

<u>Michaels Stores</u>	
<u>Deal amount</u>	\$6.1 billion (\$44/share)
<u>Date deal announced</u>	June 30, 2006
<u>Purchasing private equity firms</u>	Bain Capital Blackstone
<u>Debt financiers</u>	Deutsche Bank J.P. Morgan Bank of America CSFB
<u>Purchasing advisor(s)</u>	Deutsche Bank CSFB Bank of America
<u>Company advisor(s)</u>	J.P. Morgan Goldman Sachs
<u>Other participating private equity firms</u>	Apollo ³⁴⁰ KKR ³⁴¹ TPG T.H. Lee Carlyle ³⁴² Goldman Sachs PIA

The HCA LBO

312. KKR, Bain and Merrill Lynch, along with HCA management insiders led by CEO and Chairman Dr. Thomas Frist, orchestrated a \$33 billion proprietary deal to buy HCA, which was at the time the largest LBO in history. Defendants and their co-conspirators explicitly agreed there

³⁴⁰ Private equity firms interested in the Michaels Stores LBO included: (1) Blackstone, Bain, Carlyle and T.H. Lee; (2) TPG, KKR and Apollo; (3) Warburg; and (4) Goldman Sachs PIA. Burke Decl., Ex. CC, TPG-E-0000002979.

³⁴¹ According to an August 9, 2006 internal Blackstone e-mail, Bain is okay with offering bridge financing to Apollo and KKR. BX-0812809-13.

³⁴² In April of 2006, Blackstone teamed up with Bain, Carlyle and T.H. Lee. BX-0123555

would be no competition for HCA notwithstanding its attractiveness to a number of Defendants and co-conspirators including Blackstone, TPG, Goldman Sachs, Apollo, Warburg, T.H. Lee, Permira and Carlyle.

313. The KKR-led consortium was the only buying group to submit an offer and faced no competing bids or competition from other private equity firms for the company. [REDACTED]

[REDACTED] No competition occurred even though the \$51 per share price represented a depressed premium of only 17.8% based on the HCA share price the day prior to the bid, and the \$51 per share was less than the share price on the day that HCA began exploring strategic alternatives aimed at increasing shareholder value.

314. As discussed below, KKR and Bain were able to purchase HCA at a suppressed price because the owners of the other large private equity firms – including at least Blackstone, TPG, Carlyle and Goldman Sachs PIA – explicitly agreed not to submit competing bids for the company.

315. On January 19, 2006, HCA disclosed that it had engaged Merrill Lynch to review various strategic alternatives to “*enhance shareholder value.*” HCA’s stock closed that day at a price of \$51.38 per share.

316. Merrill Lynch proposed the possibility of a leveraged buyout. In April 2006, Dr. Frist, the company’s founder and a substantial shareholder, contacted Bain and KKR to explore the feasibility of a management-led buyout.³⁴³ At about the same time, Merrill Lynch introduced HCA management to representatives from Merrill Partners, its private equity arm.

317. The private equity firms – KKR, Bain and Merrill Partners – concluded that a leveraged buyout could be feasible. HCA’s full board was informed of these discussions on May 8,

³⁴³ Notably, Frist was, at the time, an investor in one or more funds managed by Bain.

2006. Thereafter, the private equity firms were allowed to conduct due diligence and officially evaluate the company and management team on a proprietary basis. No other potential bidders were contacted and/or invited to conduct due diligence.

318. Because Dr. Frist and Merrill Lynch were part of the buying group, the HCA board formed a Special Committee that negotiated with the buying group. On July 24, 2006, the parties reached a deal under which KKR, Bain, Merrill Lynch and Dr. Frist's buying group would acquire the stock of the company for \$51 per share. The parties executed a merger agreement the same day. No other offers for HCA were submitted to the special committee at the time.

319. The merger agreement with HCA included a 50-day "go-shop" provision during which the Special Committee and its advisor, Credit Suisse, sought out higher bid proposals from other private equity firms and potential buyers.³⁴⁴

320. Around the time of the announcement, other large private equity firms like Blackstone, TPG, Carlyle and Goldman Sachs PIA expressed strong interest in owning HCA.

321. However, none of these firms made an offer for HCA. Incredibly, only 48 hours into the seven week "go-shop" period, the leaders of Blackstone, Carlyle, TPG and Goldman Sachs confirmed that no competition would be forthcoming for HCA. As demonstrated by the following e-mails, Defendants agreed not to challenge KKR and Bain during the go-shop period.

a. [REDACTED]

[REDACTED]

³⁴⁴ KKR DAHL 000490024-30 at 24; *see also* TPG-E-0000036037-44. After the target's board accepts a bid and publicly announces a proprietary deal, there is typically a "go-shop" period. The go-shop period is the time between the board's announcement of the deal and the deal's formal closing. During the go-shop period, the target's advisor "*proactively goes out to buyers, and also responds to all inquiries that are received, and tries to stimulate the interest and to create a higher bid for the company.*" Berlinski Depo. at 186:5-11.

b. On July 26, KKR member Jim Momtazee noted: *"FYI – only new info on this topic [competitive bids for HCA] is that* [REDACTED]

[REDACTED]
[REDACTED]

c. Later on July 26, KKR Co-founder Henry Kravis noted in an internal e-mail:

[REDACTED]
[REDACTED]

d. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

322. [REDACTED]

[REDACTED] Defendants heeded KKR's call to *"step down"* and agreed not to compete for HCA.

323. Indeed, all four firms called KKR or Bain and agreed not to compete for HCA within 48 hours of the announced deal. It would have been impossible for these firms to have fully

345 TPG-E-0000096555.

346 KKR DAHL 000051683-87 at 83.

347 KKR DAHL 000132995.

348 TCG0236888.

349 TCG0216411.

evaluated HCA in that short time.³⁵⁰ The private equity firms agreed not to submit competing bids, not based on independent business decisions or a realization that the buyers were paying a full price, but instead because of an agreement with KKR and Bain not to compete for the company, *i.e.*, to allocate HCA to KKR and Bain as a part of their conspiracy.

324. [REDACTED]

The extremely low price KKR paid for HCA confirmed Defendants' collective understanding not to compete, as explained by a Blackstone executive in a July 28, 2006 e-mail: [REDACTED]

[REDACTED] In the same e-mail, the executive even speculated to another executive [REDACTED]

325. TPG internal e-mails similarly show that they did not compete because of the agreement with KKR and Bain. TPG expressly stated that it decided not to compete for HCA because "*our relationship with them, KKR and Bain was more important.*"³⁵³ E-mails between TPG managing directors Jonathan Coslet and Philippe Costeletos reflect TPG's concern over maintaining an alliance with KKR and Bain. Coslet wrote to Costeletos, "*I spoke to both Michaelson [sic]*

³⁵⁰ February 26, 2010 Deposition Transcript of Michael Michelson ("Michelson Depo.") at 150:22-152:6.

³⁵¹ BX-0658842; *see also* BX-0658829 [REDACTED]

³⁵² BX-0658842.

³⁵³ TPG-E-0000098437-38 at 37.

*[KKR] and Paglicua [Bain] and told them we had decided to pass on the HCA situation.*³⁵⁴

[REDACTED]

326. [REDACTED]

[REDACTED]

327. The private equity firms' agreement not to compete for HCA cost the shareholders of the company more than a billion dollars. Blackstone internally projected a purchase price of [REDACTED] per share or [REDACTED] per share higher than the ultimate sale price for the company.³⁵⁹ [REDACTED]

[REDACTED]

In other words, the

³⁵⁴ TPG-E-0000096555.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ TCG0089611.

³⁵⁸ TCG0216478.

³⁵⁹ BX-0658897-99.

³⁶⁰ BX-0653720-65 at 23.

Defendants who agreed to stand down acknowledged at that time that the deal worked even paying an additional \$1.6 billion or more than KKR and Bain had paid.

328. The deal closed on November 11, 2006 at \$51 per share. KKR bragged that it was able to purchase HCA at an “*attractive valuation for a high-quality asset*.”³⁶¹ Even HCA’s own management valued its stock at well over \$51 per share. In the months leading up to the LBO, HCA purchased its own common stock at prices as high as \$52.47 per share.³⁶²

329. KKR’s \$1.2 billion investment in HCA nearly doubled in value to \$2 billion in just three years.³⁶³ [REDACTED]

[REDACTED] Moreover, HCA recently issued a \$1.75 billion dividend to its private equity owners.³⁶⁴ The owners of HCA recently took the company public once again and sold a portion of the company in an IPO, raising \$3.79 billion and further padding their profits on the deal.

330. The HCA transaction was a resounding success for KKR, Bain and Merrill Lynch – because they were able to rely upon their purported competitors’ willingness to “*stand down*” and not compete. While initially successful, the request that the remaining possible competitors “*stand down*” met with a hiccup when KKR inadvertently interfered with Blackstone’s attempt to purchase

³⁶¹ KKR DAHL 000541296-322 at 312.

³⁶² CS 000153-332 (HCA Form DEFA14A), ¶5 (Nov. 8, 2006).

³⁶³ Michelson Depo. at 187:11-188:10.

³⁶⁴ HCA Press Release, *HCA Previous Fourth Quarter and Year-End 2009 Results, Board Declares Distribution to Stockholders* (Jan. 29, 2010).

Freescall, discussed *infra*, at an artificially low price.³⁶⁵ What followed was an agreement between Blackstone and KKR to allocate the Freescall and HCA deals among themselves and their partners. This exchange, detailed more thoroughly below at ¶¶370-397, captures the connections between Freescall and HCA as well as the network of *quid pro quos* that bound the repeat private equity sponsor players together at the expense of the shareholders of the companies Defendants conspired to purchase without competition.

331. The following chart details the Defendants' cartel, advisors and financiers for the HCA deal, date announced and price of the deal:

<u>HCA</u>	
<u>Deal amount</u>	\$32.1 billion (\$51/share)
<u>Date deal announced</u>	July 24, 2006
<u>Purchasing private equity firms</u>	KKR Bain Capital Merrill Lynch Global PE Frist entities
<u>Debt financiers</u>	Bank of America Citigroup J.P. Morgan Merrill Lynch
<u>Purchasing advisor(s)</u>	Bank of America Citigroup J.P. Morgan Merrill Lynch
<u>Company advisor(s)</u>	Merrill Lynch CSFB Morgan Stanley

³⁶⁵ TCG0216532-34; *see also* BX-1165731-33.

<u>HCA</u>	
<u>Other participating private equity firms</u>	Apollo ³⁶⁶ Blackstone Carlyle Goldman Sachs PIA Hellman & Friedman ³⁶⁷ Permira ³⁶⁸ TPG T.H. Lee ³⁶⁹ Warburg ³⁷⁰

The Aramark LBO

332. Aramark Chairman and CEO Joseph Neubauer led the LBO of Aramark – the second under his ownership and control of the company. The first buyout, in 1984, resulted in Neubauer making a fortune when he took the company public in 1991. Seeking to reprise this earlier result, Neubauer and a bidding group comprised of Goldman Capital, J.P. Morgan Partners, T.H. Lee and Warburg managed to purchase Aramark in an “*auction*” that once again was devoid of competition –

³⁶⁶ August 2, 2006 Morgan Stanley internal document regarding HCA. David Law (MS Ibanking) states that Warburg, Apollo and Bain are “*all chatting on HCA.*” MS_DAHLL_0021734. Law also states that Permira has decided not to upset KKR and will pass on the deal. *Id.*

³⁶⁷ [REDACTED]

³⁶⁸ [REDACTED]

³⁶⁹ July 24, 2006 e-mail from Vikrant Sawhney (DB Securities) to Todd Abbrecht (T.H. Lee) and George Taylor (T.H. Lee) regarding the possibility of T.H. Lee, Blackstone, TPG, Welsh, Carson, Anderson & Stowe and Goldman Sachs PIA forming a competing consortia for HCA. THL DAHL 00427314.

³⁷⁰ [REDACTED]