

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. ¹²² OF 2019

IN THE MATTER OF THE COMPANIES LAW (2018 Revision)
AND IN THE MATTER OF GLOBAL CORD BLOOD CORPORATION

BETWEEN:

- (1) JAYHAWK CAPITAL MANAGEMENT, L.L.C.
- (2) JHMS FUND, LLC
- (3) KENT C. MCCARTHY



PLAINTIFFS

AND:

- (1) GLOBAL CORD BLOOD CORPORATION
- (2) MARK D CHEN
- (3) JENNIFER WENG
- (4) KEN LU



DEFENDANTS

ORIGINATING
SUMMONS

TO GLOBAL CORD BLOOD CORPORATION c/o Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.

AND TO MARK D CHEN c/o Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.

AND TO JENNIFER WENG c/o Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.

AND TO KEN LU c/o Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.

LET THE DEFENDANTS attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on the day of 2019, at am/pm on the hearing of an Application by Jayhawk Capital Management, L.L.C., JHMS Fund, LLC, Kent C. McCarthy of 13021 W 74th St, Shawnee, KS 66216 USA for the following relief:

I. The Court's determination of the following questions:

1. Whether it would be contrary to the public interest under Section 237(7) (e) of the Companies Law (2018 Revision) (the "**Companies Law**") to permit a statutory merger which constitutes or is likely to constitute a fraud on the minority members of the First Defendant, Global Cord Blood Corporation ("**The Company**").
2. Whether Section 239(1) (b) and Section 239 (2) (b) of the Companies Law may be relied on to deprive members of the Company who dissent from a merger from receiving payment of the fair value of their shares in accordance with Section 238 of the Companies Law, in circumstances where the shares proposed to be offered in exchange for such statutory merger are substantively illiquid, low volume trading shares of low value, despite being listed on a national securities exchange.
3. Specifically, whether apparent compliance with Section 239(1) (b) and Section 239 (2) (b) of the Companies Law may be relied on by a majority in control of a company to deprive dissenting minority members of the Company of their rights under Section 238 of the Companies Law to a determination of the fair value of their shares in the Company, a Cayman Islands company, listed on the New York Stock Exchange ("**NYSE**") with daily trading and liquidity, subject to National Association of Securities Dealers ("**NASD**"), NYSE and Securities Exchange Commission ("**SEC**") regulation, with some US\$745 million in cash and no debt (as at 31 March 2019); upon a proposed statutory merger with a Singapore company affiliated with and part owned by the majority shareholders, having cash of just SGD\$43.3/ US\$31.9Million (as at 31 December 2018), listed on the Singapore Stock Exchange ("**SGX**") but with a small market capitalization and minimal trading activity, and whose low value shares are illiquid; and in circumstances where such merger is not bona fide in the interests of the Company or all its shareholders.

4. Whether on a true construction of the Amended and Restated Articles of Association (the "**Articles**") of the Company, or as a matter of law, any non-executive director who holds a material shareholding in the Company can be deemed to be sufficiently independent and impartial to be able to act in the capacity of an independent non-executive director for the purposes of good corporate governance of an NYSE listed company and in compliance with the NASD Rules.
5. Whether on a true construction of the Company's Articles or as a matter of law, any non-executive director who is incentivised by or in receipt of substantial remuneration can be deemed independent and impartial and able to act in the capacity of an independent non-executive director for the purposes of good corporate governance of an NYSE listed company and in compliance with the NASD Rules.
6. Whether on a true construction of the Company's Articles or as a matter of law, the appointment of any independent non-executive director to both to the audit committee of the Company as well as the compensation committee of the Company precludes any truly independent oversight and control over such director himself or herself or the Board of Directors of the Company (the "**Board**") as a whole, and whether such identical director committee membership represents inadequate internal corporate governance in a NYSE listed company and is unlawful in all the circumstances.
7. Whether on a true construction of the Company's Articles or as a matter of law, any non-executive director who is not independent (whether by reason of holding a material shareholding in the Company or by being in receipt of valuable incentives to approve the majority decisions of the Board or for any other reason) is eligible to be appointed to a special committee to determine fairly and impartially whether a statutory merger with Cordlife Group Limited ("**Cordlife**") a Singapore entity affiliated and part owned by the majority shareholders of the Company on a share for share basis pursuant to Section 239 of the Companies Law is in the best interests of the Company and all its shareholders including minority shareholders thereof.
8. Whether on a true construction of the Company's Articles or as a matter of law the identical director membership of the audit committee, compensation committee and the Special Committee of the Company represents inadequate internal corporate governance in a NYSE listed company and is unlawful in all the circumstances.

II. The Following Declarations:

9. That the Second, Third and Fourth Defendants (the “**Defendant Directors**”) are disqualified from sitting on the Company’s audit committee by reason of a history of bias in approving self-dealing transactions by the majority/ controlling shareholders and a conflict of interest in being unable to exercise any independent oversight over themselves as directors.
10. That the Defendant Directors are disqualified from sitting on the Special Committee to determine fairly and impartially whether a merger with Cordlife, an entity affiliated and part owned by the majority shareholders of the Company, on a share for share basis pursuant to Section 239 of the Companies Law is in the best interests of the Company and all its shareholders including minority shareholders thereof, by reason of their history of bias in approving self-dealing transactions by the majority shareholders to the prejudice of minority shareholders, and a lack of impartiality and independence being under a conflict of interest.
11. That the Plaintiffs are entitled as dissenting members to object to the proposed statutory merger and to file a petition with the Court under Section 238 of the Companies Law for a determination of the fair value of the shares of all dissenting members.

III. Interlocutory Injunction

12. An order restraining the Defendant Directors from acting as members of the Special Committee or taking any action as members for or on behalf of the Special Committee in connection with the proposed merger of the Company and Cordlife until the Court’s determination of the matters set out in this Originating Summons herein.
13. Further or alternatively, an order directing the Company to revoke the appointment of the Defendant Directors as members of the Special Committee immediately in accordance with Article 120 (1) of the Company’s Articles and to refrain from appointing any new members to the Special Committee pending the Court’s determination of the matters set out in this Originating Summons herein.

IV. Costs and Other Relief

14. Alternatively, the Plaintiffs seek all accounts and inquiries as to the remuneration, bonuses, gratuitous allotment of shares or other financial compensation received by each of the Defendant Directors from the Company during the timeframe June 2009 to June 2019.
15. Further or alternatively, the Plaintiffs seek an inquiry into the circumstances behind the Defendant Directors' decision to dispose of their material shareholdings in the Company in 2017.
16. That the First Defendant Company do pay the Plaintiffs costs to be taxed if not agreed.
17. Such further or other relief as this Honourable Court may deem appropriate.

THE PLAINTIFFS WILL RELY INTER ALIA, ON THE FOLLOWING FACTS AND MATTERS:

History of Bias by Defendant Directors

- i. The Defendant Directors were appointed as non-executive and supposedly independent directors of the Company on 30 June 2009.
- ii. The Defendant Directors are required by the Company's Articles to retire on rotation at least once every three years.
- iii. The Defendant Directors have at all material times been vulnerable to removal or non-re-election upon retirement from their lucrative appointments as non-executive directors by the majority shareholders in control of the Company if they had ever acted contrary to the interests of majority shareholders or voted against any resolution proposed by the said majority.
- iv. For the past ten years from June 2009 to June 2019, the Defendant Directors have failed to demonstrate any degree of independence or impartiality from the majority shareholders in control. At all material times, the Defendant Directors have acted with evident bias in accordance with the requests and instructions of the majority shareholders, approving resolutions sought to be passed by such

controlling shareholders regardless of whether such transactions were in the best interests of all shareholders and the Company as a whole, and failing to take account of any unfair prejudice caused to minority shareholders.

Particulars of Bias

The Defendant Directors:

- a) approved a convertible note issuance in April 2012 raising US\$65 million in capital at 7% interest which was not needed and has never been used by the Company from KKR China Healthcare Investment Limited ("**KKR**") an entity affiliated with the management of the Company and with the majority shareholder at that time, Golden Meditech Holdings Ltd ("**Golden Meditech**"). This senior unsecured note was convertible into ordinary shares at a price of only US\$2.83 per share, which was a below market price. The Defendant Directors knew that such conversion would lead to the unnecessary dilution of the shareholdings of minority shareholders. Golden Meditech acquired the convertible notes in January 2016 and transferred them to an affiliated company called Golden Meditech Stem Cells (BVI) Company Limited ("**GM Stem Cells**").
- b) approved a second convertible note issuance in October 2012 raising a further unnecessary US\$50 million in capital from the majority shareholder Golden Meditech at 7% interest which has never been used by the Company. The convertible notes issued in April 2012 (as set out in sub-paragraph (a) above) and October 2012 ultimately resulted in the shares held by minority investors being diluted by 50% upon conversion of the two notes totalling US\$115 million in April 2017 into 40,521,494 ordinary shares at a price of only US\$2.83 per share, which was well below market price, thereby substantially increasing the ownership of the shares owned or controlled by Golden Meditech as majority shareholder.
- c) approved or failed to raise concerns regarding the Board's decision to deny the Plaintiffs as minority shareholders participation in the convertible notes issuance in April 2012 and October 2012 on the same terms as KKR and Golden Meditech, despite repeated requests from the First Plaintiff, which in 2012 was the third largest shareholder holding 11.2% of all issued shares. The convertible notes were ultimately converted by Golden Meditech in April 2017 into 40,521,494 ordinary shares of the Company and then sold in January 2018 for US\$475 million to Nanjing. This is value taken from the

Company and all shareholders, in addition to the approximately US\$38.5 million in interest paid by the Company over the years, and appropriated by the majority shareholder with the approval of the Board.

- d) approved a restricted stock plan (“RSU”) in December 2014 which diluted minority shareholders’ interests by 10% while allotting 7,300,000 gratuitous RSUs to management for maintaining only modest growth rate of subscribers which the Company was expected to achieve in any event. The RSU included 110,000 shares for each of the Defendant Directors. On March 31st, 2018, when the RSUs were vested each of the Defendant Directors’ 110,000 RSU shares were valued at US\$1,122,000 based on the Company’s stock price at that date.
- e) acting as board members and members of the audit committee, participated in the consistent intentional under-reporting of positive earnings by the Company knowing this would artificially deflate the share price of the Company to support Golden Meditech as majority/ controlling shareholder in any future privatisation offer for the Company at below true market value.
- f) acting as a Special Committee, considered a non-binding proposal from Golden Meditech as majority / controlling shareholder through its group companies in April 2015 to acquire all outstanding ordinary shares of the Company (not already directly or indirectly owned by Golden Meditech) for US\$6.40 per share in a privatisation cash offer and failed to recommend any higher share price be offered by the majority shareholder despite the fact that the offer was a below-market offer and valued the Company at only approximately 4x free cash flow.
- g) acting as a Special Committee from April 2015 to April 2017 declined to consider and evaluate expressions of interest for the acquisition of the Company by third parties. Zhongyuan Union Cell and Gene Engineering Corp hired Citic Securities in June 2015 for a US\$1.6 billion acquisition, which would have valued the Company at over \$13 per share. Nanjing Xinjiekou Department Store Co., Ltd., a subsidiary of Sanpower Group Co., Ltd., the current controlling shareholder of the Company, announced a preliminary offer of \$11 per share in August 2015. Parties willing to pay far more than the Golden Meditech offer of US\$6.40 per share were not negotiated with and there was no recommendation of an auction for the Company between competing parties. In fact, the Board allowed Golden Meditech, as majority shareholder, to step in front of the Company as a whole and negotiate a separate deal that saw them sell only their shares at US\$11.70 per share while the minority shareholders received nothing.

- h) recommended that the Board terminate any further evaluation and negotiation of the Golden Meditech privatisation offer in April 2017 in light of a conditional sale and purchase agreement concluded between the majority shareholder's affiliate, GM Stem Cells and Nanjing Ying Peng ("**Nanjing**") of approximately 65% equity interest in the Company on a fully diluted basis for RMB 5.764 billion, the equivalent of USD\$915 million in cash (using an exchange rate of US\$1 = RMB6.3). They could have made this recommendation in late 2015, when Golden Meditech abandoned their attempts to privatize the Company and was seeking a separate deal to sell their majority stake, saving the Company hundreds of thousands of dollars in additional fees paid directly to the Special Committee members for doing no additional work.
- i) approved the sale of shares in January 2018 between the GM Stem Cells and a subsidiary of Nanjing as a transaction benefitting only the majority / controlling shareholders at the equivalent of US\$11.70 per share (using an exchange rate of US\$1 = RMB6.3) without affording minority shareholders the opportunity to sell any of their shares at the same price.
- j) acting as board members have approved the Company's decision to continue to accumulate cash of over US\$100 million per annum, to retain unnecessarily high cash balances of US\$745 million (as at 31 March 2019) and to declare no cash dividends to shareholders since listing on the NYSE in 2009, except for a modicum US\$0.08 per share dividend in June 2018, for which the Company paid out a total of US \$2.6 million cash, or to offer any share repurchase plan in the past five years. Such actions have caused the share price of the Company to remain depressed (currently trading below cash value) without any discernible rationale except preparing the Company to receive another low privatisation offer from the majority/controlling shareholder at a below market share price.
- k) disposed of their own shareholdings in 2017 when the stock price was at its highest before Golden Meditech completed the sale of its shares to Nanjing. The Annual Report of the Company in 2015 confirms that the Second and Third Defendants, each held 398,144 shares in the Company which included 53,488 ordinary shares held by the Third Defendant personally, 183,198 ordinary shares held by Super Castle Investments Limited, a company owned by the Second Defendant and 161, 458 shares held by Pantheon China Acquisition Limited an entity controlled by the Second Defendant. The Fourth Defendant held 314,049 shares in the Company, though a BVI company called Time Galaxy Limited of which the Fourth Defendant was a director. The Defendant Directors sold all such shares in the course of 2017. The Defendant Directors subsequently received 110,000 shares each as part

of management RSUs in 2018 (on March 31st, 2018, when the RSUs were vested each of the Defendant Directors' 110,000 RSU shares were valued at US\$1,122,000 based on the Company's stock price at that date). The Second and Third Defendants currently hold 220,000 ordinary shares through Pantheon China Acquisition Limited an entity controlled by the Second Defendant. In the course of 2018, the Third Defendant sold his 110,000 shares received from the RSUs as well.

- l) acting as board members the Defendant Directors failed to consider the interests of members, and specifically minority shareholders in considering the utilisation of excess cash in a share-repurchase plan at fair market prices or to declare a cash dividend (aside from a modicum US\$0.08 per share dividend in June 2018, for which the Company paid out a total of US\$2.6 million in cash), ignoring open letters from 2015 to 2018 from the First Plaintiff urging such commercially justified actions.

Inadequate Corporate Governance

- v. Furthermore, the Second and Third Defendants are husband and wife. They are self-evidently connected persons who would have no tendency to act either impartially or independently of each other as Directors when voting on board resolutions or committee resolutions. The Company's Articles provide under Articles 116(1) and 121 and that any quorum for the Board (or committee to which the board has delegated business) is two (2) persons. The Second and Third Defendants are thus able to conduct business, approve transactions and pass resolutions on behalf of the Company's audit committee, compensation committee and Special Committee without even the participation of the Fourth Defendant. This represents inadequate corporate governance for a NYSE listed company.
- vi. In addition to their main board appointments, the Defendant Directors have at all material times been appointed to the Company's audit committee where they have failed to exercise any independence or impartiality in approving the majority shareholders' self-dealing transactions, and in obvious conflict of interest they have been unable to exercise any independent oversight of themselves as directors.
- vii. In addition to their main board appointments and appointment on the Company's audit committee, the Defendant Directors have at all material times been further appointed to the Company's compensation committee where, acting in obvious self-dealing and conflict of interest, they have approved the RSU plan which included 110,000 shares for each of them personally as well as a very generous

compensation for sitting on the Special Committee to consider the privatisation proposal from the majority shareholder, Golden Meditech, from 27 April 2015 to 13 April 2017, the Second Defendant received an additional US\$15,000 per month in compensation as chairman and the Third and Fourth Defendants each received US\$9,500 per month in additional compensation as members. In total, The Defendant Directors approved compensation to themselves for serving as members of this Special Committee in excess of US\$800,000.

- viii. The Defendants Directors have in addition to their appointments on the Board, the audit committee and compensation committee been appointed as sole members of a Special Committee for the purposes of considering a merger/privatisation of the Company from Golden Meditech in April 2015 (as stated above) and from Cordlife in June 2019.
- ix. In an open letter to the Board, including the Defendant Directors, dated 17 June 2019, one of the other minority shareholders of the Company has urged the Defendant Directors in their capacity as members of the Special Committee to reject outright the non-binding proposal by Cordlife for the acquisition of the Company as a bad faith attempt to deprive minority shareholders of their dissenting rights under Section 238 of the Companies Law to fair value for their shares in the Company. The offer of Cordlife shares in exchange which are thinly traded on the SGX and essentially illiquid, technically comply in form but not substance, with the requirements of Section 239 of the Companies Law in relation to an offer of securities listed on a national exchange. The open letter states that the plan is to migrate the Company to Singapore as a wholly owned subsidiary of Cordlife to list the shares in Hong Kong or to issue A shares, so that the majority shareholder, Nanjing, can achieve a very substantial profit. The dissenting minority shareholders as future shareholders in Cordlife could find their shareholdings further diluted, by further low-price note issuances in Singapore (because Cordlife is listed in Singapore) or a low price privatisation offer. The minority shareholders would have no protection against such actions by being able to invoke dissenting rights pursuant to Section 238 of the Companies Law since they will no longer be shareholders of the Company (which, as part of the merger proposal, would become a wholly-owned subsidiary of Cordlife).
- x. In all the circumstances, the Plaintiffs contend that the proposed merger - acquisition of the Company by Cordlife constitutes a fraud on the minority shareholders and is unfairly prejudicial to them despite apparent technical compliance with the requirements of Section 239 of the Companies Law (2018 revision) and is thus contrary to the public interest and should not be permitted proceed unless the dissenting members are permitted to petition the Court under

Section 238 of the Companies Law for a determination of the fair value of their shares.

AND LET THE DEFENDANTS within 14 days after service of this Summons on them counting the day of service, return the accompanying Acknowledgment of Service to the Courts Office, PO Box 495GT, George Town, Grand Cayman.

Dated the 25 day of June 2019

Loeb Smith

LOEB SMITH

Attorneys-at-Law for the Plaintiffs

NOTES -

1. This Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of jurisdiction, 6 months) beginning with the above date unless renewed by order of the Court.
2. If a defendant does not attend personally or by his attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

THIS ORIGINATING SUMMONS was issued by Loeb Smith, Attorneys-at-Law for the Plaintiffs, whose address for service is 5th Floor, Zephyr House, 122 Mary Street, George Town, P.O. Box 31493 Grand Cayman KY1-1206, Cayman Islands (Ref: GS/SD/RT).

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS

The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, PO Box 495GT, George Town, Grand Cayman.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".
5. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

FSD CAUSE NO. OF 2019

IN THE MATTER OF THE COMPANIES LAW (2018 Revision)

BETWEEN:

**(1) JAYHAWK CAPITAL
(2) JHMS FUND, LLC
(3) KENT C. MCCARTHY**

PLAINTIFFS

AND:

**(1) GLOBAL CORD BLOOD CORPORATION
(2) MARK D CHEN
(3) JENNIFER J WEN
(4) KEN LU**

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly. THIS FORM MAY HAVE TO BE RETURNED.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in the

proceedings (tick appropriate box)

yes no

Service of the Originating Summons is acknowledged accordingly

(Signed).....

Attorneys-at-Law for [state name]

Address for Service:

Notes on Address for Service:

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Please complete overleaf

Indorsement by Plaintiffs' Attorney of his name, address and reference, if any in the box below.

Loeb Smith
5th Floor Zephyr House
Mary Street
George Town
CAYMAN ISLANDS
Ref: GS/SD/RT

Indorsement by Defendant's Attorney (or by Defendant if acting in person) of name, address and reference, if any, in the box below).

Grand Cayman KY1 -
CAYMAN ISLANDS