

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

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

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**DECLARATION OF STEPHEN P. SHEEHAN IN CONNECTION WITH  
REFERRAL OF WS&L'S FEE APPLICATIONS TO A SPECIAL MASTER**

Stephen P. Sheehan, Esq. hereby declares and states as follows:

1. Pursuant to the Court's order on September 5, 2019 directing WS&L's fee applications to be reviewed by a Special Master (Dkt #152), the Special Master held an informational meeting on September 26, 2019 and requested that WS&L provide certain calculations.


2. Those calculations are attached hereto as Exhibit 1.

3. The calculations include the number of attorney hours since August 9, 2019, of 422 hours. Over this seven week period, WSL filed over 200 pages of legal memoranda, argued at two final settlement hearings and the hearing on the non-settling defendants' motions to dismiss which involve over 1,000 pages of legal memoranda, and participated in state court proceedings concerning Charter Care Community Board's interest in Prospect Chartercare LLC.

4. These are in addition to the 2,600 hours of attorney time since this litigation was commenced, noted in the Second Supplemental Declaration of Max Wistow (Dkt #145) at paragraph six, and the 1,472 hours of attorney time billed prior to commencement of suit as noted in the Declaration of Max Wistow (Dkt #65) at paragraph eighteen, resulting in total attorney time of 4,494 hours.

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

Executed on this 27th day of September, 2019 in Rhode Island.



Stephen P. Sheehan

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the within document was electronically filed on the 27th day of September, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Stephen P. Sheehan

# Exhibit 1

## MINIMUM OF 4,494 ATTORNEY HOURS

(as of September 26, 2019)

PRE-SUIT: minimum of 1,472 hours (billed at reduced hourly rate of \$375 per hour)

POST-COMMENCEMENT OF LITIGATION THROUGH SEPTEMBER 26, 2019: 3,022 hours

SEPTEMBER 27, 2019 UNTIL PAYMENT: unknown number of hours but potentially substantial<sup>1</sup>

## REQUESTED FEE

23.33% OF ALL SUMS PAID PURSUANT TO SETTLEMENT A (i.e. 23.33% of \$11,150,000 plus 23.33% of additional recoveries)

23.33% OF ALL SUMS PAID PURSUANT TO SETTLEMENT B (i.e. 23.33% of \$4,500,000)

LESS WS&L'S ELECTIVE CREDIT OF \$552,281.25 (WSL has offered this credit if WSL fee is 23.33% of the fund. If not, there should be not such credit.)

MINIMUM REQUESTED FEE: 23.33% times \$15,650,000 minus \$552,281.25 = \$3,098,863.80

## LODESTAR CROSS-CHECK CALCULATION

THE LODESTAR CROSS-CHECK MULTIPLIER FOR WSL'S TOTAL COMPENSATION OF \$3,651,145 (requested fee of \$3,098,863.80 + credit of \$552,281.25) IS 1.35. THIS ASSUMES LODESTAR HOURLY RATE OF \$600 AND 4,494 MINIMUM TOTAL HOURS, RESULTING IN A PURE LODESTAR RECOVERY OF \$2,696,400. (\$3,651,145 IS 1.35 TIMES \$2,696,400.)

**N.B.** Empirical data for 2003-2011 collated in the leading treatise shows that the mean lodestar cross-check multiplier allowed in common fund cases involving recoveries of \$11.5-19.2 million is 1.68 – 1.98, and that "multipliers increase as fund size increases."<sup>2</sup> 5 Newberg on Class Actions § 15:89 (5th ed.). The lodestar multiplier of 1.35 is, therefore, well below the mean.

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<sup>1</sup> For example, the Non-Settling Defendants might seek review (although Plaintiffs claim they are not entitled to it) by the First Circuit if the Federal Court approves the settlements, and Settlement B will not be paid until parties return to Superior Court and move to vacate the 2015 *Cy Pres* Order to allow the settlement payment, which the Rhode Island Attorney General may oppose.

<sup>2</sup> The minimum total recovery of \$15,650,000 is in the top half of the range of \$11.5–19.2 million.