Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 8/22/2018 2:24 PM
Envelope: 1680191
Reviewer: Alexa G.

STATE OF RHODE ISLAND PROVIDENCE, SC.		SUPERIOR COURT
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
vs.	:	C.A. No: PC-2017-3856
ST. JOSEPHS HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	**Hearing Date: Sept. 6, 2018 @ 9:30 a.m.**

RECEIVER'S MEMORANDUM IN SUPPORT OF HIS MOTION TO LIFT CONFIDENTIALITY AS TO DOCUMENT FILED UNDER SEAL

On June 18, 2018, as a result of investigations, Special Counsel filed Complaints in the U.S. District Court for the District of Rhode Island[1] and in Providence Superior Court[2], as well as a motion to intervene and proposed petition in the related Cy Pres Proceeding[3] (collectively the "Complaints"). The Complaints set forth extensive and detailed allegations of wrongdoing by the Defendants. The Complaints quote extensively from documents that were produced pursuant to subpoena and which were not designated as confidential. The Complaints, however, do not refer to or discuss other documents that were designated as confidential in connection with the 2009 or 2013-2014 hospital conversion transactions.

[1] Stephen Del Sesto, et al. v. Prospect CharterCare, LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.) (the "Federal Court Action").

[2] Stephen Del Sesto, et al. v. Prospect CharterCare, LLC, et al., C.A. NO.: PC-2018-4386 (R.I. Super.) (the "State Court Action").

[3] In re: Chartercare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, C.A. No: KM-2015-0035 (the "Cy Pres Proceeding").

In connection with the briefing on the pending motion to intervene in the Cy Pres Proceeding, CharterCARE Foundation made numerous incorrect statements of fact, including the following:

> The [Cy Pres] Petition did not state that, after transfer of the charitable assets to CCF, SJHSRI still would have sufficient assets to "pay" or "satisfy" SJHSRI's considerable long-term pension liability during a "winddown" period. That is simply not true.
>
> * * *
>
> CCF now takes this opportunity to review the basic structure and content of that Petition. It is important to set the record straight, because the Proposed Intervenors press a misleading argument that the Petition misrepresented that SJHSRI's long-term pension liability was one of the "Outstanding and Post Closing Liabilities" that would be "paid off" or "satisfied" during the Heritage Hospitals' subsequent "wind down" period. A careful review of the Petition makes it clear that Petitioners said nothing of the sort.
>
> * * *
>
> In light of the above, it is misleading for the Proposed Intervenors to suggest that the Petition unconditionally included pension liabilities as among the "Outstanding and Post Closing Liabilities" that would be "paid" or "satisfied" during a wind-down period.

Opposition of Petitioner CharterCARE Foundation f/k/a CharterCARE Health Partners Foundation to Motion to Intervene at 2, 11, 14.

CharterCARE Foundation was ineffectively trying to rebut Proposed Intervenors' appropriate use of the Cy Pres Petitioners' own statements made to the Court in 2015. The Cy Pres Petitioners repeatedly stated in the 2015 *Cy Pres* Petition that the assets it would retain after the transfers to CCHP Foundation would be sufficient to "satisfy" SJHSRI's and RWMC's liabilities, including SJHSRI's pension obligations. For example, the 2015 Cy Pres Petition contains the following statement:

> Likewise, SJHSRI seeks approval to use such annual distributions **to pay the Outstanding Pre and Post Closing Liabilities (<u>both non-pension and pension</u>)** on its behalf and **when such liabilities have been paid**, to transfer use of such annual distributions to the CCHP Foundation.
>
> [Emphasis supplied]

Cy Pres Petition ¶ 27. In this statement, the Petitioners referenced both pension and non-pension obligations. Then in the same paragraph they referred generally to "Pre and Post Closing Liabilities" and stated as follows:

> RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks cy pres approval to transfer such annual distributions to SJHSRI **to satisfy the Outstanding Pre and Post Closing Liabilities** on its behalf.
>
> [Emphasis supplied]

Cy Pres Petition ¶ 27. Similarly the Cy Pres Petition stated:

> As set forth in the AG Decision, during the course of the HCA review, the parties recognized that notwithstanding the expected proceeds that would be received by the Heritage Hospitals post-closing, including Medicare settlements, i. e., reconciliation of monies due and paid for the fiscal years 2011, 2012, 2013 and 2014, the liabilities of the Heritage Hospitals would exceed the available funds. Accordingly, Old CharterCARE, subject to Court approval, **proposed that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities**.
>
> [Emphasis supplied]

Cy Pres Petition ¶ 18. Similarly the Cy Pres Petition stated:

> RWH requests that this Court grant approval to use the $12,288,8486, reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, **to satisfy the Outstanding Pre and Post Closing Liabilities as and when due**, as more fully described in Exhibit C.
>
> [Emphasis supplied]

Cy Pres Petition ¶ 24. The 2015 Cy Pres Petition for a fifth time acknowledged that the charitable assets would be used to "satisfy" SJHSRI's liabilities:

> As set forth in paragraph 29, approval for RWH to use the trust funds that it will receive upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, cy pres approval to transfer the funds **to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf**.

Cy Pres Petition ¶ 29 (emphasis supplied). And a sixth time:

> As set forth in paragraph 28, approval for RWH to use its annual income or principal distributions from the perpetual trusts identified in paragraph 28 **to satisfy the Outstanding Pre and Post Closing Liabilities** on its behalf and cy pres approval to transfer such annual income distributions to SJHSRI **after such RWH liabilities have been satisfied**.

Cy Pres Petition ¶ 6 (emphasis supplied).

To show that the Hospital Conversions Act proceedings had been similarly tainted by assurances that the Pension obligations would be honored in the years to come, Proposed Intervenors responded by filing excerpts, under seal, of a document entitled "Confidential Final Responses to the HCA Application" (the "Document").[4] This Document was submitted by the Attorney General and Department of Health by the applicants in the 2013-2014 hospital conversions proceedings. It contains misrepresentations by the applicants concerning the Pension which are directly relevant to the claims set forth in the Complaints. It substantiates Proposed Intervenors' position that both this Court (in the Cy Pres Proceeding in 2015) and the Attorney General's office was misled regarding future payments to the Pension Plan. When the applicants submitted the Document to the Attorney General, however, they requested that it be

[4] The Document is bates-stamped AGE14-135384 to AGE14-135425.

kept confidential. Accordingly, when the Attorney General produced[5] the Document to Special Counsel, he designated it as confidential pursuant to the Order entered December 14, 2017 (the "Confidentiality Order").[6]

Special Counsel hereby moves that the Court declassify the Document and permit it to be treated as not confidential.[7] Special Counsel submits that no proper basis exists for maintaining confidentiality over the Document, assuming (*arguendo*) such basis ever existed (which it did not). Special Counsel expects that the Attorney General will not oppose this motion, especially in light of the fact that the Document was evidently used to mislead the Attorney General into approving the 2013-2014 hospital conversions. If, on the other hand, the Attorney General does object, that objection—and that of any other party—should be overruled.

I. The Confidentiality Order permits the Court to declassify documents, and in any event is subject to revision by the Court

At the November 29, 2017 hearing in connection with Special Counsel's motion to overrule objections and compel production of documents from the Attorney General, the Court ruled that the Attorney General would be permitted to produce documents to Special Counsel under a designation of confidentiality, but the Court also expressly indicated it would revisit the confidentiality designations at a later date by a motion such as this:

[5] Pursuant to the subpoena Special Counsel issued to the Attorney General on November 3, 2017.

[6] Attached hereto as Exhibit 1.

[7] This Motion is with respect to one document that is peculiarly relevant to some of the incorrect factual allegations asserted by CharterCARE Foundation in its opposition to the Motion to Intervene in the Cy Pres Proceeding, but is without prejudice to further claims for declassification of other documents relevant to the Related Proceedings.

> The Court will also then take up at the request of the special counsel whether or not these records should at some point become part of the public record. But rather than going through a process there that may require briefing and other issues, the Court will issue a protective order to allow for the immediate disclosure to the special master and special counsel of those documents that are deemed confidential by the Attorney General's office.

November 29, 2017 Hearing Tr. at 48 (attached hereto as Exhibit 2).

The Confidentiality Order subsequently entered provides in relevant part:

> 4. **Declassification**. In the event that Special Counsel seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 3, Special Counsel may file a motion with the Court for a ruling that the document designated as Confidential Material is not or should not be entitled to such status and protection. Such motion may be heard upon no less than fourteen (14) days' notice to the Attorney General, Saint Joseph's Health Services of Rhode Island, Inc. ("SJHSRI"), Prospect CharterCARE, LLC ("Prospect"), and to any applicable Third Party. The Attorney General, SJHSRI, Prospect and Third Party shall have ten (10) days from the date such petition is filed to file an opposition to the petition defending the designation as Confidential Material. The person challenging the designation shall have five (5) days in which to file a reply.

Exhibit 1. In addition, the Confidentiality Order expressly provides that it is subject to revision by the Court upon notice to those same entities.[8]

[8] See Confidentiality Order § 10 ("This Order may be amended or modified by the Court upon notice to the Receiver, Special Counsel, the Attorney General, SJHSRI, and Prospect."). In addition, "[i]t is well established that, like any ongoing injunction, a trial court retains the jurisdiction and authority to enforce, modify, or terminate any confidentiality order it has entered." Hallett v. Carnet Holding Corp., 809 A.2d 1159, 1162 (Del. 2002). See also Super. R. Civ. P. 54(b) (interlocutory orders remain subject to revision at any time).

II. Confidentiality as to the Document, submitted to the regulators in connection with the Hospital Conversions Act proceedings, should be lifted, because such statutorily authorized confidentiality does not bind anyone except the regulatory agencies, and because those proceedings were tainted by fraud

The Document was submitted to the Attorney General or Department of Health in 2013-2014 by the applicants. It was designated as confidential by the applicants and the Attorney General during the Hospital Conversions Act proceedings, rather than in connection with responding to Special Counsel's subpoenas in these Receivership Proceedings. By statute, such confidentiality can only apply to "information required by this chapter of an applicant," and is initially passed upon by the Attorney General and is binding on the Attorney General, the Department of Health, and their own experts and consultants:

> The Attorney General has the power to decide whether any information required by this chapter of an applicant is confidential and/or proprietary. The decisions by the attorney general shall be made prior to any public notice of an initial application or any public review of any information and shall be binding on the attorney general, the department of health, and all experts or consultants engaged by the attorney general or the department of health.

R.I. Gen. Laws § 23-17.14-32(a). Absent from this statutory provision is any suggestion that the Attorney General's decision as to confidentiality is binding on any person or entity other than the Attorney General, the Department of Health, and their own experts or consultants. For example, it clearly is not binding on the applicants themselves concerning documents they submitted to the Attorney General and Department of Health. Instead, such confidentiality designation simply functions to prevent the Attorney General and Department of Health from producing such records pursuant to the Access to Public Records Act:

> (c) Except for information determined by the attorney general in accordance with § 23-17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as confidential, the initial application and supporting documentation shall be considered public records and shall be available for inspection upon request.

R.I. Gen. Laws § 23-17.14-6(c).

As is evident from the allegations set forth in the Complaints, the various submissions made in the Hospital Conversions Act proceedings were replete with misrepresentations or omissions—or at a minimum, a finder of fact could so conclude. Indeed, the Complaints in both the Federal Court Action and the State Court Action describe these fraudulent misrepresentations and omissions in great detail, with extensive quotation from specific documents, under the subject heading of "Fraudulent Misrepresentations and Omissions to State Regulators." See Complaint in Federal Court Action ¶¶ 308-359[9]; Complaint in State Court Action ¶¶ 200-252.[10] Maintaining their "confidentiality," as designated by the applicants in 2013 and 2014, in light of these grave allegations, is no longer appropriate or in the public interest.

Clearly the applicants have no protectable interest in shielding their misdeeds from public scrutiny; nor does the Document contain any proprietary information such as trade secrets or any information that could be used by competitors. Conversely, the interest of the citizens of Rhode Island and the participants in the Pension Plan in ensuring that fraudulent hospital conversions are not approved—and if approved, are appropriately rectified—is paramount. In other words, the allegations in the Related Proceedings require complete transparency for those proceedings under the Hospital Conversions Act. Assuming (*arguendo*) that there was any legitimate basis for the

[9] This portion of the Complaint in the Federal Court Action is attached hereto as Exhibit 3.

[10] This portion of the Complaint in the State Court Action is attached hereto as Exhibit 4.

designation when made (which is almost impossible to envision), the passage of time (over four years) since the Document was marked confidential in 2014 has likely eliminated any legitimate concerns that may have led to the information being so designated in the first instance.

This is an issue of first impression in Rhode Island and likely in the entire United States, perhaps because no one has attempted to assert such confidentiality to bar discovery in litigation outside of the context of the proceedings for hospital conversions and public records requests (e.g. under APRA or FOIA). Many states regulate hospital conversions by statute, and many of those states' statutes (including those of Ohio[11], Oregon[12], Maryland[13], and Wisconsin[14]) address the confidentiality *vel non* of

[11] Ohio's Nonprofit Health Care Facility Transfers of Assets statute provides: "(D) The notice and all other documents or materials submitted pursuant to this section are public records provided they meet the definition set forth in section 149.43 of the Revised Code [i.e. Ohio's public records law]." Ohio Rev. Code Ann. § 109.34.

[12] Oregon's Transfer of Assets of Hospital statute only provides for confidentiality of trade secrets. See Or. Rev. Stat. Ann. § 65.805.

[13] Maryland's Acquisition of Nonprofit Health Entities statute specifically exempts confidential documents from subpoena:

> (c)(1) On request to the regulating entity, and subject to paragraphs (2), (3), and (4) of this subsection, an application and related documents shall be available for public inspection and copying.
>
> (2) Except as provided in paragraphs (3) and (4) of this subsection or otherwise by law, all information and documents that are filed with the regulating entity in compliance with the requirements of this title or that are reported to, obtained by, or otherwise disclosed to the regulating entity or any other person in the course of an examination or investigation made under this title:
>
> (i) are confidential material;
>
> (ii) are not subject to subpoena; and
>
> (iii) may not be made public by the regulating entity or any other person.
>
> (3) Material that otherwise is confidential under paragraph (2) of this subsection may be made public by any person to whom the nonprofit health entity to which the material relates gives prior written consent.

documents submitted to regulators in connection with applications for hospital conversion.[15] Both inside and outside Rhode Island, however, there is a dearth of case law interpreting such statutory confidentiality provisions.

Although this may be an issue of first impression, the decision facing the Court is not a difficult one. Even (*arguendo*) putting aside the merits of the Complaints (whose merits speak for themselves), the public interest in disclosure overwhelmingly outweighs the private interest in secrecy in this matter affecting not only the pensions of more than 2,700 pensioners but also the very legitimacy of the hospital conversion process.

Nothing in the text or structure of Rhode Island's Hospital Conversions Act suggests that it was intended to create a privilege in civil litigation for documents submitted in connection with a conversion application. Nevertheless even if (*arguendo*) it did create a privilege (which it did not), our Supreme Court "consistently has 'declared that privileges, in general, are not favored in the law and therefore should be strictly construed.'" Gaumond v. Trinity Repertory Co., 909 A.2d 512, 516 (R.I. 2006) (quoting

---

> (4) If, after giving a nonprofit health entity notice and an opportunity to be heard, the regulating entity determines that it is in the interest of the policyholders, stockholders, or the public to make public any material relating to the nonprofit health entity that otherwise is confidential under paragraph (2) of this subsection, the regulating entity may make public all or part of the material in an appropriate manner.

Md. Code Ann., State Gov't § 6.5-201. Unlike Rhode Island's statute, Maryland's statute appears to preclude judicial review of confidentiality designations and merely permits the regulators to revisit such designations on their own initiative.

[14] Wisconsin's Acquisition of Hospitals statute provides: "(b) An application and all documents related to the application, as specified in par. (a), are public records for the purposes of subch. II of ch. 19 [i.e. Wisconsin's public records law, Wis. Stat. Ann. § 19.21 et seq.]." Wis. Stat. Ann. § 165.40(3)(b).

[15] In addition, California's Attorney General has also adopted a regulation governing the treatment of application materials as confidential. See Cal. Code Regs. tit. 11, § 999.5. Many other states have adopted statutes regulating nonprofit hospital conversions without addressing confidentiality issues. See Ariz. Rev. Stat. Ann. § 10-11251, et seq.; Colo. Rev. Stat. Ann. § 10-16-324, et seq.; Conn. Gen. Stat. Ann. § 19a-486, et seq.; D.C. Code Ann. § 44-601, et seq.; Ga. Code Ann. § 31-7-400, et seq.; Haw. Rev. Stat. Ann. § 432C-1, et seq.; La. Stat. Ann. § 40:2115.11, et seq.; Neb. Rev. Stat. Ann. § 71-20,102, et seq.; N.H. Rev. Stat. Ann. § 7:19-b; Va. Code Ann. § 55-531, et seq.

Moretti v. Lowe, 592 A.2d 855, 857 (R.I. 1991)). That is because "[p]rivileges, by their nature, 'shut out the light' " on 'the ascertainment of the truth.'" Pastore v. Samson, 900 A.2d 1067, 1078 (R.I. 2006) (quoting State v. Almonte, 644 A.2d 295, 298 (R.I. 1994)).

In other words, even if (*arguendo*) the Hospital Conversions Act created a privilege (which it does not), such privilege would be strictly construed against the entities asserting it. As such, in accordance with the express terms of the Hospital Conversions Act, it is only "binding on the attorney general, the department of health, and all experts or consultants engaged by the attorney general or the department of health." R.I. Gen. Laws § 23-17.14-32(a). Consequently, it is not binding on the Receiver or Special Counsel.

CONCLUSION

For all the foregoing reasons, an order should issue declassifying the Document and permitting it to be treated as not confidential.

Receiver,
Stephen F. Del Sesto, Esq., Permanent Receiver of the Receivership Estate,
By his Attorneys,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

Dated: August 22, 2018

Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 8/22/2018 2:24 PM
Envelope: 1680191
Reviewer: Alexa G.

CERTIFICATE OF SERVICE

I hereby certify that, on the 22nd day of August, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Jessica D. Rider, Esq.
Sean Lyness, Esq.
Neil F.X. Kelly, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
jrider@riag.ri.gov
slyness@riag.ri.gov
nkelly@riag.ri.gov

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crfllp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
jwk@olenn-penza.com

George E. Lieberman, Esq.
Gianfrancesco & Friedmann
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

Howard Merten, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com

Joseph V. Cavanagh, III, Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
Jvc3@blishcavlaw.com

William M. Dolan, III, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
wdolan@apslaw.com

David A. Wollin, Esq.
Hinckley Allen & Snyder, LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
dwollin@hinckleyallen.com

Preston W. Halperin, Esq.
James G. Atchison, Esq.
Christopher J. Fragomeni, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
jatchison@shslawfirm.com
jfragomeni@shslawfirm.com

Stephen Morris, Esq.
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908
stephen.morris@ohhs.ri.gov

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

Exhibit 1

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
vs.	:	C.A. No: PC-2017-3856
ST. JOSEPHS HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	

ORDER

The Receiver, Special Counsel, and the Attorney General having agreed to the entry of an order on the terms set forth below, and the Court having reviewed and considered the proposed order, and good cause appearing therefore, it is hereby:

ORDERED:

1. **Scope.** This Order shall apply to documents produced in connection with the subpoena issued by Special Counsel to the Attorney General, dated November 3, 2017, which were deemed confidential by the Attorney General pursuant to R.I. Gen. Laws § 23-17.14-32.

2. **Non-Disclosure of Confidential Material.** Except as hereinafter provided under this Order or subsequent Court Order, no Confidential Material may be disclosed to any person except as provided in Paragraph 4 below. "Confidential Material" means any document that bears the legend "AG-CONFIDENTIAL" to signify that it contains information deemed to be confidential pursuant to R.I. Gen. Laws § 23-17.14-32.

3. **Permissible Disclosure of Confidential Material.** Notwithstanding Paragraph 2, Confidential Material may be disclosed to (a) the Receiver; (b) to Special Counsel; (c) to the associates, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services; (d) to consultants, experts, or investigators retained for the purpose of assisting such counsel; to (e) persons with prior knowledge of the Confidential Material and their agents; and to (f) court officials (including, without limitation: court reporters and any special master or mediator appointed by the Court). Such Confidential Material may also be disclosed to any additional person as the Court may order. This Order shall apply to and be binding upon any individual or entity to whom Confidential Material is disclosed. Prior to sharing Confidential Material with any person in category (d) above, Special Counsel shall provide that person with a copy of this Order and explain its terms and the Court's determination that anyone viewing Confidential Material is bound by this Order. All such persons in category (d) above will read a copy of this Order and shall execute an Acknowledgment in the form of Exhibit 1 hereto, which copy shall be maintained by Special Counsel.

4. **Declassification.** In the event that Special Counsel seeks to disclose Confidential Material in a manner outside of what is provided in Paragraph 3, Special Counsel may file a motion with the Court for a ruling that the document designated as Confidential Material is not or should not be entitled to such status and protection. Such motion may be heard upon no less than fourteen (14) days' notice to the Attorney General, Saint Joseph's Health Services of Rhode Island, Inc. ("SJHSRI"), Prospect CharterCARE, LLC ("Prospect"), and to any applicable Third Party. The Attorney

General, SJHSRI, Prospect and Third Party shall have ten (10) days from the date such petition is filed to file an opposition to the petition defending the designation as Confidential Material. The person challenging the designation shall have five (5) days in which to file a reply.

5. **Filing of Confidential Material with the Court.** Confidential Material shall not be filed with the Court except under seal, when required in connection with motions as provided for in Paragraph 4 or any other reason or in connection with other matters pending before the Court for which such materials may be relevant. Any pleadings, motions, or other papers filed under seal shall be filed in accordance with the Rhode Island Superior Court Rules of Civil Procedure and any other applicable court rules or standing orders.

6. **Confidential Material at Trial or Other Court Proceeding.** Subject to the Superior Court Rules of Civil Procedure and any other applicable rules and standing orders, Confidential Material may be offered in evidence at trial or other court proceeding, provided that the proponent of the evidence gives notice to counsel for the Attorney General, SJHSRI, Prospect, and the Third Party (if known), sufficiently in advance so as to enable them to move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosures. The Court will then determine whether the proffered evidence should continue to be treated as Confidential Material and, if so, what protection, if any, may be afforded to such information at the trial or other court proceeding.

7. **No Waiver.**

(a) Review of Confidential Material by any persons identified in Paragraphs 3, 5 or 6 shall not waive the protections provided herein, or any objections to production of Confidential Material.

(b) The inadvertent, unintentional, or *in camera* disclosure of Confidential Material shall not, under any circumstances, be deemed a waiver, in whole or in part, of claims of confidentiality. If the Attorney General inadvertently or unintentionally produces any Confidential Material without marking or designating it as such in accordance with the provisions of this Order, the Attorney General may, promptly on discovery, furnish a substitute copy properly marked, along with written notice to the other persons that such document is deemed confidential and should be treated as such in accordance with the provisions of this Order. Each receiving person must treat such document as Confidential Material from the date such notice is received.

8. **Inadvertent Production of Privileged Material.** The Receiver, Special Counsel, and Attorney General shall adhere to the obligations imposed by the Superior Court Rules of Civil Procedure regarding privileged material. However, the inadvertent failure of any of them to designate and/or withhold any document as subject to the attorney-client privilege, the attorney work-product doctrine or any other applicable protection or exemption from discovery will not be deemed to waive a later claim as to its appropriate privileged or protected nature, or to stop the producing person from designating such document as privileged or protected from discovery at a later date in writing and with particularity.

9. **Survival.** The terms of this Order shall survive the conclusion of this matter. Special Counsel, the Attorney General, SJHSRI, Prospect or any other applicable Third Party may move the Court for an order addressing the post-conclusion treatment of Confidential Material.

10. **Amendment or Modification of Order.** This Order may be amended or modified by the Court upon notice to the Receiver, Special Counsel, the Attorney General, SJHSRI, and Prospect.

ORDERED:

Brian P. Stern
Associate Justice

Stern, J.

Dated: December 14, 2017

ENTERED:

/s/ Carin Miley

Dep. Clerk

Dated: December 14, 2017

Presented by:

Max Wistow, Esq. (#0330)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com

Dated: December 7, 2017

EXHIBIT 1

STATE OF RHODE ISLAND PROVIDENCE, SC.		SUPERIOR COURT
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
vs.	:	C.A. No: PC-2017-3856
ST. JOSEPHS HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	

ACKNOWLEDGEMENT

The undersigned declares and states as follows:

1. I have read the attached Order, dated December __, 2017 ("Order"), understand its contents and hereby agree to comply therewith and to be bound thereby. In addition, I consent to the jurisdiction of the Rhode Island Superior Court for the purposes of enforcement of the Order.

2. I agree to use Confidential Material only for purposes of assisting in the matters for which I have been retained, and for no other purpose.

3. I agree to retain all Confidential Material in a secure manner and in accordance with the terms of the Order. I also agree not to distribute any Confidential Material except in accordance with the Order. I further agree not to communicate Confidential Material to any person or entity not qualified to receive it under the terms of the Order.

4. I agree to comply with all other provisions of the Order.

5. I acknowledge that failure on my part to comply with the provisions of the Order may be punishable by contempt of court and may render me liable to any Party, person, or entity damaged thereby.

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

Executed on _____.
Name: _____ (print or type)

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that, on the 7th day of December, 2017, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Kathryn Enright, Esq.
Jessica D. Rider, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
kenright@riag.ri.gov
jrider@riag.ri.gov

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crfllp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
jwk@olenn-penza.com

Joseph V. Cavanagh, III, Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
jvc3@blishcavlaw.com

Howard Merten, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

Exhibit 2

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	)	
VS.	)	C.A. No: PC/2017-3856
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	)	

MOTION TO COMPEL

HEARD BEFORE THE HONORABLE JUSTICE BRIAN P. STERN ON:

WEDNESDAY, NOVEMBER 29, 2017

APPEARANCES:

RICHARD J. LAND, ESQ.....FOR THE PETITIONER

MAX WISTOW, ESQ.....SPECIAL COUNSEL

CHRISTOPHER CALLACI, ESQ.....UNITED NURSES & ALLIED PROFESSIONALS

JOSEPH CAVANAGH, III, ESQ.....PROSPECT CHARTERCARE, LLC

STEPHEN F. DEL SESTO, ESQ.....COURT-APPOINTED RECEIVER

SPECIAL ASSISTANT ATTORNEY GENERALS
JESSICA RIDER, ESQ.
KATHRYN ENRIGHT, ESQ.....FOR THE STATE

MR. CALLACI: Thank you.

THE COURT: Any of the other attorneys who have entered wish to be heard?

I know CharterCare has a -- or St. Joe's, sorry, has a position.

MR. LAND: Judge, Richard Land on behalf of St. Joseph's, the petitioner. Your Honor, I will be very brief. I was mentioned by Ms. Enright. My client has no objection to the disclosure of the information. I did send Mr. Wistow a communication yesterday. We would only like to reserve relative to attorney-client privilege materials, which I frankly don't think are included, but Mr. Wistow indicated a willingness to enter into a protective order with Prospect. Perhaps that can cover that issue for us as well. As a general rule, we are not objecting.

THE COURT: Thank you.

Okay. This Court has considered the papers that have been filed and the arguments of counsel here today. The subpoena in this case was issued to the Office of Rhode Island Attorney General pursuant to orders of this Court dated September 13, 2017, and October 27, 2017, which permitted the special master and special counsel to issue subpoenas. On October 17, prior to the second order, this Court issued an order approving and

appointing special counsel. The special counsel's engagement includes gathering information and determining whether or not there exists claims against third parties by the pension plan estate.

A subpoena for documents was properly served on the Office of the Rhode Island Attorney General on November 3, 2017. The subpoena was returnable on November 17th at 11 a.m. at the offices of the special counsel. On November 6, a proof of service was filed with this Court. On November 16th, the Office of the Attorney General filed a partial objection to the subpoena. On November 17th, the special counsel filed a motion to overrule the partial objection by the Attorney General and compel a response. On November 27, the Office of the Attorney General filed an objection to the motion to compel. And on November 28, the special counsel filed a reply. His motion has been heard this afternoon.

First of all, this Court will note that there have been agreements among the parties to modify the scope of the subpoena, including number two, which has been -- has been taken off the list without prejudice. Numbers one and three are subject to some modifications, as the Court asked during oral arguments. The Court will allow counsel to converse after this is completed. And if

necessary, we certainly can put that agreement on the record.

There are several issues that were addressed in the motion and in the objection and reply. First, dealing with the production of publicly available documents. As the Attorney General has conceded in their most recent papers and here today, that objection is withdrawn. The Attorney General will provide all publicly available documents that are within the scope of the subpoena to the special counsel.

The second issue deals with the Attorney General's objection that the special counsel should be required to provide search terms to serve electronic records. The Attorney General has indicated during oral argument that it has not yet identified which systems electronically stored information is contained that is responsive to the subpoena. So, the Court finds that makes it difficult, if not impossible, to put the onus on the special counsel to provide search terms.

Certainly this Court is not adverse in any respect to once identification is complete — again, is it just an e-mail system, an analysis system, thumb drive storage or other electronic media — of working through search terms that may be appropriate.

Fortunately on November 6, 2017, the Rhode Island

Supreme Court adopted revisions to the Superior Court Rules of Civil Procedure. These new rules deal with electronically stored information, and they are extremely helpful here. In that, the Supreme Court modified not only Rule 26 but other rules to provide for how electronic discovery shall be dealt with. And that's exactly what we have.

So, in accordance with the new rules, the Court orders that counsel for the Attorney General, as well as the special counsel, meet and confer in person. The Attorney General's office shall bring with them someone with knowledge of the information technology systems used by the Attorney General. And the special counsel may have available an information technology person as well.

The Court finds, and it's been this Court's experience in the past, that many times it's helpful that if the two subject matter experts speak, they can work out a way that the special counsel can get the information he wants. And the Attorney General, in this case, can run certain searches and save a lot of time and expense for everyone.

Specifically, the plan and the court order require that comes out of this meeting is one, a discussion of the types of electronic information maintained by the Office of Attorney General; a discussion of the

preservation of any electronic information; the format by which the special counsel wishes the information to be produced; the search terms or other methods by which the electronic media will be assessed and searched; the method for serving or preserving claims of privilege or protection of information after production; and general terms that would include a fallback agreement; the method for asserting or preserving confidentiality of proprietary information, if applicable; the date or dates for compliance with the electronic information.

This Court will require that if a plan is not submitted to this Court on or before December 7, 2017, at 4:30, if the plan is not agreed to, the parties will still submit to the Court the portions of the plan that are agreed to. And each party shall delineate what their final proposal was to each. At that point the Court will review it and make a determination and issue an order with respect to the plan.

With respect to confidential documents, this Court may allow for disclosure of these documents at a minimum under the terms of a protective order. This Court finds that the most effective way — based on the arguments today and hearing from both Prospect and CharterCare -- I'm sorry -- and St. Joe's — is that these documents will be issued to the special counsel under the terms of a

protective order. This is the most effective way and efficient way to give the special master and special counsel access to all of these documents.

The Court will also then take up at the request of the special counsel whether or not these records should at some point become part of the public record. But rather than going through a process there that may require briefing and other issues, the Court will issue a protective order to allow for the immediate disclosure to the special master and special counsel of those documents that are deemed confidential by the Attorney General's office.

The Court would also like to address the issue of a privilege log. What the Court has done or tried to do since the beginning of this matter — once again, we have people here that are plan participants — is to try and help everyone understand the terms of the process going forward. Now we are talking, finally, in terms of the time for production. But even when things are required to be produced, the Office of the Attorney General in this case will be required to produce documents to the special counsel.

The law allows but does not require that the Attorney General may raise what we call in the law "privileges." If the Attorney General asserts a

privilege with respect to a document, he will not be required at that time to produce that document, even if they are responsive to what the special counsel has asked for.

However, the Attorney General, if they assert a privilege – and I'm saying if, because they haven't reviewed all the documents at this point – will be required to prepare something called a privilege log. And in this log, as to each document that they're saying there's a privilege, the Attorney General must provide sufficient information for the special counsel to evaluate whether or not that privilege should apply.

If there is a dispute between the special counsel and the Attorney General about whether or not a document should have been produced, the Court, upon request of the special counsel, will convene a hearing and in certain cases may view certain documents through what's called an in camera inspection, which is to look at them in order to help the Court make a decision as to whether or not a privilege applied.

So, the Attorney General in their papers raised three of these privileges. So let me tell you what they are because when the documents come back in, there will be a privilege. And it may delineate one, two, three or all of these privileges. And the first one really

applies to government agencies. It started with applying to the President of the United States. This was developed way back during the Nixon administration in something called executive privilege.

And the courts have found another privilege called deliberative process privilege. And this privilege is a qualified privilege. It may be raised by the Attorney General. What it protects is the internal deliberations of an agency to safeguard the process for agency decisions. The reason behind it is that we don't want to foil the free exchange of ideas within the regulator — in this case, the Attorney General's office — during the course of their decision-making, in this case, about whether to approve or not approve an application.

However, there are certain rules you can't just say everything is deliberative. There's two words in the law. One says that it has to be predecisional and the second is it has to be deliberative.

Predecisional means it was prepared to assist an agency decision-maker at arriving at his or her decision. Deliberative means making recommendations or expressing opinions on legal or policy matters, as opposed to factual or objective material outside the deliberative process which cannot be withheld.

Now, even if deliberative process is asserted by the

Attorney General, this Court may be able to review documents and weigh certain competing interests to determine whether or not it should apply. But just realize -- and again, this is the Attorney General's call, but there may be certain documents after applications were filed that internally went into the decision-making process on policy or other things that may come to us as part of a privilege log. It doesn't mean they are not going to be turned over at this point. But it means the special counsel will review them.

There's also something called the work product privilege that they've raised. And that's documents that have been prepared or obtained in the anticipation or because of the prospect of litigation, lawsuits. Again, it may be raised or not raised. It's the Attorney General's decision to make. And this is divided into two categories: documents that contain mental impressions of an attorney or their legal theory, and those are pretty much the highest type of exempted disclosure.

There's also something called factual work product. And as I said, while this opinion work product or the attorney notes have absolute immunity, factual work product is qualified. This Court can hold a hearing and make a decision based on the set of legal factors of whether or not — even though there's that work product

privilege – certain information is going to be disclosed to the special counsel.

Lastly, the Attorney General raises the prospect of what's called the attorney-client privilege. The client, in this case the Attorney General, can invoke that privilege. And that's communications made by a client to his attorney for the purpose of seeking professional advice, as well as the responses by the attorney that are privileged and not subject to disclosure.

Fortunately, many of these issues were dealt with by my colleague Justice Silverstein in two very -- cases that received a lot of attention years ago, the lead paint case and more recently in the 38 Studios litigation. And some of these have, including in the lead paint case, many of these issues in terms of privilege have been reviewed. And the opinions are from our Rhode Island Supreme Court which is binding upon this Court.

So I just want to be clear that what we are going to talk about, finally, is when these things need to be produced. But I want everyone to understand that the production will come in. And there may also be what are called privilege logs, which are documents that a choice has been made to assert a privilege and then Attorney Wistow or the special counsel will go through a process

and have discussion about these.

It's -- this is important because what I want everyone to understand is the date that the Court sets for the return of this subpoena — which again is passed at this point. The Attorney General has properly filed an objection — may very well not be the end of the issue in terms of what documents are produced from the Attorney General's office because we may get a privilege log, and it may take some more time.

Now, subpoenas in this case under court order are issued under the Superior Court rules. And those rules do not indicate the amount of time that shall be afforded the person subject to the subpoena to respond. The date may be put down by the party issuing the subpoena, in this case the special counsel.

The Court, however, upon the filing of an objection, which the Attorney General's office did at this point, may determine whether or not there has been a reasonable time for compliance. In this case, the Court must balance the request for more time by the Attorney General's office with the need and timeliness of this information by the special counsel.

This Court has publicly stated in other proceedings in this case that there are insufficient funds in the pension plan to pay all members the benefits they are

entitled to under the pension plan. In fact, based on the reports of the special master, without a large infusion of assets into the plan, the benefits to some or all or part of the plan members may need to be significantly reduced in February of 2018. I have been very upfront about that.

Whether or not there are claims against third parties can only be determined after the special counsel completes or substantially completes their investigation. While the special counsel has issued a number of subpoenas, it is likely that the information obtained from one subpoena may lead to further request and information from other sources.

So, for every delay in getting pieces of information, it only delays the special counsel's decision, which is his charge to determine whether or not any assets may be brought into the pension plan.

The Court also recognizes that we have a lot of documents here and that the Attorney General must be given the opportunity to gather, review, and produce responsive documents. At the same time, the Court recognizes that the Attorney General's office has been 26 days thus far. The Court had pressed the Attorney General's office during oral argument of what steps they have taken during the past 26 days, including how many

individuals have been assigned, whether the responsive documents have been identified, the status of privilege logs, and the amount of documents that have been produced.

While the Attorney General's office has taken some steps, the Court is terribly concerned where we are after 26 days. As I mentioned before, a large group of these documents are deemed public records. And our Attorney General's office has been loud and clear with cities and towns and other parties – some of those cases before me – that the city and town has 30 days to respond on a publicly available -- even if they have many documents.

What we have here is the Attorney General – I understand the circumstance is slightly different – asking for 90 additional days or actually more than that, if we look at when the subpoena was served on November 3.

After weighing these factors, the Court will order a rolling production of documents by the Attorney General. I have ordered, as part of the electronic records, that the parties meet and confer and put together a plan. The order will also require a plan that's agreed to between the special counsel and the Attorney General's office in terms of his priorities in terms of production.

The Court, understanding the amount of documents we are talking about here, will extend the Attorney

General's compliance day on the subpoena until January the 15th. However, the Court wants not only a plan but the Court wants a weekly update to both the special counsel and a copy to this Court beginning December 5, 2017, and weekly thereafter. This way the Court and either the request of the special counsel or on its own initiative can bring the parties back in, because we are not going to be extending that day.

On that day, all of the documents that are not privileged will be produced. A full privilege log will be produced. And the Attorney General's office should be in a position that if any of the documents are marked privilege, that they have ready access to them if the Court requires an in camera review or further proceedings in this matter.

The Court is going to ask the special counsel to prepare a draft of the appropriate order, circulate it to the Attorney General's office. If the order is -- if the order is agreed to, the Court will sign it. If there is a dispute, the Court will review any competing orders by the end of this week and enter the order.

We need to continue this process, and at the same time, the Court completely understands and appreciates the decision that the Attorney General needs to make in terms of what, if any, privileges may be released, will

be taken with respect to the production.

Thank you very much, counsel.

Court is in recess.

(A D J O U R N E D)

* * * * * * * *

Exhibit 3

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; GAIL J. MAJOR; NANCY ZOMPA; RALPH BRYDEN; DOROTHY WILLNER; CAROLL SHORT; DONNA BOUTELLE; and EUGENIA LEVESQUE,	:	
Plaintiffs	:	
v.	:	C.A. NO.: _____
PROSPECT CHARTERCARE, LLC; CHARTERCARE COMMUNITY BOARD; ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; PROSPECT CHARTERCARE SJHSRI, LLC; PROSPECT CHARTERCARE RWMC, LLC; PROSPECT EAST HOLDINGS, INC.; PROSPECT MEDICAL HOLDINGS, INC.; ROGER WILLIAMS HOSPITAL; CHARTERCARE FOUNDATION; THE RHODE ISLAND COMMUNITY FOUNDATION; ROMAN CATHOLIC BISHOP OF PROVIDENCE; DIOCESAN ADMINISTRATION CORPORATION; DIOCESAN SERVICE CORPORATION; and THE ANGELL PENSION GROUP, INC.,	:	Jury Trial Demanded Class Action
Defendants.	:	

COMPLAINT

important part of your future retirement income," and again reassured them that "[t]he Hospital pays the entire cost of the Plan," with payment options that included annuity payments for life.

306. These Defendants knew that the "Hospital," which for nearly two years had been owned and operated by the Prospect Entities, claimed it had no obligations whatsoever to Plan participants. Moreover, SJHSRI, RWH and CCCB had already decided to put the Plan into receivership and ask for a severe cut in benefit payments to all Plan participants, and were merely allowing time to pass in order to obscure the connection between the 2014 Asset Sale and the receivership, so that the inevitable firestorm of employee shock and anger and negative publicity that would be generated by the receivership would not be linked to the current operations of New Fatima Hospital and New Roger Williams Hospital.

307. An earlier internal draft of the April 13, 2016 PowerPoint presentation stated that the Plan was a "Church Plan" and, therefore, that the Plan participants' benefits were not protected under ERISA. However, as part of a long history of concealment from the Plan participants, this disclosure was deleted and did not appear in the presentation actually given. Indeed, the Plan participants were never informed that the Plan was purported to be a Church Plan, such that the Plan participants' benefits were not protected under ERISA.

E. FRAUDULENT MISREPRESENTATIONS AND OMISSIONS TO STATE REGULATORS

308. In 2014 Defendants SJHSRI, RWH, CCCB and the Prospect Entities sought and obtained approval from the Rhode Island Department of Health and the Rhode Island Attorney General to convert Fatima Hospital and Rogers Williams Hospital into for-profit operations.

309. On February 14, 2014, pursuant to the conspiracy in which the Diocesan Defendants were participating with all of the other Defendants to relieve Fatima Hospital of any liability under the Plan at the expense of the Plan participants, Bishop Tobin personally wrote to the Health Services Council to lobby in favor of regulatory approval of the for-profit hospital conversion:

> I write on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings. . . .
>
> * * *
>
> The Diocese of Providence is grateful to CharterCARE for all it has done to preserve the healing ministry of SJHSRI/Our Lady of Fatima Hospital, all within very difficult financial circumstances. However, without this transaction, it appears that a consistent Catholic health care presence in the Diocese of Providence would be gravely compromised, **and the financial future for employee-beneficiaries of the pension plan would be at a significant risk. I believe that this partnership will help avoid the catastrophic implications of such a failure**, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima.
>
> [Emphasis added]

310. However, as explained above, rather than believing the 2014 Asset Sale would help avoid pension failure, Bishop Tobin personally, and, through him and other officials, the Diocesan Defendants, knew that "the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings" made pension failure much more likely, and, indeed, a virtual certainty, absent unanticipated and extremely improbable investment gains, because it would cut the link between the Plan and an operating hospital, and would transfer assets from SJHSRI that otherwise would be available to help fund the Plan.

311. Thus they knew that the Plan was at much more than a "significant risk." Indeed, as noted above, in the draft letter written to papal authorities in September of

2013, only six months earlier, discussed above, Bishop Tobin had described the pension as "a spiraling and gaping unfunded liability." He removed that reference from the final version of that letter because he was warned that the letter may be "subject to discovery in a civil lawsuit," and substituted "significant" for "spiraling and gaping." Thus, the Diocesan Defendants not only were fully aware of the extent of the unfunded liability, they also took steps to understate and conceal it.

312. Angell acted as CCCB's and SJHSRI's consultant in connection with the application for regulatory approval of the conversion of Fatima Hospital, Roger Williams Hospital, and other health care facilities into for-profit entities.

313. On April 9, 2014, CCCB provided Angell with a document prepared by the Rhode Island Attorney General's office, consisting of questions to be answered in connection with that application, and asked for Angell's assistance in answering the following question:

> Please provide:
>
> * * *
>
> b. documentation as to the determination that $14 m will stabilize the plan and a description and any written information of the understanding with employee representatives with respect to the freezing and the funding of the plan;

314. Previously, on December 20, 2013, Angell had provided CCCB and SJHSRI with calculations which demonstrated that if $14,000,000 was contributed to the Plan, and assuming a future rate of return of 7.75%, the Plan would run out of funds in 2034, at a time when it would still have over $99 million in unpayable liabilities to Plan participants.

315. On March 27, 2014, Angell updated its calculations based on a slightly higher value of the Plan assets at the beginning of 2014, which projected that even with the $14,000,000 contribution, the Plan would run out of funds in 2036, at a time when it would still have over $98 million in liabilities to Plan participants. To illustrate the consequences if the 7.75% rate of return proved to be too high, Angell also provided an alternative calculation, in which Angell assumed a lower rate of return of 5.75% rather that 7.75%, under which the Plan would run out of assets six years earlier in 2030, with additional unpayable liabilities to Plan participants.

316. Indeed, if the 5.75% rate of return were utilized, the Plan would have been only 66% funded even in 2014 even with the contribution of $14,000,000.

317. As noted above, moreover, the market discount rate in early 2014 that single employer benefit plans were required to use under ERISA was 4.6%, which if utilized would have produced an even lower funding level.

318. On April 10, 2014, however, CCCB and SJHSRI asked Angell to modify that calculation for submission to the Attorney General and the Department of Health. The requested modification was that Angell utilize only the higher projected rate of return of 7.75%, delete all the calculations post-2014, and “simply show only the stabilization effect [in 2014] of the incoming $14M to the plan with no other information shown.”

319. An employee of Angell spoke to the CCCB representative who had requested the modification, and was told that CCCB “wants to show the projection of the funded status after the $14M contribution for 2014,” in order to “highlight the ‘stabilization’ of the Plan.”

320. Angell was thereby being asked to present the 2014 funding level in isolation, for purposes of demonstrating Plan stabilization to the Attorney General and the Department of Health, knowing that it would be misleading, because the complete calculation demonstrated that the $14,000,000 contribution would *not* "stabilize" the Plan, since the complete calculation showed that, notwithstanding that contribution, the Plan would run out of money in 2036 with over $98,000,000 in liabilities to Plan participants even at the high assumed rate of return of 7.75%, or in 2030 with the rate of return of 5.75%.

321. Angell agreed to disregard both of its prior calculations and provided SJHSRI, RWH, and CCCB with the requested new calculation to give to the Rhode Island Department of Health and the Rhode Island Attorney General in support of the application for approval of the asset sale. That new calculation purported to show that the immediate effect of the $14 million contribution would be to increase the funding percentage of the Plan to 94.9%, and deleted the calculations which demonstrated that the Plan nevertheless would run out of money in either 2030 or 2036 depending on the estimated rate of return.

322. That calculation also did not disclose that the funding percentage of 94.9% was based on assumed investment returns that SJHSRI, RWH, CCCB, and Angell knew were nearly 70% above market rates of return (*i.e.*, Angell's projected rate of return of 7.75% was over 68% greater than the market rate of 4.6%).

323. In addition, the calculation did not disclose the fact that the use of any funding level percentage as a measure of the Plan's funding progress was contrary to and deviated from the standards of actuarial practice, that according to those standards the funding progress of a pension plan should not be reduced to a funding percentage

at a single point in time, or that pension plans should have a strategy in place to attain and maintain a funded status of 100% or greater over a reasonable period of time, not merely at a single point in time.

324. These misrepresentations and omissions concerning the Plan's funding level were made to, and part of the information relied upon by, both the Rhode Island Department of Health and the Rhode Island Attorney General in approving the asset sale.

325. On February 21, 2014, the Department of Health sent a list of questions to counsel for SJHSRI, RWH, and CCCB, and to counsel for the various Prospect Entities. On March 7, 2014, counsel for SJHSRI, RWH, and CCCB and counsel for the various Prospect Entities co-signed and sent the Department of Health a letter enclosing their clients' responses to the Department of Health's question, that repeated the question and responded, as follows:

> c. Please identify to what extent, if any, this purchase price will be used by CharterCARE for community benefit versus paying off debts.
>
> Response: The use of the sale proceeds as described is [sic] Section (b) above will benefit the community in three ways:
>
> * * *
>
> b. **The use of $14M to strengthen the St. Joseph Pension Plan will be of significant benefit to the community as it will assure that the pensions and retirement of many former employees, who reside in the community, are protected**.
>
> [Emphasis supplied]

326. In fact, all of the Defendants knew this statement was false and misleading, and that the contribution of the $14,000,000 to the Plan would not "assure"

that the benefits of the Plan participants were protected, even according to the calculations that Angell shared with all of those other Defendants.

327. On April 8, 2014, CCCB President and Chief Executive Officer Belcher testified at a public hearing held before the Project Review Committee of the Rhode Island Department of Health as part of the approval process. He was asked to address three questions raised by a recent report on SJHSRI by Moody's Investor Services. The third question related to Moody's' concern over the funded status of employee retirement accounts, including the Plan. Mr. Belcher testified as follows:

> MR. BELCHER: . . . But the third part was on the pension fund, and the impact on the pension fund with this -- and I think you know we shared information up-front is that at the time of the closing we'll be putting millions of dollars into the pension fund which will bring it to a level of roughly 91 and a half percent funding which is above the safe level that you need for sort of a quote safe level. So all of this really helps stabilize the pension fund as well.

328. SJHSRI, RWH, and CCCB intentionally misled the state regulators by the statement that a funding level of 91.5% "is above the safe level." As discussed above, it is never proper to use a funding level on a single date to measure the health of a pension plan, but it especially inappropriate when the plan sponsor is selling all of its operating assets, because the plan sponsor will lack the means to make up the underfunding. In that context, even if the projected rate of return of 7.75% were reasonable (which it was not), and were actually achieved over time, a funding level of 91.5% would practially guarantee pension plan failure, since it would denote insufficient funds to meet plan obligations even if all of the future assumptions upon which the funding level is based perform exactly as assumed, including thirty to forty years of investment returns.

329. On April 11, 2014, CCCB reminded Angell that the Attorney General was also asking Supplemental Question S3-48, as follows:

> S3-48 Will the pension liability remain in place – how much, and what is the plan going forward to fund the liability?

330. On April 15, 2014, SJHSRI, RWH, CCCB, and the Prospect Entities responded to the Attorney General and answered that question as follows:

> Response: The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, **future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors**. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.
>
> [Emphasis supplied]

331. When that statement was made, however, SJHSRI, RWH, and CCCB knew that it was their intention not to make any future contributions, and, therefore, that "future contributions to the Plan" would *not* "be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors."

332. Indeed, in spite of this representation, in the more than four years since that statement was made, not a single penny has been contributed to the Plan other than the $14,000,000 contribution which they made to secure regulatory approval for the 2014 Asset Sale, contrary to the recommendations of the Plan's actuarial advisors.

333. The Project Review Committee held a public hearing on May 6, 2014. During the testimony of the Department of Health's expert concerning the Plan, CCCB Chief Financial Officer Michael Conklin interrupted, and testified that the "recommended contributions going forward" to fund the Plan were $600,000 per year, which he assured the Committee would be paid out of SJHSRI's expected $800,000 annual income from

outside trusts, and profit sharing paid to CCCB in connection with its 15% share in Prospect Chartercare.

334. Mr. Conklin thereby misrepresented that SJHSRI's expected future income was $800,000, when in fact it was less than $200,000, and suggested that CCCB's profit-sharing in Prospect Chartercare would provide additional funds, when no profit sharing was anticipated for the indefinite future. CCCB has yet to receive any profit sharing whatsoever.

335. Mr. Conklin also misrepresented that the projected annual contribution of $600,000 was an actuarial "recommended contribution," when in fact it was a number made up out of whole cloth by SJHSRI, RWH, and CCCB, and was much below the recommendations of the Plan actuary.

336. Mr. Conklin also did not disclose that SJHSRI, RWH, and CCCB had no intention of making any of those contributions.

337. The Project Review Committee accepted these false assurances, but was aware that even those assurances were based upon assumed investment rates of return, and if the investment returns on Plan assets were lower than anticipated, higher annual contributions would be needed to make up the difference. The Committee referred to this possibility as the "investment risk" of the Plan, and at the hearing on May 6, 2014 asked CCCB President and Chief Executive Officer Belcher "who's bearing the investment risk going forward?" He replied as follows:

> MR. BELCHER: Heritage Hospitals. It stays with the old CharterCare.
>
> MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?
>
> MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

As discussed above, SJHSRI, RWH, and CCCB fraudulently misrepresented their intentions, as it was never their intention to support the Plan, and they have made no contributions whatsoever to the Plan.

338. Defendants also chose to conceal the unfunded status of the Plan out of concern that such disclosure would be seized upon by a competitor that was asking that the Department of Health to delay the proposed asset sale. Indeed, at the same public hearing on May 6, 2014, a representative of that competitor strongly objected to the terms of the asset sale proposed by Defendants, and repeated his client's request that the Committee delay acting upon the application until his client's counter-proposal could be fully considered.

339. The Attorney General did not immediately accept the assurances that there would be sufficient income following the asset sale to adequately fund the Plan. Instead, representatives of the Attorney General asked for proof of legal authority for RWH's assets to be used for that purpose.

340. On May 8, 2014 counsel for SJHSRI, RWH, and CCCB provided the Attorney General with a resolution purportedly approved by RWH's Board of Trustees stating, *inter alia*:

> WHEREAS As part of its retained assets, RWMC has $6,666,874 in Board Designated Funds ("the RWMC Board Designated Funds") that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;
>
> * * *
>
> RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

341. They e-mailed a copy of the resolution to the Attorney General's office (with cc to counsel for the Prospect entities) and stated:

> Finally, attached is the Roger Williams Medical Center (RWMC) Board of Trustees Resolution authorizing the use of the RWMC Board Designated Funds to satisfy the St. Joseph Health Services of Rhode Island (SJHSRI) liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

342. However, SJHSRI, RWH, and CCCB never intended that any part of RWH's "Board Designated Funds" would ever be contributed to the Plan, and, indeed, none have been. They also knew that even $6,666,874 would be insufficient to meaningfully reduce the unfunded liability, such that there was not even a remote chance there would be any surplus left over to transfer to CC Foundation after that liability was paid.

343. Instead of meaning what it says, this resolution evidences SJHSRI, RWH, and CCCB's willingness to tell regulators what they wanted to hear, even if it meant misrepresenting their intended funding sources and manipulating the board of trustees of affiliated companies. In fact, in December 2014, soon after the closing of the asset sale, the board of trustees of RWH was replaced with individuals who were already planning to put the Plan into Receivership.

344. A crucial fact not disclosed to either the Department of Health or the Attorney General was that *for years prior to the asset sale*, management at CCCB, RWH, and SJHSRI had been searching for a way to abandon the grossly underfunded Plan to the detriment of Plan participants, while at the same time protecting the assets of SJHSRI from the claims of Plan participants.

345. For example, on January 2, 2012, the Chairman of the Investment Committee for CCCB's Board of Trustees informed CCCB's head of Personnel, Darlene Souza, and CCCB's Chief Financial Officer Conklin, that the Board of Trustees and management must consider the option of terminating the Plan and distributing the assets with a *pro rata* reduction in benefits.

346. On December 31, 2012, Ms. Souza emailed Mr. Conklin and CCCB's Chief Executive Officer Belcher, wished them a "Happy New Year," and then advised them of what she called the "potentially good news" that, according to her reading of the Plan documents, they could "terminate the plan without a solvency issue," and:

- deprive 1,798 (out of a total of 2,852) Plan participants of any benefit whatsoever,
- pay benefits to an additional 744 Plan participants of only 88% of what they were due;
- pay full benefits only to the remaining 1,054 Plan participants who had already reached normal retirement age; and
- improve SJHSRI's balance sheet by over $29,000,000 by eliminating its liability for the unfunded portion of the Plan.

347. However, Ms. Souza advised Messrs. Conklin and Belcher that there was a downside to the Plan termination, which was that other hospitals with supposed Church Plans had attempted to terminate their plans just as she was proposing, but those hospitals had been sued in class actions, and one of those cases had a pending settlement that obligated the hospital to pay a significant amount of the unfunded benefits, notwithstanding its alleged Church Plan status.

348. Accordingly, Ms. Souza warned that if SJHSRI terminated the Plan and distributed reduced benefits, "we are exposed to a class action lawsuit" by the Plan participants who received no benefits, which could expose SJHSRI to "$30-$35m" as

damages, which "would potentially erode the $29m fiscal savings" resulting from eliminating SJHSRI's funding liability by termination of the Plan.

349. On June 20, 2013, the CCCB Board discussed the possibility of seeking a "Special Master" for the Plan.

350. In December 2013, the CCCB Board discussed putting the Plan into receivership.

351. Thus, notwithstanding the strategic delay in doing so, the scheme to abandon the Plan was already in the works when SJHSRI, RWC, and CCCB assured the Project Review Committee on April 8, 2014 and May 6, 2014 that the "recommended" annual contributions to the Plan would be made and that SJHSRI, RWH, and CCCB were "on the hook" if the projected returns on investment did not materialize.

352. Instead of representing their genuine intention, these statements were part of the conspiracy by all of the Defendants to obtain approval from the Attorney General and the Department of Health through false assurances, and to also thereby assuage the concerns of the unions, and of the general public (including Plan participants) who attended or followed reports of the hearing.

353. In furtherance of that conspiracy, CCCB President and Chief Executive Officer Belcher and Thomas M. Reardon (president of Prospect Medical East) made a statement which the Providence Journal on May 12, 2014 published as an op-ed, which stated:

> The development and pursuit of innovation in health delivery should not come at the cost of one of the most cherished values in Rhode Island health care - that of local control. We are pleased that our proposal will assure preservation of local governance, as our joint venture board will

> have equal representation from CharterCare and Prospect with a local board chair, with real veto powers.

354. This statement was materially false and intentionally deceptive, because under the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, previously agreed to in form by CCCB and the Prospect Entities, deadlocks between CCCB-appointed directors and Prospect-appointed directors for some of the most significant board-level decisions were to be resolved by allowing the decisions of Prospect-appointed board members to prevail.

355. On the same day that Mr. Belcher's statement appeared in the Providence Journal, CCCB emailed it to all of the employees of CCCB, SJHSRI, and RWH, stating, "[w]e want to share the following op-ed that appeared in today's Providence Journal." The same mailing assured all employees that "Prospect and CharterCARE equally share seats on the new company's eight-member governing board," withholding the critical information that although the number of seats were shared equally, the seats filled by the Prospect Entities had the power to make some of the most significant corporate decisions against the wishes of the directors chosen by CCCB, and certainly without disclosing that the 2014 Asset Sale was merely a step in the scheme to shield Fatima Hospital from liabilitity on the Plan, and to strip assets from SJHSRI that were needed to satisfy its pension obligations to those same employees.

356. In addition to falsly reassuring the public and their own employees on the issue of local control, SJHSRI, RWH, CCCB, and the Prospect Entities also misled state regulators concerning the degree of local control that CCCB would have after the 2014 Asset Sale.

357. On May 2, 2014, CCCB and the various Prospect Entities involved in the asset sale, through their counsel, responded to the following question of the Rhode Island Attorney General:

> Question: Please describe the governance structure of the new hospital after conversion, including a description of how members of any board of directors, trustees or similar type group will be chosen.

358. Defendants responded in pertinent part as follows:

> Response:
>
> An overview of the governance structure for Prospect CharterCARE, LLC is as follows:
>
> Prospect CharterCARE, LLC will have a Board of Directors.
>
> Prospect CharterCARE, LLC's Board of Directors will have half of its members selected by and through PMH's ownership in Prospect CharterCARE, LLC and the other half of the members will be selected by and through CCHP's ownership Prospect CharterCARE, LLC.
>
> The Board of Directors will be responsible for determining the patient Care, strategic, and financial goals policies and objectives of Prospect CharterCARE, LLC.
>
> * * *
>
> Prospect CharterCARE, LLC's Board of Directors will be structured as follows: (i) eight (8) members; (ii) fifty (50%) percent of its members will be appointed by PMH; and (iii) fifty (50%) percent of its members will be appointed by CCHP. The purpose of the structure is to ensure a strong local presence and mission. The Board of Directors will include at least one physician representative.
>
> The Board of Directors will be responsible for determining the patient care, strategic, and financial goals, policies and objectives of Prospect CharterCARE, LLC. **The issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP.**
>
> [Emphasis supplied]

359. The statement that "[t]he issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP" was also materially false, for the same reason that some of the most significant decisions were to be resolved by allowing Prospect-appointed board members' decisions to prevail.

F. MISLEADING THE STATE COURT IN CONNECTION WITH *CY PRES* PROCEEDINGS

360. In November of 2009, SJHSRI, CCCB, and RWH filed a petition with the Rhode Island Superior Court, asking the court to approve certain changes affecting charitable donations pursuant to the statutory and common law doctrine of *cy pres*.

361. The doctrine of *cy pres* is intended to be used in appropriate circumstances to allow charitable donations to be applied to a similar purpose when the original recipient of the donations is no longer able to fulfill that purpose.

362. In the 2009 proceedings, the specific purpose of the *cy pres* petition was to inform the court that the original recipients of the charitable gifts had been reconstituted in connection with formation of CCCB and the affiliation of SJHSRI, Roger Williams Medical Center, RWH, and CCCB; that such entities as reconstituted would continue to apply the charitable gifts in accordance with those intentions; and to obtain court approval therefor.

363. Notably, the *cy pres* petition in 2009 did not involve an original recipient of the charitable gift who was insolvent and sought to transfer assets to a related entity in fraud of creditors. To the contrary, in the 2009 petition, essentially the same entities held the assets as had held them originally and creditors were in no way affected or damaged by approval of these transfers.

364. The Superior Court approved this *cy pres* petition on December 14, 2009.

Exhibit 4

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN; GAIL J. MAJOR; NANCY ZOMPA; RALPH BRYDEN; DOROTHY WILLNER; CAROLL SHORT; DONNA BOUTELLE; and EUGENIA LEVESQUE,	:	
Plaintiffs	:	
v.	:	C.A. NO.: _____
PROSPECT CHARTERCARE, LLC; CHARTERCARE COMMUNITY BOARD; ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; PROSPECT CHARTERCARE SJHSRI, LLC; PROSPECT CHARTERCARE RWMC, LLC; PROSPECT EAST HOLDINGS, INC.; PROSPECT MEDICAL HOLDINGS, INC.; ROGER WILLIAMS HOSPITAL; CHARTERCARE FOUNDATION; THE RHODE ISLAND COMMUNITY FOUNDATION; ROMAN CATHOLIC BISHOP OF PROVIDENCE; DIOCESAN ADMINISTRATION CORPORATION; DIOCESAN SERVICE CORPORATION; and THE ANGELL PENSION GROUP, INC.,	:	Jury Trial Demanded Class Action
Defendants.	:	

COMPLAINT

E. FRAUDULENT MISREPRESENTATIONS AND OMISSIONS TO STATE REGULATORS

200. In 2014 Defendants SJHSRI, RWH, CCCB and the Prospect Entities sought and obtained approval from the Rhode Island Department of Health and the Rhode Island Attorney General to convert Fatima Hospital and Rogers Williams Hospital into for-profit operations.

201. On February 14, 2014, pursuant to the conspiracy in which the Diocesan Defendants were participating with all of the other Defendants to relieve Fatima Hospital of any liability under the Plan at the expense of the Plan participants, Bishop Tobin personally wrote to the Health Services Council to lobby in favor of regulatory approval of the for-profit hospital conversion:

> I write on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings. . . .
>
> * * *
>
> The Diocese of Providence is grateful to CharterCARE for all it has done to preserve the healing ministry of SJHSRI/Our Lady of Fatima Hospital, all within very difficult financial circumstances. However, without this transaction, it appears that a consistent Catholic health care presence in the Diocese of Providence would be gravely compromised, **and the financial future for employee-beneficiaries of the pension plan would be at a significant risk. I believe that this partnership will help avoid the catastrophic implications of such a failure**, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima.
>
> [Emphasis added]

202. This letter was sent as part of the conspiracy into which the Diocesan Entities had entered with the other Defendants when they agreed to the 2014 Asset Sale.

203. However, as explained above, rather than believing the 2014 Asset Sale would help avoid pension failure, Bishop Tobin personally, and, through him and other

officials, the Diocesan Defendants, knew that "the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings" made pension failure much more likely, and, indeed, a virtual certainty, absent unanticipated and extremely improbable investment gains, because it would cut the link between the Plan and an operating hospital, and would transfer assets from SJHSRI that otherwise would be available to help fund the Plan.

204. Thus they knew that the Plan was at much more than a "significant risk." Indeed, as noted above, in the draft letter written to papal authorities in September of 2013, only six months earlier, discussed above, Bishop Tobin had described the pension as "a spiraling and gaping unfunded liability." He removed that reference from the final version of that letter because he was warned that the letter may be "subject to discovery in a civil lawsuit," and substituted "significant" for "spiraling and gaping." Thus, the Diocesan Defendants not only were fully aware of the extent of the unfunded liability, they also took steps to understate and conceal it.

205. Angell acted as CCCB's and SJHSRI's consultant in connection with the application for regulatory approval of the conversion of Fatima Hospital, Roger Williams Hospital, and other health care facilities into for-profit entities.

206. On April 9, 2014, CCCB provided Angell with a document prepared by the Rhode Island Attorney General's office, consisting of questions to be answered in connection with that application, and asked for Angell's assistance in answering the following question:

Please provide:

* * *

b. documentation as to the determination that $14 m will stabilize the plan and a description and any written information of the understanding with employee representatives with respect to the freezing and the funding of the plan;

207. Previously, on December 20, 2013, Angell had provided CCCB and SJHSRI with calculations which demonstrated that if $14,000,000 was contributed to the Plan, and assuming a future rate of return of 7.75%, the Plan would run out of funds in 2034, at a time when it would still have over $99 million in unpayable liabilities to Plan participants.

208. On March 27, 2014, Angell updated its calculations based on a slightly higher value of the Plan assets at the beginning of 2014, which projected that even with the $14,000,000 contribution, the Plan would run out of funds in 2036, at a time when it would still have over $98 million in liabilities to Plan participants. To illustrate the consequences if the 7.75% rate of return proved to be too high, Angell also provided an alternative calculation, in which Angell assumed a lower rate of return of 5.75% rather that 7.75%, under which the Plan would run out of assets six years earlier in 2030, with additional unpayable liabilities to Plan participants.

209. Indeed, if the 5.75% rate of return were utilized, the Plan would have been only 66% funded even in 2014 even with the contribution of $14,000,000.

210. As noted above, moreover, the market discount rate in early 2014 that single employer benefit plans were required to use under ERISA was 4.6%, which if utilized would have produced an even lower funding level. As noted, SJHSRI had claimed that it was as a matter of voluntary policy following ERISA guidelines.

211. On April 10, 2014, however, CCCB and SJHSRI asked Angell to modify that calculation for submission to the Attorney General and the Department of Health.

The requested modification was that Angell utilize only the higher projected rate of return of 7.75%, delete all the calculations post-2014, and "simply show only the stabilization effect [in 2014] of the incoming $14M to the plan with no other information shown."

212. An employee of Angell spoke to the CCCB representative who had requested the modification, and was told that CCCB "wants to show the projection of the funded status after the $14M contribution for 2014," in order to "highlight the 'stabilization' of the Plan."

213. Angell was thereby being asked to present the 2014 funding level in isolation, for purposes of demonstrating Plan stabilization to the Attorney General and the Department of Health, knowing that it would be misleading, because the complete calculation demonstrated that the $14,000,000 contribution would *not* "stabilize" the Plan, since the complete calculation showed that, notwithstanding that contribution, the Plan would run out of money in 2036 with over $98,000,000 in liabilities to Plan participants even at the high assumed rate of return of 7.75%, or in 2030 with the rate of return of 5.75%.

214. Angell agreed to disregard both of its prior calculations and provided SJHSRI, RWH, and CCCB with the requested new calculation to give to the Rhode Island Department of Health and the Rhode Island Attorney General in support of the application for approval of the asset sale. That new calculation purported to show that the immediate effect of the $14 million contribution would be to increase the funding percentage of the Plan to 94.9%, and deleted the calculations which demonstrated that the Plan nevertheless would run out of money in either 2030 or 2036 depending on the estimated rate of return.

215. That calculation also did not disclose that the funding percentage of 94.9% was based on assumed investment returns that SJHSRI, RWH, CCCB, and Angell knew were nearly 70% above market rates of return (*i.e.*, Angell's projected rate of return of 7.75% was over 68% greater than the market rate of 4.6%).

216. In addition, the calculation did not disclose the fact that the use of any funding level percentage as a measure of the Plan's funding progress was contrary to and deviated from the standards of actuarial practice, that according to those standards the funding progress of a pension plan should not be reduced to a funding percentage at a single point in time, or that pension plans should have a strategy in place to attain and maintain a funded status of 100% or greater over a reasonable period of time, not merely at a single point in time.

217. These misrepresentations and omissions concerning the Plan's funding level were made to, and part of the information relied upon by, both the Rhode Island Department of Health and the Rhode Island Attorney General in approving the asset sale.

218. On February 21, 2014, the Department of Health sent a list of questions to counsel for SJHSRI, RWH, and CCCB, and to counsel for the various Prospect Entities. On March 7, 2014, counsel for SJHSRI, RWH, and CCCB and counsel for the various Prospect Entities co-signed and sent the Department of Health a letter enclosing their clients' responses to the Department of Health's question, that repeated the question and responded, as follows:

> c. Please identify to what extent, if any, this purchase price will be used by CharterCARE for community benefit versus paying off debts.

Response: The use of the sale proceeds as described is [sic] Section (b) above will benefit the community in three ways:

* * *

b. **The use of $14M to strengthen the St. Joseph Pension Plan will be of significant benefit to the community as it will assure that the pensions and retirement of many former employees, who reside in the community, are protected**.

[Emphasis supplied]

219. In fact, all of the Defendants knew this statement was false and misleading, and that the contribution of the $14,000,000 to the Plan would not "assure" that the benefits of the Plan participants were protected, even according to the calculations that Angell shared with all of those other Defendants.

220. On April 8, 2014, CCCB President and Chief Executive Officer Belcher testified at a public hearing held before the Project Review Committee of the Rhode Island Department of Health as part of the approval process. He was asked to address three questions raised by a recent report on SJHSRI by Moody's Investor Services. The third question related to Moody's' concern over the funded status of employee retirement accounts, including the Plan. Mr. Belcher testified as follows:

> MR. BELCHER: . . . But the third part was on the pension fund, and the impact on the pension fund with this -- and I think you know we shared information up-front is that at the time of the closing we'll be putting millions of dollars into the pension fund which will bring it to a level of roughly 91 and a half percent funding which is above the safe level that you need for sort of a quote safe level. So all of this really helps stabilize the pension fund as well.

221. SJHSRI, RWH, and CCCB intentionally misled the state regulators by the statement that a funding level of 91.5% "is above the safe level." As discussed above, it is never proper to use a funding level on a single date to measure the health of a

pension plan, but it especially inappropriate when the plan sponsor is selling all of its operating assets, because the plan sponsor will lack the means to make up the underfunding. In that context, even if the projected rate of return of 7.75% were reasonable (which it was not), and were actually achieved over time, a funding level of 91.5% would practially guarantee pension plan failure, since it would denote insufficient funds to meet plan obligations even if all of the future assumptions upon which the funding level is based perform exactly as assumed, including thirty to forty years of investment returns.

222. On April 11, 2014, CCCB reminded Angell that the Attorney General was also asking Supplemental Question S3-48, as follows:

> S3-48 Will the pension liability remain in place – how much, and what is the plan going forward to fund the liability?

223. On April 15, 2014, SJHSRI, RWH, CCCB, and the Prospect Entities responded to the Attorney General and answered that question as follows:

> Response: The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, **future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors**. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.
>
> [Emphasis supplied]

224. When that statement was made, however, SJHSRI, RWH, and CCCB knew that it was their intention not to make any future contributions, and, therefore, that "future contributions to the Plan" would *not* "be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors."

225. Indeed, in spite of this representation, in the more than four years since that statement was made, not a single penny has been contributed to the Plan other

than the $14,000,000 contribution which they made to secure regulatory approval for the 2014 Asset Sale, contrary to the recommendations of the Plan's actuarial advisors.

226. The Project Review Committee held a public hearing on May 6, 2014. During the testimony of the Department of Health's expert concerning the Plan, CCCB Chief Financial Officer Michael Conklin interrupted, and testified that the "recommended contributions going forward" to fund the Plan were $600,000 per year, which he assured the Committee would be paid out of SJHSRI's expected $800,000 annual income from outside trusts, and profit sharing paid to CCCB in connection with its 15% share in Prospect Chartercare.

227. Mr. Conklin thereby misrepresented that SJHSRI's expected future income was $800,000, when in fact it was less than $200,000, and suggested that CCCB's profit-sharing in Prospect Chartercare would provide additional funds, when no profit sharing was anticipated for the indefinite future. CCCB has yet to receive any profit sharing whatsoever.

228. Mr. Conklin also misrepresented that the projected annual contribution of $600,000 was an actuarial "recommended contribution," when in fact it was a number made up out of whole cloth by SJHSRI, RWH, and CCCB, and was much below the recommendations of the Plan actuary.

229. Mr. Conklin also did not disclose that SJHSRI, RWH, and CCCB had no intention of making any of those contributions.

230. The Project Review Committee accepted these false assurances, but was aware that even those assurances were based upon assumed investment rates of return, and if the investment returns on Plan assets were lower than anticipated, higher annual contributions would be needed to make up the difference. The Committee

referred to this possibility as the "investment risk" of the Plan, and at the hearing on May 6, 2014 asked CCCB President and Chief Executive Officer Belcher "who's bearing the investment risk going forward?" He replied as follows:

> MR. BELCHER: Heritage Hospitals. It stays with the old CharterCare.
>
> MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?
>
> MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

As discussed above, SJHSRI, RWH, and CCCB fraudulently misrepresented their intentions, as it was never their intention to support the Plan, and they have made no contributions whatsoever to the Plan.

231. Defendants also chose to conceal the unfunded status of the Plan out of concern that such disclosure would be seized upon by a competitor that was asking that the Department of Health to delay the proposed asset sale. Indeed, at the same public hearing on May 6, 2014, a representative of that competitor strongly objected to the terms of the asset sale proposed by Defendants, and repeated his client's request that the Committee delay acting upon the application until his client's counter-proposal could be fully considered.

232. The Attorney General did not immediately accept the assurances that there would be sufficient income following the asset sale to adequately fund the Plan. Instead, representatives of the Attorney General asked for proof of legal authority for RWH's assets to be used for that purpose.

233. On May 8, 2014 counsel for SJHSRI, RWH, and CCCB provided the Attorney General with a resolution purportedly approved by RWH's Board of Trustees stating, *inter alia*:

> WHEREAS As part of its retained assets, RWMC has $6,666,874 in Board Designated Funds ("the RWMC Board Designated Funds") that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;
>
> * * *
>
> RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

234. They e-mailed a copy of the resolution to the Attorney General's office (with cc to counsel for the Prospect entities) and stated:

> Finally, attached is the Roger Williams Medical Center (RWMC) Board of Trustees Resolution authorizing the use of the RWMC Board Designated Funds to satisfy the St. Joseph Health Services of Rhode Island (SJHSRI) liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

235. However, SJHSRI, RWH, and CCCB never intended that any part of RWH's "Board Designated Funds" would ever be contributed to the Plan, and, indeed, none have been. They also knew that even $6,666,874 would be insufficient to meaningfully reduce the unfunded liability, such that there was not even a remote chance there would be any surplus left over to transfer to CC Foundation after that liability was paid.

236. Instead of meaning what it says, this resolution evidences SJHSRI, RWH, and CCCB's willingness to tell regulators what they wanted to hear, even if it meant misrepresenting their intended funding sources and manipulating the board of trustees of affiliated companies. In fact, in December 2014, soon after the closing of the asset

sale, the board of trustees of RWH was replaced with individuals who were already planning to put the Plan into Receivership.

237. A crucial fact not disclosed to either the Department of Health or the Attorney General was that *for years prior to the asset sale*, management at CCCB, RWH, and SJHSRI had been searching for a way to abandon the grossly underfunded Plan to the detriment of Plan participants, while at the same time protecting the assets of SJHSRI from the claims of Plan participants.

238. For example, on January 2, 2012, the Chairman of the Investment Committee for CCCB's Board of Trustees informed CCCB's head of Personnel, Darlene Souza, and CCCB's Chief Financial Officer Conklin, that the Board of Trustees and management must consider the option of terminating the Plan and distributing the assets with a *pro rata* reduction in benefits.

239. On December 31, 2012, Ms. Souza emailed Mr. Conklin and CCCB's Chief Executive Officer Belcher, wished them a "Happy New Year," and then advised them of what she called the "potentially good news" that, according to her reading of the Plan documents, they could "terminate the plan without a solvency issue," and:

- deprive 1,798 (out of a total of 2,852) Plan participants of any benefit whatsoever,
- pay benefits to an additional 744 Plan participants of only 88% of what they were due;
- pay full benefits only to the remaining 1,054 Plan participants who had already reached normal retirement age; and
- improve SJHSRI's balance sheet by over $29,000,000 by eliminating its liability for the unfunded portion of the Plan.

240. However, Ms. Souza advised Messrs. Conklin and Belcher that there was a downside to the Plan termination, which was that other hospitals with supposed

Church Plans had attempted to terminate their plans just as she was proposing, but those hospitals had been sued in class actions, and one of those cases had a pending settlement that obligated the hospital to pay a significant amount of the unfunded benefits, notwithstanding its alleged Church Plan status.

241. Accordingly, Ms. Souza warned that if SJHSRI terminated the Plan and distributed reduced benefits, "we are exposed to a class action lawsuit" by the Plan participants who received no benefits, which could expose SJHSRI to "$30-$35m" as damages, which "would potentially erode the $29m fiscal savings" resulting from eliminating SJHSRI's funding liability by termination of the Plan.

242. On June 20, 2013, the CCCB Board discussed the possibility of seeking a "Special Master" for the Plan.

243. In December 2013, the CCCB Board discussed putting the Plan into receivership.

244. Thus, notwithstanding the strategic delay in doing so, the scheme to abandon the Plan was already in the works when SJHSRI, RWC, and CCCB assured the Project Review Committee on April 8, 2014 and May 6, 2014 that the "recommended" annual contributions to the Plan would be made and that SJHSRI, RWH, and CCCB were "on the hook" if the projected returns on investment did not materialize.

245. Instead of representing their genuine intention, these statements were part of the conspiracy by all of the Defendants to obtain approval from the Attorney General and the Department of Health through false assurances, and to also thereby assuage the concerns of the unions, and of the general public (including Plan participants) who attended or followed reports of the hearing.

246. In furtherance of that conspiracy, CCCB President and Chief Executive Officer Belcher and Thomas M. Reardon (president of Prospect Medical East) made a statement which the Providence Journal on May 12, 2014 published as an op-ed, which stated:

> The development and pursuit of innovation in health delivery should not come at the cost of one of the most cherished values in Rhode Island health care - that of local control. We are pleased that our proposal will assure preservation of local governance, as our joint venture board will have equal representation from CharterCare and Prospect with a local board chair, with real veto powers.

247. This statement was materially false and intentionally deceptive, because under the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, previously agreed to in form by CCCB and the Prospect Entities, deadlocks between CCCB-appointed directors and Prospect-appointed directors for some of the most significant board-level decisions were to be resolved by allowing the decisions of Prospect-appointed board members to prevail.

248. On the same day that Mr. Belcher's statement appeared in the Providence Journal, CCCB emailed it to all of the employees of CCCB, SJHSRI, and RWH, stating, "[w]e want to share the following op-ed that appeared in today's Providence Journal." The same mailing assured all employees that "Prospect and CharterCARE equally share seats on the new company's eight-member governing board," withholding the critical information that although the number of seats were shared equally, the seats filled by the Prospect Entities had the power to make some of the most significant corporate decisions against the wishes of the directors chosen by CCCB, and certainly without disclosing that the 2014 Asset Sale was merely a step in the scheme to shield

Fatima Hospital from liabilitity on the Plan, and to strip assets from SJHSRI that were needed to satisfy its pension obligations to those same employees.

249. In addition to falsly reassuring the public and their own employees on the issue of local control, SJHSRI, RWH, CCCB, and the Prospect Entities also misled state regulators concerning the degree of local control that CCCB would have after the 2014 Asset Sale.

250. On May 2, 2014, CCCB and the various Prospect Entities involved in the asset sale, through their counsel, responded to the following question of the Rhode Island Attorney General:

> Question: Please describe the governance structure of the new hospital after conversion, including a description of how members of any board of directors, trustees or similar type group will be chosen.

251. Defendants responded in pertinent part as follows:

> Response:
>
> An overview of the governance structure for Prospect CharterCARE, LLC is as follows:
>
> Prospect CharterCARE, LLC will have a Board of Directors.
>
> Prospect CharterCARE, LLC's Board of Directors will have half of its members selected by and through PMH's ownership in Prospect CharterCARE, LLC and the other half of the members will be selected by and through CCHP's ownership Prospect CharterCARE, LLC.
>
> The Board of Directors will be responsible for determining the patient Care, strategic, and financial goals policies and objectives of Prospect CharterCARE, LLC.
>
> * * *
>
> Prospect CharterCARE, LLC's Board of Directors will be structured as follows: (i) eight (8) members; (ii) fifty (50%) percent of its members will be appointed by PMH; and (iii) fifty (50%) percent of its members will be appointed by CCHP. The purpose of the structure is to ensure a strong

> local presence and mission. The Board of Directors will include at least one physician representative.
>
> The Board of Directors will be responsible for determining the patient care, strategic, and financial goals, policies and objectives of Prospect CharterCARE, LLC. **The issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP.**
>
> [Emphasis supplied]

252. The statement that "[t]he issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP" was also materially false, for the same reason that some of the most significant decisions were to be resolved by allowing Prospect-appointed board members' decisions to prevail.

F. MISLEADING THE STATE COURT IN CONNECTION WITH *CY PRES* PROCEEDINGS

253. In November of 2009, SJHSRI, CCCB, and RWH filed a petition with the Rhode Island Superior Court, asking the court to approve certain changes affecting charitable donations pursuant to the statutory and common law doctrine of *cy pres*.

254. The doctrine of *cy pres* is intended to be used in appropriate circumstances to allow charitable donations to be applied to a similar purpose when the original recipient of the donations is no longer able to fulfill that purpose.

255. In the 2009 proceedings, the specific purpose of the *cy pres* petition was to inform the court that the original recipients of the charitable gifts had been reconstituted in connection with formation of CCCB and the affiliation of SJHSRI, Roger Williams Medical Center, RWH, and CCCB; that such entities as reconstituted would continue to apply the charitable gifts in accordance with those intentions; and to obtain court approval therefor.