

**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.

PROSPECT CHARTERCARE, LLC; ET AL.,

Defendants.

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

**STIPULATION AND PROPOSED ORDER CONCERNING LIMITED DISCOVERY
AND RELATED SUMMARY JUDGMENT MOTIONS**

Plaintiff Stephen Del Sesto (the “Receiver”) and the individual named plaintiffs (individually and as putative class representatives) (with the Receiver, “Plaintiffs”) and Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, The Angell Pension Group, Inc., Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively “Non-Settling Defendants,” and with Plaintiffs, the “Parties”) jointly submit this proposed plan for limited discovery and related motions for summary judgment.

BACKGROUND

1. At the September 10, 2019 hearing on Non-Settling Defendants’ motions to dismiss the Amended Complaint, the Court requested that the Parties outline a path for proceeding with this case that would allow for some limited discovery to go forward while the motions to dismiss are pending or deferred and ordered the Parties to meet and confer over an order consistent with that outline.

2. The Parties agree to discovery as set forth below, limited to Count IV of the Plaintiffs' First Amended Complaint, concerning when, if at any time, the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") ceased to be a church plan exempt from ERISA, with the expectation that Plaintiffs and/or Non-Settling Defendants will file motions for summary judgment as further described below, limited to that issue.

3. The Parties agree to the following schedule for resolving Count IV:

- a. Within five (5) business days of the Court's approving this stipulation, Plaintiffs, the Non-Settling Defendants, and the Settling Defendants will jointly request that the Rhode Island Attorney General agree to Plaintiffs' producing to the Non-Settling Defendants the documents that were produced to the Receiver in the Receivership Proceedings by the Rhode Island Attorney General, including pursuant to confidentiality orders in the Receivership Proceeding, without motion practice to declassify any such confidential documents.
- b. Within ten (10) business days of the Court's approving this stipulation, the Receiver shall produce to the Non-Settling Defendants the records he received from all defendants and third parties pursuant to the turn-over order and/or subpoenas in the Receivership Proceeding, other than from the Non-Settling Defendants, Bank of America,¹ and the Attorney General. However, and in any event, the Receiver shall not be required to produce Angell's work product prepared for the Receiver as actuary to the Plan following the appointment of the Receiver, or Angell's files transferred to

¹ However, the Receiver will make the records obtained from Bank of America available for inspection and copying upon request of the Non-Settling Defendants.

Gabriel, Roeder, Smith & Company as the Plan's new actuary. The Receiver shall have the option of delivering the documents either directly to counsel for the Non-Settling Defendants or to a copy company designated by the Non-Settling Defendants for copying at their expense.

- c. In the event the Rhode Island Attorney General does not agree within ten (10) business days of that request, Plaintiffs, the Non-Settling Defendants, and the Settling Defendants shall promptly file a joint motion in the Receivership Proceeding for an Order authorizing Plaintiffs to produce to the Non-Settling Defendants the documents that were produced to the Receiver in the Receivership Proceedings by the Rhode Island Attorney General, including pursuant to confidentiality orders in the Receivership Proceeding, without motion practice to declassify such documents.
- d. Within ten (10) business days of the Rhode Island Attorney General's agreeing to the request referred to in paragraph a, or, in the event the Attorney General does not agree, then within ten (10) business days of the Court in the Receivership Proceeding issuing the Order referred to in paragraph c, the Receiver shall produce to the Non-Settling Defendants the records he received from the Attorney General.
- e. The Parties stipulate that the documents that were produced to the Receiver, including pursuant to confidentiality orders in the Receivership Proceeding, may be produced to each of the other Parties in the order and in the manner in which the Receiver obtained them, together with any indexes provided with such documents, and that, as recipients of documents produced to the

Receiver, the Non-Settling Defendants agree to be bound by existing confidentiality agreements and/or protective orders entered by the court in the Receivership Proceeding.

- f. At any time between thirty (30) and sixty (60) days after the Court's approval of this stipulation, the Receiver may file a motion for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA. The Receiver may attach to his motion and the Non-Settling Defendants may attach to their objections such documents as are permitted by Fed. R. Civ. P. 56, provided, however, that insofar as the Parties attach the documents produced by any of the Defendants to the Receiver in the Superior Court Receivership Proceeding, or documents that were prepared by the office of the Attorney General or the Department of Health, or submitted by any defendant in this action to the Attorney General and/or to the Department of Health in connection with the 2009 hospital affiliation and/or 2014 asset sale and related hospital conversion proceedings, such documents shall be deemed *prima facie* authentic, provided that the party submitting any such document (i) represents that the document has been submitted in its entirety, or if not, that the complete document has been provided to opposing counsel, and (ii) identify the source from whom the document was obtained. Insofar as the Receiver was provided with redacted documents in the Receivership proceeding, production of a complete copy of the document with the redactions shall be sufficient. Any party that refuses to accept that such documents are

authentic shall be required, within ten (10) days of receipt thereof and written notification of the other party's intention to offer it in connection with a motion for summary judgment, to present specific grounds to justify such refusal, and not merely rely on lack of personal knowledge of authenticity.

- g. Within ten (10) days of their receipt of the Receiver's motion for summary judgment, the Non-Settling Defendants will provide the Receiver with their proposed schedule for any additional discovery pursuant to Fed. R. Civ. P. 56(d) and a proposed briefing schedule. The parties will attempt to agree upon a schedule, but if no schedule is agreed, then, within fifteen (15) business days of their receipt of the Receiver's motion for summary judgment, the Non-Settling Defendants will file motions for additional discovery pursuant to Fed. R. Civ. P. 56(d) and for the Court to set the briefing schedule. Insofar as the Receiver has not already produced the documents he received from the Attorney General, the motion for additional discovery can seek an order concerning whether and how such documents should be produced. If the Non-Settling Defendants are permitted either by agreement or by motion to conduct discovery pursuant to Rule 56(d), Plaintiffs also will be permitted to conduct discovery within the same time period, also limited to Count IV of the First Amended Complaint.
- h. The Receiver's motion for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA, shall not preclude the Non-Settling Defendants from filing their own motions at any

time concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA, and neither the Receiver's nor the Non-Settling Defendants' motions for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA shall preclude the filing of subsequent Rule 56 motions on other issues or counts. In the event the Non-Settling Defendants file their own motions concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA, the Plaintiffs shall have the right to seek discovery pursuant to Rule 56(d) either by agreement or by motion.

- i. Within thirty (30) days of the Court approving this stipulation, the Parties shall meet and confer and jointly propose to the Court a stipulation and order concerning the treatment of confidential information submitted in connection with motions for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA, provided, however, that if the parties are unable to agree on a joint proposal, each party concerned with this issue shall within forty (40) days of the Court's approving this stipulation submit a proposed order, and any party's failure to do so will constitute a waiver of that party's right to request confidentiality for any information submitted by any party in connection with the motions for summary judgment.
- j. For purposes of this limited discovery, requests for discovery from Plaintiffs are limited to requests directed to the Receiver.

4. Upon resolution of Count IV, the Court will hold a status conference to discuss next steps (for example, and without any implied admission by any party that such step may be appropriate or necessary, mediation, answer deadlines, deadlines to replead, dispositive motions on ERISA preemption grounds, retention of supplemental jurisdiction, potential cross-claims and third-party practice, and discovery on a going-forward basis).

JOINT POSITION ON MEDIATION

5. The Parties believe that a renewed effort at mediation may be warranted once the Court has ruled on the motions for summary judgment concerning Count IV, or, in the event no such motions are filed, after the Parties have completed the limited discovery provided for herein.

APPROVED:

Hon. William E. Smith
Chief United States District Judge

Dated: October , 2019

So stipulated as of October 22, 2019,

By:

STEPHEN DEL SESTO, AS RECEIVER
AND ADMINISTRATOR OF THE ST.
JOSEPH HEALTH SERVICES OF RHODE
ISLAND RETIREMENT PLAN, et al.

PROSPECT MEDICAL HOLDINGS, INC.
and PROSPECT EAST HOLDINGS, INC.

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DIOCESAN ADMINISTRATION
CORPORATION and DIOCESAN SERVICE
CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October 2019, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Max Wistow

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