the quarter as follows:

“EMSC delivered another quarter of revenue and earnings growth. We are especially pleased with the improvement in performance at AMR and continued growth at EmCare. Our recently completed acquisitions strengthen our footprint and, coupled with our successful debt refinancing, further position us to execute on our strategic initiatives.”

65. EMS’s third quarter 2010 revenues and diluted EPS eclipsed even those posted one quarter prior. During this quarter, the Company’s net revenue was \$737.2 million, an increase of 10.8% from revenue posted during the comparable period in 2009. Similarly, diluted EPS was \$0.82, an increase of 24.7% compared to the third quarter of 2009. Defendant Sanger described the Company’s performance during the third quarter



as follows:

“EMSC continued to generate strong revenue and earnings during the quarter. Revenue at both segments benefited from organic and acquisition growth, and diluted EPS increased by 24.7% in spite of unusual employee medical claims in the quarter. We also strengthened our balance sheet during the quarter and now have \$346 million in cash to capitalize on market opportunities.”

66. The Company’s impressive financial performance will only continue to improve as a result of the comprehensive health-care overhaul passed last year. According to Arthur Henderson, an analyst with Jefferies & Co., “[t]he Company’s ambulance and emergency staffing and management units may both profit from the overhaul.”

67. The EMS Board should have leveraged this heightened demand for the Company’s services to extract a substantial premium and a favorable Merger Agreement, or opted instead to keep EMS an independent company. Instead, the Individual Defendants locked-up a negative premium deal with CD&R because it suited the investment objectives of Onex.

68. When commenting on the Proposed Transaction, Richard J. Schnall, a partner at CD&R, underscored EMS’s bright prospects:

“EMSC is an exceptionally high quality and successful company with an outstanding management team and world-class workforce led by Bill Sanger ... The Company is poised for continued strong growth due to its leading market position, operational effectiveness and the value it brings to its customer base.”

69. This begs the question whether a sale of EMS at this time was indeed the most appropriate strategic alternative.

**V. The EMS Board Violated Its Fiduciary Duties  
by Agreeing to Pay CD&R's Expenses**

70. On February 14, 2011, EMS publicly announced that the total price of the Proposed Transaction includes “net debt and estimated transaction costs of approximately \$300 million,” representing over 10% of the deal’s total value and approximately \$6.50 per share.

71. Investors quickly condemned this agreement, noting that transaction fees in similar mergers typically amount to only 1% to 2% of deal value, and that, without the massive \$300 million payout, the implied price would be over \$70 per share – right in line with analysts’ expectations. As a CNBC Business report noted on the day the deal was announced, “shareholders who awoke to a deal worth \$3.2 billion and expected that would mean roughly \$70 a share are trying to understand how transaction costs in this deal amounted to \$6.50 a share.” See *EMS Transaction Fee has Investors Up in Arms* (CNBC, February 14, 2011).

72. Responding to investor criticism and in an attempt to defend itself, on February 17, 2011, the EMS Board filed additional disclosures on Form 8-K regarding these transaction fees. According to EMS,

The Company previously reported that an estimated \$300 million of the total transaction value included net debt and fees and expenses for transaction advisory services, including financing and other advisory fees payable by the buyer. Net debt at December 31, 2010 was approximately \$134 million, the Company’s transaction advisory fees are approximately \$26 million and debt financing costs and advisory fees and other buyer transaction costs, including consulting and M&A fees, are approximately \$140 million. No fees are being paid to Onex Corporation or its affiliates in connection with the Merger.

73. Rather than assuaging investors’ ire, the Company’s announcement

confirmed the absurdity of their agreement. The Company is literally *paying* \$140 million of CD&R's financial obligations associated with consummating the Proposed Transaction. The Company is attempting to pass this burden along to the rest of the shareholders in the form of a discount of nearly 5% of the deal's total value, reducing the price paid to shareholders by over \$3.00 per share.

74. Further, EMS's cost of \$140 million in debt financing costs and various nebulous fees is unreasonably high and excessively dilutive of the final value received by shareholders, relative to comparable transactions. The costs and fees that the EMS Board agreed on behalf of the shareholders to pay amount to almost 5% of deal value, where ordinarily they represent 1 to 2%.

**VI. The EMS Board Agreed To Unnecessary Deal Protections While Failing to Protect the Remaining Shareholders by Negotiating a Majority-of-the-Minority Provision into the Merger Agreement**

75. The Board further breached its fiduciary duties to the Class by approving the Merger Agreement, which contains significant deal protections. These deal protections, combined with Onex's 82% voting interest - undermine the Board's exploration of strategic alternatives and lock up the shareholder vote.

76. First, the Board failed to secure a majority-of-the-minority provision in the Merger Agreement.

77. Second, the EMS Board agreed to cease all solicitation of offers for the Company, and has tied its hands with respect to its ability to entertain superior offers. Section 6.02(a) of the Merger Agreement provides in relevant part:

From the date of this Agreement until the Effective Time or, if earlier, the

termination of this Agreement, subject to Section 6.02(b), the Company shall not and shall cause its Subsidiaries not to, and the Company shall direct its and their Representatives not to, and the Company shall not permit its officers, directors or Principal Stockholders to, directly or indirectly: (i) initiate, solicit, knowingly encourage or facilitate (including by way of providing information) the submission or making of any requests, inquiries, proposals or offers that constitute or may reasonably be expected to lead to, any Acquisition Proposal or engage in any discussions or negotiations with respect thereto or otherwise cooperate with or assist or participate in, or facilitate, any such requests, proposals, offers, discussions or negotiations or furnish to any Person any material nonpublic information in furtherance of, any Acquisition Proposal....

78. As written, the No-Shop prevents EMS and its representatives from even *encouraging* competing bids for the Company; the antithesis of maximizing shareholder value.

79. Third, the EMS Board granted CD&R a recurring and unlimited "Matching Right" in the Merger Agreement, which provides CD&R four business days to revise its proposal or persuade the EMS Board not to change its recommendation on the merger in the face of a proposal from a third party suitor. Section 6.02(e) of the Merger Agreement provides in relevant part:

(iii) prior to approving or recommending such Superior Proposal or terminating this Agreement to enter into a proposed definitive agreement with respect to such Superior Proposal, the Company shall, and shall cause its Representatives to, during the Notice Period, negotiate with Parent and Sub in good faith (to the extent Parent and Sub desire to negotiate) to make adjustments in the terms and conditions of this Agreement so that such proposal ceases to be a Superior Proposal, in which event the Company shall not make a Change of Recommendation with respect to and shall have no right to terminate this Agreement pursuant to Section 8.01(f) as a result of such proposal.

80. The Matching Right dissuades interested parties from making an offer for the Company by providing CD&R the opportunity to make repeated matching bids to

counter any competing offers.

81. Finally, the EMS Board further reduced the possibility of maximizing shareholder value by agreeing to a punitive and unreasonable \$116,505,000 termination fee, or 3.6% of the deal's total value.

82. Even if the Board terminates the Merger Agreement to accept a superior proposal, then the Company must pay CD&R a termination fee of \$116,505,000. Thus, the Termination Fee is driving up the cost of the acquisition, acting as a deterrent to competing bids, and potentially transferring money to CD&R that otherwise could have been paid to EMS shareholders as additional merger consideration.

83. A competing proposal is highly unlikely however, due to the terms of a voting agreement between CD&R and Onex, which dictates how Onex's 82% voting interest in EMS must be cast in any vote on the Merger Agreement ("the Unitholders Agreement").

84. The Unitholders Agreement requires Onex to vote all of its EMS voting rights in favor of the Merger Agreement. The Merger Agreement requires only a simple majority of EMS' shareholders to approve the merger, a majority that is far surpassed by Onex's 82% voting interest, thereby ensuring that the merger is a *fait accompli*. The Board's failure to secure a majority-of-the-minority provision in the Merger Agreement means that EMS's minority shareholders will effectively have no vote on the Proposed Transaction.

85. Onex has breached its fiduciary duties as a controlling shareholder not only by initiating the sale process, but also by entering into the Unitholders Agreement

and contracting away its voting control. Section 3 of the Unitholders Agreement states:

Restriction on Transfer of the LP Exchangeable Units; Other Actions

(a) Each Limited partner agrees it will not, prior to the termination of this Agreement; (i) except pursuant to the exchange provided for in Section 2 hereof, transfer, assign, sell, gift-over, pledge, encumber, hypothecate, exchange (whether for Class B Common Stock or otherwise) or otherwise dispose (whether by sale, liquidation, dissolution, dividend or distribution) of any or all of its LP Exchangeable Units or any right or interest therein (including any interest in the Class B Special Voting Share), or consent to any of the foregoing (any such action, a “*Transfer*”), (ii) enter into any derivative arrangement with respect to, or create or suffer to exist any Encumbrances with respect to, any or all of its LP Exchangeable Units or any right or interest therein (including any interest in the Class B Special Voting Share), in either case that would reasonably be expected to prevent or delay such Limited Partner’s compliance with its obligations hereunder; (iii) enter into any contract, option or other agreement, arrangement or understanding with respect to any Transfer; (iv) grant any proxy, power-of-attorney or other authorization or consent with respect to any of the LP Exchangeable Units (or its interest in the Class B Special Voting Share) with respect to any matter that is, or that could be exercised in a manner, inconsistent with the transactions contemplated by the Merger Agreement and this Agreement or the provisions thereof and hereof; (v) deposit any of the LP Exchangeable Units into a voting trust, or enter into a voting agreement or arrangement with respect to any of its LP Exchangeable Units (or its interest in the Class B Special Voting Share); or (vi) enter into any contract or agreement that would be breached by, or take any other action that would reasonably be expected to prevent or delay such Limited Partner’s compliance with its obligations hereunder.

(Emphasis in the original).

86. As the controlling shareholder, Onex assumed fiduciary obligations by exercising actual control throughout the sale process, including the negotiation of the Unitholders Agreement. It was therefore a breach of its fiduciary duties for Onex to enter into the Unitholders Agreement, which restricted its right to vote, and thereby contract away its fiduciary obligation to consider all alternative and superior proposals.

87. The EMS Board breached their fiduciary duties by locking-up the Merger

with these improper deal protection provisions while at the same time allowing Onex to negotiate restrictions on their voting rights. Furthermore, the aforementioned Deal Protections are simply unreasonable barriers to competing offers and wholly unnecessary in light of Onex's pledge to support the Proposed Transaction. When viewed collectively and in light of the meager consideration and the conflicted sales process, these provisions cannot be justified as reasonable or proportionate measures to protect CD&R's investment in the transaction process.

### **CLASS ACTION ALLEGATIONS**

88. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of EMS's common stock (except defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from defendants' wrongful actions, as more fully described herein.

89. This action is properly maintainable as a class action.

90. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of shareholders who are scattered throughout the United States. As of October 29, 2010, there were 30,315,886 shares of EMS class A common stock outstanding.

91. There are questions of law and fact common to the Class including, *inter alia*, whether:

a. The Individual Defendants breached their fiduciary duties by failing to obtain the best price reasonably available in connection with this all-cash sale

of the Company;

b. The Individual Defendants breached their fiduciary duties by failing to obtain a provision in the Merger Agreement that would subject the Proposed Transaction to the approval of the majority of EMS's public shareholders other than Onex;

c. Onex breached its duty as controlling shareholder of the Company by orchestrating the Proposed Transaction to further its own objectives at the expense of the remainder of EMS's public shareholders;

d. The Individual Defendants are acting in furtherance of their own self-interest to the detriment of the Class;

e. Plaintiffs and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages; and

f. Plaintiffs and the other members of the Class will be damaged irreparably by Defendants' conduct.

92. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

93. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for



Defendants, or adjudications with respect to individual members of the Class, which would as a practical matter be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

94. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class, as a whole, is appropriate.

## COUNT I

### **BREACH OF FIDUCIARY DUTY AGAINST ONEX AS CONTROLLING SHAREHOLDER**

95. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

96. Onex is a controlling shareholder. By virtue of its control of 82 percent of the voting rights of the Company, Onex exercises control over the business and affairs of EMS and over the EMS Board, as EMS expressly acknowledges in its 2010 10-K:

[T]he Onex entities exercise a controlling influence over our business and affairs and have the power to determine all matters submitted to a vote of our stockholders, including the election of directors, the removal of directors and approval of significant corporate transactions such as amendments to our certificate of incorporation, mergers and the sale of substantially all of our assets. The Onex entities could cause corporate actions to be taken even if the interests of these entities conflict with the interests of our other stockholders. This concentration of voting power could have the effect of deterring or preventing a change in control of EMS[] that might otherwise be beneficial to our stockholders.

97. Moreover, Onex's control is evidenced by the fact that Individual Defendant Le Blanc is also a Managing Director of Onex.

98. Onex exercised actual control over the sale through the Unitholders Agreement. Onex exercises actual control in that it entered into the Unitholders Agreement, which renders approval of the Proposed Transaction a foregone conclusion and nullifies any potential opposition by the unaffiliated shareholders – as was acknowledged by the Company in the Form 8-K announcing the Proposed Transaction

99. Because Onex exercised actual control, it was not permitted to contract away its fiduciary duty obligations to be able to consider all alternative and superior proposals by entering into the Unitholders Agreement and restricting its vote. Onex breached its fiduciary duties as a controlling shareholder by entering into the Unitholders Agreement with CD&R, thereby limiting its voting rights and the Board's ability to ensure a fair and value-maximizing process.

100. As the controlling shareholder of EMS, Onex owes the highest obligation of due care, loyalty, good faith and candor to the public stockholders of EMS.

101. In advancing its own interests at the expense of the Class by mandating and endorsing the Proposed Transaction, Onex has breached its fiduciary duties and is liable for the same.

102. Plaintiffs and the Class have no adequate remedy at law.

## COUNT II

### **BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS**

103. Plaintiffs repeat and re-allege each and every allegation above as if set forth in full herein.

104. The Individual Defendants, as EMS directors, owe the Class the utmost fiduciary duties of due care, good faith, candor and loyalty. By virtue of their positions as directors and/or officers of EMS and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Individual Defendant was required to: (a) use their ability to control and manage EMS in a fair, just and equitable manner; (b) act in furtherance of the best interests of EMS and its shareholders and not their own; and (c) fully disclose the material circumstances, procedures, and terms of the Proposed Transaction so that shareholders can make a fully informed decision.

105. The Individual Defendants failed to fulfill their fiduciary duties in connection with the Proposed Transaction by, among other things, (a) succumbing to Onex's pressure to sell the Company despite the fact that it was not in the best interest of the Company's public shareholders and (b) failing to negotiate for a provision in the Merger Agreement that would provide the public shareholders with a voice on the Proposed Transaction.

106. As a result of EMS directors' breaches of fiduciary duty in agreeing to the Proposed Transaction, the Class will be harmed by receiving the inferior consideration offered in the Proposed Transaction.

107. Plaintiffs and the Class have no adequate remedy at law.

### COUNT III

#### AIDING AND ABETTING AGAINST CD&R, ONEX AND BAML

108. Plaintiffs repeat and re-allege each and every allegation above as if set forth in full herein.

109. Defendants CD&R, Onex and BAML are sued herein as aiders and abettors of the breaches of fiduciary duty by the Individual Defendants.

110. The Individual Defendants breached their fiduciary duties of due care, good faith, candor and loyalty, to EMS shareholders.

111. Such breaches of fiduciary duties could not and would not have occurred but for the conduct and knowing participation of CD&R, Onex and BAML.

112. Defendants CD&R, Onex and BAML rendered substantial assistance to the Individual Defendants in their breach of their fiduciary duties to EMS shareholders.

113. Defendant CD&R had knowledge of Onex and the Individual Defendants' breaches, and knowingly participated in their breaches by entering into the Proposed Transaction, pursuant to which EMS would pay not only its own bankers' fees, but also the fees of CD&R, as the buyer. CD&R further aided and abetted the breaches of fiduciary duty by Onex and the Individual Defendants by entering into the Unitholders Agreement, thereby limiting Onex's voting interest and the Board's ability to maximize

shareholder value. Thus, CD&R could obtain the Company at a lower overall price.

114. Defendant BAML, knew the EMS Board retained it to provide unbiased advice regarding the Company's strategic alternatives. In addition, defendant BAML knew that the EMS Board actually disregarded its fiduciary duty to evaluate what is in the best interest of the company and its shareholders, and determined to pursue a singular strategy – to sell the Company. Nevertheless, BAML facilitated that breach, persuading the Board to accept the negative premium Proposed Transaction, to ensure BAML's receipt of lucrative advisory and financing fees.

115. Defendant Onex, through its control of the EMS Board, devised a plan to sell the Company, and orchestrated the Proposed Transaction to achieve its goal of monetizing its position in the Company. In doing so, Onex knowingly aided and abetted the Individual Defendants' breaches of fiduciary duties by causing them to abandon any effort to maximize shareholder value and instead seek a transaction suitable to Onex.

116. As a result of this conduct by CD&R, Onex and BAML, Plaintiffs and other members of the Class have and will be damaged by being denied the best opportunity to maximize the value of their investment in the Company.

117. Plaintiffs and the Class have no adequate remedy at law.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs demand judgment as follows:

- a. Enjoining EMS and any of the EMS Board members and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing, during the pendency of this action,

from taking any action to consummate the Proposed Transaction until such time as the EMS Board has fully complied with their fiduciary duties and taken all readily available steps to maximize shareholder value;

b. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of EMS's shareholders and to refrain from entering into any transaction until the process for the sale or merger of the Company is completed and the highest possible value is obtained;

c. Order the immediate disgorgement of all profits, benefits and other compensation obtained by CD&R as a result of its breaches of fiduciary duties;

d. Finding the EMS Board and Onex liable for breaching their fiduciary duties to the Class;

e. Reforming the Merger Agreement to condition consummation of the Proposed Transaction on the approval of a majority of the non-Onex shareholders;

f. Finding the Matching Right and Termination Fee invalid and unenforceable, or in the alternative, amending such deal protections as necessary to ensure a full and fair sale process for the benefit of the Class;

g. Finding CD&R, Onex and EMS liable for aiding and abetting a breach of fiduciary duty;

h. Requiring the EMS Board to fully inform itself of all of the Company's strategic alternatives, and giving full and fair consideration to any alternative offers for the Company;

i. Requiring the EMS Board, Onex and CD&R to disclose all

material information relating to the Proposed Transaction;

j. Awarding the Class compensatory damages, together with pre- and post-judgment interest;

k. Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

l. Awarding such other and further relief as is just and equitable.

Dated: February 28, 2011

GRANT & EISENHOFER P.A.  
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Deborah Elman  
485 Lexington Avenue  
29<sup>th</sup> Floor  
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*Of Counsel*

/s/ Michael J. Barry  
GRANT & EISENHOFER P.A.  
Stuart M. Grant (Del. I.D. #2526)  
Michael J. Barry (Del. I.D. #4368)  
Ralph Sianni (Del. I.D. #4151)  
Christine M. Mackintosh (Del. I.D. #5085)  
Kyle McGee (Del. I.D. #5558)  
1201 North Market Street, Suite 2100  
Wilmington, DE 19801-2599  
Tel.: 302-622-7000  
Fax: 302-622-7100

*Counsel for Plaintiffs*

## Batch Print Document Cover Sheet

**Document Title:** Verification and Affidavit of Nicholas Staffieri on behalf of Southeastern Pennsylvania Transportation Authority in support of Verified Class Action Complaint

**Page Count:** 2

**Transaction ID:** 36180128  
**Document Type:** Verification to Complaint

**Authorizer:** Michael J Barry  
**Authorized Date:** 2/28/2011 3:51 PM EST

**Court:** DE Court of Chancery Civil Action  
**Case Number:** 6230-  
**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al





IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CLEVELAND BAKERS AND  
TEAMSTERS PENSION FUND,  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY, and  
SOUTHWEST OHIO REGIONAL  
COUNCIL OF CARPENTERS PENSION  
PLAN, on behalf of themselves and all other  
similarly situated shareholders of Emergency  
Medical Services Corporation,

Plaintiffs,

v.

KEVIN E. BENSON, STEVEN B.  
EPSTEIN, PAUL B. IANNINI, JAMES T.  
KELLY, ROBERT M. LEBLANC,  
WILLIAM A. SANGER, MICHAEL L.  
SMITH, CDRT ACQUISITION  
CORPORATION, CLAYTON, DUBILIER  
& RICE LLC, CDRT MERGER SUB, INC.,  
ONEX CORPORATION, BANK OF  
AMERICA CORPORATION and MERRILL  
LYNCH, PIERCE, FENNER & SMITH INC.

Defendants.

C.A. No. \_\_\_\_\_

**VERIFICATION AND AFFIDAVIT  
IN SUPPORT OF VERIFIED CLASS ACTION COMPLAINT**

COMMONWEALTH OF PENNSYLVANIA )  
 ) S.S.  
COUNTY OF PHILADELPHIA )

I, Nicholas Staffieri, being duly sworn, deposes and says that:

1. I am the General Counsel of Plaintiff Southeastern Pennsylvania Transportation Authority ("SEPTA"), and am authorized to submit this verification and affidavit on behalf of SEPTA.

2. I have read the foregoing Verified Class Action Complaint. The facts set forth in the foregoing Class Action Complaint that relate to the acts and deeds of SEPTA are true to my own knowledge. With respect to the facts set forth in the foregoing Verified Class Action

Complaint that relate to the acts and deeds of others, as to those matters, I believe them to be true.

3. Neither SEPTA nor I have received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the above-captioned case, except for such (i) damages or other relief as the Court may award such person or entity as a member of the class, (ii) such fees, costs and other payments as the Court expressly approves to be paid to or on SEPTA's behalf, or (iii) reimbursement, paid by SEPTA's attorneys, of actual and reasonable out-of-pocket expenditures incurred by SEPTA directly in connection with the prosecution of this action.

4. I make this affidavit and verification under penalty of perjury.

  
Nicholas Staffieri

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 24<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Tina A. Tripi, Notary Public  
City of Philadelphia, Philadelphia County  
My Commission Expires Dec. 26, 2011  
Member, Pennsylvania Association of Notaries

## Batch Print Document Cover Sheet

**Document Title:** Verification and Affidavit of Carl Pecoraro and Edward Thomas on behalf of Cleveland Bakers and Teamsters Pension Fund in support of Verified Class Action Complaint

**Page Count:** 2

**Transaction ID:** 36180128

**Document Type:** Verification to Complaint

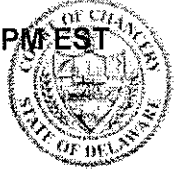
**Authorizer:** Michael J Barry

**Authorized Date:** 2/28/2011 3:51 PM EST

**Court:** DE Court of Chancery Civil Action

**Case Number:** 6230-

**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al



CLEVELAND BAKERS AND  
TEAMSTERS PENSION FUND,  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY, and  
SOUTHWEST OHIO REGIONAL  
COUNCIL OF CARPENTERS PENSION  
PLAN, on behalf of themselves and all other  
similarly situated shareholders of Emergency  
Medical Services Corporation,

Plaintiffs,

v.

KEVIN E. BENSON, STEVEN B.  
EPSTEIN, PAUL B. IANNINI, JAMES T.  
KELLY, ROBERT M. LEBLANC,  
WILLIAM A. SANGER, MICHAEL L.  
SMITH, CDRT ACQUISITION  
CORPORATION, CLAYTON, DUBILIER  
& RICE LLC, CDRT MERGER SUB, INC.,  
ONEX CORPORATION, BANK OF  
AMERICA CORPORATION and MERRILL  
LYNCH, PIERCE, FENNER & SMITH INC.

Defendants.

C.A. No. \_\_\_\_\_

**VERIFICATION AND AFFIDAVIT  
IN SUPPORT OF VERIFIED CLASS ACTION COMPLAINT**

STATE OF OHIO )  
 ) S.S.  
COUNTY OF CUYAHOGA )

We, Carl Pecoraro and Edward Thomas, being duly sworn, depose and say that:

1. We are the Chairman and the Secretary, respectively, of Cleveland Bakers and Teamsters Pension Fund (the "Fund") and are authorized to submit this verification and affidavit on behalf of the Fund.

2. We have read the foregoing Verified Class Action Complaint. The facts set forth in the foregoing Class Action Complaint that relate to the acts and deeds of the Fund are true to our own knowledge. With respect to the facts set forth in the foregoing Verified Class Action

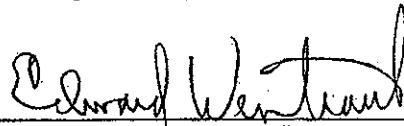
Complaint that relate to the acts and deeds of others, as to those matters, we believe them to be true.

3. Neither the Fund nor we have received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the above-captioned case, except for such (i) damages or other relief as the Court may award such person or entity as a member of the class, (ii) such fees, costs and other payments as the Court expressly approves to be paid to or on the Fund's behalf, or (iii) reimbursement, paid by the Fund's attorneys, of actual and reasonable out-of-pocket expenditures incurred by the Fund directly in connection with the prosecution of this action.

4. We make this affidavit and verification under penalty of perjury.




Carl Pecoraro, Chairman



Edward Weintraub, Secretary

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 24<sup>th</sup> day of February, 2011.



Notary Public  
My Commission Expires 7-18-12

NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 18TH 2012  
RECORDED IN LAKE COUNTY

## Batch Print Document Cover Sheet

**Document Title:** Verification and Affidavit of Herb Adams on behalf of Southwest Ohio Regional Council of Carpenters Pension Plan in support of Verified Class Action Complaint

**Page Count:** 3

**Transaction ID:** 36180128

**Document Type:** Verification to Complaint

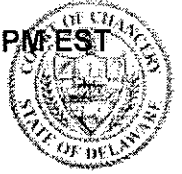
**Authorizer:** Michael J Barry

**Authorized Date:** 2/28/2011 3:51 PM EST

**Court:** DE Court of Chancery Civil Action

**Case Number:** 6230-

**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CLEVELAND BAKERS AND  
TEAMSTERS PENSION FUND,  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY, and  
SOUTHWEST OHIO REGIONAL  
COUNCIL OF CARPENTERS PENSION  
PLAN, on behalf of themselves and all other  
similarly situated shareholders of  
Emergency Medical Services Corporation,

Plaintiffs,

v.

KEVIN E. BENSON, STEVEN B.  
EPSTEIN, PAUL B. IANNINI, JAMES T.  
KELLY, ROBERT M. LEBLANC,  
WILLIAM A. SANGER, MICHAEL L.  
SMITH, CDRT ACQUISITION  
CORPORATION, CLAYTON, DUBILIER  
& RICE LLC, CDRT MERGER SUB, INC.,  
ONEX CORPORATION, BANK OF  
AMERICA CORPORATION and  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INC.

Defendants.

C.A. No. \_\_\_\_\_

**AFFIDAVIT AND VERIFICATION OF HERB ADAMS  
PURSUANT TO COURT OF CHANCERY RULES 23(aa) AND 3(aa)**

I, Herb Adams, being duly sworn, do hereby state as follows:

1. My name is Herb Adams. I am the Trustee for Southwest Ohio Regional Council of Carpenters Pension Plan ("SWORCPP"). I make this Affidavit and Verification on behalf of SWORCPP pursuant to Court of Chancery Rules 23(aa) and

3(aa) in connection with the filing of the Verified Class Action Complaint in the above-captioned Action.

2. SWORCPP is a current shareholder of Emergency Medical Services Corporation and has been a shareholder at all times relevant to this Action.

3. I verify that I have reviewed and am familiar with the allegations of the foregoing Verified Class Action Complaint. I further verify that the allegations as to SWORCPP and its own actions are true and correct and all other allegations upon information and belief are true and correct.

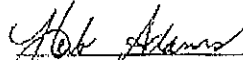
4. I verify that I have reviewed and authorized, subject to ratification from the Board of Trustees of SWORCPP, the filing of the Verified Class Action Complaint against the above-listed defendants.

5. Neither I nor SWORCPP, including any of its trustees, have received, been promised or offered, and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the Action except for (i) such damages or other relief as the Court may award SWORCPP; (ii) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of SWORCPP; or (iii) reimbursement, paid by SWORCPP's attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

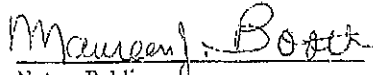


I make this Affidavit and Verification under penalty of perjury that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of February 2011

  
Herb Adams  
Trustee,  
Southwest Ohio Regional Council of  
Carpenters Pension Plan

SWORN TO AND SUBSCRIBED  
before me this 25<sup>th</sup> day of February 2011

  
Notary Public



MAUREEN J. BOOTH  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires ~~03-18-11~~ MY COMMISSION EXPIRES 03-18-11

## Batch Print Document Cover Sheet

**Document Title:** Supplemental Information Pursuant to Rule 3(a) of the Rules of the Court of Chancery

**Page Count:** 1

**Transaction ID:** 36180128

**Document Type:** Supplemental Information Sheet

**Authorizer:** Michael J Barry

**Authorized Date:** 2/28/2011 3:51 PM EST

**Court:** DE Court of Chancery Civil Action

**Case Number:** 6230-

**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al



SUPPLEMENTAL INFORMATION PURSUANT TO RULE 6230-  
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. **Caption of Case:** Cleveland Bakers and Teamsters Pension Fund, Southeastern Pennsylvania Transportation Authority and Southwest Ohio Regional Council of Carpenters Pension Plan, on behalf of themselves and all other similarly situated shareholders of Emergency Medical Services Corporation v. Kevin E. Benson, Steven B. Epstein, Paul B. Iannini, James T. Kelly, Robert M. LeBlanc, William A. Sanger, Michael L. Smith, CDRT Acquisition Corporation, Clayton, Dubilier & Rice LLC, CDRT Merger Sub, Inc., Onex Corporation, Bank of America Corporation, and Merrill Lynch, Pierce, Fenner & Smith Inc.

2. **Date Filed:** February 28, 2011

3. **Name and address of counsel for plaintiff:**  
Michael J. Barry, Grant & Eisenhofer P.A., 1201 N. Market Street, Wilmington, DE 19801

4. **Short statement and nature of claim asserted:** Shareholder class action alleging breach of fiduciary duty by corporate directors and controlling shareholder in connection with proposed sale of the corporation, and aiding and abetting of same by proposed acquirer, controlling shareholder and financial advisor.

5. **Substantive field of law involved (check one):**

- |   |  |
|---|--|
| <input type="checkbox"/> Administrative law         | <input type="checkbox"/> Trade secrets/trade mark/<br>or other intellectual property |
| <input type="checkbox"/> Commercial law             | <input type="checkbox"/> Trusts*   |
| <input type="checkbox"/> Constitutional law         | <input type="checkbox"/> Wills and estates*  |
| <input checked="" type="checkbox"/> Corporation law | <input type="checkbox"/> Zoning  |
| <input type="checkbox"/> Guardianships              | <input type="checkbox"/> Real Property   |
| <input type="checkbox"/> Labor law                  | <input type="checkbox"/> Other   |

6. **Related case(s):** *Larry Pieri v. EMS, et al.*, C.A. No. 6205 (Del. Ch.); *United Wire Metal & Machine Pension Fund v. Sanger, et al.*, C.A. No. 6210 (Del. Ch.).

7. **Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):**  
10 *Del.C.* § 341

8. **If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.**  
Preliminary injunctive relief to enjoin the transaction described in Paragraph 4, above.

9A. **If the complaint seeks summary proceedings, check here** \_\_\_\_\_

9B. **If the complaint seeks expedited proceedings, check here** \_\_\_\_\_  
A formal motion must accompany this request.

10. **If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause.** \_\_\_\_\_

/s/ Michael J. Barry  
Michael J. Barry (Del. ID No. 4368)

## Batch Print Document Cover Sheet

**Document Title:** Letter to the Register in Chancery from Michael J. Barry, Esquire regarding  
Summons Instructions

**Page Count:** 1

**Transaction ID:** 36180128

**Document Type:** Summons Instructions

**Authorizer:** Michael J Barry

**Authorized Date:** 2/28/2011 3:51 PM EST

**Court:** DE Court of Chancery Civil Action

**Case Number:** 6230-

**Case Name:** Cleveland Bakers & Teamsters Pension Fund et al vs Kevin E Benson et al



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EFiled: Feb 28 2011 3:51PM EST  
Transaction ID 36180128  
Case No. 6230-



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Washington, DC 20036  
Tel: 202-783-6091 • Fax: 202-350-5908

Direct Dial: 302-622-7065  
Email: mbarry@gelaw.com

February 28, 2011

**Via LexisNexis File and Serve**  
Register in Chancery  
New Castle County Courthouse  
500 North King Street  
Wilmington, DE 19801

**Re: *Cleveland Bakers and Teamsters Pension Fund, et al. v. Benson, et al.***

Dear Register in Chancery:

Please be advised that our office will prepare Summonses for service on Defendants Kevin E. Benson, Steven B. Epstein, Paul B. Iannini, James T. Kelly, Robert M. LeBlanc, William A. Sanger, Michael L. Smith, CDRT Acquisition Corporation, Clayton, Dubilier & Rice LLC, CDRT Merger Sub, Inc., Onex Corporation, Bank of America Corporation and Merrill Lynch, Pierce, Fenner & Smith Inc. in the above-referenced action. We will submit these Summonses for your approval and kindly request that you issue them. We will then have Tri-State Courier Service serve them.

Very truly yours,

/s/ Michael J. Barry  
Michael J. Barry (DE Bar No. 4368)