



COLORADO CENTER  
on LAW & POLICY

## **Litigation Update: Exempla Cases** **July 2008**

### **Overview**

There are two separate lawsuits currently pending related to the proposed transaction of two Denver-area Exempla hospitals.

A citizens and physicians lawsuit is pending in Boulder County against the Sisters of Charity health care group and the Community First Foundation. A hearing on defendants' motions to dismiss the suit is scheduled to for September 3<sup>rd</sup> in Boulder County District Court.

In Denver, Exempla filed a lawsuit against Sisters of Charity and the Community First Foundation. This lawsuit has been remitted to arbitration, though arbitrators have yet to be selected and no time for hearing or decision has been set.

Please see below for further analysis.

### **Boulder County Case**

The Boulder County case focuses on Community First Foundation (CFF). It alleges that CFF is required to obtain court approval before it spends any current or future dollars for anything other than direct health care services. CFF received the bulk of its monies from Lutheran Hospital donors, who meant to support the Hospital, not general community philanthropy. In turn, should it receive any proceeds from the sale of its interest in the Exempla joint venture, those dollars also must be spent on direct health services unless the court approves spending for broader purposes. The historic legal doctrine of *cy pres* so requires.

### **Denver County Case**

The Denver case focuses on whether the nature of the Exempla joint venture is such that neither joint venture sponsor has an interest it can sell. It is only a joint venture sponsor in the event Exempla is legally dissolved for failure to carry out its mission, and no one is suggesting it can't carry out its mission. So CFF and Sisters of Charity, it is argued, are beyond their legal authority in buying and selling interests. The arbitrators will determine whether Exempla or the sponsors are right.

For current updates, please see [www.cclponline.org](http://www.cclponline.org) or contact Ed Kahn, CCLP Special Counsel, at 303-573-5669 ext. 305.