UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

REID HOSPITAL & HEALTH CARE SERVICES, INC., Plaintiff,	)	
v.	)	CAUSE NO. 1:17-cv-01422-RLY-TAB
CONIFER REVENUE CYCLE SOLUTIONS, LLC, Defendant.	)	

SECOND AMENDED COMPLAINT FOR DAMAGES

Comes now Plaintiff, Reid Hospital & Health Care Services, Inc. ("Reid") and for its Second Amended Complaint for Damages against Conifer Revenue Cycle Solutions, LLC ("Conifer") and states the following:

I. THE PARTIES AND RELATED ENTITIES

1. Reid is an Indiana not-for-profit corporation operating an acute care hospital with its principal place of business in Wayne County, Indiana.

2. Reid is a 233-bed regional referral center in the business of providing health care and hospital services to the residents of Wayne County, Indiana, and surrounding areas in East Central Indiana and West Central Ohio.

3. Reid's Richmond, Indiana, campus provides a wide and comprehensive array of health care and hospital services to its patients.

4. Conifer is a California limited liability company with its principal office in Collin County, Texas.

5. Conifer is a wholly owned subsidiary of Conifer Health Solutions, LLC.

6. Conifer Health Solutions, LLC, is a Delaware limited liability company with its principal place of business in Collin County, Texas.

7. Conifer Health Solutions, LLC, is a wholly owned subsidiary of Tenet Healthcare Corporation ("Tenet").

8. According to Tenet's Form 10-K's, Tenet owned 72 hospitals and operated an additional 5 hospitals in 2013, and owned 74 hospitals and operated an additional 6 hospitals in 2014.

9. Conifer is in the business of providing comprehensive revenue cycle management and collection services to hospitals and health care providers throughout the United States.

10. Conifer markets itself as the United States' number one hospital revenue cycle management and collection outsourcing vendor.

11. According to Tenet's Form 10-K's, Conifer Health Solutions, LLC, provided business process services, often including revenue cycle management through Conifer, to more than 700 hospitals and health care providers in 2013, and approximately 800 hospitals and health care providers in 2014.

12. Conifer claims that its revenue cycle outsourcing for providers enhances patient experience and provider satisfaction, improves net revenue, contains costs, and drives yield improvement by:

a. Simplifying patient interactions through scheduling, patient access, financial clearance, eligibility, and patient experience services;

b. Transforming clinical information into data to create more successful patient outcomes and efficiency;

c. Using dedicated teams focused on health information management, case management, clinical appeals, government audits, coding and coding quality, revenue integrity, and clinical documentation improvement;

d. Resolving aging A/R through focused billing, follow-up, denials and appeals management, as well as patient-centric account resolution.

13. According to Conifer's marketing materials:

a. It "Ranked No. 1 in the 2015 Black Book™ RCM ("Revenue Cycle Management") outsourcing survey" for the third consecutive year.

b. "Conifer's revenue cycle management performance ranked first in 9 of 18 key performance indicators, among them: vendor overall preference/industry recommendations; support and customer care; and technology and process improvement."

c. Conifer provides "best in class" revenue cycle services to hospitals.

d. "Conifer Health has assembled the best knowledge base along with the best system capabilities in the health performance and management industry."

e. Conifer is the top revenue cycle management outsourcing vendor in the category "Hospitals 150 Beds and More."

f. Conifer's Revenue Cycle Outsourcing was recognized in the KLAS 2015 Revenue Cycle Services Report for its ability to "help [its] clients improve collections (cash, A/R), streamline processes and decrease costs."

14. At least some of Conifer's marketing materials do not distinguish Conifer Revenue Cycle Solutions, LLC, from its parent company, Conifer Health Solutions, LLC.

15. On the other hand, Conifer has represented that it was Conifer Revenue Cycle Solutions, LLC, and not Conifer Health Solutions, LLC, that provided revenue cycle management services to Reid.

16. Conifer also provides revenue cycle management services to the hospitals owned by or managed by Tenet or Conifer Health Solutions, LLC.

II. STATEMENT OF JURISDICTION AND VENUE

17. Conifer and Reid are citizens of different States.

18. The amount in controversy between the parties exceeds $75,000.

19. Jurisdiction is appropriate in the United States District Court for the Southern District of Indiana pursuant to the provisions of 28 U.S.C. § 1332 regarding diversity of citizenship.

20. Venue is appropriate in the United States District Court for the Southern District of Indiana pursuant to Section 18.10 of the Master Agreement for Revenue Cycle Outsourcing (the "Master Agreement") between the parties.

III. THE FACTS

A. The Master Agreement

21. On or about April 28, 2011, Reid outsourced its entire revenue cycle management to Dell Marketing, LP ("Dell") pursuant to the 77-page Master Agreement for Revenue Cycle Outsourcing (the "Master Agreement"). Conifer possesses a copy of the Master Agreement.

22. Section 18.10 of the Master Agreement provides that the "Agreement shall be governed according to the laws of Indiana without giving effect to any rules of conflicts of law."

23. On November 5, 2012, Conifer assumed all of Dell's duties and obligations under the Master Agreement.

24. Therefore, starting in November, 2012, Conifer was responsible for Reid's entire revenue cycle.

25. Section 2.1 of the Master Agreement states, in relevant part:

> <u>Scope of this Agreement</u>. During the Term, [Conifer] will provide to Reid and Reid will obtain from [Conifer], the Base Services in accordance with the terms of this Agreement. For avoidance of doubt the Base Services shall consist of: (1) the detailed tasks identified in **Schedule A**; (2) other tasks that are not described in **Schedule A** that fall historically within the scope of services having been performed by the Affected Employees prior to the Effective Date; and (3) all services, functions, responsibilities, activities and tasks not specifically described in this Agreement that are reasonably necessary or an inherent part of, or a necessary subpart included within such services to the same extent and in the same manner as if specifically described in The Agreement. In addition to the Base Services, during the Term, the Parties may agree for [Conifer] to provide Additional Services to Reid in accordance with the terms of this Agreement.

26. These Base Services and Additional Services, which are described in greater detail in the Master Agreement, included scores of responsibilities such as prequalifying patients, case management services, accurately coding medical records, timely billing for Reid's services, timely responding to requests for additional information from third party payors (i.e. insurers, Medicaid and Medicare), timely

appealing and pursuing denials, and ultimately collecting all sums due Reid for its services.

27. Pursuant to Section 12.4 of the Master Agreement, Conifer:

> Warrants that the services shall be performed in a manner ***consistent with best practices of providers of the types of services specified in this Agreement***. (Emphasis supplied.)

(hereinafter referred to as the "Best Industry Practices Warranty").

28. In Section 1.1 of the Master Agreement, Conifer further represented that it:

> [H]as the skill, ***personnel***, knowledge and management expertise to provide the services in compliance with all applicable laws ***and payor contracts***. (Emphasis supplied.)

29. In the "Patient Access Services" task description in Schedule A of the Master Agreement, Conifer is obligated to "Coordinate and aid patients in the completion of Medicaid or Charity Care applications as needed."

30. Additionally, Section 9.3 of the Master Agreement provides:

> [Conifer] shall at all times perform the Services in accordance with the following:
>
> (A) All applicable laws and regulations.
>
> (B) All guidance provided by CMS [Center for ***Medicare and Medicaid Services***] applicable to Dell's [Conifer's] performance of the billing and collection functions of the Services. (Emphasis supplied.)

31. Section 9.5 of the Master Agreement states that [Conifer]:

> ***Will comply with the provisions of the Payor Contracts*** that are applicable to [Conifer] in its performance of the billing and collection functions of the Base Services. (Emphasis supplied.)

32. Section 10.1(B) of the Master Agreement provides:

> Incentive Fees. Commencing with the Second Contract Year of the Term, as described in Section 4 of Schedule C, [Conifer] will deliver an invoice to Reid for the incentive fees, if any, earned by [Conifer] during the prior Measurement Period calculated in accordance with Section 6 of Schedule C ("Incentive Fees"). Reid will pay each such invoice in accordance with Section 10.5.

33. Section 4.4 of the Master Agreement provides:

> Location of [Conifer] Personnel Performing Services. Reid is committed to investing in the community which it serves. This commitment includes the development and maintenance of a local work force necessary to support Reid's operations. To this end, it is agreed that except with the express written consent of Reid, ***all Base Services functions shall be performed at a facility that is located within a 20 mile radius of the address of Reid's offices stated in the opening paragraph of this Agreement***. Reid consents to the functions of coding, transcription, small balance collections and self-pay billing and collections being performed outside of such 20 mile radius

(hereafter the "Locality Clause") (Emphasis supplied).

34. The Locality Clause was very important to Reid for two reasons:

a. Reid was very supportive of the City of Richmond and Wayne County, and as the county's largest employer, did not want to see over 200 employees lose their jobs; and

b. Reid was concerned that if ultimately the subcontracting out of its revenue cycle to first Dell and later Conifer did not work out, Reid wanted to be able to bring the management of its revenue cycle back in-house and have local residents available to provide such services.

35. Section 14.1 (B) of the Master Agreement is titled "Limitation of Liability," and provides, in relevant part:

> Limitation on Types of Damages. Except with respect to claims resulting from the willful misconduct of [Conifer], its employees and agents, breach by Dell, its employees or agents of its confidentiality obligations under Section 11.2 or (iii) claims from Dell's indemnification obligations and Section 20 of **Schedule E**, but with respect to all other claims, actions and causes of action arising out of, under or in connection with this Agreement (except for Reid's obligations to make payments under this Agreement), regardless of the form of action, whether in contract or tort (including negligence, strict liability or otherwise) and whether or not such damages are foreseen, neither Party will be liable for, any amounts for indirect, incident, special, consequential (including, without limitation, loss profits, lost revenue, or damages for the loss of data) or punitive damages of the other Party or any third parties.

36. Section 14.1(C) of the Master Agreement further provides, in relevant part:

> Limitation on Direct Damages. Except with respect to Reid's payment obligations under this Agreement and with respect to claims, actions or causes of action arising from (1) [Conifer's] indemnification obligations set forth in Article 13, (ii) the willful misconduct or Gross Negligence of [Conifer], its employees and agents, (iii) a breach by [Conifer], its employees or agents of its obligation of confidentiality Section 11.2, or (iv) claims from [Conifer's] indemnification obligations set forth in Section 20 of **Schedule E**, but with respect to all other claims, actions and causes of action arising out of, under or in connection with this Agreement, regardless of the form of action, whether in contract or tort (including negligence, strict liability or otherwise) and whether or not such damages are foreseen, neither party's liability will exceed the total amount actually paid or payable to [Conifer] by Reid for Services provided under this Agreement (excluding amounts paid as reimbursement of expenses or taxes) during the 12 month period immediately preceding the date on which the claim, action, or cause of action arose.

37. "Gross Negligence" is defined in the Master Agreement by Section 1.2 as "the intentional failure by [Conifer] to perform a manifest duty in reckless disregard of the consequences as affecting the life and property of Reid." (The terms "gross

negligence" or "grossly negligent" conduct in this Complaint shall incorporate this definition by reference).

38. Conifer has expressly waived the Dispute Resolution provisions of Article 15 of the Master Agreement.

39. On September 8, 2016, the parties entered into a Tolling Agreement and on October 14, 2016, the parties amended the Tolling Agreement. Copies of the Tolling Agreement and amendment are attached as **Exhibit A** and incorporated by reference herein.

40. Pursuant to the terms of the Tolling Agreement, all limitations periods applicable to Reid's claims are tolled.

B. Conifer's Bad Performance

41. In August, 2012, shortly before Conifer took over for Dell, Dell submitted a survey to its employees working on the Reid project.

42. The results of the survey reflected staffing shortages at Reid in the revenue cycle management operations managed by Dell.

43. Survey comments included, without limitation, "We are VERY understaffed. Currently, we are doing the minimum to get by. This is unacceptable," and "I feel that we just do not have proper staffing for the workload and this affects workload, benefits, morale, and job performance."

44. The results of this survey—and the understaffing created under Dell's tenure—were known to Conifer at the time Conifer assumed Dell's responsibilities under the Master Agreement.

45. In fact, the director of Dell's work under the Master Agreement, Matt Mason, became the director of Conifer's work under the Master Agreement.

46. However, rather than addressing this problem upon assuming the Master Agreement from Dell, Conifer exacerbated it through gross negligence, recklessness, incompetence, and a policy of willful misconduct and willful mismanagement with the intent to maximize its income and try to force Reid to modify the Master Agreement.

i. Conifer willfully and grossly negligently understaffed the Reid project in order to maximize its own income and to leverage the risks that Conifer's mismanagement posed to Reid's revenue stream against Reid to pressure Reid to modify the Master Agreement to Conifer's benefit.

47. Emails among Conifer employees working on the Reid project from December, 2012, reflect frequent unaddressed staffing shortages.

48. These problems with understaffing only grew worse as Conifer continued to manage Reid's revenue cycle operations.

49. By way of example, the following statements are taken from Conifer employee emails:

a. Employees were rotating weekends, however that left us severely understaffed on Monday and Fridays or during the week. LOS [length of [patient] stay] went up. (December 2012)

b. I sent you the skills and attributes we were looking for in temporary payment posting support and haven't heard anything since. Our unposted cash is very high. (December 2012)

c. We need additional hands to get current. (December 2012)

d. I disagree that we should remove staffing as a key initiative, although I know why you want to do that. My concern is that when we're on the AR slides and we address unposted cash we have to say we're short-staffed. (January 2013)

e. The month of March had an extremely high LOS causing a loss of 2 million dollars. WOW!! (April 2013)

f. Whatever you can do to exude calm and organization when it comes to staffing will go a long way. ☺ (June, 2013)

g. [W]e did not meet our target claims on hold of $3.5M last month because we had over $1M in psych claims we were holding for Case Management. Annette Saylor's husband passed away and she [sic] out for a couple of weeks so the claims did not get reviewed. (July 2013)

h. Issue: Staffing Shortages. There was a baseline reduction from 150 to 125 FTEs from the Dell takeover. Revenue cycle leaders and some revenue cycle staff are spending time on non-core activities to support Soarian Financials implementation, Lean project meetings, etc. … diverting the staff from core responsibilities. … Implement conversion assistance needed to backfill Soarian implementation efforts. (September 2013)

i. The purpose of the meeting is to discuss the overall relationship with Reid. There are a number of negative factors that we need to address (the pending RAC payback issue, the negative margin P&L and our current performance with Reid, etc.). (February 2014)

j. I know everyone is overwhelmed not just Medicare billers. … Everything has become very overwhelming -- needless to say there has only been 2 Medicare billers for the last 14 months. (February 2014)

k. I am mad at certain situations here that never get answered and will never get any better it seems. I have always tried to have a positive outlook, but anymore that is unattainable. I try every day to tell myself that it will get better, but every day I leave here, I feel like a fool for thinking that it will be better. (March 2014)

l. One of our biggest issues is documentation discrepancies, or lack of documentation. … Our coding staff was cut in half when Dell came in, we had the number of coders we did for a reason. Now we barely have enough to scrape by. (April 2014)

m. When we were fully staffed, we did bill the ESRD when it was related to ESRD for the Medicare allowed rate. … The problem started when we became short staffed and it was decided that if it was related to ESRD and balance was under $100 that we would adjust these off since there was only two of us. (October 2014)

50. Unbeknownst to Reid, Conifer was willfully and grossly negligently short-staffing Reid's revenue cycle management in an effort to hold down costs, as Conifer was experiencing losses on the Reid account.

51. Conifer asked Reid to waive the Master Agreement's Locality Clause, claiming Conifer could improve performance if it could manage Reid's revenue cycle from its Dallas, Texas offices. Conifer did not disclose to Reid at that time that Conifer was cutting staff to hold down costs. Reid refused to waive the Locality Clause.

52. In the months after Conifer assumed the Master Agreement, Reid became aware that Conifer failed to meet the minimum performance standard classified as "Point of Service Collection" during the July to September, 2012, measurement period and during the January to March, 2013, measurement period.

53. During the same time period, Reid became aware that Conifer also failed to meet the minimum performance standard classified as "Contractual Adjustments as

a Percent of Net Revenue" during the July to September, 2012, measurement period and during the January to March, 2013, measurement period.

54. On September 9, 2013, Reid's President and CEO, Craig Kinyon, sent Conifer's president a letter expressing Reid's concerns with Conifer's failure to meet the above-referenced Performance Metrics and Reid's broader concerns that Conifer was failing to perform its contractual obligations, generally.

55. In his letter of September 9, 2013, Mr. Kinyon wrote, "The failure to meet [Conifer's] minimum performance standards is likely *the result of Conifer's reduction of staff* and the failure to perform all the base services delegated to Conifer under the Master Agreement." (Emphasis added).

56. On October 11, 2013, Conifer's Assistant Vice President of Client Management, Sean Kirby, responded on behalf of Conifer to the numerous issues identified in Mr. Kinyon's letter, and conceded that Conifer was "facing some staffing changes and challenges."

57. Mr. Kirby tendered his response on Conifer Health Solutions, LLC's, letterhead, but Conifer Revenue Cycle Solutions, LLC, has represented that it—and not Conifer Health Solutions, LLC—assumed the contractual obligations of the Master Agreement.

58. In fact, at the time of Mr. Kirby's response, Conifer's Health Information Management ("HIM") staff on the Reid project had been reduced by 13 full-time employees—or 25%-- from the time of the Dell transition.

59. At the time of Mr. Kirby's response, Conifer's business office staff on the Reid project had been reduced by 15 full-time employees—or 33%-- from the time of the Dell transition;

60. At the time of Mr. Kirby's response, Conifer's patient access staff on the Reid project had been reduced by 2 full-time employees from the time of the Dell transition, and;

61. Conifer's Case Management Director on the Reid project left Conifer on September 20, 2013.

62. Mr. Kirby knew these facts and *actually removed them from an early draft of his response to Mr. Kinyon* at the suggestion of Conifer's on-site Director of Revenue Cycle Management, Laura Hale.

63. Ms. Hale suggested Mr. Kirby keep from Reid this information and omit it in his response, so as to not emphasize the extreme staffing shortages Conifer had caused.

64. Pursuant to Ms. Hale's suggestion, the information related to Conifer's grossly negligent and willful reduction of staff referenced in rhetorical paragraphs 58, 59, 60, and 61 were removed in the final draft of the letter Conifer's Assistant Vice President of Client Management, Mr. Kirby, sent to Reid President and CEO, Mr. Kinyon.

65. Mr. Kirby, in his response to Mr. Kinyon, ultimately committed to "Complete recruitment for open positions" and "Onboard additional remote/local resources" within 90 days of the letter to address Reid's concerns.

66. January 9, 2014, is the date by which Conifer was to "Complete recruitment for open positions" and "Onboard additional remote/local resources."

67. Notwithstanding Mr. Kirby's assurance, the problems caused by Conifer's short staffing the Reid revenue cycle management and collection processes did not improve.

68. On January 29, 2014, Sharon Grayum, a Health Information Management Consultant for Conifer, began a two-day correspondence with Pam Schinke, an In-Patient Coder with the Health Information Management department managed by Conifer, in which the two agreed that they were woefully understaffed.

69. On February 21, 2014, Ms. Grayum wrote, in response to an employee taking ***three days off***, "There is no one else to help at this point. I will let Laura [Hale] know because the DNFB (Discharged Not Final Billed) will be higher. ***This is bad***." (Emphasis supplied).

70. On March 11, 2014, Ms. Grayum announced that Miramed, a third party coding support vendor, may start helping the Health Information Management staff with coding. She writes, "Let's all pray that [Miramed] can help."

71. On April 25, 2014, Conifer's Reanelle Ripberger writes: "We are so short staffed, that anyone can make that mistake. (***Is Reid aware of how short staffed we are now?***)." (Emphasis supplied.)

72. On May 14, 2104, Ms. Grayum writes to Martha Miller, a Coder, "***We just don't have enough ED coders.***" (Emphasis supplied.)

73. On August 12, 2014, Tanja McFarland, a Reid employee, emailed Kristin Ward, the Case Management Director, to offer to assist Ward's "short-staffed" department as McFarland's schedule allowed.

74. Clearly, Conifer did not fulfill its commitments to address "[c]omplete recruitment for open positions" and "[o]nboard additional remote/local resources" within 90 days of Mr. Kirby's October 11, 2013, response to Mr. Kinyon.

75. Mr. Kirby's commitment to Mr. Kinyon to address understaffing was simply placatory.

76. On May 12, 2014, Gloria Srch, Conifer's Florida-based primary coding manager on the Reid project, emailed Ms. Grayum a twenty-one-item priority list for Reid operations. Not a single one of those items in Ms. Srch's May 12, 2014, email addressed or even alluded to Conifer's severe understaffing problems at Reid, of which Conifer was fully aware.

77. In response to Ms. Srch, Ms. Grayum reiterated her need for additional coders to Ms. Srch.

78. In April, 2014, Conifer presented a proposal to Reid that the Master Agreement's Locality Clause be removed "by allowing Conifer to leverage its Centers of Excellence" to improve delivery of Conifer's services.

79. The hallmark of Conifer's proposal to utilize its "Centers of Excellence" on the Reid project was to close its operation at Reid and manage Reid's revenue cycle remotely.

80. In the "Value Proposition" portion of Conifer's April 2014 presentation to Reid, Conifer presented Reid with a PowerPoint slide that stated, in part:

- Conifer Invest and potential Value Proposition
    - Receives same base fee of $9.5 annually, with the exception of:
        - Return Case Mgmt and associated expense
        - Add Patient Registration Expense
        - Eliminate annual contractual decrease
    - ***<u>Assumes more expense by filling critical open positions</u>***

(Emphasis supplied.)

81. By "Return Case Management and associated expense" to Reid, Conifer would no longer be providing these revenue cycle services to Reid.

82. By adding "Patient Registration Expense," Conifer would increase the amount it would charge Reid for these services.

83. By "Eliminat[ing] annual contractual decrease," Conifer was proposing that it bill Reid more, even though Conifer would be providing fewer services.

84. Conifer's proposal to fill "critical open positions" ***was conditioned upon*** Reid's agreement to eliminate the Master Agreement's Locality Clause and Reid's agreement to pay Conifer more money for less services.

85. It is obvious that Conifer was well aware of its extreme staffing shortages at Reid and that it needed to "fill critical open positions."

86. The Deal Economics of Conifer's April, 2014, proposal revealed Conifer's core motivation to understaff the Reid project.

87. In Conifer's presentation to Reid, Conifer told Reid that Reid was spending between $4.5 million to $7.5 million less than the typical industry price for revenue cycle outsourcing.

88. Once again, what Conifer did not tell Reid was that Conifer was losing money on the Master Agreement. (According to an email from Conifer's Ronnie Land dated February 5, 2014, from January 1, 2013 to December 31, 2013 Conifer lost $1.6 million under the Master Agreement.)

89. Conifer knew it was critically understaffing the Reid project since the time it assumed the Master Agreement.

90. Conifer was willfully and grossly negligently understaffing Reid's revenue cycle management and collection processes in an effort to reduce its losses and force Reid to renegotiate the Master Agreement.

91. Implicitly, if Reid did not agree to change the Master Agreement, Conifer would continue to administer the Reid project with a skeleton staff.

92. By September 2014, Conifer had cut its staff performing revenue cycle and collection functions at Reid to 105 employees. Reid presently has 218 employees performing the same revenue cycle functions Conifer was contractually obligated to fulfill.

ii. <u>Conifer's decision to understaff Reid's revenue cycle management caused Reid to miss various deadlines and fail to satisfy requirements of third party payors</u>.

93. Approximately 95% of Reid's revenue comes from Medicaid, Medicare and health insurance companies who pay for services rendered to Reid patients.

94. The Master Agreement required Conifer to, among other things, retain sufficient staffing levels to comply with "all applicable laws and payor contracts." Master Agreement, Section 1.1.

95. The Master Agreement required Conifer to comply with all payor contracts. Master Agreement, Section 9.5.

96. These payor contracts contain relatively short time periods that required Conifer's strict compliance. If these deadlines were missed, Reid's right to receive payment from these insurance companies was forfeited.

97. The Master Agreement required Conifer to comply with all Medicaid and Medicare regulations. Master Agreement, Section 9.3.

98. Medicare and Medicaid published regulations that contained time periods that required Conifer's strict compliance. If these time deadlines were missed, Reid's right to receive payment from Medicare and Medicaid was forfeited.

99. Due to Conifer's decision to not properly staff Reid's revenue cycle management, Conifer missed deadlines required by third party payors causing more than $20 million of Reid's charges for services to be written off.

iii. Conifer's bad performance fell far below Best Industry Practices.

100. Reid terminated Conifer effective September 30, 2014.

101. Following Conifer's termination, Reid hired PricewaterhouseCoopers ("PwC"), among other third-party vendors retained to mitigate Reid's losses, to attempt to collect as much of Reid's revenues as possible that had not been collected due to Conifer's bad performance as described herein. PwC was also hired to catch up on the cash posting that was left undone by Conifer.

102. PwC has a division that provided hospital revenue cycle management and collection services.

103. Before PwC commenced its work for Reid, Reid placed Conifer on notice that PwC had been retained, provided Conifer with an outline of the services PwC was to perform, and asked Conifer for its comments and suggestions regarding PwC's proposed activities.

104. Conifer received Reid's notice referenced in the immediately preceding paragraph, but it did not make any comments or suggestions related to PwC's anticipated services.

105. At no time did Conifer ever object to PwC's retention or question PwC's qualifications to perform the anticipated services.

106. By the time Reid terminated Conifer:

a. There was a "Discharged Not Final Billed" (DNFB) metric of over $62 million;

b. There was a backlog of cash posting of approximately $33 million;

c. There was approximately $35 million in net uncollected accounts receivables that were referred to PWC for collection, approximately $20 million of which was over 365 days old, and the approximately $15 million that which was less than 365 days old had an average age of 219 days.

107. It is extremely difficult to collect hospital accounts receivables after they become 365 days old.

108. It is very difficult to collect hospital accounts receivables after they become 219 days old.

109. Reid's accounts receivable is an extremely important property interest asset to Reid. In fact, a hospital's accounts receivable is the lifeblood that keeps a hospital open, and damage to a hospital's accounts receivable directly damages a hospital's bottom line.

110. Conifer's willful and grossly negligent decision to understaff Reid's revenue cycle management directly damaged Reid's accounts receivable and ultimately Reid's cash collections from accounts receivable.

111. Upon Conifer's departure, Reid immediately noticed that the coding of medical records had been mismanaged as the result of understaffing and inadequate training.

112. When Conifer exited Reid, the master patient index and physician master index systems had printed out thousands of error notices.

113. Instead of correcting the errors, the manager of HIM, Conifer's Roscoe Myrmingos, simply asked that the error report function be disabled.

114. Reid's information systems ("IS") department refused to turn off the error reporting function.

115. IS instructed Mr. Myrmingos that these errors instead needed to be corrected.

116. Nonetheless, when Reid terminated Conifer, there were shelves and shelves of these error reports that Conifer's employees had never bothered to review or correct.

117. Conifer also completely mismanaged the clinical documentation improvement system (CDI).

118. Conifer was responsible for this CDI function and routinely missed both reviewing accounts and complications and comorbid conditions in patient records.

119. Conifer had no more than two people and sometimes only one, working in the CDI program, which was grossly inadequate.

120. Reid now has five employees *plus* an additional manager in the CDI program.

121. Third-party payors routinely ask for additional information and deny claims.

122. Third-party payors have relatively short timeframes for responding to such inquiries and if a satisfactory response is not received, then the claim is denied.

123. If a claim is denied, there is a small time window to file an appeal.

124. Conifer did not even initiate a claims denial management program at Reid to address its exceptionally high denial rate.

125. Conifer's staff on the Reid project regularly failed to respond to these routine requests for information resulting in denials of claims.

126. After missing those deadlines Conifer frequently ignored the appeals deadlines and permitted them to expire.

127. PWC attempted to collect unresolved claims, most of which were the result of Conifer missing various deadlines.

128. Conifer's failure to timely bill, timely follow up, and timely appeal caused Reid to write off $21,447,037.

129. $20,480,441 of the write-off described in the paragraph above would have been collected had Conifer used Best Industry Practices.

130. Following Conifer's termination, it took two full years for Reid to process the backlog and otherwise attempt to mitigate the millions of dollars in losses Conifer caused.

131. The consulting agency Crowe Horwath LLP ("Crowe") developed a tool called Revenue Cycle Analytics ("RCA") that aggregates accounting data from over 600

hospitals to develop performance benchmarks for various categories of hospital revenue cycle management operations ("Industry Benchmarks").

132. Reid retained Crowe to investigate Conifer's poor performance and compare Conifer's work at managing Reid's revenue cycle with Best Industry Practices.

133. Under Conifer's management, the percent of Reid's Accounts Receivable with aging over 90 Days was 72.2% higher than Industry Benchmarks.

134. "Bad Debt" is debt that is written off.

135. Under Conifer's management of the Reid revenue cycle, Reid's Bad Debt was more than three times the Industry Benchmark.

136. "Point of Service Cash Collections" is the percentage of patient cash payments collected by the hospital at the time of service (i.e. deductibles and copays) and posted to the hospital patient accounting system within 4 days of the date of service.

137. Conifer's performance at Reid on Point of Service Cash Collections was 1.4%. Industry Benchmark performance on Point of Service Cash Collections was 27.0%.

138. "Credit Days" are the amount of credit accounts receivable divided by average daily gross patient services revenue. Under Conifer's management, Reid's Credit Days averaged 3.4. Industry Benchmark Credit Days averaged 0.3.

139. The "Initial Denial Rate" is the gross patient services revenue that is denied by the insurance payer at the time of the first submission to the payer divided by the total gross patient services revenue. Under Conifer's management, the Initial Denial

Rate at Reid of denied claims was 13.8%. The Industry Benchmark Initial Denial Rate was 6.7%.

140. There is no way Conifer could achieve the reported rankings and accolades advertised by Conifer (see for example rhetorical paragraphs 12 and 13 above) by providing the level of service Conifer provided to Reid.

141. Conifer's parent company Tenet owns and/or operates over 80 hospitals nationwide.

142. To achieve the reported accolades and rankings referenced above, Conifer must have provided services to other hospitals, including hospitals owned and managed by Tenet, that were far superior to the services Conifer provided to Reid.

143. Instead of providing services "consistent with ***best practices*** of providers of the types of services" that Conifer warranted in Section 12.4 of the Master Agreement, Conifer's services fell drastically below Best Industry Practices, and in fact were well below the level of services Conifer apparently provided to other hospitals.

144. Conifer's failure to provide services consistent with Best Industry Practice was caused by Conifer's willful and grossly negligent decision to understaff the Reid revenue cycle management.

iv. <u>Conifer failed to perform numerous services for which it was obligated under the Master Agreement</u>.

145. Conifer also fell short of performing dozens of the services identified in the Master Agreement.

146. Conifer did not meet requirements on 26 percent of the 146 contractually-required "Base Services" under the Master Agreement's Schedule A.

147. The Master Agreement identifies seven service categories of Base Services tasks in Schedule A.

148. Of the five tasks classified as "Third Party Service Contract", Conifer met zero.

149. Of the 25 tasks classified as "Patient Resource Management", Conifer met only 17.

150. Of the 29 tasks classified as "Health Information Management", Conifer met only 15.

151. Of the 48 tasks classified as "Patient Financial Services", Conifer failed to meet 11.

152. Despite Conifer's willful misconduct, recklessness and gross negligence, it still overstated the collection rate it reported to Reid for purposes of calculating its Incentive Fees from January, 2013, to September, 2013.

IV. CONIFER WILLFULLY AND WITH GROSS NEGLIGENCE BREACHED THE MASTER AGREEMENT WITH REID

153. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

154. On April 28, 2011, Reid and Dell entered into the Master Agreement.

155. Pursuant to the terms of the Master Agreement, Dell agreed to provide Reid the services described therein.

156. Pursuant to the terms of the Master Agreement, Reid agreed to pay Dell for those services.

157. On November 5, 2012, Conifer assumed all of Dell's duties and obligations under the Master Agreement.

158. As explained above, Conifer represented that it had the resources, expertise and experience to utilize Best Industry Practices in its management of Reid's revenue cycle operations. Conifer breached this promise by failing to use Best Industry Practices in its management of Reid's revenue cycle.

159. As explained above, Conifer represented it would hire personnel to manage Reid's revenue cycle consistent with Best Industry Practices. Conifer breached this promise by failing to hire personnel to manage Reid's revenue cycle consistent with Best Industry Practices.

160. Conifer expressly warranted in writing that "the services *shall* be performed in a manner consistent *with best practices of providers* of the types of services specified in this Master Agreement." (Emphasis supplied). Conifer breached this promise or warranty by failing to perform its services in a manner consistent with best practices of providers of the type of services specified in the Master Agreement.

161. Conifer expressly promised that it would follow all requirements of third party payors. Conifer breached this promise by failing to follow the filing requirements of third party payors.

162. Conifer's specific failures include, but are not limited to:

a. Failing and refusing to staff the Reid project in a manner that would enable Conifer personnel to exercise Best Industry Practices, thereby breaching Conifer's Best Industry Practices Warranty in the Master Agreement;

b. Failing to perform 38 of the Base Services described in Schedule A of the Master Agreement.

c. Failing and refusing to monitor and continually review claims denied due to coding and/or documentation issues.

d. Failing to review a sample of code assignments and provide information on the results of such sample to Reid on a monthly basis.

e. Failing to perform regular audits of bills against codes to ensure that bills were capturing correct data and to report the results of the audit to Reid.

f. Failing to include separately chargeable CPT codes on claim reimbursement forms.

g. Failing to perform its services in accordance within the time restraints contained in Medicaid and Medicare regulations, as well as with all other payor contracts.

h. Failing to perform services within the time restraints contained in payor contracts.

i. Failing to coordinate and aid patients in the completion of Medicaid or Charity Care applications as needed.

j. Failing to get patients pre-certified for insurance and medical benefits.

k. Failing and refusing to implement a claim denial management program at Reid as required by the Master Agreement.

l. Failing to analyze and update Reid's Charge Description Master ("CDM") to reflect Medicare's fee schedule.

m. Failing to accurately calculate its Incentive Fees in accordance with the terms of the Master Agreement.

163. As a result of these breaches, Reid has been damaged in an amount in excess of $35,000,000.

164. Many, if not all, of Conifer's failures referenced above were the direct result of Conifer's willful and grossly negligent misconduct in choosing to understaff the Reid project, as described above.

165. As a result of the failure identified in rhetorical paragraph 162(m), Reid overpaid Conifer's Incentive Fees.

166. Reid's total overpayment of Incentive Fees equals Ninety Thousand Three Hundred Twenty-One Dollars ($90,321).

167. Conifer's multiple breaches of the Master Agreement were all done with Conifer's actual knowledge of the risks to Reid.

168. This actual knowledge is demonstrated through Conifer's repeated acknowledgements that the Reid project was understaffed and that Reid was being damaged because of said understaffing.

169. This actual knowledge is also demonstrated by Conifer's own staff constantly complaining about understaffing problems.

170. As a leader in revenue cycle management services, Conifer knew or should have reasonably known and concluded that its decision to understaff the Reid project entailed a probability of harm to Reid.

171. As a leader in revenue cycle management services, Conifer knew or should have reasonably known and concluded that its failure to timely file claims and failure to implement a claims denial management program entailed a probability of harm to Reid.

172. Conifer's decision to understaff the Reid project, its failure to timely file claims, it's failure to implement a claims denial management program, and its failures described in paragraph 162 are also the result of Conifer's reckless indifference to Reid's welfare.

173. This reckless indifference is demonstrated by Conifer's lack of any meaningful response to Reid's repeated complaints to Conifer about its understaffing and collection problems on the Reid project.

174. Conifer's willful misconduct is also demonstrated by its failure to perform its manifest duties under the Master Agreement by willfully understaffing the Reid

project and then attempting to use its own understaffing decisions as leverage to renegotiate Reid's contract.

175. Accordingly, the limitation on damages provided by Section 14.1 of the Master Agreement does not apply to Reid's claim for breach of contract.

176. As a result of Conifer's willful and grossly negligent breaches of the Master Agreement, Conifer has caused Reid damages in excess of $35 million.

177. As a result of Conifer's gross negligence and willful misconduct, Reid seeks all remedies allowed by law.

WHEREFORE, the Plaintiff, Reid Hospital & Health Care Services, Inc., prays the Court grant judgment in its favor and against Conifer in an amount in excess of $35,000,000 sufficient to compensate Reid for the consequences of Conifer's gross negligence and willful misconduct, breach of the Master Agreement, and breach of express warranty; for costs of the action; for pre-judgment interest; and for all other relief just and proper in the premises.

/s/ Scott L. Starr
Scott L. Starr, #1601-09

/s/ R. Daniel Faust
R. Daniel Faust, #28556-53
Starr Austen & Miller, LLP
201 South Third Street
Logansport, IN 46947
Telephone (574) 722-6676
Facsimile (574) 753-3299
Email: starr@starrausten.com
faust@starrausten.com

/s/ Mary K. Reeder
Mary K. Reeder, #6462-49
General Counsel
Reid Hospital & Health Care Services, Inc.
1100 Reid Parkway
Richmond, IN 47374
Telephone: (765) 983-3128
Facsimile: (765) 983-3324
Email: mary.reeder@reidhealth.org

Attorneys for Plaintiff,
Reid Hospital & Health Care Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, a copy of the foregoing Second Amended Complaint for Damages was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Mary K. Reeder, Esq. - mary.reeder@reidhealth.org
Patrick A. Shoulders, Esq. - pshoulders@zsws.com
Robert L. Burkart, Esq. - rburkart@zsws.com
William H. Jordan, Esq. – bill.jordan@alston.com
Kristen K. Bromberek, Esq. – kristen.bromberek@alston.com
Samuel R. Rutherford, Esq. – sam.rutherford@alston.com

/s/ R. Daniel Faust
R. Daniel Faust, #28556-53

5331 /second amended complaint