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IN THE ~~CIRCUIT~~ COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ~~ORANGE~~ COUNTY, FLORIDA

Priority Healthcare Corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Deloitte & Touche, LLP, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. 04-CA-10530  
DIV 32

H

COMPLAINT

Plaintiff, **PRIORITY HEALTHCARE CORPORATION** ("PHC"), by and  
through its undersigned attorneys, sues Defendant, **DELOITTE & TOUCHE, LLP**  
("D&T"), as follows:

FACTUAL ALLEGATIONS

1. This is an action seeking recovery of damages ~~in excess of~~ \$15,000, exclusive of interest, costs and attorneys' fees.
2. PHC is an Indiana corporation whose principal place of business is located in Lake Mary, Florida.
3. D&T is a Delaware limited liability partnership, with principal offices in New York, New York. D&T maintains an office in Orange County, Florida.
4. Venue is proper in Orange County, Florida because D&T maintains an office there.
5. On or about March 27, 2003, PHC and D&T entered into a written agreement (hereinafter "the Contract") under which D&T was to provide specified

consulting services in conjunction with the creation of PHC's business integration program ("the Project"). A true and correct copy of the Contract is attached hereto as Exhibit A.

6. Under the terms of the Contract, D&T was to provide the specified services within a not-to exceed maximum of 42,912 hours, which were to be compensated at hourly rates set forth in the Contract.

7. D&T was required to complete all specified services no later than June 1, 2004.

8. D&T was to perform all services with due professional care in accordance with the American Institute of Certified Professional Accountants' ("AICPA's") definition of due care. The AICPA defines due care for consulting services to include, among other requirements:

A. Only undertaking those professional services that the firm can reasonably expect to be completed with professional competence.

B. Exercising due professional care in the performance of professional services.

C. Adequately planning and supervising the performance of professional services.

9. D&T breached the Contract by:

A. failing to complete all services requires by the Contract;

B. failing to provide the services required by the Contract in a timely manner; and

C. failing to perform the services required by the Contract in accordance with due professional care as that term is defined by the AICPA.

10. On April 23, 2004, D&T unilaterally announced that unless PHC agreed to pay it additional compensation on a time and materials basis, retroactive to December, 2003, D&T was unwilling to continue performance of its obligations under the Contract.

11. As of April 23, 2004, PHC had already paid D&T the full amount owed under the Contract, despite the fact that significant portions of the work required to be performed by D&T under the Contract remained incomplete, other portions of the work submitted by D&T were not performed with due professional care, and D&T was behind schedule for timely completion of all work.

12. D&T had given no prior warning of intent to demand an increase in fees, and no agreed upon changes to the scope of the Contract had occurred.

13. As a result of D&T's refusal to complete the required work for the established Contract price, PHC was forced to employ a remedial contractor on an emergency time and material basis to continue the work D&T abandoned.

#### **COUNT I – BREACH OF CONTRACT**

14. PHC realleges Paragraphs 1 through 13 above.

15. As a **direct and proximate result of D&T's breaches of the Contract**, PHC has suffered the following damages:

A. the costs associated with hiring a replacement contractor on an emergency basis to continue the work abandoned by D&T;

B. any additional costs over and above the maximum price authorized by the Contract that PHC has or will incur to procure and implement the business integration program outlined in the Contract; and

C. lost business opportunities and increased operational costs associated with the inadequate and delayed performance of D&T.

16. Alternatively, under the terms of the Contract, PHC is entitled to return of those fees previously paid to D&T that represent the proportional value of the services that D&T failed to perform or inadequately performed under the Contract.

17. PHC has performed all conditions precedent to the commencement of this action, or such conditions have otherwise occurred or have been waived by D&T.

**WHEREFORE**, PHC demands judgment against D&T for general damages, consequential damages and special damages in the form of lost business opportunities and increased operational costs, prejudgment interest and costs.

**COUNT II – FRAUD IN THE INDUCEMENT**

18. PHC realleges Paragraphs 1 through 13 and 15 through 17 above.

19. Prior to entering into the Contract, D&T made false material misrepresentations of fact for the purpose of inducing PHC to enter into the Contract. D&T knew the misrepresentations were false at the time they were made.

20. The false misrepresentations of material fact include D&T's representations that it possessed the requisite manpower to perform the Project within the time periods required by PHC and that D&T's "Fortune 500 Group" was available and committed to performing the critical tasks of the Project.

21. PHC suffered damages because it reasonably relied on the misrepresentations by entering into the Contract. If PHC had known that D&T's misrepresentations were false, it would not have entered into the Contract.

**WHEREFORE**, PHC demands judgment against D&T for general damages, consequential damages and special damages in the form of lost business opportunities and increased operational costs, prejudgment interest and costs.

**COUNT III-NEGLIGENT MISREPRESENTATION**

22. PHC realleges Paragraphs 1 through 13 and 15 through 17 above.

23. Prior to entering into the Contract, D&T made negligent material misrepresentations of fact for the purpose of inducing PHC to enter into the Contract. D&T made these negligent misrepresentations with knowledge, without knowledge of the truth or falsity of the misrepresentations, or it should have known that the misrepresentations were false:

24. The negligent misrepresentations of material fact include D&T's representations that it possessed the requisite manpower to perform the Project within the time periods required by PHC and that D&T's "Fortune 500 Group" was available and committed to performing the critical tasks of the Project.

**WHEREFORE**, PHC demands judgment against D&T for general damages, consequential damages and special damages in the form of lost business opportunities and increased operational costs, prejudgment interest and costs.

**DEMAND FOR JURY TRIAL**

PHC demands a trial by jury on all issues so triable.

Dated: December 27, 2004

Respectfully submitted,



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