

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :  
ADMINISTRATOR OF THE ST. JOSEPH :  
HEALTH SERVICES OF RHODE ISLAND :  
RETIREMENT PLAN, ET AL. :

Plaintiffs :

v. :

C.A. No: 1:18-CV-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**SECOND SUPPLEMENTAL DECLARATION OF MAX WISTOW IN  
SUPPORT OF APPROVAL OF SETTLEMENTS A AND B AND WSL'S FEE  
APPLICATIONS IN CONNECTION THEREWITH**

Max Wistow, Esq. hereby declares and states as follows:

1. I am counsel, along with Stephen Sheehan and Benjamin Ledsham, for Plaintiffs in the captioned matter, and submit this declaration in support of approval of Settlements A and B and the fee applications of Wistow, Sheehan & Loveley, P.C. ("WSL") in connection therewith.

2. This Second Supplemental Declaration supplements my (first) Supplemental Declaration of January 4, 2019 submitted in connection with Settlement B and my (initial) Declaration of November 21, 2018 submitted in connection with Settlement A.

3. On January 25, 2018, Plaintiffs' counsel issued a subpoena *duces tecum* on CharterCARE Foundation ("CCF"), which produced over 31,000 pages of documents in rolling productions between February and May, 2018. Plaintiffs' counsel also obtained over 1,000,000 pages of documents from other subpoenaed persons or entities.

4. In April and May of 2018, I had a series of discussions and correspondence with Attorney Russell Conn, counsel for CCF, in which Mr. Conn contended that his client had no liability to Plaintiffs, and sought the outright non-assertion of Plaintiffs' claims against his client. That was certainly not acceptable to Plaintiffs. Accordingly, on June 18, 2018 Plaintiffs commenced this action against various defendants, including CCF.

5. Following the issuance of the Superior Court's September 17, 2018 bench decision granting Plaintiffs' motion to intervene in *In re: Chartercare Health Partners Foundation, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island*, KM-2015-0035 (R.I. Super.), settlement discussions began between Plaintiffs and CCF, which culminated in the settlement agreement. This Court preliminarily approved that settlement on May 17, 2019, and the hearing on final settlement approval is scheduled for August 29, 2019.

6. Since this action was commenced on June 18, 2018, attorneys at WSL have devoted a minimum of 2,600 hours of time in prosecuting the claims of the Receiver and the Plaintiffs.

7. Those expenditures of time remain ongoing, even as to the pending settlements.

8. The blended hourly rate for the attorneys from WSL who have worked on this matter in non-contingent fee litigation is over \$600 per hour. However, by far most of WSL's legal work is on behalf of plaintiffs in contingent fee cases, at a usual contingent fee of between 33.33% and 40% of the gross recovery in nongovernmental cases. In those cases that are successful, WSL's contingent fees are frequently several multiples of that hourly rate, and we recover all of our out-of-pocket expenses. Obviously, however, in those cases that are unsuccessful, WSL earns no contingent fees.

9. When we first began discussions with the Receiver concerning our representation, we did not have a sufficient basis to conclude it would be economically feasible for us to structure our fees entirely on a contingent fee basis. To the contrary, we believed (correctly, as it turned out) that many hundreds of hours would be necessary to obtain sufficient information to determine whether or not there was a reasonable basis to assert claims on behalf of the Receiver and the Plan (and, hence, any reasonable likelihood of earning any contingent fee whatsoever, much less a fee we considered reasonable). In other words, the necessary investment of time and resources in that investigation would be much greater than we normally would have to undertake in evaluating the merits of a case taken on a pure contingent fee basis. In short, given that there was no assurance that the investigation would be productive, we would not have undertaken this representation on a pure contingent fee basis.

10. The hourly rate of \$375 in the Retainer Agreement for the investigative phase was well below WSL's normal hourly charges. It was acceptable because it was accompanied by a contingent fee of 10% of sums obtained by settlement prior to commencement of litigation and 23.33% of sums recovered after the commencement of litigation, and together the combination was reasonable.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 15th of August, 2019 in Rhode Island.



Max Wistow