

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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| _____ |) | |
| STEPHEN DEL SESTO, AS RECEIVER |) | |
| AND ADMINISTRATOR OF THE ST. |) | |
| JOSEPH HEALTH SERVICES OF |) | |
| ISLAND RETIREMENT PLAN, et al., |) | |
| <i>Plaintiffs,</i> |) | |
| |) | |
| v. |) | C.A. No. 1:18-cv-00328-WES-LDA |
| |) | |
| PROSPECT CHARTERCARE, LLC, et al., |) | |
| <i>Defendants.</i> |) | |
| _____ |) | |

PROSPECT ENTITIES’ OBJECTION TO FINAL SETTLEMENT APPROVAL

NOW COME, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, “Prospect”) and hereby object to final approval of the settlement agreement (“Settlement Agreement”) between the Plaintiffs¹ and Chartercare Community Board (“CCCB”), St. Joseph Heath Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RHW”) (collectively, “Settling Parties”).

INTRODUCTION

The Court should not approve this settlement, and certainly should not find that it was made in “good faith,” for the simple reason that it was the product of naked collusion between the Receiver and the Settling Parties to benefit the Receiver to the detriment of the defendants and the creditors of the Settling Parties.

¹ Plaintiffs include Stephen Del Sesto, as receiver and administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (“Receiver”), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, and all other class members.

Under both Rule 23 as well as R.I. Gen. Laws § 23-17.14-35(3) (“Special Act”), collusion is a basis for rejecting a settlement (in the case of Rule 23) and of denying that a settlement was in “good faith” (under the Special Act). Here, the evidence that Prospect obtained through the limited discovery that this Court authorized—including document requests and depositions of the Receiver and of Richard Land, Esq. (“Land”), on behalf of CCCB—shows that this settlement was collusive.

As set out in detail below, the evidence shows that CCCB expressed a willingness to settle even before this lawsuit was filed, and that, contrary to the representations that have been made to the Court, there was no hard bargaining at arm’s length. Instead, in exchange for a release of its officers, directors and agents, CCCB simply threw up a white flag and turned itself over to the Receiver. In the process, CCCB gave up a process it had envisioned—in which it would engage in an orderly settlement of its obligations to creditors and then turn over the remainder of its assets to the Receiver—and instead agreed to turn over virtually all of its assets to the Receiver, leaving only \$600,000 to be fought over in dissolution proceedings by its creditors (including Prospect)—with the Receiver still looking to pick up almost all of that sum as well. Thus, the settlement upends a traditional dissolution process by siphoning off all of CCCB’s assets before the proceeding begins, to the obvious detriment of the creditors, including Prospect and the other defendants.

This collusion is reflected not only in the structure of the settlement, but in the terms of the Settlement Agreement itself. The Settlement Agreement includes an *admission* by CCCB that its liability to the St. Josephs Health Services of Rhode Island Retirement Plan (“the Plan”) is at least \$125 million, and also that CCCB’s proportional fault was small compared to the fault of the other defendants. The deposition testimony reveals that these provisions were specifically included at the Receiver’s insistence, although they lack any factual basis. The former provision was included so that the Receiver would not have to engage in any prove-up in the dissolution proceeding—

instead, it could use a \$125 million obligation to sweep up virtually all of the \$600,000 that has been set aside for allocation to creditors (presumably after attorneys' fees and other fees are paid). The second provision was included to lock CCCB into an admission should the Special Act be declared unconstitutional. In both instances, these provisions, which lack factual basis, were included at the demand of the Receiver to privilege his position and, pointedly, to disadvantage the non-settling defendants. Having received the releases that they sought, and apparently resigned to the dissolution of CCCB by the end of this lawsuit, the decision-makers at CCCB simply agreed to whatever the Receiver wanted.

It is notable that neither Land nor the Receiver could point to a single difficult issue in their negotiations. That is because this was a complete capitulation by CCCB, resulting in a Settlement Agreement in which CCCB and the Receiver colluded against the remaining defendants. The Settlement Agreement is not in good faith and should be denied.

FACTS

The Plan was an employee pension plan sponsored by SJHSRI, which owned and operated Our Lady of Fatima Hospital ("Fatima Hospital") prior to 2014. SJHSRI would come to experience sustained financial difficulties and, as a result, entered into an affiliation agreement ("Affiliation Agreement") to share operational expenses with Roger Williams Hospital, a corporation that owned and operated Roger Williams Hospital ("RWH," or collectively with Fatima Hospital, "the Hospitals"). As part of the Affiliation Agreement, RWH and SJHSRI organized into Chartercare Health Partners ("CCHP"), which later changed its name to CCCB.

Despite the Affiliation Agreement, the Hospitals continued to lose money, leading CCCB to seek out outside capital. Prospect responded to CCCB's solicitation, and in 2014, purchased the Hospitals' assets ("2014 Sale"). The 2014 Sale was expressly conditioned upon any liability for the Plan remaining with SJHSRI, and was reviewed, evaluated, and approved by the Rhode

Island Department of Health (“RIDOH”) and the Rhode Island Attorney General (“RIAG”) pursuant to the Hospital Conversion Act (“HCA”) and the Health Care Facility Licensing Act of Rhode Island (“HLA”). Ultimately, the 2014 Sale was consummated and memorialized in an Asset Purchase Agreement (“APA”), as amended from time to time, which provided the following:

Sellers,² jointly and severally, shall indemnify, defend and hold harmless Prospect,³ the Prospect Member,⁴ the Company,⁵ the Company Subsidiaries⁶ . . . from and against any loss, Liability, claim, damage or expense (including costs of investigation and defense and reasonable attorneys’ fees and expenses), whether or not involving a Third-Party Claim (collectively, “Damages”), arising from or in connection with:

[. . .]

(c) The Excluded Assets and Excluded Liabilities.⁷

(d) . . . liabilities for funding of, or tax or ERISA Penalties or any other liabilities with respect to, the [Plan].

In 2017, SJHSRI filed a petition with the Rhode Island Superior Court, requesting that the Plan be placed into receivership (“Receivership Action”). The court appointed a receiver (“Receiver”), and also, at the Receiver’s request, approved the engagement of a special counsel (“Special Counsel”) to investigate and assert any claims that the Plan had or may have against third parties. The Special Counsel issued numerous subpoenas to a plethora of individuals and

² “Sellers” include CCCB (previously CCHP), SJHSRI, RWH. *See Exhibit 1* (APA at A-13).

³ “Prospect” means Prospect Medical Holdings, Inc. *See Exhibit 1* (APA at A-12).

⁴ “Prospect Member” means Prospect East Holdings, Inc. *See Exhibit 1* (APA at A-12).

⁵ “The Company” means Prospect Chartercare, LLC. *See Exhibit 1* (APA at A-3).

⁶ “The Company Subsidiaries” include Prospect Chartercare SJHSRI, LLC and Prospect Chartercare RWMC, LLC. *See Exhibit 1* (APA at A-3).

⁷ Excluded Assets included the Plan. *See Exhibit 1* (APA at 6-7, § 2.2) (the following assets are excluded from the Purchased Assets and shall be retained by Sellers . . . : . . . (d) any Seller Plans . . . the Retirement Plan and the Retirement Plan Assets).

entities, eventually filing an action against Prospect and others, including the Settling Parties, in this Court (“Federal Court Action”).

Prior to the Federal Court Action, the Receiver proposed to the Rhode Island General Assembly legislation specifically to govern settlement of claims pertaining to the Plan, the Special Act, which provides the following:

The following provisions apply solely and exclusively to judicially approved good-faith settlements of claims relating to the St. Joseph Health Services of Rhode Island retirement plan . . . :

[. . .]

(3) For purposes of this section, a good-faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors’ proportionate share of liability.

The Receiver proposed the Special Act because, at the time, he “already ha[d] parties who [] expressed a willingness to settle[.]” He contended that the Special Act was necessary to “negotiate and accept terms of settlement from some parties without compromising [] claims and efforts with those unwilling to offer a reasonable settlement[.]” Land Depo. at 27:23-28:2, **Exhibit 2**, arguing that he could not “entertain those discussions until the [Special Act was] in place.” *Id.*; **Exhibit 5** (June 5, 2018 Del Sesto letter).

On September 4, 2018, the Receiver filed a Petition for Settlement Instructions (“Settlement Petition”) in the Receivership Action, requesting that the Superior Court approve the Settlement Agreement, purportedly negotiated at arms-length by the Receiver and the Settling Parties. The Settlement Agreement provides that: (1) the Settling Defendants would make a lump sum payment of \$11,150,000 to the Receiver; (2) RWH would assign to the Receiver its interests in an escrow account held by the Rhode Island Department of Labor and Training with a current balance of \$750,000; (3) CCCB would transfer to the Receiver its interest in CCF and hold in trust

for the Receiver CCCB's fifteen percent membership interest in Prospect Chartercare; (4) CCCB and other Settling Defendants would, at the direction of the Receiver, petition the Superior Court to undergo judicial liquidations; and (5) that Plaintiffs will release the current officers and directors of the Settling Defendants, with one exception. See **Exhibit 3**, *Memorandum and Order*, ECF No. 124 at 4.

In addition, the Settlement Agreement contained several "surprising concessions by the Settling Defendants," which could "cause a cautious reader to raise an eyebrow." *Id.* at 4, 5. Those include an admission by the Settling Defendants that they are liable for breach of contract in the amount of "at least" \$125 million, and a statement that the Settling Defendants' "proportionate fault in tort, if any, in causing [alleged] damages is small compared to the proportionate fault of the other defendants" Settlement Agreement at ¶¶ 28, 30. Over the objection of Prospect, the Superior Court approved the Settlement Petition, finding, among other things, that the Settlement Agreement was in the "range of reasonableness" for approval. *St. Joseph Health Servs. of R.I. v. St. Josephs Health Servs. of R.I. Ret. Plan*, 2018 R.I. Super. LEXIS 94, *41 (R.I. Super. Ct. Oct. 29, 2018).

Subsequently, the Receiver and the Settling Parties filed a joint motion pursuant to Rule 23 of the Federal Rules of Civil Procedure, seeking preliminary certification of a settlement class, appointment of class counsel, and preliminary approval of the Settlement Agreement ("Joint Settlement Motion" ECF No. 77). Prospect and other non-settling defendants objected to the Joint Settlement Motion arguing, among other things, that the Settlement Agreement was a result of a collusive effort between the Receiver and the Settling Defendants to disadvantage the non-settling defendants. See ECF Nos. 75, 75-1.⁸

⁸ In addition to arguing that the Settlement Agreement was a result of collusion, Prospect previously argued that the Joint Settlement Motion should be rejected because (1) the Plan is a

At a hearing on the Joint Settlement Motion, the Receiver asked the Court to find that the proposed settlement was made in “good faith” for purposes of the Special Act. The Court denied this request, despite granting preliminary approval of the Joint Settlement Motion. *See Exhibit 3*, ECF No. 124 at 7. In addition, the Court found that “some further investigation [was] warranted” as to the “good faith” issue, and thus granted Prospect’s motion to conduct limited discovery. *See Exhibit 3*, ECF No. 124 at 5, 7-8. Additionally, the Court overruled Prospect’s objections to the Joint Settlement Motion without prejudice to those objections being reasserted at the time of final settlement approval. *See Exhibit 3*, ECF No. 124 at 14.

ARGUMENT

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, a court may approve a class action settlement proposal only after “finding that it is fair, reasonable, and adequate[.]” “In the First Circuit, this requires a wide-ranging review of the overall reasonableness of the settlement that relies on neither a fixed checklist of factors nor any specific litmus test.” *Hill v. State St. Corp.*, 2014 U.S. Dist. LEXIS 179702, *16 (D. Mass. Nov. 26, 2014) (quoting *In re Tyco Int’l Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007)). But where, as here, “a settlement is reached before the class is certified, the settlement agreement is subject to heightened scrutiny for fairness.” *Trombley v. Bank of Am. Corp.*, 2012 U.S. Dist. LEXIS 63072, *10 (D.R.I. May 3,

retirement plan subject to ERISA; therefore no settlement can be effectuated without the Pension Benefit Guaranty Corporation (“PBGC”), a necessary party to the Federal Court Litigation, and no settlement of any Plan-held claims should be effectuated without the PBGC; (2) federal courts have exclusive jurisdiction over ERISA plan fiduciaries’ activities and over the interpretation and enforcement of ERISA’s provisions; and (3) any actions the Receiver takes to compromise and settle the Plan’s ERISA-based claims against the Settling Defendants (e.g., failure to fund the Plan in accordance with ERISA’s requirements, etc.) are governed by ERISA, not state law, causing his attempt to settle those claims under state law to be wholly preempted and superseded—and therefore, contrary to federal law. *See* ECF Nos. 75, 75-1. Those objections to the Joint Settlement Motion are referenced and incorporated herein by references. However, for the purposes of efficiency, the substance of this motion will focus solely on the Special Act, collusion, and the Receiver’s request for a finding of “good faith.”

2012) (citing *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 946 (9th Cir. 2011) and *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)). Thus, “when a settlement agreement is reached *prior* to formal class certification,” a court’s generalized inquiry into a settlement’s overall fairness gives way to a stricter scrutiny. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 946 (hereinafter “*Bluetooth*”); *D’Amato*, 236 F.3d at 85 (“When a settlement is negotiated prior to class certification, as is the case here, it is subject to a higher degree of scrutiny in assessing its fairness.”) This heightened inquiry directs the Court to examine not only whether the settlement is fair, but also whether it was “the product of collusion among the negotiating parties.” *Bluetooth*, 654 F.3d at 947 (quoting *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 458 (9th Cir. 2000)).

The unique circumstances of this case heighten the inquiry further. Enacted solely to govern settlements reached in this particular litigation, the Special Act requires that any settlement be in “good faith” and absent from “collusion . . . or other wrongful or tortious conduct intended to prejudice the *non-settling tortfeasor(s)*, irrespective of the settling or non-settling tortfeasors’ proportionate share of liability.” See R.I. Gen. Laws § 23-17.14-35(3) (emphasis added.) By its plain language, therefore, the Special Act broadens the Court’s focus on collusion by the Settling Parties against absent class members, to also include collusion by Settling Parties against non-settling defendants.⁹

Other courts, when confronted with similar statutory language, have observed this very fact. See, e.g., *In re MGM Grand Hotel Fire Litigation*, 570 F. Supp. 913, 927 (D. Nev. 1983) (explaining that, pursuant to N.R.S. 17.245, a statute analogous to § 23-17.14-35, “[i]n order to further protect the non-settling defendant, the Court must find that the settlement was in ‘good

⁹ Of note, the language of the Special Act itself is not necessarily unique; only its limitation on this particular litigation is. See, e.g., N.R.S. 17.245; Cal. Code Civ. P. §§ 877 and 877.6.

faith”); *Copper Sands Homeowners Ass’n v. Copper Sands Realty*, 2012 U.S. Dist. LEXIS 84453, *13 (D. Nev. June 18, 2012) (approving a settlement but also explaining that “[t]here ha[d] been no evidence or suggestion of any aim or intent by the [settling defendants] or [p]laintiffs to injure the interests of any non-settling [d]efendants by virtue of the settlement between the [settling defendants] and [p]laintiffs”); *see also, e.g., Gray v. Derderian*, 2009 U.S. Dist. LEXIS 89367, *51 n.7 (D.R.I. Aug. 14, 2009) (referencing the collusion proscribed by the good faith standard in Virginia’s good faith settlement statute and noting that “[c]ollusion in violation of [Virginia’s ‘good faith’ settlement statute] occurs when the release is given with the tortious purpose of intentionally injuring the interests of nonsettling parties, rather than as the product of arm’s length bargaining based on the facts of the case and the merits of the claim” (quoting *Dacotah Marketing & Research, L.L.C. v. Versatility, Inc.*, 21 F. Supp. 2d 570, 578 (E.D. Va. 1998))), *accepted and adopted by Gray v. Derderian*, 2009 U.S. Dist. LEXIS 89366 (D.R.I. Sept. 15, 2009).

The Settling Defendants, therefore, can only be relieved of their liability through settlement if that settlement is absent of any collusion, dishonesty, and other wrongful or tortious conduct that prejudices Prospect and the other non-settling defendants, as defined by the Special Act. The Settlement Agreement, however, is rife with such wrongful conduct and collusion: it does not simply provide for a payment of money for a settlement of claims. Instead, through the Settlement Agreement’s terms, the Receiver has obtained the consent of CCCB, RWH, and SJHSRI (the “Oldco Entities”) to use them as a stepping stool to place himself in a more advantageous position against the non-settling defendants. In exchange, the Oldco Entities have obtained releases from personal liability for their directors, officers, and agents. This is exactly the sort of artfully engineered prejudice against non-settling parties that the Special Act was signed into law to prevent.

Collusion among and between the Receiver and the Oldco Entities is evident in at least two ways. First, the Settlement Agreement evidences an obvious *quid pro quo*: the OldCo Entities grant the Receiver an unobstructed path to substantially all of their assets, to the detriment of Prospect and other creditors and in violation of their obligation to complete an orderly wind down. As a reward for the Oldco Entities' capitulation, the Receiver grants the Oldco Entities and their directors, officers, and agents a full release from liability. Second, the Receiver and the Oldco Entities have effectively acknowledged their collusion by including false statements in the Settlement Agreement specifically to benefit the Receiver and prejudice Prospect and other non-settling defendants.

A. The Settlement Agreement Is the Product of Collusion Between the Oldco Entities and the Receiver, Granting The Receiver Unobstructed Access To The Oldco Entities' Assets, In Exchange For Shielding the Oldco Entities' Officer, Directors, and Agents from Liability.

Despite the Receiver's assertion that the Settlement Agreement materialized from "contested and often-times heated negotiations," its terms plainly evidence nothing more than the Oldco Entities' complete and immediate capitulation to the Receiver's self-serving demands. *See* ECF No. 109-2 at ¶ 2. Under the Settlement Agreement, the Oldco Entities have agreed to transfer all of their liquid assets to the Receiver for deposit into the Plan, save for a reserve of \$600,000. The Oldco Entities have also granted the Receiver priority status over its numerous other known creditors, despite having had a prior intention to pay the Plan *after* the Oldco Entities satisfied their existing liabilities. As a result, the Receiver gets paid, and the remainder of the creditors, including Prospect, are left in the dust. While Prospect and the other creditors can participate in a judicial liquidation, only \$600,000 has been reserved for distribution among all creditors, and even here, the Settlement Agreement impermissibly favors the Receiver, arbitrarily assigning to him a \$125 million claim that shoves Prospect and the remaining creditors to the back of the line. As a result,

the Settlement Agreement completely cuts off Prospect’s contractual right to indemnification from the Oldco Entities, pursuant to the APA.

This is plainly no coincidence, but rather a collusive arrangement crafted by the Settlement Agreement’s architects: the Receiver, his Special Counsel, and Land—the Oldco Entities’ agent and attorney during their wind down period after the 2014 Sale (“Wind Down Period”)—an experienced insolvency attorney that regularly serves as a court-appointed receiver, special master, and examiner.¹⁰ *See* Land Depo. at 8:4-6, 8:21-9:7, 9:12-17, **Exhibit 2**.

During the Wind Down Period, Land performed “functions that employees would do to try to wind down ordinary operating issues and all of the issues that might cope up in a wind-down of an entity.” *See* Land Depo. at 9:14-17, **Exhibit 2**. Those functions principally included financial management and working with the chairman of CCCB to pay “ordinary expense” with “ordinary revenue” and administering CCCB’s assets consistent with a *cy pres* order. *See* Land Depo. at 12:3-24, 12:25-14:25, **Exhibit 2**. During the Wind Down Period, but before Land was involved, the Oldco Entities had used approximately \$12 million to satisfy pre- and post-2014 Sale liabilities, which left them with about \$3 million in surplus funds. *See* Land Depo. at 17:1-21, **Exhibit 2**. During Land’s involvement, after satisfying some of the pre- and post-2014 Sale liabilities, the \$3 million surplus was bolstered to about \$13 million as a result of “a lot of factors,” including Medicare, Medicaid, and CMS settlements as well as settlements of litigation and charitable trust distributions. *See* Land Depo. at 19:2-20:3, **Exhibit 2**.

According to Land’s understanding, the Oldco Entities would use the \$13 million to pay “ongoing liabilities” during the Wind Down Period, and to the extent that any money was remaining or available, pay that money into the Plan. *See* Land Depo. at 20:4-13, **Exhibit 2**

¹⁰ Land’s experience as an insolvency attorney is found at <https://crflfp.com/directory/Richard-J.>

(explaining that the \$13 million was used for “ongoing liabilities”), *see* Land Depo. 23:15-19, **Exhibit 2** (“I understood that [SJHSRI], having satisfied all of its other liabilities, would then use whatever funds were available to it for the pension plan. That was my understanding”), *see* Land Depo. at 25:3-9, **Exhibit 2** (“after the [Wind Down Period] concluded, there would be a process undertaken to finalize the wind-down and . . . if the only remaining obligation of these entities in the aggregate . . . was the pension, then presumably we would have sought to have the pension get the remaining assets”), *see* Land Depo. at 25:10-14, **Exhibit 2** (“Q. So your—the way you are handling this was to deal with the liabilities as part of the wind-down, and then afterwards the pension would have been addressed in some way, shape or form. Is that fair? A. That’s how I understood the paradigm”).

After the Plan was petitioned into receivership, but before any claims were asserted against the Oldco Entities, the Oldco Entities “expressed a willingness to settle” any potential claims against them, *See* Land Depo. at 28:9-10, 28:16-23, **Exhibit 2**; *see also* Del Sesto Depo. at 16:17-17:6, **Exhibit 4**. So much so, the Oldco Entities—at the Receiver’s request—unconditionally provided the Receiver with \$400,000 to fund the expenses of the receivership. *See* Del Sesto Depo. at 14:24-15:22, **Exhibit 4**. However, Land claims that no “formal” settlement discussions were had until after the Federal Court Action had commenced. *See* Land Depo. at 29:8-11, **Exhibit 2**; *see also* Del Sesto Depo. at 16:11-16, **Exhibit 4**.

Within days after the Federal Court Action was initiated on June 18, 2018, Land, the Receiver, and Special Counsel met on June 29, 2018, for a “50,000 foot” discussion about settlement, which they claim constituted the “inception” of settlement discussions. *See* Del Sesto Depo. at 28:12-16, **Exhibit 4**; Land Depo. at 59:22-25, **Exhibit 2**. Thereafter, on July 9, 2018, the Oldco Entities made an initial settlement offer to the Receiver. Land Depo. at 29:8-16, **Exhibit 2**; and **Exhibit 6** (July 9, 2018 Settlement Letter). The initial settlement offer was that the Oldco

Entities would “commence a judicial wind-down” and liabilities “would be satisfied and assets of the Oldco [E]ntities would be paid to the [P]lan *after* resolution of creditor claims.” *See* Land Depo. at 32:1-11, **Exhibit 2** (emphasis added). The initial offer, therefore, was consistent with Land’s “understanding” of the Oldco Entities’ obligations to the Plan during the Wind Down Period: pay liabilities first, and pay any remaining funds to the Plan. However, that understanding was quickly uprooted and the Oldco Entities completely abandoned their obligation and intention to complete an orderly wind down when the Receiver rejected the initial settlement proposal, as the Oldco Entities completely capitulated to the Receiver’s demands to have the Plan paid ahead of any creditors through the settlement and to include self-serving and collusive provisions in the Settlement Agreement.

The Oldco Entities’ capitulation to the Receiver began with an agreement: (1) to make an upfront payment to the Receiver of all of the Oldco Entities’ assets, except for a \$600,000 reserve, and (2) to a permissive judicial liquidation procedure to be implemented, if so instructed by the Receiver. *See* Land Depo. at 33:22-34:4, 34:5-10, **Exhibit 2** (“Q. . . . So your proposal was to have a judicial wind-down procedure upfront and payment to the plan afterwards, and the end result was payment first and judicial wind-down afterwards. Is that correct? MR. SHEEHAN: Objection. A. That’s a simplification but that’s correct”). This concession was the polar opposite of Land’s previous understanding of the wind down procedure: pay liabilities first, then pay money into the Plan. The reason for having a judicial liquidation *after* a payment to the Receiver, according to Land, was because the Oldco Entities faced “significant or potential liabilities to the— from third-parties” *See* Land Depo. at 34:11-25, **Exhibit 2**. Those liabilities from third-parties, according to Land, could be asserted in a judicial wind-down of the Oldco Entities after the Receiver was paid almost all of the Oldco Entities liquid assets. *See* Land Depo. at 38:18-24, 42:24-43:8, **Exhibit 2**.

Land, on behalf of the Oldco Entities, agreed to this structure despite knowing that at the time of the Settlement Agreement, Prospect had a pending contractual indemnification claim against the Oldco Entities relative to the Plan, pursuant to the 2014 Asset Purchase Agreement. *See* Land Depo. at 40:21-41:14, **Exhibit 2**; and **Exhibit 7**.¹¹ Land not only knew that Prospect had pending claims against the Oldco Entities, but also that other creditors—who are wholly unaware of the Settlement Agreement and payment to the Receiver—had asserted claims, some of which were not covered by insurance. *See* Land Depo. at 42:5-44:4, **Exhibit 2**. According to Land, if the Settlement Agreement were approved and the funds were paid to the Receiver, Prospect and other creditors could figuratively (and literally) “get in line” in the judicial receivership proceeding and file their claims against the mere \$600,000 that the Receiver left behind—but still intends to pursue—with the Oldco Entities. *See* Land Depo. at 47:21-48:1, **Exhibit 2** (“Q. Yes. They all go over to the Receiver. And I’m asking you whether at that point in time Prospect’s indemnification claim would be limited to recourse against the \$600,000 or whatever is left? MR. SHEEHAN: Objection. A. I believe that to be the case”).¹²

As if this was not enough, the Settlement Agreement further benefits the Receiver to the detriment of other creditors through the Oldco Entities’ admission of liability. In paragraph 28 of

¹¹ **Exhibit 7** (List of Liabilities attached as Exhibit 16 and 17 to Settlement Agreement), which constitutes a list of liabilities, was prepared by Land’s office. Therefore, Land knew full well that at the time of settlement discussions with the Receiver, Prospect had accrued a liability against the Oldco Entities.

¹² It is undisputed that Land had an obligation as an attorney—and fiduciary duty as an agent—to wind down the Oldco Entities (specifically CCCB, a non-profit) in an orderly manner by paying liabilities in a certain order. Section 7-6-51(1), entitled “Distribution of assets,” provides that in liquidating and distributing the assets of a non-profit corporation during a wind down, the assets shall *first* be applied to “[a]ll liabilities and obligations of the corporation . . . or, adequate provision shall be made for their payment and discharge.” As such, the Oldco Entities’ grant of a priority to the Receiver of the Oldco Entities’ liquid assets violates a statutorily mandated wind down process for a non-profit entity. The Court should refrain from approving a fiduciary’s disregard of their statutory obligations to winding down a non-profit corporation.

the Settlement Agreement, the Oldco Entities admit to at least \$125 million in contractual liability to the Receiver. The purpose of this admission is to ensure that the Receiver will be favored over other creditors, including Prospect, in a judicial liquidation proceeding. As a result, the Receiver *always* gets the money first, whether it be in the initial payment of millions of dollars, or in a claim for the OldCo Entities' remaining assets through judicial liquidation. This sort of prejudice against the Non-settling Defendants is clearly incompatible with "good faith" under the Special Act.

In exchange for the OldCo Entities' capitulation, the Receiver agreed to release the officers and directors of the Oldco Entities – the ones who had to agree to enter into the Settlement Agreement—from any liability. *See* Land Depo. at 49:13-17, **Exhibit 2**. According to Land, the Oldco Entities' officers and directors would not have agreed to the settlement unless they were individually released because if they were not released and were later sued by plaintiffs, their indemnification claims against the Oldco Entities would be "worthless" once the Oldco Entities transferred virtually all of their assets to the Receiver. *See* Land Depo. at 108:6-16, **Exhibit 2** (just as Prospect's claims and the claims of other creditors will be "worthless" if the settlement is approved). Land himself—as an attorney and agent of the Oldco Entities—is presumably being released under these terms.

The Oldco Entities' utter lack of resistance to the Receiver's demands is evident in the timeline of events: on June 29, 2018, Land, the Receiver and Special Counsel had a meeting regarding settlement; on July 9, 2018, the Oldco Entities proposed an initial settlement; on August 10, 2018, the Receiver had already sent a draft settlement agreement (that included all the Oldco Entities' concessions) to Land; and on August 30, 2019, a final Settlement Agreement was circulated and executed. *See* Land Depo. at 60:1-3, **Exhibit 2** ("Q. So the length of the settlement is roughly from the end of June to the end of August. A. Roughly, yeah."). Accordingly, the entire settlement was negotiated and fully documented in a matter of several weeks, which directly

contradicts the Settlement Agreement's representation that it was the result of "*lengthy* and intensive arm's-length negotiations"

The lack of true arm's length negotiations and the Oldco Entities' simple acquiescence is also evident from the fact that the discovery propounded to the Receiver and to the Oldco Entities resulted in the production of no letters, e-mails, or notes reflecting any genuinely substantive negotiations of the terms of the Settlement Agreement, with the exception of Land's initial settlement proposal in his July 9, 2018 letter. *See Exhibit 6*. In fact, no red-lined drafts of the Settlement Agreement were produced, and the only two drafts had been sent by the Receiver's counsel to counsel for the Oldco Entities on August 10 and August 30, 2018. Land's assertion that the Settlement Agreement was the result of "contested and often-times heated negotiations" is not reflected in a single draft, e-mail, letter or other document produced by the parties. Indeed, *both Land and the Receiver were unable to recall any particular issues that were difficult to resolve or otherwise contentious. See Land Depo. at 64:22-24, Exhibit 2* ("Q. Is there a particular issue that you can recall that was difficult to resolve and contentious? A. I don't recall specifically. No."); *see also Del Sesto Depo. at 111:21-112:2, Exhibit 4* ("Q. Do you remember any of the topics of settlement discussions with the settling defendants that were contentious or were—I think you used the word frustrating? A. There were many. There were many. Q. Tell me what you recall. A. I don't recall anything specific . . .").

The Oldco Entities, over the course of under eight weeks, completely changed their tune: no longer would they pay their liabilities; instead they would pay the Receiver. This abrupt about-face was the result of a collusive *quid pro quo* with the Receiver, through which they obtained releases of liability for their directors, officers, and agents. The eagerness with which the Oldco Entities capitulated to the Receiver's collusive offer is evident from the lack of meaningful negotiation between the two parties. This sort of collusion, to the detriment of Prospect and other

non-settling defendants, was *exactly* what the Special Act was intended to prevent—the sacrificing of the Oldco Entities’ creditors for the benefit of a settling defendant. As such, the Court should find that the Settlement Agreement is not a good faith settlement and deny final approval.

B. The Receiver and the Oldco Entities Have Effectively Acknowledged Their Collusion and Dishonesty by Including False Statements in the Settlement Agreement Designed to Benefit the Receiver and Prejudice Prospect as Well as Other Creditors of the Oldco Entities.

In addition to the evident *quid pro quo* surrounding its negotiations, the Settlement Agreement itself is also plagued by false statements that were included to benefit the Receiver and prejudice the Non-settling Defendants. Such collusion is most plainly evident in paragraphs 28 and paragraph 30.

- a. *Paragraph 28’s admission of liability was meant solely to prejudice Prospect and other creditors, and it is dishonest inasmuch as it contradicts Land’s understanding of the Oldco Entities’ obligation to fund the Plan.*

In paragraph 28 of the Settlement Agreement, the Oldco Entities admit that they are liable in breach of contract for a set amount of \$125 million. That language was included in the Settlement Agreement, at the behest of the Receiver, to establish a set amount of damages owed so that the Receiver would not be required to prove a claim for damages in any future judicial liquidation proceeding. *See* Land Depo. at 55:11-56:13, **Exhibit 2**. Specifically, paragraph 28 of the Settlement Agreement, as the Receiver explained, was to allow “there to be a representation affirmatively by Attorney Land’s clients that my claim is \$125 million. I would not have to prove that claim if there was a judicial dissolution. Now I had the number actually locked in in terms of what the liability was.” Del Sesto Depo at 68:2-11, **Exhibit 4**. The Receiver’s understanding was “that [he] would still have the ability to file a claim in any judicial liquidation proceeding.” Del Sesto Depo at 69:10-11, **Exhibit 4**.

Therefore, not only would the Receiver be given all the liquid assets of the Oldco Entities, save for the \$600,000 reserve, but he would *also* be able to assert a \$125 million claim in a judicial liquidation of the Oldco Entities remaining assets without first having to prove his claim. An admitted obligation at this level allows the Receiver to secure the lion's share of whatever non-liquid assets that the Oldco Entities still have when a judicial receivership takes place, without having to establish a key element of the claim: damages. *See Del Sesto Depo.* at 69:2-11, **Exhibit 4** (“Q. Okay. So this isn’t the end of your recourse, this [S]ettlement [A]greement. You get the money that comes from this settlement, there’s approximately \$600,000 left to the Oldco [E]ntities, you still would have the right to pursue additional money in additional liquidation? MR. SHEEHAN: Objection to the form. Q. That’s your understanding? A. My understanding is that I would still have the ability to file a claim in any judicial liquification proceeding”). As a result, other creditors will be left with only \$600,000 to satisfy their claims.

This easily-granted concession by the Oldco Entities is further proof of collusion among them and the Receiver. Indeed, evidence shows that the Oldco Entities were so compliant that this term was granted almost as an afterthought: the first draft of the Settlement Agreement—circulated by the Receiver’s Special Counsel—includes an admission of \$120 million in liability, and yet that amount was then *increased* in the final Settlement Agreement to \$125 million. Therefore, because the first draft was circulated by Special Counsel, the \$5 million increase had to have been either *unilaterally* granted by the Oldco Entities’ counsel, or unilaterally changed by Special Counsel without objection. In fact, the Receiver did not even know what accounted for the \$5 million increase; all he offered was the Claim that \$125 million represented a more accurate number. *See Del Sesto Depo.* at 100:9-12, **Exhibit 4** (“Q. What accounts now for the difference in the numbering of \$120 million in the draft and \$125 million in the final? A. What amounts for that five million dollar difference? Q. Yes. A. I—I don’t know. The \$125 million is the more accurate

number as far as I'm concerned.") Either way, collusion—rooted in a dishonest admission—is apparent. *Compare* paragraph 28 of executed Settlement Agreement with paragraph 26 of draft Settlement Agreement, **Exhibit 8**.

Not only is the admission of \$125 million in liability prejudicial to Prospect and other creditors, it is also blatantly dishonest; further exhibiting the collusive efforts between the Receiver and the Oldco Entities. It plainly contradicts Land's testimony and his understanding as to the Oldco Entities' obligation to fund the Plan. As Land explained, the Oldco Entities had no obligation to contribute money to the pension plan because the plan was a Church Plan. *See* Land Depo. at 87:19-88:5, **Exhibit 2** ("Q. Is that because it's—regardless of the Cy Pres order, SJHSRI had an obligation with respect to the pension plan? MR. SHEEHAN: Objection. He already said there was no obligation. A. My understanding was—my understanding is under applicable law relating to church plans, that there was no formal obligation of SJHSRI to contribute to the [P]lan. Whether that—that would mean it's not a liability"); *see* Land Depo. at 153:22-15:5, **Exhibit 2** ("Q. . . . You were asked a number of times whether you considered it to be an obligation of the Oldco [E]ntities to fund the pension plan, and I believe your testimony is you didn't think it was an obligation because it was a church plan. Is that correct? A. My understanding of the church plan status was that it was not a formal liability of the entities to fund the plan").¹³ And, as Land attested in an affidavit to this Court, "SJHSRI did not believe that it had an obligation to make contributions to the Plan. . . ." *See* Land Depo. at 85:16-24, **Exhibit 2**; ECF No. 109-2 at ¶ 4. In addition, during Land's deposition, in reference to that obligation, Attorney Wistow—Special Counsel to the Receiver—stated on the record: "It's a moral obligation." *See* Land Depo. at 89:1-

¹³ Moreover, SJSHRI judicially admitted that it had no obligation to fund the plan in its Petition for the Appointment of a Receiver, stating "[a]s a result of the "church plan" exemption, [SJHSRI] was not required to make annual minimum contributions to the Plan, or make pension insurance payments to the Pension Benefit Guaranty Corporation" *See* Petition at ¶ 6.

6, **Exhibit 2** (“MR. WISTOW: Objection. It’s a moral obligation. MR. KESSIMIAN: Please, Max. MR. WISTOW: It’s so obvious. We’re just wasting time. He said there was no legal obligation to return the money over”). Coupled with Land’s testimony, that statement is clear evidence of the direct conflict between the language that was included in paragraph 28 and the Oldco Entities’ lack of contractual obligation to contribute to the Plan. The Oldco Entities simply had no breach of contract to which they could admit. Thus, the admission of non-existent contractual liability in paragraph 28, for an amount of \$125,000,000, was false, collusive, and intended to benefit the Receiver and prejudice Prospect and other non-settling defendants.

b. *Paragraph 30 of the Settlement Agreement is false and intended to prejudice Prospect and other creditors.*

In paragraph 30 of the Settlement Agreement, the Oldco Entities state that their proportionate fault in tort is less than that of the non-settling defendants. By their own admission, that statement is false and without merit, and was therefore only included in the Settlement Agreement in a collusive effort to affect the rights of Prospect and other non-settling defendants. According to Land, he could not evaluate any of the tort liability of the non-settling defendants: “[s]o I’m not prepared now, nor was I then, to evaluate whether any of the defendants had liability in tort to the plaintiff.” *See* Land Depo. at 54:9-12, **Exhibit 2**. Land further admitted that he had not evaluated the potential tort liabilities of the non-settling defendants. *See* Land Depo. at 49:7-20, **Exhibit 2**. Without an evaluation as to the liabilities of the non-settling defendants in tort, and without an evaluation as the liabilities of the Oldco Entities in tort, Land could not have legitimately stated in the Settlement that the Oldco Entities’ proportionate liability was somehow less than that of the non-settling defendants.

Similarly, the Receiver has testified that he had no view concerning the proportionate fault in tort among all the defendants. *See* Del Sesto Depo. at 70:9-71:4, **Exhibit 4**. When asked

specifically whether he agreed with the statement that the Oldco Entities' fault is small when compared to that of the non-settling defendants, the Receiver said: "I'm not stating that one way or the other." Del Sesto Depo. at 70:23-25, **Exhibit 4**. The Receiver further testified that he had no view on the liability of the non-settling defendants. *See* Del Sesto Depo. at 71:1-4, **Exhibit 4** ("Q. All right, so you're not—you don't have a view on that specifically? MR. SHEEHAN: Objection. A. No."). All the Receiver would offer is that he agreed with the statement in paragraph 30, *see* Del Sesto Depo. at 70:12-13, **Exhibit 4**—despite having no view as to the magnitude of the relative fault of the Oldco Entities. Indeed, when pressed by counsel for Prospect, neither the Receiver nor Land was able to explain, articulate, or even defend the truthfulness of the statement in paragraph 30 of the Settlement Agreement.

Accordingly, it is clear that Paragraph 30 of the Settlement Agreement was unsupported by Land or the Receiver's own independent analysis, and that it was simply a blunt instrument included in the Settlement Agreement to prejudice the Non-settling Defendants. The Receiver even admits that paragraph 30 was included in the Settlement Agreement solely to advance his interests:

And if the [the Special Act] was deemed to be unconstitutional, it was challenged to be unconstitutional, I wanted Attorney Land to fight hard to stick to the statement made in the settlement as to the small amount of proportionate fault because I would have had to have been dealing with at that point in time contribution issues, both in either judicial dissolution or in this lawsuit. And by making that statement, it would have required the Oldco Entities and their counsel to argue in a way that would support the statement.

See Del Sesto Depo. 114:13-23, **Exhibit 4**. The Receiver's own words offer the best explanation as to why the proportionate fault language was included in paragraph 30 Settlement Agreement: irrespective of truth, it was included so that Land will be compelled to testify that it was true in a future proceeding, whether in a judicial liquidation or a proceeding before this Court. The

Receiver and Land have shown that they were willing to make this statement with knowledge, or, at a minimum, reckless disregard of its falsehood. This sheds further light on the collusion between the Receiver and Oldco Entities for the specific purpose of prejudicing Prospect and other Non-settling Defendants in future proceedings.

CONCLUSION

Independently and taken together, the facts of this unique case, in light of a unique statute, compel but one conclusion: that the Settlement Agreement was the product of collusion. Those same facts also justify finding that Settlement Agreement reflects collusive, dishonest or other wrongful or tortious conduct intended to prejudice Prospect and the other Non-settling Defendants. The Special Act's good faith mandate was meant to prevent one defendant from settling to the detriment to the other and yet, that is exactly what happened here; therefore, the Joint Motion for Settlement should be denied.

Respectfully submitted,

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PROSPECT EAST HOLDINGS, INC.

By their attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August 2019, I have caused the within document to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Preston Halperin, Esq.

ASSET PURCHASE AGREEMENT

by and among

CHARTERCARE HEALTH PARTNERS,
ROGER WILLIAMS MEDICAL CENTER,
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND,
ROGER WILLIAMS REALTY CORPORATION,
RWGH PHYSICIANS OFFICE BUILDING, INC.,
ELMHURST EXTENDED CARE FACILITIES, INC.,
ROGER WILLIAMS MEDICAL ASSOCIATES, INC.,
ROGER WILLIAMS PHO, INC.,
ELMHURST HEALTH ASSOCIATES, INC.,
OUR LADY OF FATIMA ANCILLARY SERVICES, INC.,
THE CENTER FOR HEALTH AND HUMAN SERVICES,
SJH ENERGY, LLC,
ROSEBANK CORPORATION,
PROSPECT MEDICAL HOLDINGS, INC.,
PROSPECT EAST HOLDINGS, INC.,
PROSPECT CHARTERCARE, LLC,
PROSPECT CHARTERCARE RWMC, LLC,
PROSPECT CHARTERCARE SJHSRI, LLC,
PROSPECT CHARTERCARE ELMHURST, LLC,
and
PROSPECT CHARTERCARE PHYSICIANS, LLC

Dated as of September 24, 2013

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| Schedule 7.2 | Pre-Closing Operations: Affirmative Covenants |
| Schedule 7.3 | Pre-Closing Operations: Negative Covenants |
| Schedule 9.12 | Non-Terminated Seller Plans |
| Schedule 9.13 | Frozen Seller Plans |
| Schedule 12.2 | Permitted Exceptions |

LIST OF EXHIBITS:

| | |
|-----------|---|
| Exhibit A | Amended and Restated Agreement |
| Exhibit B | Form of Quitclaim Deed |
| Exhibit C | Form of Tenant Estoppel Certificate |
| Exhibit D | [Intentionally omitted] |
| Exhibit E | Form of Leasehold Assignment and Assumption Agreement |
| Exhibit F | Form of Bill of Sale |
| Exhibit G | Form of Assignment and Assumption Agreements |
| Exhibit H | Management Services Agreement |
| Exhibit I | FIRPTA Certificates |
| Exhibit J | Limited Power of Attorney |
| Exhibit K | Charity Care/Financial Assistance Policy |
| Exhibit L | Essential Services |
| Exhibit M | Catholicity Standards for Legacy SJHSRI Locations |
| Exhibit N | Service Restrictions for Other Company Locations |

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of September 24, 2013 by and among CharterCARE Health Partners, a Rhode Island non-profit corporation ("CCHP"), Roger Williams Medical Center, a Rhode Island non-profit corporation ("RWMC"), St. Joseph Health Services of Rhode Island, a Rhode Island non-profit corporation ("SJHSRI"), Roger Williams Realty Corporation, a Rhode Island non-profit corporation ("RWRC"), RWGH Physicians Office Building, Inc., a Rhode Island non-profit corporation ("RWOB"), Elmhurst Extended Care Facilities, Inc., a Rhode Island non-profit corporation ("Elmhurst ECF"), Roger Williams Medical Associates, Inc., a Rhode Island non-profit corporation ("RWMA"), Roger Williams PHO, Inc., a Rhode Island non-profit corporation ("PHO"), Elmhurst Health Associates, Inc., a Rhode Island corporation ("Elmhurst HA"), Our Lady of Fatima Ancillary Services, Inc., a Rhode Island corporation ("Our Lady"), The Center for Health and Human Services, a Rhode Island non-profit corporation ("TCHHS"), SJH Energy, LLC, a Rhode Island limited liability company ("SJHE"), and Rosebank Corporation, a Rhode Island corporation ("Rosebank" and together with CCHP, RWMC, SJHSRI, RWRC, RWOB, Elmhurst ECF, RWMA, PHO, Elmhurst HA, Our Lady, TCHHS and SJHE, each a "Seller" and, collectively, "Sellers"), Prospect Medical Holdings, Inc., a Delaware corporation ("Prospect"), Prospect East Holdings, Inc., a Delaware corporation ("Prospect Member"), Prospect CharterCare, LLC, a Rhode Island limited liability company (the "Company"), Prospect CharterCare RWMC, LLC, a Rhode Island limited liability company ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC, a Rhode Island limited liability company ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC, a Rhode Island limited liability company ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC, a Rhode Island limited liability company ("Physicians SMLLC" and together with RWMC SMLLC, SJHSRI SMLLC, Elmhurst SMLLC, each a "Company Subsidiary" and collectively, the "Company Subsidiaries"). Sellers, Prospect, the Prospect Member, the Company, and each Company Subsidiary are each a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, Sellers own, lease and operate the Facilities and engage in the Business;

WHEREAS, Prospect is in the business of owning and operating hospitals and related businesses and has formed the Company and owns 100% of the outstanding equity of the Company;

WHEREAS, the Company has formed all of the Company Subsidiaries as single-member limited liability companies and owns 100% of the outstanding equity in each Company Subsidiary as the sole member thereof;

WHEREAS, Sellers desire to sell to the Company, and the Company desires to acquire from Sellers, either directly or through the Company Subsidiaries, substantially all of the assets used in the operation of the Facilities, all as more fully set forth herein;

(y) all of Sellers' equity, membership or other ownership interests (i) in Rhode Island PET Services, LLC and Chemosynergy, LLC and (ii) to the extent applicable, pursuant to Section 7.2(n) below, in UMG and/or such other project or entity contemplated by such Section 7.2(n); and

(z) either: (1) all of Sellers' equity, membership or other ownership interests in Roger Williams Radiation Therapy, LLC; or (2) in the event that Sellers sell all or any part of their interests in Roger Williams Radiation Therapy, LLC prior to Closing and, notwithstanding Sellers' commercially reasonable efforts to reinvest all or a portion of the proceeds of such sale as provided in Section 7.2(n) below, all or a portion of such proceeds are not so reinvested, then any portion of the sale proceeds not so reinvested (hereafter, the "JV Proceed Deficiency") shall be included as a Purchased Asset hereunder and shall be transferred to the Company.

2.2 Excluded Assets of Sellers. Notwithstanding anything herein to the contrary, the following assets are excluded from the Purchased Assets and shall be retained by Sellers (the "Excluded Assets"):

(a) cash, cash equivalents and investments (except for the amount of any JV Proceed Deficiency as per Section 2.1(z) above);

(b) all of the following: (i) any Employment Agreement that is not listed as an Assumed Employment Agreement on Schedule 2.1(f)(1); (ii) any Physician Agreement that is not listed as an Assumed Physician Agreement on Schedule 2.1(f)(2), or that is so listed but is removed prior to Closing as provided in Section 2.1(f); and (iii) any other Contract listed on Schedule 2.2(b) (collectively, the "Excluded Contracts"); and all of Sellers' rights and interests thereunder;

(c) any Permits, Environmental Permits and Approvals that are not transferable;

(d) any Seller Plans (and any and all assets associated therewith or set aside to fund liabilities related thereto), the Retirement Plan and the Retirement Plan Assets;

(e) any unamortized bond issuance costs and all funds held by the bond trustee under the bond indentures for RWMC Rhode Island Health and Educational Building Corporation Tax-Exempt Revenue Bonds - Series 1998 and SJHSRI Rhode Island Health and Educational Building Corporation Tax-Exempt Revenue Bonds - Series 1999;

(f) except to the extent included within the Transferred Restricted Funds, any charitable restricted assets of Sellers, whether held directly by Sellers or by one or more third parties for Sellers' benefit, and any accrued interest thereon;

(g) the assets of CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation);

(h) funds held by Sellers' trustee for insurance, board designated investments, restricted interests in perpetual trusts, donor restricted funds and funds restricted by spending policy, and any accrued interest thereon;

- (i) the corporate books and records of Sellers;
- (j) any shares of capital stock, membership interest, partnership interest or other ownership in any Seller;
- (k) all rights in any insurance policies of Sellers covering the Purchased Assets or any Assumed Liabilities, except as otherwise expressly provided herein (including without limitation pursuant to Section 2.1(l) above); and
- (l) the rights of Sellers under this Agreement and all related documents.

2.3 Assumed Liabilities of Sellers. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Sellers shall assign, and the Company shall assume or shall cause one or more Company Subsidiaries to assume, effective as of the Effective Time, the following Liabilities of Sellers with respect to the Facilities and the Purchased Assets as and to the extent existing on the Closing Date (collectively, the "Assumed Liabilities"):

(a) the Assumed Contracts, but only to the extent of Liabilities that (x) are described in Section 2.3(b) below, or (y) accrue or arise after the Effective Time and relate to any period after the Closing Date;

(b) all accounts payable of Sellers as of the Closing Date that were accrued in the Ordinary Course of Business to the extent such accounts payable remain unpaid as of the Closing Date and are reflected in the calculation of Final Net Working Capital;

(c) all accrued expenses of Sellers incurred in the Ordinary Course of Business to the extent the same remain unpaid as of the Closing Date, other than (x) intercompany payables, (y) transaction expenses of Sellers, and (z) any expenses associated with any Taxes, the Seller Plans (but only to the extent such expenses are not reflected in the calculation of Final Net Working Capital) or the Retirement Plan;

(d) deferred gain on investments in the Related Ventures;

(e) all ETO balances associated with the Transferred Employees, including all costs, liabilities and expenses associated with or arising from the same and/or the rollover of such balances from Sellers to the Company as of the Effective Time;

(f) asset retirement obligations as reflected on the Interim Balance Sheet;

(g) if, prior to Closing, Sellers invest the proceeds of any sale of all or any part of their interests in Roger Williams Radiation Therapy, LLC in UMG or some other project or entity as may be mutually agreed by the Parties, as provided in Section 7.2(n) below, and Sellers' acquisition of such replacement interest entails the assumption of any liabilities, any such liabilities so assumed; and

(h) any other obligations or Liabilities identified in Schedule 2.3.

In no event shall the Company assume any Liability that is an Excluded Liability.


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives, all as of the date and year first above written.

SELLERS:

CHARTERCARE HEALTH PARTNERS


ROGER WILLIAMS MEDICAL CENTER

By: 
Name:
Title:

By: 
Name:
Title:

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND


ROGER WILLIAMS REALTY CORPORATION

By: 
Name:
Title:

By: 
Name:
Title:

RWGH PHYSICIANS OFFICE BUILDING, INC.

ELMHURST EXTENDED CARE FACILITIES, INC.


By: 
Name:
Title:

By: 
Name:
Title:

ROGER WILLIAMS MEDICAL ASSOCIATES, INC.

ROGER WILLIAMS PHO, INC.

By: 
Name:
Title:

By: 
Name:
Title:

ELMHURST HEALTH ASSOCIATES, INC.


OUR LADY OF FATIMA ANCILLARY SERVICES, INC.


By: 
Name:
Title:

By: 
Name:
Title:


THE CENTER FOR HEALTH AND HUMAN SERVICES

SJII ENERGY, LLC

By: 
Name:
Title:

By: 
Name:
Title:

ROSEBANK CORPORATION

By: 
Name:
Title:

PROSPECT:

PROSPECT MEDICAL HOLDINGS, INC.

By: _____
Name: _____
Title: _____

PROSPECT MEMBER:

PROSPECT EAST HOLDINGS, INC.

By: _____
Name: _____
Title: _____

THE COMPANY:

PROSPECT CHARTERCARE, LLC

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: _____
Name: _____
Title: _____

COMPANY SUBSIDIARIES:

PROSPECT CHARTERCARE RWMC, LLC

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: _____
Name: _____
Title: _____

PROSPECT CHARTERCARE SJHSRI, LLC

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: _____
Name: _____
Title: _____

**PROSPECT CHARTERCARE ELMHURST,
LLC**

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: 
Name: _____
Title:

**PROSPECT CHARTERCARE PHYSICIANS,
LLC**

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: 
Name: _____
Title:

“Capital Projects” has the meaning set forth in Section 2.5(b)

“Cash Purchase Price” has the meaning set forth in Section 2.6(a).

“Cath Lab Capital Lease” means that certain Capital Lease Obligation entered into by and between RWMC and Philips Medical dated December 27, 2012, with respect to Sellers’ cardiac catheterization laboratory, the long-term portion of which, as of the date of this Agreement (*i.e.*, \$558,288), shall be treated as partial satisfaction of the Long-Term Capital Commitment pursuant to Sections 4.2(b) and 4.2(c) of the Amended and Restated Agreement and Section 2.5(b) hereof.

“CCHP” has the meaning set forth in the introductory paragraph.

“Church” has the meaning set forth in Section 7.5(e).

“Church Approvals” has the meaning set forth in Section 7.5(e).

“Church Plan” has the meaning set forth in Section 4.17(i).

“Closing” has the meaning set forth in Section 3.1.

“Closing Cash Amount” has the meaning set forth in Section 2.6(a).

“Closing Date” has the meaning set forth in Section 3.1.

“CMS” means the Centers for Medicare & Medicaid Services.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, as further defined in Section 4.17(g).

“Code” means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder.

“Commitment” has the meaning set forth in Section 12.1(a).

“Company” has the meaning set forth in the introductory paragraph.

“Company Locations” has the meaning set forth in Exhibit N.

“Company Subsidiaries” has the meaning set forth in the introductory paragraph.

“Company/Prospect Indemnified Persons” has the meaning set forth in Section 14.2.

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated as of August 2, 2012, between CCHP and Prospect.

“Contract” means any written or oral contract, commitment, instrument, license, lease or agreement, currently in effect, including renewals, extensions, assignments and amendments made in accordance therewith.

“Private Health Plan Liabilities” means all Liabilities relating to Private Health Plans in connection with reimbursement for the provision of health care services to enrolled or covered beneficiaries.

“Private Health Plans” means insurers, third party payors, health maintenance organizations, preferred provider organizations, third party administrators for self-insured employers and similar arrangements, other than Government Reimbursement Programs, but including those situations where, pursuant to a contract with a Government Reimbursement Program, the Private Health Plan provides coverage under a managed care product to persons obtaining their Medicare, Medicaid, or similar benefits from the Private Health Plan rather than directly from Medicare or Medicaid.

“Prospect” has the meaning set forth in the introductory paragraph.

“Prospect Advance” has the meaning set forth in Section 2.7.

“Prospect Benefit Plans” has the meaning set forth in Section 6.6.

“Prospect Contribution” has the meaning set forth in Section 2.5(a).

“Prospect Member” has the meaning set forth in the introductory paragraph.

“Provider Agreements” has the meaning set forth in Section 2.1(f).

“Purchased Assets” has the meaning set forth in Section 2.1.

“RE Tax Returns” means all Tax Returns, questionnaires, certificates, affidavits and other documents required in connection with the payment of any Transfer Taxes in respect of the Owned Real Property.

“Real Estate Taxes” has the meaning set forth in Section 12.2.

“Real Property” means the Owned Real Property and the Leased Real Property.

“Rejected Physician Agreements” has the meaning set forth in Section 2.1(f).

“Related Venture” and “Related Ventures” mean, individually and collectively (i) Rhode Island PET Services, LLC, a Rhode Island limited liability company, (ii) Roger Williams Radiation Therapy, LLC, a Rhode Island limited liability company, and (iii) Chemosynergy, LLC, a Rhode Island limited liability company.

“Release” means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating, or disposing of Hazardous Materials into the environment, including the ambient air, surface and subsurface soils, surface water and groundwater.

“Remediation” means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, containment, corrective action, monitoring, sampling and

analysis, reclamation, closure, or post-closure activity in connection with the suspected, threatened or actual Release of Hazardous Materials.

“Representatives” means with respect to any Person, any of its Affiliates, directors, trustees, officers, members, shareholders, employees, counsel, accountants, consultants, agents, advisors and other representatives.

“Residents and Fellows List” has the meaning set forth in Section 4.19.

“Retirement Plan” means the St. Joseph Health Services of Rhode Island Retirement Plan.

“Retirement Plan Assets” shall mean the assets, cash and investments of the Retirement Plan.

“Revenue Procedure” has the meaning set forth in Section 8.2(c).

“Rosebank” has the meaning set forth in the introductory paragraph.

“RWMA” has the meaning set forth in the introductory paragraph.

“RWMC” has the meaning set forth in the introductory paragraph.

“RWMC SMLLC” has the meaning set forth in the introductory paragraph.

“RWOB” has the meaning set forth in the introductory paragraph.

“RWRC” has the meaning set forth in the introductory paragraph.

“Second 20-Day Period” has the meaning set forth in Section 2.9(c).

“Seller Indemnified Persons” has the meaning set forth in Section 14.3.

“Seller Intellectual Property” means Intellectual Property that is not Third Party Intellectual Property.

“Seller Member” has the meaning set forth in the Recitals.

“Seller Plans” has the meaning set forth in Section 4.17(a).

“Sellers” has the meaning set forth in the introductory paragraph.

“Sellers’ Cost Reports” has the meaning set forth in Section 13.6.

“Sellers’ Knowledge” (and similar expressions) means the actual knowledge of any member of the Management Group, after making diligent inquiry of those employees of any of Sellers with principal day-to-day operational responsibility with respect to a particular matter.

“Sellers’ Representative” has the meaning set forth in Section 15.9(a).

In The Matter Of:
Stephen Del Sesto, et al v.
Prospect CharterCARE, LLC, et al

Richard Land
July 24, 2019



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Original File 07-24-19-Richard Land.txt
Min-U-Script® with Word Index

UNITED STATES 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 :
 :
 vs. : C.A. No. :
 : 1:18-cv-00328-WES-LDA
 PROSPECT CHARTERCARE, LLC, :
 et al :

DEPOSITION OF RICHARD LAND
 (Taken on behalf of Defendant
 Prospect Medical Holdings, Inc. and
 Prospect East Holdings, Inc.)

Wednesday, July 24, 2019
 10:00 a.m.
 SHECHTMAN HALPERIN SAVAGE, LLP
 1080 Main Street
 Pawtucket, Rhode Island 02860

- - -

Lori P. Hamel
 Certified Court Reporter
 Premier Legal Support, Inc.

For the Defendant: (Angel Pension Group)

ROBINSON & COLE, LLP
 BY: STEVEN J. BOYAJIAN, ESQ.
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For the Defendant: (CharterCARE Foundation)

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For the Defendant: (Rhode Island Community Foundation)

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 Email: Cdieter@hinckleyallen.com

For the Defendant: (Prospect CharterCARE, LLC, Prospect
 CharterCARE SJHSRI, LLC, and
 Prospect CharterCARE RWMC, LLC)

FERRUCCI RUSSO, P.C.
 BY: W. MARK RUSSO, ESQ.
 55 Pine Street, 4th Floor
 Providence, Rhode Island
 Email: Mr@frlawri.com

APPEARANCES

For the Plaintiff:

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For the Defendant: (Prospect Medical Holdings, Inc. and
 Prospect East Holdings, Inc.)

SHECHTMAN HALPERIN SAVAGE, LLP
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For the Defendant: (CharterCare Community Board, SJHSRI,
 and Roger Williams Hospital)

CHACE RUTTENBERG & FREEDMAN, LLP
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For the Defendant: (Roman Catholic Bishop of Providence,
 Diocesan Administration Corporation,
 and Diocesan Service Corporation)

PARTRIDGE, SNOW & HAHN
 BY: PAUL M. KESSIMIAN, ESQ.
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 Providence, Rhode Island 02903
 Email: Pk@psh.com

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1 MR. WISTOW: Max Wistow for the plaintiffs.
 2 MR. SHEEHAN: Stephen Sheehan for the
 3 plaintiffs.
 4 MR. LEDSHAM: Benjamin Ledsham for the
 5 plaintiffs.
 6 MR. FINE: Robert Fine for CCCB, St. Joseph,
 7 Roger Williams, and also the deponent.
 8 MR. HALPERIN: Thank you.
 9 EXAMINATION BY MR. HALPERIN
 10 Q. Would you please state your full name.
 11 A. Richard J. Land.
 12 Q. Mr. Land, I'm going to ask you questions. If you don't
 13 understand them, I'll be glad to try to rephrase them.
 14 Have you ever been deposed before?
 15 A. Yes.
 16 Q. By whom are you currently employed?
 17 A. Chace Ruttenberg & Freedman, LLP. I'm a partner.
 18 Q. How long have you been with Chace Ruttenberg?
 19 A. Started with them July 1, 2012.
 20 Q. And you've been -- how long have you been practicing
 21 law?
 22 A. Since 1996.
 23 Q. You're here today in what capacity, sir?
 24 A. You deposed me individually, and you also served a
 25 30(b)(6) deposition notice for the CharterCARE

Page 6

1 (Commenced at 10:02 a.m.)
 2 RICHARD LAND
 3 Being duly sworn, deposes and testifies as follows:
 4 MR. HALPERIN: Mr. Land, my name is Preston
 5 Halperin, as you know, and I'm representing the
 6 Prospect entities for purposes of this deposition.
 7 Before we start I'd like to suggest that we go
 8 around the room and let counsel identify themselves and
 9 who they represent so we'll have a record of who's here
 10 today.
 11 So, as I said, I'm Preston Halperin. I'll go to
 12 my left.
 13 MR. KESSIMIAN: Paul Kessimian, I'm counsel
 14 for the Roman Catholic Bishop of Providence, a
 15 corporation sole, Diocesan Administration Corporation,
 16 and Diocesan Service Corporation, known in this case as
 17 the Diocesan defendants.
 18 MR. FRAGOMENI: Chris Fragomeni for the
 19 Prospect entities.
 20 MR. BOYAJIAN: Steve Boyajian for the Angel
 21 Pension Group.
 22 MR. DENNINGTON: Andrew Dennington for
 23 CharterCARE Foundation.
 24 MS. DIETER: Christine Dieter for Rhode
 25 Island Community Foundation.

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1 defendants, and so I'm in that capacity as well.
 2 Q. What is your current role for CharterCARE Community
 3 Board?
 4 A. I'm counsel for the entity, as well as an agent for
 5 purposes of the administrative aspects of winding down
 6 the entities.
 7 Q. Is that agency in a written document?
 8 A. There's a corporate vote that authorized it.
 9 Q. And are you agent for specific purposes or anything in
 10 general, or how is it phrased?
 11 A. It was -- my recollection it was a generic agency for
 12 purposes of winding down the entities.
 13 Q. And how long have you had that role?
 14 A. I believe that vote was in early 2015.
 15 Q. And what had been your responsibilities over the past
 16 four or so years as agent for -- I'm going to refer to
 17 CharterCARE Community Board as CCCB.
 18 A. For CCCB alone or for -- I'm sorry.
 19 Q. Okay, that's a fair point. Let's define the parties
 20 here.
 21 So you mentioned that you're here on behalf of
 22 CharterCARE Community Board, which I will refer to as
 23 CCCB, but that entity has responsibility for two other
 24 entities, correct?
 25 A. Correct.

Page 9

1 Q. And what are those two other entities?
2 A. CCCB owns St. Joseph's Health Services of Rhode Island
3 and Roger Williams Hospital.
4 Q. And so in your capacity as agent, did you also perform
5 some services or acts on behalf of the two entities
6 owned by CCCB?
7 A. Yes.
8 Q. So what were your responsibilities generally over the
9 last four years as agents for those entities?
10 A. So, I think it's easier to -- I'll describe it this
11 way.
12 When the hospitals were -- when hospital operating
13 entities were sold to Prospect, there were no employees
14 left, and so I performed, as agent, essentially
15 functions that employees would do to try to wind down
16 ordinary operating issues and all of the issues that
17 might come up in a wind-down of an entity.
18 Q. So is it fair to say that the wind-down of the entities
19 was your principal role in some way, shape or form
20 either as agent or attorney?
21 A. I guess that's fair. Principal role.
22 Q. What other roles were there other than that which
23 related to the wind-down of the entities?
24 A. Well, I counseled the board of directors in the context
25 of my services as a -- as an attorney.

Page 10

1 Q. So, that would be in connection with, like, routine
2 corporate matters?
3 A. Routine corporate matters, what was going on with the
4 wind-down itself, legal issues that might arise during
5 that process.
6 Q. I'm going to show you the 30(b)(6) Notice of
7 Deposition. If you could look at the schedule on the
8 last page.
9 (Witness perusing document)
10 Q. Mr. Land, on behalf of CCCB, are you able to testify
11 with respect to the matters set forth on Attachment A?
12 A. Yes, but I'll note I believe 4 is outside the scope of
13 what the judge authorized, but I am prepared. I can
14 discuss all these issues.
15 MR. HALPERIN: Okay. Thank you. We'll mark
16 that as Exhibit 1.
17 (Exhibit 1 marked)
18 MR. SHEEHAN: Just for the record, we're
19 going to object to the testimony with respect to
20 subsection 4. I presume it's going to go forward but
21 we want to make it clear that our position is going to
22 be that any testimony on those issues should not be
23 considered in this litigation, so. Just put that on
24 the record.
25 MR. FINE: I join in that objection and

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1 notation by Mr. Sheehan.
2 MR. WISTOW: Just to be clear, will you allow
3 testimony on 4 with an objection, or are you going to
4 instruct him not to answer?
5 Well, why don't we -- I don't want to put you --
6 why don't you decide that when you --
7 MR. FINE: And I will need to discuss that
8 with the deponent.
9 MR. HALPERIN: And just from the standpoint
10 of how this deposition is going to proceed, I think it
11 really makes sense for one of your team to take the
12 role of objecting and speaking on the record. I don't
13 think we should have more than one attorney from a
14 party speaking. I don't care who it is.
15 MR. WISTOW: That's your suggestion but
16 unless it becomes disruptive, if either one of us wants
17 to say something, I don't see a problem with that. But
18 let's not fight about everything.
19 (Arrival of Attorney Mark Russo)
20 MR. HALPERIN: Off the record.
21 (Off the record)
22 BY MR. HALPERIN:
23 Q. Mr. Land, during the last several years while you acted
24 as agent and attorney for CCCB, did you have any role
25 in the oversight of the financial aspects of CCCB in

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1 terms of what it was using its money for?
2 A. Yes.
3 Q. And who was -- what was your responsibility with
4 respect to financial management?
5 A. Bills, all the bills, all the revenues came through my
6 office. Earlier in the -- earlier in the process, I
7 was working primarily with Dan Ryan who was the
8 chairman, reviewing matters with Dan. But primarily
9 from a financial perspective, ordinary expenses were
10 paid. Ordinary -- revenues that came in were deposited
11 and either invested in various vehicles or maintained
12 in checking -- bank accounts. Most issues, if not all,
13 were discussed with Dan Ryan, and he ultimately made
14 decisions on -- on how things went.
15 Q. Did you communicate with a board in making decisions as
16 to how monies were going to be spent, or was this
17 something you had some level of authority to do
18 independently?
19 A. When you say "spent," we -- there were wind-down
20 expenses, so wind-down expenses were paid with -- you
21 know, to the extent that board approval was required
22 for extraordinary expenses or settlement of disputes or
23 things like -- of that nature, I involved Dan Ryan, and
24 Dan would have determined what to do next.
25 Q. Were you familiar when you took on the role of agent

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1 with the order that entered in the Cy Pres superior
 2 court decision that resulted in monies being in the
 3 hands of CCCB after the Prospect transaction?
 4 A. So, that order actually entered after I got involved
 5 and so, yes, I was familiar with it. That matter was
 6 primarily handled by Adler, Pollock & Sheehan. I would
 7 consider myself more of an observer of that process
 8 than actively involved in it.
 9 Q. Did the terms of that order and/or the petition that
 10 led to that order inform you as to any -- how you were
 11 to -- how CCCB was to administer its assets?
 12 A. My recollection of that order is that primarily related
 13 to -- well, let me rephrase that.
 14 The answer to your question basically is yes, but
 15 that's an incomplete response in the sense that that
 16 order didn't address all the assets of any of the
 17 entities.
 18 Q. Some amount of the assets of the entities ended up
 19 under control of CCCB as a result of the order; is that
 20 true?
 21 MR. SHEEHAN: Objection to the form.
 22 MR. FINE: You can answer.
 23 A. Um, I don't believe that order caused assets of CCCB.
 24 I don't know if this is just being imprecise or being
 25 overly technical, but I don't believe that that order

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1 addressed assets of CCCB itself. It addressed assets
 2 of Roger Williams Hospital and St. Joseph's Health
 3 Services of Rhode Island, and it spoke to -- the
 4 starting point for that order was -- or in the petition
 5 was the charitable assets that were held by those
 6 entities and what was to happen with those charitable
 7 assets and how they were to be divided up between the
 8 CharterCARE Foundation and maintained and continued to
 9 be used for charitable purposes, and what I'll
 10 characterize as the Oldco entities -- Roger Williams
 11 Hospital and St. Joseph's Health Services of Rhode
 12 Island -- and what assets would be free to be used to
 13 satisfy liabilities -- freed from the charitable
 14 aspect, to be used to pay the liabilities of the Oldco
 15 entities.
 16 Q. Right, so some amount of money was made available to
 17 satisfy liabilities following the -- as a result of the
 18 Cy Pres order; is that accurate?
 19 A. That's correct.
 20 Q. Okay. And was it part of your role to administer those
 21 funds in order to satisfy liabilities?
 22 A. On behalf of the Oldco entities. I was the agent doing
 23 that work.
 24 Q. So that was part of what you were charged with doing?
 25 A. I guess you could characterize it that way.

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1 Q. Show you the order and ask you if you can identify it
 2 for the record.
 3 A. This is a document captioned Order on Petition for
 4 Approval of Disposition of Charitable Assets. It has a
 5 Rhode Island Superior Court stamp on the top left
 6 corner with the case number, indicating that it's filed
 7 in Kent County Superior Court. Hard to read but it
 8 appears to have been submitted on 4/6/2015. There's an
 9 envelope number, a reviewer. The last page has a
 10 certification by Patricia Rocha who's an attorney at
 11 Adler Pollock & Sheehan. And the prior page has the
 12 electronic signatures of Judge Stern and his clerk,
 13 Carin Miley.
 14 Q. And this is the order we were just discussing, the
 15 Cy Pres order, correct?
 16 A. Without having reviewed the detail of it, it does
 17 appear to be that order, yes.
 18 Q. And take a look at the second page, paragraph 3,
 19 please.
 20 Have you -- do you see the language that says that
 21 there's approval for Roger Williams Hospital to use
 22 \$12,288,848 for pre and post-closing liabilities?
 23 A. I do see that.
 24 (Phone interruption)
 25 MR. HALPERIN: Off the record.

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1 (Off the record)
 2 MR. HALPERIN: Can you do me a favor, the
 3 last question.
 4 (The record was read by the
 5 court reporter, as requested)
 6 Q. Mr. Land, was that twelve million -- approximately
 7 twelve million dollars of funds that you had or CCCB
 8 had under its control during the last several years
 9 that you were agent?
 10 A. So, this refreshes my memory on -- from an aspect of
 11 the Cy Pres order that I didn't recall. So the Cy Pres
 12 order also dealt with accumulated earnings that weren't
 13 charitable assets, and those funds, for the most part,
 14 did not come into my possession. By the time I got
 15 involved, a significant portion, if not all of those
 16 funds -- and I'd have to go back and review the
 17 records, but they had already been used by the Oldco
 18 entities before I ever even got involved, or, earlier
 19 in the process before the Cy Pres petition was actually
 20 entered. And I can't answer really why that was done
 21 and who did it. I just know that there was a gap
 22 between the sale and when I was brought in, and during
 23 that gap period other people were doing things, and
 24 these assets were used to pay Oldco liabilities.
 25 Q. Approximately how much money was under the control of

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1 the Oldco entities when you became involved?
2 A. I don't recall precisely but I do recall that there was
3 a sources and uses of funds document created in
4 connection with the sale of the entities. And the only
5 thing I can specifically recall is that the net amount
6 of money that was projected to remain after full
7 liquidation -- and this was a projection done at the
8 time of sale so it didn't really contemplate everything
9 that's actually transpired since. But the net amount
10 was -- for all of these entities, in cash was about
11 \$3.1 million. That's my recollection. So, taking into
12 account that the sources and uses contemplated spending
13 all these -- a significant portion of these funds down,
14 so the net result was about \$3.1 million.
15 Q. But the question that I was asking is approximately how
16 much money was under your control or whether Oldco
17 controls --
18 A. I don't specifically recall what it was at that time,
19 but it was -- I'd be speculating, but it was small. It
20 was in the single digits, low millions. In the
21 aggregate.
22 Q. And approximately how much money is under Oldco's
23 control now in connection with the settlement that is
24 being discussed?
25 A. It's over \$14 million. Some of those funds have some

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1 limitations on them. Some of which is noted in the --
2 in the settlement agreement itself. Some of those
3 funds, as per the Cy Pres, are to be used for
4 educational purposes relating to the ongoing operations
5 that are being conducted by Prospect. But in the
6 aggregate it's a slightly more than \$14 million.
7 MR. SHEEHAN: Could I ask to have the
8 question read back, I didn't hear it.
9 MR. HALPERIN: The question?
10 MR. SHEEHAN: Just the question.
11 MR. HALPERIN: Can you please read the last
12 question back.
13 (The record was read by the
14 court reporter, as requested)
15 Q. And of the money that is under Oldco's control now, do
16 you know approximately how much of that is available to
17 satisfy liabilities as opposed to restricted funds?
18 A. I'm -- I believe about a million dollars, plus or
19 minus, is restricted at this stage. Seven hundred
20 fifty of that, approximately, is referenced in the
21 settlement agreement and relates to the Roger Williams
22 Workers' Compensation reserve that the Department of
23 Labor is requiring. The balance relates to the -- what
24 I'll call the continuing medical education funds that
25 are to be used per the Cy Pres for education programs

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1 at the hospital conducted by Prospect physicians.
2 Q. So if I understood your answer, approximately
3 13 million is available for liabilities? Wind-down
4 liabilities?
5 A. Yeah, approximately. Today.
6 Q. Yes, yes. Let's mark the Order on the Petition as
7 Exhibit Number 2, please.
8 (Exhibit No. 2 marked)
9 Q. What is it that caused those funds to go from being a
10 relatively small amount of one to three million, I
11 think you testified, up to this \$14 million over the
12 last four years?
13 A. Um, there are a lot of factors. I mean, there were
14 investment returns which can cause part of it. There
15 were settlements with the Medicare, Medicaid, CMS that
16 resulted in significantly greater recoveries than were
17 anticipated and was anticipated by the -- that folks at
18 the hospital who prepared the sources and use funds in
19 the analysis at the time of sale. That might be the
20 most significant portion. There were some settlements
21 of litigation matters that were disputed that resulted
22 in considerably greater returns than again the same
23 folks estimated at the time of the sale. And we've had
24 some charitable trust distributions. The charitable
25 trust ran for a period of time. I believe there are

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1 charitable remainder trusts and those resulted in
2 distributions. So that's a considerable portion as
3 well.
4 Q. Have any portion of those funds been used to pay
5 liabilities over the past four years?
6 A. Oh, absolutely. There's been ongoing liabilities.
7 There's -- including just ordinary operating expenses
8 and costs of running, you know, winding down the
9 business. There have been CMS claims back against the
10 hospitals for recoupment as well. So the net positive
11 effect of those transactions is what you see now in the
12 increase in assets, but there were negative
13 transactions as well.
14 Q. I'm going to ask you to move to another area, and that
15 is the St. Joseph's retirement plan itself. What was
16 your role, or CCCB's role in connection with the
17 retirement plan over the last four years?
18 MR. SHEEHAN: Objection to the form.
19 A. Um, so, again, as agent I was working with the board to
20 evaluate what to do with the plan eventually. In terms
21 of CCCB, again -- you know, so the plan is the
22 St. Joseph's Health Services of Rhode Island Plan. The
23 entity is a separate -- St. Joseph's Health Services of
24 Rhode Island is a separate entity from CCCB. There was
25 a separate board for St. Joseph's Health Services of

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1 Rhode Island. Same people but we had separate boards.
 2 So when I worked with -- we worked collectively, but
 3 when you ask the question what CharterCARE's role was,
 4 I viewed it as St. Joseph's although CharterCARE was
 5 the owner of the entity.
 6 Q. During the last four years, did you consider CCCB or
 7 any of the Oldco entities to have a financial
 8 obligation or liability to the pension plan?
 9 A. The only connection that I saw between St. Joseph's
 10 pension plan and Roger Williams would have flowed from
 11 the Cy Pres petition and order. And that -- that says
 12 what it says.
 13 Q. And based upon the Cy Pres order and the petition, was
 14 it your understanding that any amount of the assets
 15 under Oldco's control could be applied to the pension
 16 plan?
 17 A. Um, can I take a minute to look at it because I don't
 18 want to misquote what the order says.
 19 Q. Before you do that, I'm going to provide you with the
 20 petition as well, and I'm going to mark as Exhibit
 21 Number 3 the Petition for Approval of the Disposition
 22 of Charitable Assets.
 23 (Exhibit No. 3 marked)
 24 Q. If you could identify that just for the record. You
 25 don't need to go into quite as much detail, just tell

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1 us what it is.
 2 A. It's the Petition for Approval of Disposition of
 3 Charitable Assets Including Application of Doctrine of
 4 Cy Pres. And it has a case number at the top, it
 5 appears to be court stamped.
 6 Q. Is this a document you're familiar with?
 7 A. I've read it.
 8 Q. All right, so if you could look at that, as well as the
 9 Order, and I'll ask you the same question with regard
 10 to pension liabilities.
 11 (Witness perusing document)
 12 Q. You had a chance to look at that?
 13 All right. Having reviewed the petition, Exhibit
 14 Number 3, does it refresh your memory as to whether or
 15 not the pension obligation was considered a liability
 16 of the Oldco entities, any of them?
 17 MR. SHEEHAN: Objection.
 18 A. I don't -- I don't read the document to indicate that.
 19 Q. Let me refer you to page 12, at the top, paragraph 27,
 20 the portion that continues at the top of page 12. And
 21 the sentence that starts with "Likewise." Would you
 22 read that sentence to yourself.
 23 (Witness reading)
 24 A. Okay.
 25 Q. Do you know if the reference in there to pension is a

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1 reference to the St. Joseph's retirement plan that's
 2 the subject of this litigation, or is that referring to
 3 some other pension?
 4 A. I believe it's referring to the St. Joseph's Health
 5 Services pension plan.
 6 Q. So that parenthetical is a parenthetical that comes
 7 after post-closing liabilities in the document,
 8 correct?
 9 MR. SHEEHAN: Objection.
 10 A. Correct.
 11 Q. Was it -- did you have an understanding over the last
 12 four years as to whether there was an obligation on the
 13 part of the Oldco entities to provide any kind of
 14 funding to the plan?
 15 A. So again, just to be precise, I understood that
 16 St. Joseph's Health Services of Rhode Island, having
 17 satisfied all of its other liabilities, would then use
 18 whatever funds were available to it for the pension
 19 plan. That was my understanding. Whether that's right
 20 or wrong, that was my understanding. With respect to
 21 the other Oldco entities, I don't recall, frankly,
 22 CharterCARE -- anything specific relating to
 23 CharterCARE. And with respect to Roger Williams, I
 24 think -- I believe there was potentially a partial
 25 waterfall. In looking at this document I believe it

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1 relates to the charitable assets with waterfall.
 2 Potentially.
 3 Q. Let me refer you to paragraph 17 as well and I'll ask
 4 you some more questions.
 5 On page 7, I'll ask you to look at the last
 6 sentence in paragraph 17 of Exhibit 3.
 7 "It is anticipated" is the beginning of that
 8 sentence. The final sentence in paragraph 17.
 9 A. The final sentence in paragraph 17 says --
 10 Q. Oh, I'm sorry, the second to last sentence.
 11 A. I'm just going to read the whole paragraph.
 12 Q. Go right ahead.
 13 (Witness reading)
 14 A. Okay, I've read it.
 15 Q. The last sentence of paragraph 17 says: "The SJHSRI
 16 pension funding obligation will continue after the
 17 wind-down period concludes."
 18 Is that the understanding you had during the last
 19 several years, that once the wind-down period
 20 concluded, the pension would be funded in some way?
 21 MR. SHEEHAN: Objection to the form.
 22 A. Yes, but not -- not an automatic funding. But yes.
 23 Q. What did CCCB contemplate would happen with respect to
 24 the money under its control after the wind-down period
 25 concluded?

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1 MR. SHEEHAN: Objection, beyond the scope of
 2 the deposition.
 3 A. After the wind-down period concluded, there would be a
 4 process undertaken to finalize the wind-down and to --
 5 ultimately if the only -- if the only remaining
 6 obligation of these entities in the aggregate, assuming
 7 all to be one, was the pension, then presumably we
 8 would have sought to have the pension get the remaining
 9 assets.
 10 Q. So your -- the way you are handling this was to deal
 11 with the liabilities as part of the wind-down, and then
 12 afterwards the pension would have been addressed in
 13 some way, shape or form. Is that fair?
 14 A. That's how I understood the paradigm.
 15 MR. SHEEHAN: Objection.
 16 Q. Now, at some point in time, a decision was made to
 17 petition the plan into receivership; is that correct?
 18 A. That's correct.
 19 Q. And you filed a petition for receivership, yes?
 20 A. Correct.
 21 Q. At some point did you have a discussion with the
 22 Receiver or anyone on behalf of the Receiver as to how
 23 the assets under the control of CCCB would be
 24 disbursed?
 25 A. It's certainly possible I would have had a conversation

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1 about that.
 2 Q. When you spoke with Mr. DelSesto, either before or
 3 after his appointment, was there a discussion as to how
 4 the assets that CCCB had under its control would be
 5 utilized, if at all, in connection with the
 6 receivership?
 7 A. I don't recall that conversation -- a conversation like
 8 that.
 9 Q. So, when was the first time that there was a
 10 conversation whereby CCCB or Oldco assets would be used
 11 to satisfy pension obligations?
 12 A. A conversation with whom?
 13 Q. Either Mr. DelSesto or someone on his behalf.
 14 A. I don't recall precisely, but I believe we might have
 15 had conversations about the Cy Pres petition and order
 16 early on in the receivership, simply because they were
 17 part of the history of it, these entities.
 18 Q. Would that discussion have included the fact that the
 19 monies under CCCB's control would ultimately be paid to
 20 the plan?
 21 MR. SHEEHAN: Objection to the form, calls
 22 for speculation.
 23 A. I just don't recall.
 24 Q. Don't recall. Okay.
 25 When was the first time, if you can recall, that

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1 you discussed the settlement of claims that the plan
 2 asserted against Oldco entities?
 3 A. That would have been after the complaint was filed.
 4 Q. I'm going to show you a letter.
 5 (Witness perusing document)
 6 Q. Have you seen this before?
 7 A. So I'm aware of this. I don't know if I've actually
 8 seen the letter but I'm aware of the letter. I want to
 9 say I have seen it but I don't specifically recall.
 10 Q. Let's mark it as Exhibit 4.
 11 (Exhibit No. 4 marked)
 12 Q. So Exhibit 4, just for the record, is a letter that you
 13 just looked at dated June 5, 2018 from Mr. DelSesto to
 14 Speaker Mattiello, Senate President Dominick Ruggerio,
 15 and House Majority Leader Joseph Shekarchi.
 16 Could you look at the second page of Exhibit
 17 Number 4. And you'll see at the end of the paragraph
 18 that appears at the top of the second page, the last
 19 sentence. You can read the whole thing but I want to
 20 focus you on the last sentence that starts with "You
 21 should know."
 22 A. I see it.
 23 Q. Okay. So that sentence says: "You should know that we
 24 already have parties who have expressed a willingness
 25 to settle and avoid even the filing of a complaint, but

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1 we cannot entertain those discussions until this
 2 legislation is in place."
 3 My question is, was CCCB that party that was having
 4 discussions before the filing of the complaint?
 5 MR. SHEEHAN: Objection.
 6 A. So, I don't know who else the Receiver or Mr. Wistow
 7 might have had -- or anybody might have had
 8 conversations with. This sentence says "expressed a
 9 willingness to settle." And I can tell you that we
 10 expressed a willingness to settle. But that is the
 11 extent of what was expressed.
 12 Q. So that willingness to settle was expressed before the
 13 complaint was filed; is that true?
 14 A. Yes.
 15 Q. And what was it you thought you were willing to settle?
 16 A. Well, any potential claims. There was nothing asserted
 17 against us at the time, but I think everybody who had
 18 participated in this process through that point in time
 19 recognized that it was a pretty contentious situation
 20 among all the parties, and so we had expressed a
 21 willingness to engage in settlement discussions if the
 22 Receiver was willing to do so. But that's -- again, it
 23 was a willingness to settle.
 24 Q. That was expressed before any claims were actually
 25 asserted against CCCB?

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1 A. I don't recall that there were any formal claims or
 2 even a threat of a claim asserted at that point in
 3 time.
 4 Q. Did you communicate anything more than a willingness to
 5 settle at that time in terms of what the settlement
 6 might look like from CCCB's perspective?
 7 A. Don't recall doing that.
 8 Q. But at some point you did engage, or your office
 9 engaged in formal settlement discussions with the
 10 Receiver or counsel; is that true?
 11 A. After the settlement -- after the complaint was filed.
 12 Q. Did your office make the initial settlement proposal to
 13 the Receiver?
 14 A. We did. We made -- it was a written proposal that was
 15 prepared by my office and sent to the Receiver. Or
 16 Receiver's counsel.
 17 Q. I'll show you a document.
 18 (Document produced to witness)
 19 Q. Is the document you're holding the initial settlement
 20 proposal that your office made to the Receiver?
 21 A. Yes, it does appear to be.
 22 MR. HALPERIN: Let's mark that as Exhibit
 23 Number 5.
 24 (Exhibit No. 5 marked)
 25 Q. Do you recall the terms of this settlement proposal?

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1 A. Generally.
 2 Q. Would you agree that in the first paragraph, this
 3 proposal indicates that any remaining funds were going
 4 to be paid to the pension plan?
 5 MR. SHEEHAN: Objection to the form.
 6 Q. Maybe I should just -- let me withdraw that question.
 7 That's a bad question.
 8 At some -- this settlement calls for funds to be
 9 paid to the pension plan, correct?
 10 MR. SHEEHAN: Objection.
 11 A. This settlement proposal provided for a process by
 12 which the Oldco entities would wind down, and claims of
 13 other parties would be evaluated in the process, and
 14 the plan would have a claim in that process. So when
 15 you say that it would -- I'm not sure the answer -- I'm
 16 not sure I can answer your question directly.
 17 Q. Let me ask you it differently. Let's put the letter
 18 down and let me just ask you, can you tell me what the
 19 initial settlement proposal was that was made to the
 20 Receiver?
 21 MR. SHEEHAN: Objection. You're referring to
 22 the letter?
 23 Q. I'm asking him if he can just tell me what in his --
 24 what he recalls the settlement proposal to be. I
 25 understand there's a letter as well, but if you can

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1 either tell me by looking at the letter or tell me if
 2 you remember it, but I'm just asking you to testify as
 3 to what the terms were of the initial settlement
 4 proposal that you made.
 5 MR. SHEEHAN: Objection. Unclear whether
 6 you're talking about another proposal. I don't know
 7 what you're talking about.
 8 MR. HALPERIN: The initial settlement
 9 proposal.
 10 MR. SHEEHAN: The thing that's in Exhibit 5.
 11 MR. HALPERIN: That's what he testified this
 12 is the initial settlement was, yes.
 13 A. So, I think Exhibit 5 speaks for itself, but
 14 summarizing Exhibit 5 --
 15 Q. Okay, let me try it another way.
 16 Was it your understanding based upon the proposal
 17 you made as reflected in Exhibit Number 5 that there
 18 would be a judicial process whereby liabilities would
 19 be satisfied and monies would be paid to the pension
 20 plan?
 21 MR. SHEEHAN: Objection.
 22 MR. FINE: Objection.
 23 A. I believe that that would be consistent with what the
 24 settlement proposal was as set forth in this exhibit.
 25 Q. Look at the second paragraph on the first page. You'll

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1 see the words "commence a judicial wind-down."
 2 A. Second paragraph first page?
 3 Q. Yes.
 4 A. Yes.
 5 Q. Okay. So the judicial wind-down was in fact part of
 6 the process you were suggesting, right?
 7 A. Yes.
 8 Q. And as part of that judicial wind-down, liabilities
 9 would be satisfied and assets of the Oldco entities
 10 would be paid to the plan after resolution of creditor
 11 claims.
 12 And if you want, take a look at this letter and
 13 tell me if you agree that that's what this says or not.
 14 MR. SHEEHAN: Again objection. The document
 15 speaks for itself.
 16 (Witness perusing document)
 17 A. So, after a detailed -- so, after a detailed judicial
 18 wind-down process, the claim that had been asserted at
 19 this point against the Oldco entities by the plan would
 20 be satisfied along with -- after the payment of other
 21 liabilities. That's how I understood this.
 22 Q. Was this proposal acceptable to the Receiver?
 23 A. The answer is no.
 24 Q. And do you recall conversations that you participated
 25 in after sending your July 9 letter?

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1 A. Yes.
2 Q. What was the response that you received in conversation
3 before we get to any formal written communications?
4 A. I would say in -- it was expressed that this was
5 entirely unacceptable. Different words were probably
6 used but this was not an acceptable proposal to the
7 Receiver or the Receiver's counsel.
8 Q. And who were those conversations with?
9 A. Um, certainly Mr. Wistow. I believe Mr. Sheehan was
10 also there. Perhaps Mr. Ledsham. I believe he was.
11 Mr. Fine was with me. And I believe Mr. DelSesto was
12 at the meeting where that was -- the initial reaction
13 to this took place.
14 Q. Was it communicated to you that it was unacceptable
15 that there would be a judicial wind-down process that
16 would occur before payment to the retirement plan?
17 A. I don't recall specifics. My general recollection of
18 that was it was an animated response that this was
19 entirely unacceptable. I don't recall then going
20 through the details of specifically what was
21 unacceptable.
22 Q. But ultimately the end result when you reached the
23 settlement was there would not be a judicial wind-down
24 process before payment to the Receiver. Is that
25 correct?

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1 MR. SHEEHAN: Objection.
2 A. The settlement agreement that's been submitted to the
3 court does not have a judicial wind-down proceeding
4 prior to payment. I think it speaks for itself.
5 Q. Right. So your proposal was to have a judicial
6 wind-down procedure upfront and payment to the plan
7 afterwards, and the end result was payment first and
8 judicial wind-down afterwards. Is that correct?
9 MR. SHEEHAN: Objection.
10 A. That's a simplification but that's correct.
11 Q. Why did you want to have a judicial wind-down process
12 before payment to the plan as opposed to what was
13 ultimately agreed to?
14 A. I don't recall every consideration, but I -- I believe
15 at the time we -- there were what we considered to be
16 still significant or potentially significant
17 outstanding liabilities to the -- from third parties,
18 and we wanted to try to deal with those in one
19 collective process. There were -- there was ongoing
20 litigation. I think the settlement communication that
21 we prepared addressed the ongoing litigation issues
22 potentially. There were ongoing costs relating to the
23 litigation. So we were trying to deal with a lot of
24 different issues and encapsulating them into a
25 receivership proceeding.

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1 MR. HALPERIN: Off the record.
2 (Recess taken)
3 BY MR. HALPERIN:
4 Q. I'm going to show you a document. If you can identify
5 that, please.
6 A. This looks like a printout of an e-mail from -- so it's
7 captioned -- the subject is Forward: Draft settlement
8 agreement with exhibits, and it's got an attachment
9 called Draft Settlement Agreement and Exhibits.pdf
10 8.10.18 Draft Settlement Agreement with Oldcos.docx.
11 And I believe this is an e-mail from Steve Sheehan to
12 myself and Bob Fine with that draft agreement, but it's
13 printed in what appears to be on my letter -- on my
14 e-mail. So I'm not sure exactly why that is but it
15 does appear that it was from Stephen to me and Bob.
16 Q. All right. Well, on the first page, which -- let me --
17 let me withdraw that and let's stop and mark that
18 document if we can as Exhibit Number 6.
19 (Exhibit No. 6 marked)
20 Q. So on the first page of Exhibit Number 6, halfway down
21 you see that there is a caption of an e-mail coming
22 from Steve Sheehan dated August 10 to Mr. Fine and to
23 you, with a copy to Mr. Wistow, Mr. Ledsham.
24 A. Yes, I see that.
25 Q. Okay. Is this the initial draft of the settlement

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1 agreement between the Oldco entities and the Receiver?
2 A. I could read through this in detail and I still
3 wouldn't be able to tell you if it was the initial
4 draft. But I --
5 Q. So you -- it's a draft but you're not sure it's an
6 initial draft.
7 A. The very first one? I can't say it's the very first
8 draft.
9 Q. Do you know who prepared the first draft of the
10 settlement agreement?
11 A. The Receiver or the Receiver's counsel prepared the
12 first draft of this settlement agreement, yes.
13 Q. Do you know whether or not the first draft of the
14 settlement agreement, whether it be this document or
15 another document, incorporated a judicial wind-down
16 process into the settlement?
17 A. I --
18 MR. SHEEHAN: Are you talking about this
19 document?
20 Q. Whether the initial draft of the settlement agreement,
21 when it first -- I'll rephrase it one more time.
22 When you -- when the settlement agreement first
23 came from the Receiver, whether it be this document or
24 any other document, did it contemplate a judicial
25 wind-down process, if you know?

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1 A. I believe that once we engaged in discussions of a
2 settlement along the lines of what is in this draft and
3 ultimately made its way into the final version, that
4 that concept was included, and it was -- but it wasn't
5 necessarily required. The judicial wind-down would not
6 necessarily be required but the concept was included,
7 as far as I can recall, from the outset.

8 Q. Under what circumstance would a judicial wind-down not
9 be included?

10 A. My recollection, and I'd have to go back and read this
11 in the final version, was that there were some -- that
12 the Receiver under our settlement agreement would have
13 some rights relative to directing that a receivership
14 be commenced or a judicial wind-down be commenced. Or
15 the timing thereof.

16 Q. Who participated in the negotiation of the settlement
17 agreement on your side of the equation?

18 A. On my side?

19 Q. Yes.

20 A. Myself, Mr. Fine. The members of the board were
21 consulted. I believe Mr. Digou in my office also was
22 working with us on it, although I don't know how much
23 of a role he played.

24 Q. At some point in time, did your group agree that the
25 monies that were under the control of CCCB would be

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1 paid to the Receiver in order to settle the claims,
2 with the exception of the several hundred thousand
3 dollars that was going to be retained?

4 A. Well, so the settlement agreement that was filed with
5 the court and we are seeking authorization and approval
6 of contemplates payment to the Receiver and then
7 potentially a subsequent proceeding. So I guess the
8 answer is yes, it contemplates payment to the Receiver.

9 Q. And that payment will happen if the settlement is fully
10 approved without an initial judicial process, other
11 than court approval, is that so?

12 A. If the court approves the settlement agreement, the
13 settlement agreement provides for an immediate -- I
14 think there's a short period of time -- payment to the
15 Receiver of a large settlement amount, and then a
16 subsequent proceeding potentially. A liquidation
17 proceeding.

18 Q. How are creditors of the Oldco entities being treated
19 in connection with the settlement?

20 A. To the extent that there are creditors that can
21 participate in -- they're creditors of the entity. So
22 they're currently creditors of the entity but to the --
23 if there's a judicial wind-down proceeding, they'll
24 participate in that process.

25 Q. So, under the settlement that the Oldco entities have

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1 entered into, the funds will be paid over to the
2 Receiver with the exception of -- was it \$600,000
3 that's being retained by the Oldco entities?

4 A. It's a \$600,000 retention, yes.

5 Q. So all the funds would be paid over with the exception
6 of \$600,000, and then possibly there will be a judicial
7 process whereby the creditors could assert claims, and
8 their recourse would be to whatever remains of the
9 \$600,000 fund; is that correct?

10 MR. SHEEHAN: Objection. The document speaks
11 for itself.

12 A. I believe that that's what the document says.

13 Q. Okay.

14 MR. WISTOW: Except it doesn't, but, that's
15 okay.

16 Q. I'm going to show you another document, sir.

17 MR. HALPERIN: Off the record.
18 (Off the record)

19 Q. Mr. Land, do you recognize this document?

20 A. These appear to be several exhibits from the settlement
21 agreement that was filed with the Superior Court --
22 excuse me, the Federal District Court approval.

23 Q. And the exhibits that are before you are numbered
24 Exhibit 16 and 17. Is that correct?

25 A. That does appear to be the case. There are -- I

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1 have -- yeah, I have duplicates within this document,
2 too, so.

3 Q. Duplicates?

4 A. There's 16, which is CCB liabilities. 17, which is
5 SJHSRI liabilities. And there's another 17, which is
6 likewise SJHSRI liabilities, but there's no -- so I've
7 got two 17s and one 16.

8 MR. HALPERIN: Okay. In that case, let's
9 correct this. Let's go off the record for a minute.
10 (Off the record)

11 MR. HALPERIN: Let's mark the document you
12 have in front of you as Exhibit Number 7.
13 (Exhibit No. 7 marked)

14 MR. SHEEHAN: We're not withdrawing it?
15 MR. HALPERIN: We fixed it.

16 THE WITNESS: There were two 17s so Preston
17 removed the second 17 and now we have 16 and 17 as
18 Exhibit 7.

19 Q. Mr. Land, do you know who prepared Exhibit Number 7?

20 A. I believe my office prepared this.

21 Q. And on the second page of the document that's Bates
22 number 772, there's a fourth column that has the word
23 "Indemnification" all the way down until the very last
24 box. Can you tell me what those claims are that are
25 set forth on that page?

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1 A. Those claims all relate to the sale transaction and --
2 with Prospect. And there are indemnification rights
3 that arise under various agreements that Prospect or
4 one of the Prospect entities may hold.
5 Q. On the first column of Bates No. 772, the next to last
6 box refers to an Asset Purchase and Sale Agreement
7 dated September 24, 2013. Do you see that?
8 A. I do.
9 Q. Is that the agreement pursuant to which the Prospect
10 entities acquired the hospital assets?
11 A. That is.
12 Q. And that agreement has provisions for indemnification
13 rights; is that correct?
14 A. As I recall, yes.
15 Q. And this list of indemnification claims are all claims
16 that would exist pursuant to the contract rights of the
17 Prospect entities pursuant to the transaction; is that
18 correct?
19 A. Correct.
20 Q. Can you look at Bates No. 774, which is Exhibit 17.
21 Are all the claims that are set forth on Exhibit 17
22 claims that were open as of the date of the settlement
23 agreement?
24 A. I'm not sure what you mean by the term "open."
25 Q. Were they pending?

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1 A. No.
2 Q. So what's -- how can you determine by looking at this
3 list whether a claim is a pending claim or not pending
4 claim?
5 A. Well, so -- so, for instance, the top group of claims
6 were relating to workers' comp or medical malpractice,
7 personal injury. Those claims were -- I'll use your
8 term -- open claims in litigation of some -- in some
9 manner. Or be -- you know, maybe being dealt with
10 through Blue Cross -- excuse me, not Blue Cross.
11 Through Beacon Mutual. But I wouldn't describe the
12 indemnification claims as open claims, per se. They
13 were contingent unliquidated claims that had not been
14 asserted at that time. They were listed as a potential
15 liability but they were not open in the sense -- in the
16 same sense that the litigation matters were open.
17 I don't know if you want me to go through all of
18 these but they have different characteristics to them.
19 Environmental, the TrukAway landfill claim, is an --
20 presently -- present matter that's being investigated.
21 The liability on that is uncertain. There are other
22 claims listed, I think they're self-explanatory, but
23 they're not necessarily open in the traditional sense.
24 Q. If the court approves the settlement, what will happen
25 with respect to these liabilities that are listed on

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1 Exhibit 16 and 17?
2 A. Some of these claims will need to be resolved
3 through -- if there's a receivership or some other kind
4 of liquidation, judicial liquidation proceeding, some
5 of them would need to be filed and pursued through that
6 process. And some of them -- many of them have already
7 been resolved through either settlements or they're
8 fully insured against.
9 Q. Are there any claims that are on Exhibit 16 or 17 that
10 are not covered by insurance, to your knowledge?
11 A. I don't know that the indemnification claims are
12 covered by insurance. That might be -- there might be
13 insurance for them but I don't know that there are. I
14 don't believe that the TrukAway environmental claim is
15 covered by insurance. These miscellaneous fully-funded
16 retirement plan references, I don't know that they're
17 covered by insurance. It references potential
18 wind-down expense. I don't believe they're insured. I
19 believe that all of the Workers' Comp, personal injury,
20 medical malpractice claims that are listed on these
21 schedules -- let me just look at this more closely for
22 a second. I believe that these are covered by
23 insurance or have already been resolved. Bear with me
24 for one second.
25 (Brief pause)

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1 A. This schedule -- these schedules are St. Joseph's
2 Health Services of Rhode Island and CCCB, so I do
3 believe that these have been -- these are either
4 covered or resolved.
5 Q. Let's focus on the Prospect indemnification claims.
6 At the time Exhibit 16 and 17 was created, there
7 had not yet been a formal demand for indemnification by
8 the Prospect entities; is that true?
9 A. Um, from time to time Prospect has asserted
10 indemnification rights on various matters over the past
11 several years, so I can't say that it hadn't been
12 asserted. So I don't recall specifically the timing of
13 those indemnification claims, but certainly that has --
14 it had happened in the past and indemnification claims
15 were paid.
16 Q. Okay. Subsequent to the federal agreement, however,
17 there was a new demand for indemnification that was
18 served upon --
19 A. Very recently.
20 Q. Very recently.
21 A. There was a letter asserting an indemnification claim
22 against CCCB, and I believe a reference to
23 indemnification rights --
24 Q. Yes.
25 A. -- at CCCB -- that Prospect held.

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1 Q. Right.
2 A. Purportedly held.
3 Q. And that, in fact, is exactly what's anticipated on
4 Exhibit 16 with the reference to the purchase and sale
5 agreement [sic] dated September 24, 2013. Is that
6 correct?
7 A. I believe that to be correct.
8 Q. So what is your understanding as to what will happen to
9 that indemnification claim or liability if the
10 settlement proceeds as anticipated?
11 A. To the extent that there's -- that Prospect intends to
12 pursue -- if there is a settlement, if the funds are
13 paid out, if it goes into a judicial receivership
14 proceeding, and if Prospect were to pursue their claim,
15 it would file a claim in the judicial liquidation
16 proceeding. However, Prospect in its indemnification
17 letter asserts effectively what I'll characterize as a
18 setoff right against the 15 percent interest that
19 CharterCARE Community Board holds in Prospect Medical
20 Holdings? I'm trying to remember all the entities. I
21 think that's right. Prospect Medical Holdings. I
22 might not have that right. But nevertheless, the
23 15 percent interest held by Prospect -- by CharterCARE
24 Community Board in the Oldco entities, that interest is
25 what Prospect specifically asserted indemnification

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1 claim against.
2 Q. Just so that we're all on the same page, I think what
3 you're meaning to say is that CCCB holds a 15 percent
4 interest in Prospect CharterCARE, LLC?
5 A. Thank you, Prospect CharterCARE, that's correct. So
6 Prospect CharterCARE, LLC, the entity that is operating
7 the hospitals here, is -- 15 percent of that entity is
8 owned by CharterCARE Community Board.
9 Q. If the settlement proceeds and that 15 percent interest
10 were to transfer over to the Receiver, the recourse
11 that Prospect would have for indemnification would be
12 to the \$600,000 or whatever was left of it; is that
13 fair to say?
14 MR. SHEEHAN: Objection.
15 A. I'm sorry, I didn't understand the question.
16 Q. If all the assets are paid that are expected to be paid
17 under the settlement agreement over to the Receiver,
18 and if the 15 percent interest were to be liquidated
19 and paid over to the Receiver, the rights that Prospect
20 would have to pursue indemnification would be limited
21 to pursuing the remaining funds that CCCB would have?
22 MR. FINE: Objection. You can answer.
23 A. I'm not sure I understand what you're asking because
24 the -- I'm not sure I understand what you're asking.
25 Q. If the settlement moves forward, can we agree that all

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1 of CCCB's assets, including the 15 percent, will be in
2 the hands of the Receiver with the exception of
3 \$600,000?
4 MR. SHEEHAN: Objection.
5 A. The payments under the settlement agreement would
6 contemplate -- all the liquid assets to be transferred
7 over to the Receiver are subject to the \$600,000
8 reserve. The 15 percent interest is also contemplated
9 to inure to the benefit of the Receiver under the
10 settlement agreement. How and -- how that gets
11 transferred over and what it might be subject to,
12 whether it's subject to the claims of Prospect is a
13 separate issue that I can't answer. So I don't know
14 the answer to your question whether --
15 Q. I was prefacing the question with the assumption that
16 all of the assets that are possibly going to be
17 transferred to the Receiver were in fact transferred to
18 the Receiver, that being the cash and the value of the
19 15 percent.
20 A. Unencumbered.
21 Q. Yes. They all go over to the Receiver. And I'm asking
22 you whether at that point in time Prospect's
23 indemnification claim would be limited to recourse
24 against the \$600,000 or whatever is left?
25 MR. SHEEHAN: Objection.

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1 A. I believe that to be the case.
2 Q. Thank you.
3 Mr. Land, do you recognize that document?
4 A. This appears to be the settlement agreement that was
5 actually filed with the federal district court. It
6 appears to be signed on the last several pages by the
7 interested parties.
8 MR. HALPERIN: I'll state for the record that
9 I did not copy all of the exhibits just because of the
10 volume. So this is the agreement without the exhibits.
11 Q. What's the date of the settlement agreement that you
12 have in front of you?
13 A. Entered into as of August 31, 2018.
14 MR. HALPERIN: Let's mark that as Exhibit
15 Number 8, please.
16 (Exhibit No. 8 marked)
17 Q. Exhibit 8 is the final settlement agreement that was
18 reached as a result of the negotiations that took
19 place; is that correct?
20 A. It does appear to be the settlement agreement that was
21 filed for approval.
22 Q. And do you know what the significant differences are
23 between this ultimate settlement and the original
24 proposal you made back in July 9?
25 A. I probably know some of the differences between them,

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1 but I don't know that I know all of the significant
2 differences off the top of my head.
3 Q. Tell me what you think one of the significant
4 differences are between what you proposed and what you
5 ultimately agreed to.
6 A. Oh, between what we ultimately -- what we originally
7 proposed?
8 Q. Mm-hmm.
9 A. Well, this -- the biggest difference is this compels
10 and requires an immediate payment of a substantial sum
11 of money to the Receiver on how to settle, whereas our
12 original proposal did not contemplate that.
13 Q. The settlement agreement that you have in front of you
14 includes releases of various officers, directors,
15 employees and agents of the Oldco entities; is that
16 correct?
17 A. Yes.
18 Q. Was a claim made on the D&O policies for any of those
19 individuals in connection with the claims that were
20 asserted by the Receiver prior to the settlement?
21 A. I believe we sent the complaint to the D&O carrier, put
22 them on notice, but I don't recall what followed from
23 that off the top of my head.
24 Q. Do you know what the coverage was that's available in
25 the D&O policy?

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1 A. I don't recall off the top of my head.
2 Q. Was the D&O carrier ever active in the negotiations or
3 the settlement?
4 A. No.
5 Q. And that's because you were able to negotiate a release
6 of the individuals that would have been covered by that
7 policy as a result of the settlement; is that --
8 MR. FINE: Objection.
9 A. I don't know why the D&O carrier didn't get involved.
10 Q. There were no claims asserted against those
11 individuals, were there?
12 A. No.
13 Q. I'd like you to look at page 19 of Exhibit Number 8.
14 (Witness perusing document)
15 Q. I'm referring you to page 19. And the -- will you read
16 to yourself that first full sentence on 19, please.
17 (Witness reading)
18 Q. Do you see that?
19 A. I see that.
20 Q. How was the \$125 million damage amount arrived at for
21 purposes of this settlement agreement?
22 A. My recollection is that that was the amount that -- of
23 the shortfall from the actuarial analysis that was
24 included in the petition to appoint Receiver. That's
25 my recollection.

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1 Q. Is that a number that your side calculated or?
2 A. No, that would have been calculated by Angel Pension.
3 And -- when we filed the petition for the appointment
4 of Receiver, we included the analyses that we had
5 requested Angel Pension to perform, and I believe
6 \$125 million was one of the shortfall numbers included
7 in the actuarial analysis.
8 Q. Is it possible that that's the amount if one were to
9 purchase an annuity versus the shortfall amount?
10 MR. SHEEHAN: Objection to the form.
11 Q. Do you know?
12 A. I don't know the answer to that off the top of my head.
13 Q. But when CCCB entered into this settlement, it believed
14 that it was liable for \$125 million in damages. Is
15 that correct?
16 MR. SHEEHAN: Objection.
17 A. So, as it's stated in the settlement agreement, the
18 entities agreed that they were liable for breach of
19 contract of potentially -- in arguably some of the
20 other claims.
21 Q. Okay, so the \$125 million was not intended to be a
22 calculation of CCCB's liability?
23 I'm just trying to read the sentence. You can read
24 it in different ways, I'm wondering what your
25 understanding is.

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1 MR. SHEEHAN: Objection.
2 A. I don't know how to answer the question other than to
3 just read the sentence back. I think it speaks for
4 itself. So I --
5 Q. Well, by that language, was CCCB intending to agree
6 that it was liable to the tune of \$125 million?
7 A. I believe that's what it says. CCCB agrees that it is
8 liable, it says they are liable, along with SJHSRI,
9 jointly and severally, for breach of contract in the
10 amount of damages of at least 125 million.
11 Q. Okay. And down in paragraph number 30, if you could
12 review that, please.
13 (Witness reading)
14 Q. Can you explain how it is that the settling defendants,
15 the Oldco entities have a small amount of fault as
16 compared to the other defendants?
17 MR. SHEEHAN: Are you asking his opinion as a
18 lawyer? I'm going to object to the form, this is
19 really not appropriate.
20 MR. HALPERIN: I'm not going to engage in a
21 dialogue of the questions.
22 MR. SHEEHAN: All right, well, objection to
23 the form of the question.
24 MR. HALPERIN: Do you want the question read
25 back?

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1 THE WITNESS: Yes, please.
 2 (The record was read by the
 3 court reporter, as requested)
 4 MR. SHEEHAN: Still objection.
 5 MR. FINE: Objection.
 6 A. My recollection at the time -- my recollection of what
 7 is occurring at the time relating to the negotiations
 8 over this settlement agreement, and to some extent both
 9 of the provisions that you've identified in your
 10 questions, is that there were allegations and claims
 11 asserted in the complaints of significantly fraudulent
 12 activities engaged in by the parties. And I don't
 13 remember all the details of the complaint, but those
 14 activities sounded to be in tort, not contract. And
 15 while on the one hand the only party that -- and again
 16 this is my recollection. The only party that was, in
 17 our view, contractually -- potentially contractually
 18 obligated, was St. Joseph's Health Services of Rhode
 19 Island, and then potentially the other entities. And
 20 that's how we -- that's how paragraph 28 that you asked
 21 me to read came -- the thinking around that. And then
 22 dovetailing with 30, it wasn't -- it was our view that
 23 there was no active tort engaged in by our entities
 24 relative to the -- you know, as asserted in the
 25 complaint. And that would have been -- I believe

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1 that -- my recollection is that that's how we viewed
 2 it. And that's why the comparative language in
 3 paragraph 30 "in tort" came to be. That's my
 4 recollection.
 5 Q. Which of the non settling defendants do you contend had
 6 greater responsibility than the settling defendants in
 7 tort?
 8 MR. SHEEHAN: Objection.
 9 A. I -- there's language in here that says "if any." So
 10 I'm not prepared now, nor was I then, to evaluate
 11 whether any of the defendants had liability in tort to
 12 the plaintiff. It's a relative statement. But if
 13 there was going to be liability, our relative liability
 14 in tort was less -- was considerably less. If there
 15 was any liability. So I'm not -- I don't know that I
 16 evaluated then who among the other defendants was more
 17 culpable or less culpable than another, but -- and I --
 18 I'm not prepared to do that now.
 19 Q. Was it explained to you in the negotiations why it was
 20 necessary that CCCB admit to liability at all as part
 21 of the settlement agreement?
 22 A. I don't recall. I mean, I certainly don't recall
 23 specifically conversations with plaintiff's counsel,
 24 but it's entirely possible that, you know, we had our
 25 own internal conversations regarding that issue. But I

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1 don't recall specifically.
 2 Q. Do you recall that your original proposal did not
 3 include an admission of liability?
 4 A. Yes.
 5 Q. But you don't recall an explanation for why it was
 6 necessary that that find its way into the agreement
 7 coming from Receiver's side?
 8 A. Are you talking about the 125 million or are you
 9 talking about --
 10 Q. Yes.
 11 A. I'm sorry, I misunderstood your question.
 12 Q. Yes.
 13 A. I generally -- I generally recall a conversation about
 14 the 125 million and not wanting to have to prove the
 15 claim again.
 16 Q. Not wanting to prove the claim again...
 17 A. In the liquid -- in a liquidation proceeding. A
 18 subsequent liquidation proceeding. That's my
 19 recollection.
 20 Q. I just want to understand what you're saying.
 21 Are you suggesting that someone on the Receiver
 22 side of the negotiations said that they wanted to have
 23 the admission of liability to facilitate the judicial
 24 wind-down process, or a claim? I'm not understanding.
 25 Maybe you can explain that a little bit better.

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1 A. I don't know about facilitate. They -- the -- my
 2 recollection is that the -- they were seeking a damage,
 3 an admission on damages relative to -- and it's limited
 4 to breach of contract. And it would be -- so that they
 5 didn't have to liquidate their claim in a subsequent
 6 proceeding.
 7 Q. And what subsequent proceeding would that be?
 8 A. Well, it would be the judicial wind-down.
 9 Q. Were they gonna be part of the judicial wind-down
 10 process if they received all the assets except for
 11 \$600,000?
 12 A. I believe that's how this process was to play itself
 13 out. Settling -- yeah, it's in paragraph 31.
 14 MR. SHEEHAN: It's also paragraph 28, by the
 15 way.
 16 A. Yeah, I don't think -- I think that's all contemplated.
 17 MR. WISTOW: Which explains the 125. The
 18 paragraph expressly says why. If you read it.
 19 A. Yeah, in fact it references the value of -- the
 20 calculation based upon purchase of annuities as well.
 21 Q. So that goes back to the last -- the earlier question I
 22 asked you.
 23 A. Yeah.
 24 Q. Okay. So let's just clear that up.
 25 Looking at the agreement, do you know how that

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1 \$125 million was calculated?

2 A. Well, consistent with my prior testimony, it was based
3 upon the evaluations that we had attached to the
4 petition. But now looking at all of paragraph 28, not
5 just the part you referenced before, but it
6 specifically states that that's the sum that would be
7 sufficient to purchase annuities from one or more
8 insurance companies to fund all of the benefits to
9 which the plaintiff participants are entitled under the
10 plan.

11 Q. Okay. I'm all set with that.

12 (Pause)

13 Q. I do have one other question on that document.
14 Who drafted the provisions that we were just
15 looking at that included the \$125 million admission of
16 contract liability, and the relative proportion of
17 fault provisions?

18 A. So, the initial draft of these documents, I think I
19 testified to, came from the Receiver, or the Receiver's
20 counsel. After the initial draft there were drafts
21 that went back and forth with redlining or sometimes
22 handwritten comments, if I'm recalling correctly. I
23 think both parties participated in some of the
24 redrafting. I cannot speak to what and who made
25 changes to either one of those paragraphs. And in

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1 fact, paragraph 37 says that neither party shall be
2 deemed the drafter, or nothing should be construed
3 against either party as the drafter of the agreement.

4 Q. Do you know the status of the claim by the doctrine
5 Niselson?

6 A. Niselson.

7 Q. Niselson.

8 A. I think that's Roger Williams.

9 Q. Do you know the status of that claim?

10 A. I do.

11 MR. SHEEHAN: Are we going to have a
12 stipulation about confidentiality here?

13 Q. I don't need the terms, I'm just asking whether it's
14 settled or not settled.

15 A. It's pending litigation.

16 MR. HALPERIN: We can go off the record for a
17 second.

18 (Off the record)

19 MR. HALPERIN: I'm going to ask the witness a
20 question relating to the Niselson claim, and that
21 portion of this transcript all counsel have agreed to
22 keep confidential.

23 MR. SHEEHAN: And all counsel having had the
24 opportunity to say otherwise, none having said
25 otherwise, that it's concluded. All right?

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1 Q. Mr. Land, do you know if the Niselson claim is covered
2 by insurance?

3 A. The Niselson claim covered by insurance is a
4 complicated issue. We have submitted it and have
5 engaged in a debate with the insurance company.
6 Insurance company has thus far indicated that they are
7 covering for defense costs after the initial reser --
8 self-insured portion is paid, which I think we are just
9 about through. They have not indicated that they will
10 indemnify on the claim. There is a dispute regarding
11 that, and whether or not that dispute turns into
12 something meaningful will be for the future.

13 Q. Okay. And how is the Niselson claim dealt with as part
14 of the settlement with the Receiver?

15 A. It's a claim that would be contemplated in a judicial
16 liquidation if it comes to that.

17 Q. Okay. We looked at a July letter, July 9 letter that
18 you sent initially proposing a settlement, and then we
19 saw the settlement agreement on August 30. Is that the
20 timeline for the negotiation of the settlement from
21 your initial offer to the settlement?

22 A. I believe my initial offer references a June 29
23 meeting, and I think that that's the inception of the
24 discussions, and then subsequent settlement
25 negotiations.

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1 Q. So the length of the settlement is roughly from the end
2 of June to the end of August.

3 A. Roughly, yeah.

4 Q. And during that time, your office was providing
5 information to Mr. Wistow's office, weren't you?

6 A. Yes.

7 Q. And you were working together with respect to the DLT
8 issue; is that true?

9 A. That's true.

10 Q. And after a request was made that your office drafted
11 and Mr. Wistow's office reviewed; is that true?

12 A. I believe that's true.

13 Q. Would you agree that you were working cooperatively to
14 arrive and to supply information to eventually arrive
15 at a settlement?

16 A. Well, I believe that at the time we started sharing
17 information, we effectively resolved to settle the
18 case. We were working out the details of the
19 settlement, including going back and forth with drafts,
20 and there were still some -- I'll characterize it as
21 head banging over terms in the settlement agreement.
22 But I think that we had reached a point where there was
23 substantial consensus that we were going to be able to
24 get a settlement agreement done so we started sharing
25 information to facilitate that process.

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1 Q. So the process started when the complaint was filed and
2 your office agreed to accept service; is that true?
3 A. Fair.
4 Q. And then there was a motion to intervene that was filed
5 by the Receiver. Do you know if that's in connection
6 with the Cy Pres or what that's in connection with?
7 And I'd be happy to show you an e-mail, see if it
8 refreshes your memory.
9 MR. SHEEHAN: Objection, beyond the scope of
10 the deposition.
11 MR. HALPERIN: Well, I'm trying to determine
12 that.
13 (Witness perusing document)
14 A. Okay.
15 Q. I've just shown you an e-mail dated June 25, from you
16 to Mr. Wistow, and it refers to a Motion to Intervene.
17 Do you know what that's in reference to?
18 A. I don't. I mean, if you gave it to me -- if you handed
19 that to me without asking the first question and
20 referencing the Cy Pres, I would absolutely answer no.
21 But it may very well have been the Cy Pres.
22 MR. WISTOW: Do you have a copy of that?
23 MR. HALPERIN: Yes.
24 MR. WISTOW: There's no reason to be
25 speculating here.

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1 Q. Do you recall that there was a Motion to Intervene that
2 was filed by the Receiver in any matter relating to
3 this pension case?
4 A. I do recall that he had filed a motion.
5 Q. What matter was the Motion to Intervene in?
6 A. I believe that was in the Cy Pres.
7 Q. Okay.
8 MR. SHEEHAN: Are you marking this?
9 MR. HALPERIN: Well...
10 MR. SHEEHAN: You don't need to.
11 MR. HALPERIN: I'm trying to at this point
12 just understand what it is.
13 Q. I'll ask you one other question.
14 Do you recall that your office did not object to
15 that Motion to Intervene?
16 A. I believe that we filed -- I believe we filed permitted
17 objection.
18 Q. I'll mark the document but the document says you -- in
19 the second paragraph. "You will see we are not seeking
20 to object to the motion, merely addressing allegations
21 of misconduct." What does that mean?
22 A. Well, so, I don't know what our document would have
23 been captioned, but Mr. Wistow asserted alleged
24 misconduct on behalf of our client in connection with
25 the Cy Pres. And I don't recall all the details but we

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1 objected to any inference or indication or overt
2 statement that anybody on our side engaged in
3 intentional misconduct.
4 Q. Do I understand correctly you were not objecting to the
5 intervention?
6 A. We did not object to the intervention.
7 Q. Thank you. So, just so we have a clear record, I will
8 mark that. That is your version.
9 (Exhibit No. 9 marked)
10 A. And I think I said Mr. Wistow. It's -- the Receiver.
11 Q. And during this period of time, from the end of June to
12 the agreement in August, you supplied financial
13 information to the Receiver, correct?
14 A. Correct.
15 Q. And the Receiver actually provided some advice or
16 assistance in connection with claims that were
17 identified as pending. Is that correct?
18 A. I believe we were working cooperatively at that point,
19 but I don't know if I'd call it advice, but.
20 Q. So at what point were you not working cooperatively
21 with the Receiver to get from your initial meeting at
22 the end of June to the settlement agreement in August?
23 MR. SHEEHAN: Objection to the form. I don't
24 understand.
25 A. There were times during that period where I -- I

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1 believe that we were -- it was contentious over various
2 issues, but overall we used that period of time to work
3 to finalize the settlement agreement, and a lot of the
4 effort that you're referring to now was in furtherance
5 of that.
6 Q. So, do you recall anything that you would characterize
7 as contentious in the negotiations that you can
8 remember as you sit here today?
9 A. At the beginning stages of the -- of the discussions,
10 it was very contentious. I mean, first meeting was
11 cordial I would characterize it as, but certainly not
12 friendly. The meeting relating to our proposal was
13 hardly cordial. Contentious. The subsequent early
14 stages of the deliveries of drafts were -- there were
15 debates and issues that were discussed in a -- in an
16 animated manner at times. I don't -- I don't recall
17 precisely when things smoothed out and we started
18 working -- it was a more amicable relationship, but it
19 certainly moved from very very contentious to a common
20 goal of getting the settlement agreement done and
21 filed.
22 Q. Is there a particular issue that you can recall that
23 was difficult to resolve and contentious?
24 A. I don't recall specifically. No.
25 Q. No?

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1 fair assessment. That his view was it didn't provide
2 him with anything.
3 Q. Did you agree with him?
4 A. No, but...
5 Q. But that's what you recall he said?
6 A. Yes.
7 Q. Anything else?
8 A. I don't recall any more details of that meeting.
9 Q. Have I exhausted your memory as to the details of that
10 meeting?
11 A. Yeah, sure.
12 Q. All right. Could I turn your attention to paragraph 4?
13 A. Still on the affidavit, right?
14 Q. Yes, sir.
15 A. Exhibit 11, paragraph 4.
16 Q. It says:
17 "Based upon the Church Plan status of the
18 St. Joseph Health Services of Rhode Island Pension Plan
19 (the Plan) and the governing Plan documents, SJHSRI did
20 not believe that it had an obligation to make a
21 contribution to the Plan, nor did SJHSRI have available
22 assets to fund the Plan."
23 Do you see that?
24 A. I see that.
25 Q. I'm going to focus on the last part, "nor did SJHSRI

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1 have available assets to fund the Plan."
2 What did you mean by that?
3 A. The plan, even in a best case scenario, needed millions
4 and millions of dollars. Best case scenario. SJHSRI
5 doesn't have anywhere near those kinds of funds to
6 satisfy the needs of the plan.
7 Q. That's what I wanted to get at.
8 So, it certainly wouldn't be true to say that at
9 the time you signed this affidavit, that SJHSRI had no
10 funds that could be available to fund the plan, right?
11 (Long pause)
12 Q. I'm drawing a distinction between --
13 A. Yeah, yeah, yeah.
14 Q. -- fully funding the plan and funding the plan at all.
15 A. Yeah, SJHS had and has funds, and subject to the
16 satisfaction of other liabilities potentially would
17 have had money to put into the plan.
18 Q. And subject to -- strike that.
19 Did you understand at any time before the
20 receivership was filed that SJHSRI had an obligation to
21 the plan?
22 A. My understanding was that as a church plan, that there
23 wasn't a formal -- there was not a formal obligation to
24 fund the plan.
25 Q. Okay. So -- all right. So, would you agree that --

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1 would you characterize the pension plan before the
2 receivership was filed as a liability of SJHSRI?
3 MR. SHEEHAN: Objection.
4 A. So, I'm not an accountant, so if you're asking me an
5 accounting question of whether it would be booked as a
6 liability on a balance sheet, I can't answer that
7 question. From a practical perspective, I believe the
8 view of HSRI was after this satisfaction of any and all
9 of its other liabilities, the remaining funds would be
10 paid over to them, to the pension.
11 Q. Okay. And what did you base that understanding on?
12 A. That there would be no other liabilities to satisfy so
13 it would be -- call it excess funds.
14 Q. But the -- do you understand -- is that understanding
15 based at all in part -- let me strike that.
16 Is that understanding based at all on the Cy Pres
17 petition or order?
18 A. Relative to SJHSRI, no.
19 Q. Is that because it's -- regardless of the Cy Pres
20 order, SJHSRI had an obligation with respect to the
21 pension plan?
22 MR. SHEEHAN: Objection. He already said
23 there was no obligation.
24 A. My understanding was -- my understanding is under
25 applicable law relating to church plans, that there was

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1 no formal obligation of SJHSRI to contribute to the
2 plan. Whether that -- that would mean it's not a
3 liability. But if there's no other liabilities to be
4 satisfied and there's money left, my client, SJHSRI,
5 would use those funds to contribute to the plan.
6 Q. That's what I'm getting at. Why would it do that?
7 A. Because there -- all the other liabilities are
8 satisfied and there were no other funds -- nobody else
9 to pay.
10 Q. There would still be an obligation to pay the pension
11 even under that circumstance, right?
12 MR. WISTOW: Objection.
13 A. I don't understand the --
14 Q. So, for example, if SJHSRI doesn't have any liability
15 to Paul Kessimian, it doesn't matter if there's
16 \$200 million left over after you pay all the other
17 claimants, the plan's not gonna pay -- Let me back up.
18 There has to be an obligation that SJHSRI has if,
19 even after it pays all its other claimants, it would
20 turn over its remaining assets to the plan, right?
21 MR. SHEEHAN: Objection.
22 A. I think the only answer I can say is no. I don't --
23 your --
24 Q. So it would be gratuitous.
25 A. Your question -- no.

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1 MR. WISTOW: Objection. It's a moral
2 obligation.
3 MR. KESSIMIAN: Please, Max.
4 MR. WISTOW: It's so obvious. We're just
5 wasting time. He said there was no legal obligation to
6 return the money over.
7 Q. Is that what you're saying?
8 A. I'd like the question read back because I -- I really
9 don't even know what it is at this point.
10 MR. KESSIMIAN: Please.
11 (The record was read by the
12 court reporter, as requested)
13 A. Okay. So, whether I characterize it as a moral
14 obligation or some other type of obligation is
15 irrelevant. The fact is is that SJHSRI established a
16 pension plan for its employees. It was a substantially
17 underfunded pension plan. It would have made that
18 contribution. I don't know that I made that
19 determination, but when I came into this relationship,
20 that's how it was communicated to me. And that -- that
21 concept carried through.
22 Q. Okay. If you go to -- I believe it's Exhibit 3, which
23 is a Petition for Approval of Disposition of Charitable
24 Assets.
25 Now, this document is dated January 13, 2015. I

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1 believe you testified earlier that by the time this
2 document was filed, you were already acting as agent
3 for the Oldco entities; is that right?
4 A. Yeah, I think that's fair. I think I might have said
5 January of 2015, but it might have been a little
6 earlier. But in that time frame I started serving as
7 agent.
8 Q. To the best of your recollection, by the time this gets
9 filed, you were the agent, correct?
10 A. Yes.
11 Q. So, paragraph -- go to page 12. There's a footnote.
12 And footnote 7, just take a look, read that for me, let
13 me know when you're done.
14 (Witness reading document)
15 Q. You done?
16 A. Mm-hmm.
17 Q. Okay. So the last sentence, for instance: "In order
18 to ensure the success of the Joint Venture, the Old
19 CharterCARE Board approved the use of RWH funds for the
20 benefit of SJHSRI to be used toward payment of the
21 Outstanding Pre and Post Closing Liabilities."
22 Do you see that?
23 A. Mm-hmm.
24 Q. Do you go -- first, is that statement accurate? To the
25 best of your knowledge.

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1 A. I really don't know.
2 Q. Okay. Do you know when -- let me strike that.
3 Do you know whether the CharterCARE Board approved
4 the use of RWH funds for the benefit of SJHSRI to be
5 used towards payment of the outstanding pre and post
6 closing liabilities?
7 A. I don't have personal knowledge of that.
8 Q. Okay. Has any -- have any of the Oldco entities been
9 paying costs associated with the plan since the
10 receivership was filed?
11 A. Yes.
12 Q. Why?
13 A. Well, we advanced funds to the Receiver and -- for
14 payment of the Receiver's fees and the counsel fees for
15 the Receiver.
16 Q. And why is that?
17 A. There was a request made by the Receiver post filing.
18 I brought the matter to my board and explained the
19 request, and my board agreed to fund -- I don't recall
20 the precise amount but fund a not insignificant amount
21 for the operation of receivership. And in part that is
22 because in the petition itself we offered to do so.
23 The Oldco entities offered to do so in order to not
24 impair further the holdings that were in the fund.
25 Q. Any other reason?

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1 A. Not that I recall.
2 Q. Okay. Did you ever discuss the Cy Pres order or
3 petition with the Receiver or his counsel?
4 A. I -- I'm sure I did.
5 Q. What can you recall about those discussions?
6 A. Just its existence. That there is a potential
7 waterfall under it. That it doesn't deal with the
8 CharterCARE Community Board 15 percent holding in
9 Prospect. CharterCARE. I don't think -- I don't know
10 beyond that. I don't know that we ever got into a lot
11 of detail.
12 Q. Sitting here today, do you recall any discussion with
13 the Receiver or his counsel or any of its agents
14 regarding the effect, if any, on the Cy Pres order or
15 its petition on the pension plan?
16 A. I don't recall.
17 MR. KESSIMIAN: Let's mark this as the next
18 exhibit.
19 (Exhibit No. 12 marked)
20 Q. It is a November 27, 2017 e-mail, Bates Plaintiff
21 00003417.
22 MR. DENNINGTON: Do that number again?
23 MR. KESSIMIAN: Sure, it's Plaintiff
24 00003417.
25 Q. Have you reviewed Exhibit 12?

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1 this potential settlement?
2 A. So, I believe in the context of discussions with DLT we
3 disclosed to them that this settlement was pending.
4 Whether you characterize the DLT as a potential
5 creditor or not, I don't know but they were concerned
6 about potential liability, that's why they required
7 that reserve. I don't recall reaching out to any other
8 creditors to discuss the settlement.
9 Q. Why not?
10 MR. SHEEHAN: Objection.
11 A. I don't think it would be necessary to speak to other
12 parties about a settlement.
13 Q. Did you conclude it was necessary to speak to DLT
14 though?
15 A. The discussion with DLT revolved around seeking to
16 release funds. It's possible that we mentioned to them
17 that this was in context of a settlement to fund a
18 pension plan.
19 Q. Anything else that you recall about that?
20 A. About the conversation with DLT?
21 Q. Right.
22 A. Nothing I can specifically recall.
23 Q. Did you ever communicate with Receiver or counsel for
24 Receiver that it was D&O insurance for the members of
25 the board of directors of any of the Oldco entities?

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1 MR. FINE: Objection. You can answer.
2 A. I believe that was provided to the Receiver's counsel
3 in connection with the subpoenas.
4 Q. Did the issue of the board of directors insurance ever
5 come up in your discussions about potential settlement
6 in this matter?
7 A. I don't specifically recall.
8 Q. Do you recall there being any e-mail or written
9 communications other than the drafts of the settlement
10 agreement that would concern the exclusion of Father
11 Reilly from the settlement agreement or the release?
12 A. The only thing I can recall is I believe Mr. Wistow
13 provided us with a case, or the case reference that he
14 was focused on. But I believe that's part of the -- if
15 it was in an e-mail communication, it would have been
16 turned over in connection with the discovery and the
17 subpoena.
18 Q. What do you mean by case reference?
19 A. There was a specific case, and it gives a -- I think it
20 was a Rhode Island Supreme Court case, that implicated
21 releases of officers and directors and their -- its
22 effect on claims against the principal.
23 Q. Sitting here today do you recall the name of the case?
24 A. I do not.
25 MR. KESSIMIAN: I'm going to take a break.

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1 (Recess taken)
2 MR. KESSIMIAN: I concluded my questioning.
3 Thank you, Mr. Land.
4 THE WITNESS: Thank you.
5 EXAMINATION BY MR. BOYAJIAN
6 Q. Mr. Land, I'm Steve Boyajian, I represent Angel Pension
7 Group. I'm just going to have a few questions for you
8 today.
9 A. Great.
10 Q. Could I ask you to look at your affidavit, which I
11 believe is marked as Exhibit 11.
12 A. I got it.
13 Q. Turn your attention to paragraph 9.
14 A. Yes.
15 Q. Paragraph 9 indicates that several directors who,
16 quote, were required to approve the settlement
17 agreement and who voted, insisted that the releases
18 contained in the settlement agreement were a required
19 component as the payment of the vast majority of the
20 assets of the Heritage Hospitals, absent such releases,
21 would expose the directors and others to potential
22 liability for which they would seek indemnification
23 from the Heritage Hospitals. Is that correct?
24 A. That's correct.
25 Q. And do you understand why those directors required the

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1 releases that they did in exchange for the payment of
2 the vast majority of the assets of the Heritage
3 Hospitals to the plan?
4 A. I think I understand why they did.
5 Q. Can you tell me your understanding.
6 A. If the settlement were to go through, and there were no
7 releases of the directors, and then they were sued by
8 these same plaintiffs, the indemnification rights that
9 they had as against the Heritage Hospitals as in their
10 roles as officers or directors would be worthless,
11 because there would be no -- essentially no assets to
12 defend against the same claims that the -- those very
13 claims that the Receiver would bring.
14 Q. And so in other words, it is the personal interest of
15 the directors who voted to approve the settlement
16 agreement and maintain the value of their
17 indemnification rights that drove their decision to
18 approve the agreements?
19 MR. WISTOW: Objection.
20 A. No.
21 Q. You testified that their indemnification rights would
22 be worthless if the vast majority of the assets of
23 Heritage Hospitals was relayed to the plan; is that
24 correct?
25 A. That's true.

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1 Q. And --
2 A. In a proceeding.
3 Q. And you were proposing that the Receiver would be
4 prosecuting the claim for the plan, and also acting to
5 defend the claim at the same time? That's what I heard
6 you say and I'm just -- I can't believe that's what you
7 were proposing so I'm trying to give you an opportunity
8 to try to explain it.
9 MR. SHEEHAN: Objection.
10 A. I mean, there's the potential for an independent
11 counsel as well stated in here. So, you know, do I --
12 I don't recall specifically all the details of what I
13 was thinking at that time. I think I've said that. I
14 believe this proposal would facilitate a judicial
15 proceeding whereby the entities had already stipulated
16 that this was what -- their plan would be approved but
17 that the court would ultimately have to pass judgment
18 on that. And whether the mechanism for doing that was
19 clearly spelled out in reasonable -- I mean, I -- I'm
20 not -- I can't speculate on my thinking about that at
21 this point.
22 Q. Let me go to my last point.
23 You were asked a number of times whether you
24 considered it to be an obligation of any of the Oldco
25 entities to fund the pension plan, and I believe your

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1 testimony is you didn't think it was an obligation
2 because it was a church plan. Is that correct?
3 A. My understanding of the church plan status was that it
4 was not a formal liability of the entities to fund the
5 plan.
6 Q. If it wasn't a formal obligation, then what is the
7 basis in the settlement agreement in paragraph 29 for
8 agreeing that the Roger Williams Hospital and CCCB are
9 liable under a breach of contract theory?
10 A. So -- so the Receiver had asserted a whole bunch of
11 claims against us, including fraud as he mentioned.
12 There were allegations of conspiracy. One of the
13 claims was a contract claim, and he asserted that
14 contract claim and built his facts around that contract
15 claim. This was a settlement of disputed facts, and as
16 part of -- or disputed claims, and as part of that this
17 was the result of the settlement negotiations. On a
18 contract basis, you know, at the time we felt that we
19 could reasonably state that contractually, which
20 doesn't apply to any of the other defendants in the
21 case, there's a liability.
22 Q. So you concluded and agreed in the settlement agreement
23 that CCCB and Roger Williams Hospital were
24 contractually liable to the pension?
25 MR. FINE: Objection, compound question.

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1 A. I think what the language says -- it stands for itself,
2 Preston, so, I mean...
3 Q. How is that consistent with testifying earlier that
4 it's -- there's no obligation, if anything it's moral
5 obligation?
6 MR. WISTOW: Do you know the difference
7 between believing something and making an agreement to
8 do something? I mean, we're just wasting time here,
9 Preston. This was an agreement.
10 MR. HALPERIN: Which means it doesn't have to
11 be true, I guess.
12 MR. WISTOW: No, it doesn't mean it doesn't
13 have to be true, it's saying we agree that we are going
14 to be liable. That's what it says. You know, we can
15 torture this thing back and forth, up, down, sideways,
16 it's a complete waste of time. If your position --
17 tell the court that it is not possible for him to agree
18 to liability to make a settlement. Just tell the court
19 that. We're prepared to fight about that.
20 Q. It remains your testimony despite the settlement
21 agreement that to your knowledge there was no
22 obligation on the part of the Oldco entities to fund
23 the plan, is that your final testimony here today?
24 A. I believe my testimony was, and I -- I don't know that
25 it was ever confusing, but my understanding of the

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1 church plan obligations was that they were not formal
2 liabilities of the entities. That was my
3 understanding. In the context of the settlement
4 agreement and the negotiation of settlement agreement,
5 the result of those negotiations, which include the
6 complaint that was filed, is the settlement agreement
7 and what we agreed to.
8 MR. HALPERIN: Okay. All set. Thank you.
9 MR. SHEEHAN: Do you have a question, Paul?
10 MR. KESSIMIAN: I might, give me a second.
11 (Brief pause)
12 MR. KESSIMIAN: No, no.
13 MR. SHEEHAN: Just one question, Mr. Land.
14 FURTHER EXAMINATION BY MR. SHEEHAN
15 Q. I don't believe it's been mentioned but you recall that
16 the settlement agreement expressly provides that if the
17 settlement is not approved, the entire agreement goes
18 away, as if it never had been entered into, correct?
19 A. That's correct.
20 Q. And it's your understanding that any admissions of
21 liability go away?
22 A. That's correct.
23 MR. WISTOW: Actually, that's in the
24 affidavit.
25 A. Yes.

1 MR. WISTOW: That they were --
2 MR. KESSIMIAN: I object --
3 A. My answer is yes.
4 MR. KESSIMIAN: -- to two people questioning
5 the witness.
6 MR. WISTOW: I'm not questioning, I'm just
7 commenting because I'm just trying to get to the issues
8 in this case.
9 MR. SHEEHAN: Just be quiet, we can leave.
10 MR. FINE: Anybody else?
11 MR. HALPERIN: I think we're all set. Thank
12 you.

(Whereupon the deposition was
adjourned at 2:35 p.m.)

C E R T I F I C A T E

I, Lori P. Hamel, a Notary Public in and for the State of Rhode Island, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court, especially but without restriction thereto, under Rule 30(e) of said Rules; that the deponent was first sworn by me; that this deposition was stenographically reported by me and later reduced to print through Computer-Aided transcription; that the foregoing is a full and true record of the proceedings; and that a review of the transcript by the deponent was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of August, 2019.

Lori P. Hamel
Certified Court Reporter
Notary Public

My Commission Expires 6/24/21

UNITED STATES 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. 18-328 WES |
|) | |
| PROSPECT CHARTERCARE, LLC, ET AL.,) | |
|) | |
| Defendants.) | |

MEMORANDUM AND ORDER

WILLIAM E. SMITH, Chief Judge.

Before the Court is a joint motion pursuant to Rule 23 of the Federal Rules of Civil Procedure seeking preliminary certification of a settlement class, appointment of class counsel, and preliminary approval of a proposed settlement in this action. The motion is brought by Plaintiffs and Defendants CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively, "Settling Parties").¹ Two other groups of parties - the

¹ CCCB, SJHSRI, and RWH are also referred to in this Order as the "Settling Defendants."

Diocesan Defendants² and the Prospect Entities³ (collectively, "Non-Settling Parties") - have objected to preliminary approval and moved for discovery concerning whether the proposed settlement was the product of good-faith negotiations. See Joint Mot. for Leave to Propound Limited Disc. Related to the Settlement Agreement Between Pls. & CharterCARE Community Board, ECF No. 103.

For the reasons that follow, the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval by Plaintiffs and Defendants SJHSRI, RWH, and CCCB (ECF No. 63) ("Joint Mot.") is GRANTED. The Joint Motion for Leave to Propound Limited Discovery Relating to Settlement Between Plaintiffs and CCCB (ECF No. 103) is also GRANTED.

I. Preliminary Approval Under Rule 23(e)

Rule 23(e)(2) permits the Court to approve a class action settlement only if the proposed agreement is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2); In re Pharma. Indus. Average Wholesale Price Litig., 588 F.3d 24, 32 (1st Cir. 2009). At the

² The Diocesan Defendants consist of the Roman Catholic Bishop of Providence, a corporate sole, the Diocesan Administration Corporation, and the Diocesan Service Corporation.

³ The Prospect Entities consist of Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect Chartercare, LLC; Prospect Chartercare SJHSRI, LLC; and Prospect Chartercare RWMC, LLC.

preliminary approval stage, however, a less rigorous standard applies: the Court need only determine whether the settlement “appears to fall within the range of possible final approval.” Trombley v. Bank of Am. Corp., Civil No. 08-cv-456-jd, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011); see also Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee, 616 F.2d 305, 314 (7th Cir. 1980), overruled in part on other grounds by Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1998). Preliminary approval should not be confused for a final finding of reasonableness or fairness. The first step is merely to “ascertain whether notice of the proposed settlement should be sent to the class” 4 William B. Rubenstein, Newberg on Class Actions § 13:13 (5th ed. 2018); see also Flynn v. N.Y. Dolls Gentlemen’s Club, No. 13 Civ. 6530(PKC)(RLE), 2014 WL 4980380, at *1 (S.D.N.Y. Oct. 6, 2014) (“Preliminary approval requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties.”) (quoting Clark v. Ecolab, Inc., No. 07 Civ. 8623(PAC), 04 Civ. 4488(PAC), 06 Civ. 5672(PAC), 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (quotation marks omitted)).

The Court concludes that preliminary approval is warranted here. The proposed terms of the settlement are set forth in the Settling Parties’ settlement agreement, ECF No. 63-2 (“Settlement Agreement”). The basic terms of this proposal provide that the

Settling Defendants will make an initial lump sum payment of at least \$11,150,000 to the Receiver. RHW will also assign to the Receiver its interest in an escrow account held by the Rhode Island Department of Labor and Training with a current balance of \$750,000. CCCB will transfer to the Receiver its interest in non-settling defendant CharterCARE Foundation as well as its membership interest in non-settling defendant Prospect CharterCARE. The Settling Defendants are also required to petition the Rhode Island Superior Court to undergo judicial liquidations, pursuant to which their remaining assets will be distributed to creditors, including the Plaintiffs. For these undertakings, the Settling Defendants will receive releases of liability.⁴ The Plaintiffs and the proposed settlement class will also release the current officers and directors of the Settling Defendants, with one exception.

The Non-Settling Parties sound alarms about many of the Settlement Agreement's terms and what those terms may (or may not) reveal about the character of the Settling Parties' negotiations. For instance, the Settlement Agreement includes two surprising concessions by the Settling Defendants, who admit liability for breach of contract and represent that the amount necessary to fund the St. Joseph Health Services Of Rhode Island Retirement Plan

⁴ Certain categories of claims are excepted from these releases. See, e.g., Settlement Agreement Ex. 9 at 2 (defining excepted claims).

("Plan") is at least \$125,000,000. Settlement Agreement ¶ 28. The Settling Defendants also purport to represent that "their proportionate fault in tort, if any, in causing [alleged] damages is small compared to the proportionate fault of the other defendants . . ." Id. at ¶ 30. The Non-Settling Parties contend, among other objections, that these statements demonstrate wrongful collusion. See, e.g., Diocesan Defs.' Opp'n to Joint Mot. 13, ECF No. 73.

The Court has considered the Non-Settling Parties' arguments and nevertheless concludes that preliminary approval is warranted. On their face, the fundamental terms of the settlement appear fair, reasonable, and adequate with respect to the proposed class, subject to this Order's other terms. See Fed. R. Civ. P. 23(e)(2). Some proposed terms may cause a cautious reader to raise an eyebrow.⁵ However, these statements could also reflect an arm's length negotiation by experienced and informed counsel. As explained below, some further investigation is warranted, but the Court is satisfied that the Settlement Agreement "fall[s] within the range of possible final approval[,]" Trombley, 2011 WL 3740488, at *4.⁶

⁵ Notably, however, the Settling Defendants' statements about alleged liability or damages would in no way bind this Court or the Non-Settling Parties in any future proceeding.

⁶ No party has objected to preliminary certification of the class, its representatives, or its counsel on the grounds that they do not satisfy the Rule 23 criteria. As explained below, the

II. Settling Parties' Request for a Good Faith Finding Under R.I. Gen. Laws § 23-17.14-35

In 2018, the Rhode Island General Assembly established certain ground rules for settlements that are unique to this litigation. Those rules are codified in R.I. Gen. Laws § 23-17.14-35, which states:

The following provisions apply solely and exclusively to judicially approved good-faith settlements of claims relating to the St. Joseph Health Services of Rhode Island retirement plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:

- (1) A release by a claimant of one joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release so provides, but the release shall reduce the claim against the other joint tortfeasors in the amount of the consideration paid for the release.
- (2) A release by a claimant of one joint tortfeasor relieves them from liability to make contribution to another joint tortfeasor.
- (3) For purposes of this section, a good-faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the

Non-Settling Parties' other objections are preserved and will be considered, if asserted, at a later time.

settling or non-settling tortfeasors'
proportionate share of liability.

The Settling Parties have requested that the Court declare the Settlement Agreement to be a "good faith settlement" as defined in this statute. See Mem. In Supp. of Joint Mot. 2, ECF No. 63-1. Such a determination is not required for the Court to grant preliminary approval under Rule 23 and the Court declines to make such a ruling here.⁷ The Settling Parties' request is, however, denied without prejudice and may be renewed in connection with any final fairness determination.

III. The Prospect Entities' Request for Discovery

The parties have collectively put the good-faith nature of the proposed settlement at issue in this action. The Non-Settling Parties' have identified specific terms in the Settlement Agreement that they interpret as evidence of collusive conduct between the Settling Parties. These terms include the Settling Defendants' concessions of liability and damages and their characterization of the defendants' relative degrees of fault. See Settlement Agreement ¶¶ 28, 30. The Settling Parties have also put the circumstances surrounding the settlement front-and-center through their request for a finding under R.I. Gen. Laws § 23-17.14-35.

⁷ The Court reached the same conclusion concerning the settlement granted preliminary approval in this action on May 17, 2019. See Mem. & Order, ECF No. 123.

This context, combined with the Court's independent obligation to determine whether the proposed settlement was the product of "non-collusive negotiations," see Trombley, 2011 WL 3740488, at *4, persuades the Court that the Prospect Entities' request for targeted discovery is appropriate. Accordingly, the Court will permit the parties sixty days from the date of the entry of this order to conduct limited discovery concerning whether the settlement was executed in good faith and is not collusive in accordance with Rule 23 of the Federal Rules of Civil Procedure and R.I. Gen. Laws § 23-17.14-35.⁸

Accordingly, parties may propound targeted document requests and notice the depositions of persons with relevant knowledge. The Court will neither indulge unfettered exploration nor tolerate time-consuming stonewalling. Any discovery request shall be narrowly tailored to the subject at hand. The Court expects that any investigation will be pursued cooperatively, expeditiously, and with precision within the allotted time.⁹

⁸ Although the Prospect Entities were the source of this request, the Court will permit any party to engage in such discovery. The Court nevertheless encourages any party seeking discovery to coordinate with other parties in this litigation to minimize any duplication of effort and to streamline these proceedings.

⁹ Any discovery disputes will be subject to informal resolution pursuant to the Court's prior notice of the same. See Notice Regarding Discovery Disputes (Jan. 11, 2019), available at <https://www.rid.uscourts.gov/notices>

IV. Certification of Class, Class Representatives, and Class Counsel

To qualify for preliminary certification, a proposed settlement class must satisfy the requirements of Federal Rule of Civil Procedure Rule 23(a) and one of the three categories in Rule 23(b). See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 621 (1997). Rule 23(a) permits one or more members of a class to represent all class members' interests if

- (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The Settling Parties also seek certification under Rule 23(b) (1) (B), which requires a demonstration that prosecuting separate actions would risk creating "adjudications with respect to individual class members that . . . would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]" The Court concludes that these criteria have been satisfied.

First, there are 2,729 Plan participants, rendering joinder of all members of the proposed settlement class impracticable. See Wistow Decl. Ex. 4 at 22:7, ECF No. 65-4.

Second, the issues raised by Plaintiffs' claims present issues of law and fact common to the class. These include, but are not limited to: (1) when and whether the Plan became subject to ERISA; (2) a determination of the Plan participants' rights and any defendants' obligations under the Plan and whether any participant's rights were violated by any defendant; (3) whether any defendant committed fraud, engaged in the fraudulent transfer of assets, or participated in an unlawful civil conspiracy; and (4) whether any defendant violated the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14 et seq.

Third, the claims of the named plaintiffs arise from the same set of events and allegations as those of the other proposed class members. The defendants' conduct also allegedly affected the named plaintiffs in the same manner as the proposed class members. Consequently, the Court finds there is typicality among the proposed class representatives' claims and the claims of the proposed class.

Fourth, the proposed class representatives are aligned with the proposed class members. There is no evidence that named plaintiffs have any interests that conflict with those of other class members. In addition, the retainer agreements for the

proposed class counsel sets forth each representative's duty to act fairly and in the best interests of the class and provides that class counsel will not advise or represent any client concerning any dispute about how to allocate any aggregate settlement proceeds. See Wistow Decl. Exs. 12-18. The Court thus concludes that the proposed representatives will fairly and adequately protect the interests of the class.

As for the criteria set forth in Rule 23(b)(1)(B) for so-called "limited fund" class actions, Plaintiffs' claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., are "paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class" In re Schering Plough Corp. ERISA Litig., 589 F.3d 585, 604 (3d Cir. 2009). Here, the Plan participants seek relief that would make the Plan whole rather than a remedy for an injury to any individual participant. See Colesberry v. Ruiz Food Prods., Inc., No. CV F 04-5516 AWI SMS, 2006 WL 1875444, at *4 (E.D. Cal. June 30, 2006) ("If one plaintiff succeeds in obtaining a judgment that requires the Defendants to pay damages to the Plan, the benefit would affect everyone who has a right to disbursements from the Plan. Thus, the proposed class clearly falls within Rule 23(b)(1)(B) . . ."). The Court also agrees with the Plaintiffs that, even if Plan was not governed by ERISA during the relevant period, this is a classic "limited fund" action. See Ortiz v. Fibreboard Corp., 527 U.S.

815, 838 (1999) (outlining characteristics of Rule 23(b)(1)(B) class actions).

Lastly, the Court recognizes that the proposed class counsel are highly qualified and able to carry out their corresponding duties. Among other things, counsel are experienced in complex litigation, appear to have engaged in significant pre-suit investigation, and presented the proposed settlement to the Rhode Island Superior Court in related receivership proceedings to obtain that court's required approval.

For the foregoing reasons, the Court preliminarily certifies, for the purposes of this settlement only, the following class: All participants of the St. Joseph Health Services of Rhode Island Retirement Plan, including (1) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. who are entitled to benefits under the Plan; and all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. who are entitled to benefits under the Plan. The Court also preliminarily appoints plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutele, and Eugenia Levesque as settlement class representatives and preliminarily appoints Wistow, Sheehan & Lovley, P.C. as class counsel.

V. Notice to Potential Class Members

Rule 23(e)(1) requires that the Court "direct notice in a

reasonable manner to all class members who would be bound by the proposal” The Court has reviewed the Settling Parties’ proposed “Notice of Class Action Partial Settlement,” ECF No. 63-2, Ex. 1 (“Class Notice”), and agrees with class counsel that it summarizes the proposed settlement’s terms and the rights of the recipients in sufficiently “plain, easily understood language.” Mem. In Supp. of Joint Mot. 67. The Court therefore finds that the form and content of the proposed notice is reasonable and adequate.

VI. Objections of Non-Settling Parties

As explained at the outset, the Non-Settling Parties have objected to the Settlement Agreement on several grounds, including but not limited to that:

1. The Plan is subject to ERISA and therefore the Pension Benefit Guaranty Corporation is a necessary party;
2. The federal courts have exclusive jurisdiction over ERISA, thus the Receiver cannot administer the Plan in a state court receivership;
3. As the Receiver’s actions are governed by ERISA, any attempt by him to settle under state law is preempted and therefore unlawful;
4. R.I. Gen. Laws § 23-17.14-35 is preempted and/or unconstitutional; and

5. Class counsel's proposed attorneys' fees are unreasonable or unsupported.¹⁰

In granting preliminary approval of the Settlement Agreement, the Court makes no findings, and expressly declines to rule, on the Non-Settling Parties' objections. The Court's preliminary approval of the Settlement Agreement is without prejudice to the Non-Settling Parties' rights to assert their objections at the time of the final fairness hearing pursuant to the terms of this Order.

VII. Final Approval Hearing and Related Procedures

In accordance with the foregoing, the Court hereby further ORDERS:

1. On September 10, 2019, at 10:00 a.m. in Courtroom 2 of the United States District Court for the District of Rhode Island, One Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court order, this Court will hold a final approval hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement to determine whether (i) final approval of settlement as embodied by the Settlement Agreement should be granted, and (ii) Plaintiffs' counsel's application for attorneys' fees for representing the settlement

¹⁰ Diocesan Defs.' Resp. in Opp'n to Joint Mot., ECF No. 73; Joint Opp'n of Prospect Entities to Joint Mot., ECF No. 75.

class should be granted, and if so, in what amount.

2. No later than August 27, 2019, which is fourteen (14) days prior to the final approval hearing, Plaintiffs must file papers in support of final class action approval of the Settlement Agreement and respond to any written objections.

3. The Settling Parties other than the Plaintiffs may (but are not required to) file papers in support of final class action approval of the Settlement Agreement, so long as they do so no later than August 27, 2019.

4. The Non-Settling Parties may (but are not required to) file papers in opposition or in support of final class action approval of the Settlement Agreement, so long as they do so no later than August 27, 2019.

5. The Court approves the proposed notice plan set forth in the Settlement Agreement and its exhibits for giving notice to the settlement class (i) directly, by first class mail, per the Class Notice attached to the Settlement Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement Agreement, on the website maintained by the Receiver as more fully described in the Settlement Agreement. The Court hereby directs the Settling Parties, and specifically the Receiver, to complete all aspects of the notice plan no later than July 1, 2019, in accordance with the terms of the Settlement Agreement.

6. The Settling Defendants will file with the Court by no later than August 27, 2019, which is fourteen (14) days prior to the final fairness hearing, proof that the Class Notice was provided by any Settling Parties to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, if required.

7. Members of the preliminarily-approved settlement class do not have the right to exclude themselves or "opt-out" of the settlement. Consequently, all settlement class members will be bound by all determinations and judgments concerning the Settlement Agreement.

8. Settlement class members who wish to object to Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, must do so by the August 30, 2019 (the "Objection Deadline") which is sixty (60) calendar days after the deadline for notice to be sent pursuant to this Order.

9. To object to the Settlement Agreement, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, settlement class members must follow the directions in the Class Notice and file a written objection with the Court by the Objection Deadline. In a written objection, a settlement class member must state his or her full name, address, and home or cellular telephone number(s), pursuant to which the settlement class member may be contacted. The member must also state the reasons for the

member's objection, and whether the member intends to appear at the final fairness hearing on his or her own behalf or through counsel. Any documents supporting the objection must also be attached to the objection. Any and all objections shall identify any attorney that assisted or provided advice as to the case or such objection. No objection will be considered unless all the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to counsel for all parties by mail utilizing the United States Postal Service First Class Mail, to the addresses listed in the Class Notice, or by email to the email addresses listed in the Class Notice.

10. If a settlement class member does not submit a written comment on the proposed Settlement Agreement or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Class Notice and this Order, and if the settlement class member wishes to appear and be heard at the final fairness hearing, the settlement class member must file a notice of intention to appear with the Court and serve a copy upon counsel for all parties in the manner provided in Paragraph 9, no later than the Objection Deadline, and comply with all other requirements that may be established by the Court for such an appearance.

11. Any settlement class member who fails to timely file

a written objection with the Court and notice of his or her intent to appear at the final fairness hearing in accordance with the terms of this Order and as detailed in the Class Notice, and who fails at the same time to provide copies to counsel for all parties, shall not be permitted to object to the Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the final fairness hearing; shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means; shall be deemed to have waived the member's objections; and shall be forever barred from making any such objections. All members of the settlement class will be bound by all determinations and judgments in this action, whether favorable or unfavorable to the settlement class.

12. If the Settlement Agreement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection with the Settlement Agreement will be without prejudice to the right of all parties to assert any right or position that could have been asserted as if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Settling Parties will return to the status quo ante in this action and the certification of the preliminarily approved settlement class will be deemed vacated. The certification of the class for settlement purposes will not be considered as a factor in connection with any

subsequent class certification decision.

13. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with the approval and administration the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the settlement class.

VI. Conclusion

For the forgoing reasons, the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Approval by Plaintiffs and Defendants SJHSRI, RWH, and CCCB (ECF No. 63) ("Joint Mot.") is GRANTED. The Joint Motion for Leave to Propound Limited Discovery Related to the Settlement Agreement Between Plaintiffs and CCCB (ECF No. 103) is also GRANTED. All parties shall have sixty days from the date of this Order to propound and complete any discovery in accordance with the terms set forth above.

IT IS SO ORDERED.



William E. Smith
Chief Judge
Date: June 6, 2019

In The Matter Of:
Stephen DelSesto, et al v.
Prospect CharterCare, LLC, et al

Stephen DelSesto
July 31, 2019



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UNITED STATES 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 :
 :
 vs. : C.A. No. :
 : : 1:18-cv-00328-WES-LDA
 PROSPECT CHARTERCARE, LLC, :
 et al :

DEPOSITION OF STEPHEN DEL SESTO
 (Taken on behalf of Defendant
 Prospect Medical Holdings, Inc. and
 Prospect East Holdings, Inc.)

Wednesday, July 31, 2019
 10:00 a.m.
 SHECHTMAN HALPERIN SAVAGE, LLP
 1080 Main Street
 Pawtucket, Rhode Island 02860

- - -
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 Certified Court Reporter
 Premier Legal Support, Inc.

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1 the case?

2 MR. HALPERIN: Yeah, yeah.

3 Okay. I'm Preston Halperin obviously, the

4 attorney taking the deposition for the Prospect Medical

5 Holding and the other Prospect entities as well.

6 To my left, we'll go around the room.

7 MR. GODOFSKY: David Godofsky for Angel

8 Pension Group, Inc.

9 MR. FRAGOMENI: Chris Fragomeni for the

10 Prospect entities.

11 MR. SNOW: Steven Snow, Partridge Snow & Hahn

12 for the Diocesan defendants.

13 MR. DENNINGTON: Andrew Dennington for

14 CharterCARE Foundation.

15 MS. DIETER: Christine Dieter for Rhode

16 Island Community Foundation.

17 MR. WISTOW: Max Wistow for the plaintiffs.

18 MR. SHEEHAN: And Stephen Sheehan for the

19 plaintiffs.

20 MR. LEDSHAM: Benjamin Ledsham for the

21 plaintiffs.

22 MR. FINE: Robert Fine for -- I'll use

23 initials -- CCCB, St. Joseph, and Roger Williams

24 Hospital.

25 Q. Okay. Mr. DelSesto, you were appointed as Receiver for

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1 (Commenced at 10:07 a.m.)

2 STEPHEN DEL SESTO

3 Being duly sworn, deposes and testifies as follows:

4 EXAMINATION BY MR. HALPERIN

5 Q. Please state your name.

6 A. Stephen DelSesto, D-E-L-S-E-S-T-O.

7 Q. And you are an attorney employed at Pierce Atwood?

8 A. That's correct.

9 Q. And are you -- you're here today in your capacity as

10 receiver for the St. Joseph Health Services of Rhode

11 Island, Inc. plan?

12 A. The -- the --

13 Q. The pension plan.

14 A. Pension plan, yes.

15 Q. The case that we're here on today.

16 MR. WISTOW: Excuse me, did you say there was

17 somebody involved --

18 MR. HALPERIN: Oh, yes, I'm sorry, let's stop

19 for a second. We did this in the last deposition.

20 Just so there's a record of who's present, we're going

21 to go around the room, and I'm going to start by

22 indicating that Chris Lee, who is also an attorney for

23 Prospect Medical Holdings is on -- listening in on a

24 cell phone -- a speakerphone.

25 MR. SHEEHAN: Does he have an appearance in

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1 the pension plan, as I'll refer to it, on August 18,

2 2017. Is that correct?

3 A. It was either the 17th or the 18th, yes.

4 Q. I'm going to be asking you some questions that a

5 document may help refresh your memory so I'm going to

6 share this with everyone.

7 This document that we're going to mark as

8 Exhibit 1. It's the Receiver's First Interim Report

9 and Request for Approval of Fees and Costs.

10 (Exhibit No. 1 marked)

11 Q. Can you identify Exhibit No. 1, Mr. DelSesto?

12 A. Sure, it appears to be the first interim report and

13 request for approval of fees, costs and expenses that I

14 submitted to the court. It indicates there was a

15 hearing date on November 20, so it's likely that this

16 was submitted to the court at least somewhere in the

17 vicinity of ten days prior to that date.

18 Q. Okay. So if you look at the second to last page, it's

19 a Certificate of Service on November 14, 2017. Would

20 that be the date that it was served?

21 A. It's --

22 Q. And filed?

23 A. I would imagine it would be, yes. I signed it on the

24 10th, and then it was served electronically on the

25 14th.

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1 settle. And I believe actually you and I maybe had a
2 conversation similar to Land's of is there any way we
3 can resolve this, and I believe I was told by my
4 counsel that there were discussions with either you or
5 another counsel for Prospect about that. The only one,
6 however, that had any -- what I call even the
7 remotest substance was the one from Angel in September.
8 MR. HALPERIN: Let's mark as Exhibit 2 your
9 June 5 letter to the Rhode Island legislators.
10 (Exhibit 2 marked)
11 Q. With respect -- with respect to Mr. Land and the
12 clients that he was representing, did you understand
13 him to be representing the Oldco entities, the Roger
14 Williams Hospital, the St. Joe's, Rhode Island entity,
15 as well as CCCB?
16 A. Yes. I did. Clearly I understood him to represent the
17 petitioner in the case, which is St. Joseph Health
18 Services of Rhode Island, Inc. And then I later found
19 out that in addition, Roger Williams and CCCB, or
20 Chartercare Community Board, was also part of his
21 client group.
22 Q. And at that time you were discussing the case with
23 Mr. Land, did you also know that he was acting as an
24 agent for one or more of those entities separate and
25 apart from his role as counsel?

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1 A. I'm not sure the time frame you're talking about or
2 what you mean by that.
3 Q. At some point in time did you learn that Mr. Land had
4 two roles, attorney and agent?
5 MR. SHEEHAN: Objection.
6 A. I knew he was an attorney for those groups. I did see
7 documents that he signed on behalf of those groups that
8 were pre -- call it pre-receivership, pre-August 17, 18
9 that he signed which seemed to indicate that he was
10 acting in a capacity other than attorney. But I don't
11 know for sure if I knew if he was acting in that
12 capacity or if he was signing as an attorney for them.
13 Q. Was it Mr. Land that initially contacted you about the
14 possibility of serving in the capacity as Receiver?
15 A. Um, actually, no. It was not Attorney Land.
16 Q. Who was it?
17 A. William Dolan. Bill Dolan. Who at the time was my
18 partner.
19 Q. Do you know whether or not Mr. Land had contacted
20 Mr. Dolan?
21 A. I believe -- I believe he did, which is why Bill came
22 to speak to me about being involved in the case with
23 him, not as necessarily the Receiver at that point.
24 Q. I'm going to refer you to the last page of Exhibit
25 No. 1 which is the transaction detail that you

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1 submitted to the court.
2 The first line item is a \$400,000 amount. That's
3 an amount that was provided to you as Receiver by the
4 Oldco entities and Mr. Land; is that correct?
5 A. That's correct.
6 Q. And what was the purpose for which those funds were
7 provided to the receivership estate?
8 A. I think it -- well, the purpose I asked for them or
9 what was the purpose for him providing it?
10 Q. Well, that -- I'll back up and ask you, are you the one
11 that requested funds?
12 A. Yes, I did.
13 Q. And why did you request funds?
14 A. I requested funds because based on the petition, there
15 was an indication in the petition that was filed that
16 they would fund the expenses of the receivership until
17 they wouldn't anymore. So that the funds did not have
18 to come out of the plan itself, and so I made the
19 request so that I could have funds in the estate
20 account to pay reasonable fees, costs and expenses that
21 were approved by the court or that were within my
22 authority to pay.
23 Q. And were those funds characterized in any way as the
24 loan or as just a payment? Did you have some
25 understanding as to what the arrangement was with

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1 respect to those funds?
2 A. No, I requested them, Attorney Land indicated that he
3 had to talk to the board, they had to approve it, and
4 then came back to me and said that the board approved
5 it and that they were sending the money over. I don't
6 know in -- I don't know how it was characterized. For
7 me it was just to fund the estate.
8 Q. But you had no expectation that those monies would ever
9 have to be repaid, did you?
10 A. No, I did not.
11 Q. At some point in time did you begin having a
12 substantive discussion with Mr. Land regarding
13 settlement?
14 A. It was after the lawsuit was filed was what I would
15 consider to be the first time we had substantive
16 discussions about settlement.
17 Q. Prior to the time the lawsuit was filed, did Mr. Land
18 indicate to you that he had a desire to settle the
19 case?
20 A. Like I had stated, in about March/April, that's my best
21 recollection of the time frame, we had what I would
22 consider to be a very quick and it was not a
23 conversation that was focused on St. Joe's, I think I
24 actually bumped into him in court on another matter
25 that we were working on, and then he said can I change

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1 the subject, is there any way we can resolve this thing
2 and get it dealt with. And I -- I probably said either
3 I'll talk to my attorney or call my attorney.
4 Q. And that was before suit was filed?
5 A. That was -- right, March/April of '18, and the suit was
6 filed in June of '18.
7 Q. Did it come to your attention at any point in time that
8 the funds that were in the possession of Rick Land's
9 clients were intended to be paid into the plan at any
10 point in the future?
11 A. Could you repeat that question.
12 Q. Did it come to your attention that the monies that
13 Oldco and CCCB had were going to ultimately pay -- be
14 paid to the plan?
15 MR. SHEEHAN: Objection to the form.
16 A. It was my -- Attorney Land represented to me that he
17 believed -- in the beginning of the case he represented
18 to me that he believed that the Cy Pres order
19 functioned as -- I don't know if he called it this, I'm
20 going to characterize it as a waterfall. That
21 ultimately the monies would ultimately fall into the
22 plan. That's what he represented to me as far as his
23 understanding of the Cy Pres.
24 Q. Did you come to your own understanding of how those
25 monies were intended to flow by reviewing the Cy Pres

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1 order yourself?
2 A. Later on, myself and my counsel reviewed the Cy Pres
3 order, and I guess I'll just characterize it as I did
4 not agree with Attorney Land's initial representations
5 to me in September/October of 2017, maybe November of
6 2017.
7 Q. So having reviewed the Cy Pres order, you were not able
8 to conclude that at some point in time the moneys that
9 Oldco had were going to be paid into the plan; is that
10 correct?
11 A. Correct. To the contrary, I did not believe that the
12 Cy Pres actually did function that way. Which is why
13 we intervened.
14 Q. Do you recall when you first saw that Cy Pres order?
15 A. It had to be right around that same time frame, maybe
16 in October/November, when Attorney Land raised the
17 issue to me. At that point in time it was early on in
18 the case and I wasn't even aware that there was the Cy
19 Pres order because that was connected to the 2014
20 transaction. So it was probably somewhere shortly
21 after that conversation. But I can't say exactly when.
22 MR. HALPERIN: Let's mark as Exhibit 3 this
23 document.
24 (Exhibit No. 3 marked).
25 Q. Can you identify Exhibit No. 3, please?

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1 MR. SHEEHAN: Just wait till it's around the
2 room.
3 MR. HALPERIN: Are we out of three? Let's go
4 off the record for a second.
5 (Off the record)
6 Q. Mr. DelSesto, can you identify Exhibit No. 3?
7 A. Yep, it appears to be an e-mail dated November 27, 2017
8 from Rick Land to me stating FYI, which it appears was
9 a forward to me of an e-mail that he sent to my
10 counsel, Max Wistow, Benjamin Ledsham, and Stephen
11 Sheehan on that same date. And he sent it to me, it
12 looks like it was approximately 18 minutes later.
13 Q. Does this in any way refresh your memory as to the time
14 frame that you and your counsel were reviewing the
15 Cy Pres order?
16 A. Well, I can't speak to when my counsel was reviewing
17 it. When I reviewed it, it's consistent with what I
18 just said. It was after my conversation, this was late
19 November, so maybe I reviewed it for the first time in
20 December. But it's -- it's in that time frame,
21 October/November/December.
22 Q. In addition to reviewing the order that issued on the
23 Cy Pres, did you also review the petition that preceded
24 that order?
25 A. I don't recall specifically but I'm sure I did. Maybe

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1 I should say I don't recall specifically when but I'm
2 sure I did.
3 Q. All right, so I'm going to mark as Exhibit No. 4 the
4 order.
5 (Exhibit No. 4 marked)
6 (Witness perusing document)
7 Q. You indicated in your earlier testimony that having
8 reviewed the order you did not believe that there was
9 the provision that would allow funds to be paid
10 ultimately to the pension. Did I understand that --
11 MR. SHEEHAN: No, you mischaracterized the
12 testimony. The testimony was -- the question was
13 directed that funds be paid to the plan. It was not
14 that allowed funds to be paid to the plan.
15 MR. HALPERIN: Steve, maybe before you cut me
16 off as I was finishing, the end part of my question was
17 did I properly state that. So I was going to allow the
18 witness to indicate if that was correct or incorrect.
19 And I don't think that we need you to coach the
20 witness.
21 A. I'm going to need that read back or restated.
22 Q. Mr. DelSesto, did I understand your earlier testimony
23 that when you reviewed the order, you reached the
24 conclusion that there was not a provision that would
25 allow monies to ultimately be paid to the pension plan?

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1 Mr. Land about clarifying or seeking to agree on how
2 those funds would flow since he had one view and you
3 had another?
4 MR. SHEEHAN: Objection to the form.
5 A. I don't recall if there was a discussion about that. I
6 will say that as a Receiver with an order like this, I
7 don't know if it would have actually been within the
8 power of myself and Attorney Land to agree to
9 circumvent or to modify what I believe this order said,
10 which is why I intervened.
11 Q. So you decided to file a motion to intervene, correct?
12 A. Mm-hmm.
13 Q. And --
14 A. Yes. I'm sorry.
15 Q. And Mr. Land did not object to your intervention, did
16 he?
17 A. I -- I don't believe he did, no.
18 Q. So would you say that he was willing to cooperate with
19 your desire to intervene and to change the order in a
20 manner that was favorable to the receivership estate?
21 MR. SHEEHAN: Objection, compound question.
22 MR. FINE: Objection.
23 A. I -- could you repeat the question.
24 (The record was read by the
25 court reporter, as requested)

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1 A. I don't know what his reason for not objecting was.
2 Q. That wasn't my question, I'll ask it again.
3 Was Mr. Land willing to -- strike that.
4 Were the Oldco entities willing to cooperate with
5 the Receiver in your desire to modify the order?
6 A. Based on the lack of an objection? Is that -- is
7 that -- are you asking me based on --
8 Q. Did he --
9 A. -- me knowing that Mr. Land on behalf of the entities
10 did not object? Is that an --
11 Q. No, did you tell Mr. Land you were going to intervene?
12 A. I don't remember if there was a discussion with
13 Attorney Land about intervening.
14 Q. Did you tell Mr. Land what it was you hoped to achieve
15 by intervening?
16 A. Maybe post-filing, but I don't recall any discussion
17 pre-filing about that.
18 Q. Was there an objection by the Oldco entities to the
19 relief you were seeking?
20 A. I do not recall there being an objection filed.
21 Q. So the Oldco entities were not opposed to the relief
22 that you were seeking in your Motion to Intervene, is
23 that accurate?
24 MR. SHEEHAN: Which was to intervene.
25 MR. DENNINGTON: Objection.

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1 A. I don't know if I could say that they weren't opposed
2 as much as they weren't objecting.
3 Q. What's the status of that Motion to Intervene -- not
4 the Motion to Intervene -- of that case, if you know.
5 A. I believe that that has been -- and I'm not using this
6 in the technical sense -- stayed, pending the
7 settlements. And I believe that Judge Stern has stated
8 giving the attorney general the opportunity to file
9 something at a later date should that be necessary.
10 Q. Ultimately you filed suit against a number of parties
11 in the federal and state courts seeking to recover on
12 various claims?
13 A. That's correct.
14 Q. And with respect to the Oldco entities, do you recall
15 that they accepted service of that on or about June 19,
16 thereabouts?
17 A. That sounds accurate, yes.
18 Q. Do you remember the first time you had a settlement
19 discussion with Mr. Land and/or anyone else from the
20 Oldco entities?
21 A. It was -- if my recollection serves me correct, it was
22 sometime before July 1, like somewhere in the late
23 twenties of June.
24 Q. Do you recall where that meeting took place?
25 A. I believe the meeting took place at my counsel's

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1 office. Wistow Sheehan & Loveley.
2 Q. And who was present during that meeting?
3 A. If my recollection serves me correct, it was Attorney
4 Land, myself, Attorneys Wistow, Sheehan and Ledsham,
5 and I believe Attorney Fine was there. And I don't
6 believe anybody else.
7 Q. What was discussed at that meeting?
8 A. I believe it was discussed about possible settlement
9 parameters that Attorney Land was contemplating
10 presenting.
11 Q. Can you remember what was presented at that meeting?
12 A. I don't think anything was presented at that meeting.
13 It was more of a -- I'll characterize as more of a
14 50,000-foot discussion, with him saying I will come
15 back to you and provide you with a more detailed
16 discussion. But I -- I don't remember exactly.
17 Q. Was there any discussion about monies in the possession
18 of the Oldco entities being paid to the plan at any
19 point in time?
20 A. I don't remember if anything specifically was discussed
21 about that. There were a number of discussions, there
22 was actually a discussion about what assets actually
23 did exist with the Oldco entities. Because there was
24 some confusion as to where certain things were. And I
25 think Attorney Land had to go back and look at some

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1 Q. What contract, if you know, was breached?
2 A. In my opinion the obligation to fund the pension plan.
3 Q. So is that the -- would the contract be the plan or is
4 there a different -- is it a verbal contract or a
5 written contract?
6 A. I don't know if there is a written contract
7 specifically other than the plan document which I
8 believe is a contract between the employer and their
9 employees.
10 Q. So having reviewed the plan, did you reach the
11 conclusion that there was a contractual obligation on
12 the part of the Oldco entities to fund the plan?
13 MR. SHEEHAN: Objection. You're asking the
14 witness to give an opinion on a legal issue that's
15 being litigated in this lawsuit.
16 MR. GODOFSKY: It's a relevant question.
17 MR. SHEEHAN: No, it isn't relevant. It
18 isn't relevant to the settlement.
19 MR. GODOFSKY: It's relevant.
20 MR. HALPERIN: I think we should hold this
21 for the court. Let's let the witness answer and you've
22 preserved your objection.
23 A. Could you repeat the question.
24 (The record was read by the
25 court reporter, as requested)

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1 A. I believe in the litigation there was a count for
2 breach of contract. So that's the conclusion that the
3 defendants breached a contract that were part of that
4 count.
5 Q. The question that I asked you was whether or not based
6 on your review of the plan you concluded that there was
7 a funding obligation on the part of the Oldco entities?
8 A. I believe that the plan was a contract.
9 Q. Again, that wasn't the question. The question was
10 whether you reached the conclusion that there was a
11 funding obligation having reviewed the plan.
12 A. I believe the fact that the plan was orphaned and
13 underfunded by 125 million indicates that somebody had
14 an obligation and breached that obligation. I sued
15 approximately 14 different parties for that, and so
16 there was a conclusion that the fund -- the plan needed
17 \$125 million, give or take. Somebody did not put that
18 money in, and left it for dead.
19 Q. I appreciate when you provide all this information but
20 I'm trying to stay with the question and answer format.
21 And so I asked you whether or not having reviewed the
22 plan you reached the conclusion that the Oldco entities
23 had a funding obligation.
24 A. I believe the Oldco entities -- at least the Oldco
25 entities had a funding obligation. There were other

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1 parties as well.
2 Q. I understand that. Thank you.
3 On page 19 of Exhibit No. 6, it's a part of
4 paragraph 28, there is a reference to a damage amount
5 of \$125 million. Do you see that?
6 A. Yes, I do.
7 Q. And do you know how that amount was calculated?
8 A. I believe it was Angel Pension who provided that
9 amount. I believe that amount was in the petition
10 which led to my appointment.
11 Q. So do you have an understanding of whether that
12 \$125 million figure was an amount needed to fully fund
13 the plan or was it an amount needed to purchase an
14 annuity? Do you have any recollection as to what that
15 number represents?
16 A. I believe the settlement agreement speaks to it, and I
17 believe it -- I believe that amount would really kind
18 of cover both things you just stated.
19 Q. Do you know why it was included in the settlement
20 agreement that there be an acknowledgment by the
21 defendants that they're liable?
22 A. Absolutely.
23 Q. Why?
24 A. The -- paragraph one of Attorney Land's letter to me
25 was the, the main reason why I needed that number in

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1 there.
2 Q. Can you explain why you thought it was important to
3 have that acknowledgment of the settlement agreement?
4 A. In Attorney Land's initial proposal, which I said was
5 unacceptable and paragraph one was a non-starter, that
6 was I would have to prove the claim, if proven. This
7 allowed there to be a representation affirmatively by
8 Attorney Land's clients that my claim is \$125 million.
9 I would not have to prove that claim if there was a
10 judicial dissolution. Now I had the number actually
11 locked in in terms of what the liability was.
12 Q. Is it your understanding based on the settlement
13 agreement that was entered into that as part of the
14 settlement, in addition to receiving all of the funds
15 that are provided for, that you would also be seeking
16 additional funds in a dissolution proceeding relative
17 to that \$600,000 amount or whatever that amount ended
18 up being?
19 MR. SHEEHAN: Objection. You mean
20 liquidation proceeding?
21 MR. HALPERIN: Yes, sorry.
22 A. In the liquidation proceeding that might have occurred
23 with the Oldco entities?
24 Q. That's -- that may still occur.
25 A. Yes. Yes, that I would have the ability to file a

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1 claim.
2 Q. Okay. So this isn't the end of your recourse, this
3 settlement agreement. You get the money that comes
4 from this settlement, there's approximately \$600,000
5 left to the Oldco entities, you still would have the
6 right to pursue additional money in additional
7 liquidation?
8 MR. SHEEHAN: Objection to the form.
9 Q. That's your understanding?
10 A. My understanding is that I would still have the ability
11 to file a claim in any judicial liquidation proceeding.
12 Q. And is that where it would be important to you to have
13 the \$125 million figure acknowledged?
14 A. That was one -- one instance where it would be
15 important. That's the amount of money that Angel had
16 indicated to Attorney Land and then later indicated to
17 me that this plan needed to survive.
18 Q. Paragraph 30 on page 19 of Exhibit 6 addresses the
19 proportionate fault in tort of the various defendants.
20 Do you see that?
21 A. Yes, I do.
22 Q. Do you know who drafted that provision initially?
23 A. I don't know who drafted it, no.
24 Q. Did you yourself do any sort of analysis to reach the
25 conclusion that's stated in paragraph 30?

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1 A. Did I do an analysis? I'm not sure if I understand the
2 question.
3 Q. Did you reach that conclusion stated -- as stated in
4 paragraph 30?
5 MR. SHEEHAN: The statement is the settling
6 defendants contend. You're asking if he reached the
7 conclusion that the settling defendants contend?
8 Q. I'll ask it again.
9 Did you reach the conclusion that the amount of
10 fault that the settling defendants had was small in
11 proportion to other defendants?
12 A. I guess I'll answer that by saying I agree with the
13 statement in paragraph 30.
14 Q. You do?
15 A. Yes.
16 Q. And what is the basis for that agreement?
17 A. Because they contend it.
18 Q. That wasn't the question. I asked you whether you
19 yourself, not what they contended, the last question
20 that I believe you answered is that you agreed with the
21 statement. Are you simply agreeing that they contend?
22 A. Yes.
23 Q. So you're not agreeing that their fault is small by
24 comparison necessarily?
25 A. I'm not stating that one way or the other.

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1 Q. All right, so you're not -- you don't have a view on
2 that specifically?
3 MR. SHEEHAN: Objection.
4 A. No.
5 Q. Okay. Mr. DelSesto, I don't think there was an answer
6 to that last question. You don't have an answer on
7 that specifically?
8 A. Oh, I thought I said no.
9 Q. Okay, I didn't know she got it. Thanks.
10 (Exhibit No. 16 marked)
11 Q. Mr. DelSesto, Exhibit 16 includes Exhibits 16 and 17
12 from the settlement agreement. Is that correct?
13 A. It does, it has two separate 17s.
14 Q. We'll leave it that way since it's already been marked.
15 It's a duplicate.
16 A. Okay.
17 Q. With respect to Exhibit No. 16, do you see all of the
18 claims that are identified in the fourth column as
19 indemnification claims?
20 A. Yes, I do.
21 Q. Do you know what the nature of those claims are?
22 A. As I sit here right now, other than that they are in
23 the nature of indemnification, no.
24 Q. Do you have an understanding that these are claims that
25 either exist or might potentially exist on the part of

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1 the creditor identified in the first column and they're
2 included in the settlement agreement as liabilities?
3 A. That's -- yes.
4 Q. And you see the reference in the first column at the
5 bottom, the box that's second to the bottom on the left
6 side, to the September 24, 2013 agreement?
7 A. Oh, yes, any and all other Company/Prospect indemnified
8 persons, as such term is defined in that certain Asset
9 Purchase Agreement, dated September 30 -- I'm sorry,
10 dated September 24, 2013. Yes.
11 Q. Do you understand that to be a reference to the
12 agreement pursuant to which the Prospect entities
13 acquired the assets of the Oldco hospitals?
14 A. I understand it to be that certain asset purchase
15 agreement dated September 24, 2013.
16 Q. Do you know why it was necessary or important to list
17 liabilities of the entities in your settlement
18 agreement?
19 A. Why it was important?
20 Q. Yeah, why is it in the agreement?
21 A. To identify the liabilities of CCCB, one of the
22 settling defendants.
23 Q. Does the agreement indicate how these liabilities would
24 be treated?
25 MR. SHEEHAN: Objection. The agreement

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1 Q. Okay. What kind of response was there?
2 A. I don't -- well, I mean, I had a response to it but I
3 spoke to my counsel, and my counsel shared my reaction
4 to it but I don't know what type of response was
5 communicated back to Attorney Land.
6 Q. Okay. Well, it would appear that between that July 9
7 letter and approximately July 17 and 18 when Mr. Land
8 and his firm was communicating with the Rhode Island
9 Department of Labor and Training, that discussions were
10 continuing about a potential settlement. Correct?
11 A. They were continuing. However, it was not within the
12 framework of Attorney Land's letter. That was not --
13 if we were going to continue discussions, it had to be
14 a, a substantial deviation from what he had proposed.
15 Q. And how was that communicated to him?
16 A. You'd have to ask my counsel.
17 Q. Were you informed as to how that was communicated to
18 him?
19 A. I was informed it was communicated, I was not informed
20 as to how it was communicated.
21 Q. So is it fair to say that sometime between July 9 and
22 July 18, that there was a paradigm shift with respect
23 to the settlement discussions, which, by that I mean
24 instead of Mr. Land's proposal where the Receiver would
25 simply be another creditor in judicial liquidation

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1 proceeding, that in fact the Receiver would be getting
2 the bulk of the net assets of the Oldcos?
3 A. I don't think that would be fair to say, no.
4 Q. Well, at some point in time that occurred?
5 A. Well, certainly by the time the settlement had been
6 penned it had occurred.
7 Q. Well, it occurred sometime before that. It certainly
8 was in place by the time that Mr. Sheehan wrote or
9 drafted what may be the original draft of the agreement
10 dated August 10?
11 MR. SHEEHAN: Objection to the form of the
12 word "it." I don't know what "it" is.
13 A. Could you repeat the question?
14 (The record was read by the
15 court reporter, as requested)
16 A. Whenever the first draft was communicated over to
17 Attorney Land of the settlement agreement from my
18 counsel, I would probably say that that -- that
19 indicated a shift from Attorney Land's letter.
20 Q. Okay. In fact we can go through this but if you
21 compare the August 10 draft, which is Exhibit 15, and
22 the final agreement, which is Exhibit 6, the changes
23 were relatively few between those two?
24 MR. SHEEHAN: Objection.
25 A. I would not characterize it that way. I would say that

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1 maybe those two drafts might show few but the changes
2 that were proposed were not few.
3 Q. If you can pull out Exhibit 6 and Exhibit 15.
4 A. Exhibit 6 and which exhibit?
5 Q. Exhibit 15. Exhibit 15, I believe, is the August 10
6 draft from Mr. Sheehan, correct?
7 A. It -- yes. It appears to be.
8 Q. And Exhibit 6 is the final agreement that was signed by
9 the parties?
10 A. Yes.
11 Q. Now, if I could direct your attention to paragraph 26
12 of Exhibit 15.
13 A. Of which exhibit?
14 Q. Of Exhibit 15. The draft.
15 A. Paragraph 26.
16 Q. 26.
17 A. Yes.
18 Q. And compare that with paragraph 28 of Exhibit 6. Am I
19 correct that these two paragraphs are identical with
20 the exception of the number of \$125 million in the
21 final agreement compared to \$120 million in the
22 August 10 draft?
23 MR. FINE: Objection.
24 A. I don't know if I would agree with that. I mean, it's
25 very difficult to do a compare and contrast as I'm

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1 sitting here. That number is different but I don't
2 believe that that is the only difference in those
3 paragraphs.
4 Q. The document will speak for itself but --
5 MR. WISTOW: Thank you.
6 Q. What accounts now for the difference in the numbering
7 of \$120 million in the draft and \$125 million in the
8 final?
9 A. What amounts for that five million dollar difference?
10 Q. Yes.
11 A. I -- I don't know. The \$125 million is the more
12 accurate number as far as I'm concerned.
13 Q. Now, in paragraph 28 of the final, Exhibit 8.
14 A. Paragraph 28 of Exhibit 15?
15 Q. Of Exhibit 6. I'm sorry, Exhibit 6.
16 A. Exhibit 6. The final version.
17 Q. The final.
18 A. Okay.
19 Q. "The Settling Defendants acknowledge that SJHSRI, as
20 the former employer of the Plan participants, is liable
21 to the Plaintiffs for breach of contract, and,
22 arguably, on at least some of the other claims
23 Plaintiffs have asserted against the Settling
24 Defendants in the Federal Court Action and the State
25 Court Action..."

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1 no lawyer I have ever seen has given appropriate
2 deposition. No lawyer I have ever seen is capable of
3 answering yes, no, or I don't know. Including myself.
4 Q. It was the Receiver, or someone on behalf of the
5 Receiver, who insisted on excluding Monsignor Reilly,
6 correct?
7 A. I don't recall. I don't --
8 Q. Well, that didn't come from the settling defendants,
9 did it?
10 A. I don't recall.
11 Q. Did you as Receiver ever analyze whether the Plan had
12 any potential claims against any of the directors?
13 A. Could you repeat that question.
14 Q. Sure.
15 MR. SNOW: Could you read it back.
16 (The record was read by the
17 court reporter, as requested)
18 MR. SHEEHAN: What directors are you
19 referring to?
20 MR. SNOW: Directors of the Oldco. And
21 particularly St. Joseph Health Services of Rhode
22 Island.
23 MR. SHEEHAN: The directors who are released
24 or who are not released?
25 MR. SNOW: Either.

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1 A. Any -- any director released or unreleased, whether or
2 not there were claims against any of those parties?
3 Q. Sure.
4 A. I believe that we did look into that, and we looked
5 into whether or not that pursuit of any of those claims
6 would actually be worth the time and energy to do so.
7 Q. And what conclusion, if any, did you come to?
8 A. Well, we looked at insurance coverage, and I think
9 there was a, a determination that the insurance
10 coverage and the fight that would be associated with
11 it, not from the cost of defense but for liability,
12 would be -- it wasn't worth it.
13 Q. Okay. There were at least two insurance policies that
14 were potentially there for the directors?
15 A. I'll take your representation that there were at least
16 two. I don't recall.
17 Q. Is there any reason why negotiations with the settling
18 defendants did not begin until after the complaint was
19 filed?
20 MR. SHEEHAN: Objection.
21 A. From my point of view, because I didn't have anything
22 to consider. I couldn't begin settlement negotiations
23 without a proposed settlement or a proposed skeletal
24 settlement. I had nothing other than is there any way
25 we can resolve it. And that is not the start of a

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1 settlement discussion.
2 Q. Well, did you ever reach out to any of the defendants
3 and suggest that there could be discussions about
4 claims that would be incorporated into a future
5 complaint but --
6 A. I think I already -- I already testified that I had
7 discussions with at least three of the parties. And
8 you also have to understand that I was appearing in
9 front of these 20 -- well, I wasn't appearing before
10 all 27, 28 people on -- every four to six weeks, and
11 their lives were turned upside down and they wanted --
12 they wanted somebody's head on a stake. They wanted to
13 know when litigation was going to be filed. And I
14 was -- I had discussion with Angel very early on, never
15 went anywhere after that. I had discussions that I
16 testified to with the other two defendants in the
17 litigation that ultimately became defendants in the
18 litigation. But I did not have a proposal other than
19 what Angel offered in early September. I had nothing
20 in front of me.
21 Q. Do you remember any of the topics of settlement
22 discussions with the settling defendants that were
23 contentious or were -- I think you used the word
24 frustrating?
25 A. There were many. There were many.

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1 Q. Tell me what you recall.
2 A. I don't recall anything specific, I just know that
3 the -- I'll call it the personality clashes and what
4 Attorney Land and his counsel believed was going to be
5 an appropriate settlement and what I and my counsel
6 believed was going to be an appropriate settlement did
7 not see -- we were not riding on the same plane all the
8 time, and so things got contentious at times, things
9 were cordial at times, but it was -- it was a
10 typical -- as far as I was concerned it was a typical
11 demeanor of a settlement negotiation.
12 MR. SNOW: No further questions.
13 MR. FINE: I have four questions.
14 MR. WISTOW: Could you wait till -- do you
15 have questions?
16 MR. GODOFSKY: No.
17 EXAMINATION BY MR. FINE
18 Q. Mr. DelSesto, you know I'm Robert Fine.
19 A. Yes.
20 Q. Was there anything the settling parties did or propose
21 during the negotiation that you believe was not in good
22 faith?
23 A. No.
24 Q. Was there anything the settling parties did or propose
25 that you feel was fraudulent or dishonest?

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1 A. No.
2 Q. Was there anything that the settling parties did or
3 propose that you believed intended to prejudice the
4 non-settling defendants?
5 A. No.
6 Q. And does the same answer hold true for the actual
7 settlement agreement?
8 A. Yes, it does.
9 MR. FINE: Thank you, no further questions.
10 MR. SHEEHAN: I've got a few.
11 EXAMINATION BY MR. SHEEHAN
12 Q. Mr. DelSesto, you recall that a special statute was
13 passed regarding contribution rights in this case?
14 A. Yes, it was.
15 Q. And that if a settlement is approved under that
16 statute, the effect is that the settling defendants
17 will have no liability in contribution?
18 A. That's correct.
19 Q. Now, you earlier were asked about the concept behind
20 the paragraph dealing with the small proportionate
21 fault of the settling defendants?
22 A. Yes.
23 Q. And you -- would you put -- take your time and explain
24 why it was that that concept was a requirement of the
25 Receiver in connection with the settlement?

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1 A. Sure, I think I stated first of all it was my
2 uncertainty, and I guess concern regarding the
3 relationship between the Oldco entities and Prospect in
4 terms of putting this matter into a receivership
5 proceeding. That was one. And two, it was, as I
6 stated, if the statute that you just referenced was
7 found to be valid, constitutional, then I did not want
8 Attorney Land, if there was a relationship with
9 Prospect, I did not want Attorney Land coming and
10 saying that the Oldco entities were responsible a
11 hundred percent. Because that would hurt my ability
12 to -- preclude my ability to recover for any of the
13 other defendants. And if the statute was deemed to be
14 unconstitutional, it was challenged to be
15 unconstitutional, I wanted Attorney Land to fight hard
16 to stick to the statement made in the settlement as to
17 the small amount of proportionate fault, because I
18 would have had to have been dealing with at that point
19 in time contribution issues, both in either judicial
20 dissolution or in this lawsuit. And by making that
21 statement, it would have required the Oldco entities
22 and their counsel to argue in a way that would support
23 that statement.
24 Q. All right, I'd like to start with the last one.
25 You said that if the statute is declared

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1 unconstitutional, you wanted them to fight hard that
2 they had a small proportionate fault because otherwise
3 there would be contribution issues in the judicial
4 liquidation?
5 A. That's correct.
6 Q. Can you explain now what that would be? Who would be
7 asserting claims of contribution against whom?
8 A. The other defendants would be asserting that Prospect,
9 and that would potentially -- without the special
10 legislation, that would reduce my ability to collect
11 against them depending on what the Oldco's
12 proportionate fault would be.
13 Q. So there would be judicial liquidation with a certain
14 amount of assets in there?
15 A. Correct.
16 Q. And how would that -- how would the Receiver's rights
17 to those assets be affected by this issue?
18 A. How the Receiver's rights would be affected by the -- I
19 would -- I would be fighting with the other defendants
20 in terms of access to those funds.
21 Q. Prospect asserting --
22 A. Prospect, yeah, correct. I would be trying to -- I'd
23 be battling with them as to whether or not that money
24 came to me or them.
25 Q. Now, you were asked about your -- as Receiver through

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1 your counsel filed a motion to intervene in the Cy Pres
2 case.
3 A. Yes.
4 Q. And you understood that was a motion for intervene --
5 for leave to file a complaint in the Cy Pres case?
6 A. I believe so. To vacate the order and file a
7 complaint.
8 Q. Right. Now, in your experience is there a distinction
9 between a party being granted leave to intervene to
10 file a complaint and a party being granted the
11 substantive relief called for in the complaint?
12 A. Yes.
13 Q. Was there any -- ever any agreement with any of the
14 settling defendants that they would agree to the
15 substantive relief that the Receiver was asking for in
16 that complaint of intervention?
17 A. No.
18 MR. SHEEHAN: I don't have anything further.
19 FURTHER EXAMINATION BY MR. HALPERIN
20 Q. Would you look at Exhibit No. 6, the final settlement
21 agreement, paragraph 32.
22 A. I've got two versions. With exhibits and without.
23 I've got 17 and 6 which are both the final. One has
24 exhibits.
25 Q. Either one. Either one will work.

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C E R T I F I C A T E

I, Lori P. Hamel, a Notary Public in and for the State of Rhode Island, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court, especially but without restriction thereto, under Rule 30(e) of said Rules; that the deponent was first sworn by me; that this deposition was stenographically reported by me and later reduced to print through Computer-Aided transcription; that the foregoing is a full and true record of the proceedings; and that a review of the transcript by the deponent was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of August, 2019.

Lori P. Hamel

Lori P. Hamel
Certified Court Reporter
Notary Public

My Commission Expires 6/24/21

4

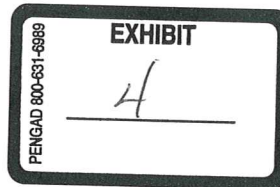
PIERCE ATWOOD

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Admitted in: RI, MA



June 5, 2018

Via first class mail, postage pre-paid
and electronic mail

House Speaker Nicholas A. Mattiello
RI State House, Room 323
82 Smith Street
Providence, RI 02903
(rep-mattiello@rilegislature.gov)

Senate President Dominick J. Ruggerio
RI State House
82 Smith Street
Providence, RI 02903
(sen-ruggerio@rilegislature.gov)

House Majority Leader K. Joseph Shekarchi
RI State House
82 Smith Hill
Providence, RI 02903
(rep-shekarchi@rilegislature.gov)

**Re: St. Josephs Health Services of Rhode Island Retirement Plan, as amended (“the “Plan”)
An Act Relating to Health And Safety - The Hospital Conversions Act (applies to
settlement of St. Joseph Hospital Retirement Plan settlements/joint tortfeasors' releases)
House Bill No. 8166 and Senate Bill No. 2112**

Dear Speaker Mattiello, President Ruggerio and Majority Leader Shekarchi:

As you know, I am the Court-appointed Receiver for the Plan and have been charged with the task of investigating and protecting this Plan for the approximately 2,700 dedicated former employees of St. Joseph's and Fatima Hospitals. As you also know, the failure of this Plan has left those 2,700 shocked, confused, angry and fearful for their financial future. Having said that, I, on behalf of myself and on behalf of the 2,700 citizens who have been devastated by this circumstance, want to extend my sincere thanks and appreciation to each of you for sponsoring the St. Joseph's joint tortfeasor legislation and thank the other dedicated members of your respective chambers for their support of this legislation.

I cannot express how critical the quick passage of this legislation is to my and Special Counsel's, Attorney Max Wistow, ability to obtain the best possible recovery for the Plan for the benefit of the 2,700 vested participants. As I have recently reported to the Court, we expect to initiate actions against the various parties that we believe are responsible for the failure of the Plan at some point

House Speaker Nicholas A. Mattiello

Page 2

June 5, 2018

this month. As with any litigation there is substantial risk and, absent a prudent settlement, the battle with these parties will likely take years. Without this legislation, the ability for me, as Receiver, to reach a reasonable settlement to expeditiously and efficiently obtain funds to supplement the assets of this Plan is substantially compromised if not wholly eliminated. Conversely, this legislation will provide the opportunity for Special Counsel, the Court and myself to negotiate and accept terms of settlement from some parties without compromising our claims and efforts with those unwilling to offer a reasonable settlement. You should know that we already have parties who have expressed a willingness to settle and avoid even the filing of a complaint but we cannot entertain those discussions until this legislation is in place.

I understand that the close of this year's session is likely to happen later this month and, as such, this time of year is an extremely busy and active period at the State House. However, for the obvious reasons and the reasons stated above it is critical that this legislation be passed by both chambers as soon as possible and, hopefully, before June 15, 2018. I again thank you for your dedicated service and willingness to assist the efforts to protect and possibly save this Plan. Most importantly for the participants of the Plan, I thank you for your prompt attention to the passage of this legislation through both chambers prior to June 15th.

Of course, I will make myself available at any time should you or any member of your respective chambers have any questions or concerns.

Sincerely,



Stephen F. Del Sesto, Esq.
Court Receiver for St. Josephs Health Services
of Rhode Island Retirement Plan

cc: St. Josephs Health Services of Rhode Island Retirement Plan Participants (*via posting on the Receiver's dedicated website*)

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Chace Ruttenberg & Freedman, LLP
Attorneys at Law

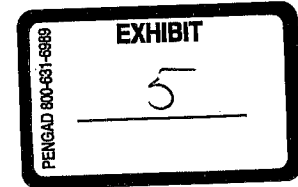
Robert B. Berkelhammer**
Nathan W. Chace
Douglas J. Emanuel*o
Robert D. Fine*
Carl I. Freedman
Macrina G. Hjerpe**
Bret W. Jedele
Drew P. Kaplan
Richard J. Land*
Allan M. Shine*
Don E. Wineberg*

LuAnn Cserr*o
Andre S. Digou*
Jared R. Sugerman*

Bruce R. Ruttenberg, *retired*

* Also admitted in Massachusetts
† Also admitted in Connecticut
o Also admitted in New York
+ Also admitted in Washington, D.C.
* Admitted in California
o Admitted U.S. Patent & Trademark Office

July 9, 2018



VIA EMAIL (mwistow@wistbar.com)
AND REGULAR MAIL

Max Wistow, Esq.
Wistow, Sheehan & Lovely, P.C.
61 Weybosett Street
Providence, RI 02903

Re: RULE 408 SETTLEMENT COMMUNICATION

Dear Max:

Thank you for taking the time to meet with Steve DelSesto (the "Receiver") and me on Friday, June 29, 2018, to discuss a potential settlement. As I have consistently maintained, it has been the intention of CharterCare Community Board ("CCCB"), Roger Williams Hospital ("RWH") and St. Joseph Health Services of Rhode Island ("SJHSRI" and together with CCCB and RWH, the "Oldco Entities") to seek an outcome that avoids the on-going cost of the litigation, as was demonstrated by the relief sought in the Cy Pres Petition and resulting Order that any remaining funds be paid into the St. Joseph Health Services of Rhode Island Pension Plan (the "Pension"). With that backdrop in mind, this letter is intended to set forth the general terms of a proposed settlement of the pending litigation consistent with my view of our discussion on Friday. While this settlement framework has been discussed with the Oldco Entities' Board members, and I have obtained their input on these concepts, the settlement proposal has not been presented to the Boards for a vote. I would expect that the final version of the settlement terms will be submitted for a vote once we have concluded our discussions.

The Oldco Entities will, in exchange for a general release from the Receiver and all the other plaintiffs ("Plaintiffs"), commence a judicial wind-down of the Oldco Entities pursuant to R.I.G.L. 7-6-60 through a proposed plan of liquidation ("Plan") including the following terms:

1. The Oldco Entities will stipulate that, if proven, the claims asserted by the Plaintiffs would exceed the value of the assets held by the Oldco

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Max Wistow, Esq.

Page 2

- Entities and that, accordingly, all assets of the Oldco Entities will be paid over to the Pension after resolution of all creditor claims or as otherwise ordered by the Court;
2. The Plan will include a claims filing procedure (not applicable to the Pension), a claims bar date, and a process for the Court to resolve such claims;
 3. Rather than appointment of a receiver over the Oldco Entities, the Plan will require the Receiver to administer the Oldco Entities' assets and manage the claims process, including if necessary, the appointment of independent counsel (upon further court approval) to evaluate (and if appropriate object to) and resolve disputed claims;
 4. The Plan will set forth a list of known creditors and will require publication notice to all unknown creditors;
 5. The Plan will require that the Receiver pay all costs and expenses incurred by or on behalf of the Oldco Entities (for example, legal counsel, records retention, e-discovery vendors, third-party administrators, or accountants) in connection with the wind-down, Receivership, or the litigation, including but not limited to, preparing and responding to subpoenas, discovery requests or depositions directed to the Oldco Entities, defending any claims brought against the Oldco Entities, their directors, trustees, officers, employees, agents or attorneys;
 6. The Plan will provide for the engagement of independent counsel to represent the interests of the Oldco Entities, their directors, trustees, officers, employees, agents and attorneys, in the judicial dissolution proceeding in the event claims are made in such proceeding against any of the foregoing parties, and will indemnify such parties against any losses suffered as a result of such claims; and
 7. In order to avoid additional costs associated with discovery, the Plan will provide that third parties may have access to the records previously provided to the Receiver's counsel pursuant to the subpoenas previously issued; provided that, for cause shown, third parties may be permitted additional discovery against the Oldco Entities.

As indicated above, in consideration of moving forward in this manner, the Plaintiffs would execute and deliver a full, general release in favor of the Oldco Entities, their respective directors, trustees, officers, employees, agents and attorneys, releasing any and all claims, suits and liabilities, known or unknown, contingent or liquidated, upon approval by the Court sitting in the Pension Receivership matter and simultaneous approval from the federal court. Of course the release and court approvals must be sufficient to withstand any collateral attack by third parties, including but not limited to, the existing defendants in litigation. Thereafter, the Oldco Entities will file the Petition for judicial wind-down in the form agreed to by the Oldco Entities and the Receiver.

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Max Wistow, Esq.
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The foregoing recitation of terms is not intended to be comprehensive, but rather to set forth the material framework for the Plan and settlement pursuant to which the Receiver will obtain significant value for the benefit of the pensioners. We anticipate working cooperatively with you and the Receiver to finalize a comprehensive Plan to submit to the Court.

If you are agreeable to this settlement framework, we can begin preparing the Plan and other settlement documentation for submission to the Court. I look forward to hearing from you.

Very truly yours,

Chace Ruttenberg & Freedman, LLP



Richard J. Land

cc: Stephen DelSesto, Esq. (Via Email)

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| EXHIBIT 16 | | | | |
|--|---------------------------|---|--|------------------------|
| (CCCB LIABILITIES) | | | | |
| Creditor | Creditor's Counsel | Counsel Address | Nature of Claim | Amount of Claim |
| Prospect Medical Holdings, Inc. | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect East Holdings, | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect CharterCare, L | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect CharterCare Physicians, LLC | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect CharterCare RWMC, LLC | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect CharterCare SJHSRI, LLC | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Prospect CharterCare Elmhurst, LLC | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Any and all other Company/Prospect Indemnified Persons, as such term is defined in that certain Asset Purchase Agreement, dated as of September 24, 2013 | Gary W. Herschman, Esq. | Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq. | Indemnification | Unliquidated |
| Rhode Island Department of Environmental Management, et al (see attached list) | Ronald N. Gagnon, P.E. | RIDEM, 235 Promenade St., Providence, RI 02908-5767 | Environmental - TrukAway Landfill, Warwick, RI | Unliquidated |

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SETTLEMENT AGREEMENT

This settlement agreement ("Settlement Agreement") is entered into this ____ day of August, 2018, between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Receiver") and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and¹ on behalf of all class members as defined herein (the Receiver and said persons are collectively referred to as "Plaintiffs"), and, on the other hand, CharterCARE Community Board ("CCCB"), St. Joseph Health Service of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively the "Settling Defendants").

WHEREAS Plaintiffs asserted claims against the Settling Defendants and others in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No: 1:18-CV-00328-WES-LDA) (the "Federal Court Action"), and in a lawsuit filed in the Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the "State Court Action"), which lawsuits concern the alleged underfunded status of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), in which Plaintiffs seek relief from the Settling Defendants including money damages that greatly exceed the remaining assets of the Settling Defendants;

WHEREAS Plaintiffs filed a motion to intervene in the civil action entitled *In re: CharterCARE Health Partners Foundation, Roger Williams Hospital and St. Joseph*

¹ Contingent upon the Court certifying the Class as provided herein.

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anyone, including but not limited to creditors, except in the ordinary course of winding-down their operations, and to provide the Receiver with ten (10) days' written notice of their intention to make any such payments in an amount greater than \$10,000, to negotiate in good faith if the Receiver objects to any such payments after being provided with notice thereof, and to submit to the jurisdiction of the Superior Court in the Receivership Proceeding if the Receiver continues to object, so that the Court in the Receivership Proceeding may determine whether such payments should be made.

26. The Settling Defendants acknowledge that they are liable to the Plaintiffs on at least some of the claims Plaintiffs have asserted against the Settling Defendants in the Federal Court Action and the State Court Action, including but not limited to claims for breach of contract, and that Plaintiffs' damages resulting from such liability include the sum that (in addition to the remaining assets of the Plan) would be sufficient to purchase annuities from one or more insurance companies to fund all of the benefits to which the Plan participants are entitled under the Plan, and that, according to a recent analysis, that sum (in addition to the remaining assets of the Plan) would be approximately \$120,000,000. Accordingly, Settling Defendants stipulate that they are liable, jointly and severally, to the Plaintiffs in the amount of damages of \$120,000,000, and that sum less the Gross Settlement Amount Prior to Distribution in the Liquidation Proceedings shall be amount of the Plaintiffs' claims as creditors of the Settling Defendants in the Liquidation Proceedings.