**STATE OF RHODE ISLAND** **SUPERIOR COURT**
**PROVIDENCE, SC.**

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| St. Joseph Health Services of Rhode Island, Inc.<br><br>vs.<br><br>St. Josephs Health Services of Rhode Island Retirement Plan, as amended | PC 2017-3856 |

**RECEIVER'S REPLY MEMORANDUM TO PROSPECT ENTITIES' OBJECTION TO RECEIVER'S NINTH INTERIM REQUEST FOR APPROVAL OF FEES, COSTS, AND EXPENSES**

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Receiver (the "Receiver") of St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") and hereby opposes the objection filed on September 10, 2019, by Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively the "Prospect Entities") to Receiver's Tenth Interim Report and Ninth Interim Request for Approval of Fees, Costs, and Expenses. In support of such opposition the Receiver states as follows:

**FACTS**

In the Receiver's Tenth Interim Report and Ninth Interim Request for Approval of Fees, Costs, and Expenses ("Ninth Interim Request"), the Receiver sets forth the Receiver's acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of that report and the basis for his request for fees, costs, and expenses for the three (3) month period of April 1, 2019, through and including June 30, 2019, which total approximately $100,000. A copy of the redacted invoice in question will be presented to the Court for review in advance of the hearing.

On September 10, 2019, the Prospect Entities' filed an objection to the Receiver's Ninth Interim Request. In that objection, the Prospect Entities assert that because the Superior Court's authority relative to the Receiver and the Plan is at issue before the Federal Court, the Court should abstain from any rulings relative to the Receiver's actions, including any payment of the Receiver's fees. The Prospect Entities adopt by reference their arguments made in their August 30, 2019,

Objection to the Receiver's Motion For Authorization to Exercise the Put Option and/or Direct its Exercise, filed with this Court. To avoid duplicative filings, the Receiver similarly adopts the arguments made in his Reply Memorandum to said objection, filed with the Court.

## ARGUMENT

### I. Summary of Argument

The Prospect Entities ask this Court to abstain from approving Receiver's Ninth Interim Request and from taking any action that may affect Plan assets until the federal court rules on the merits of certain defenses the Prospect Entities are asserting in the federal court proceeding concerning preemption under ERISA and the propriety of a state-court appointed receiver's serving as administrator of the Plan. However, the federal court in connection with the recent approval of Settlement B has already stated that these issues will not be addressed in connection with, and do not affect, settlement approval of either Settlement A or Settlement B. In a similar manner, the Receiver argues that this Court's actions on the Ninth Interim Request are entirely appropriate while such questions are pending, for the following reasons.

First, the Prospect Entities lack standing to object to the Receiver's Ninth Interim Request, because they do not even claim to suffer any legal prejudice traceable to the Receiver's Ninth Interim Request.

Second, since the Prospect Entities do not even claim any legal prejudice, they do not present any such claim of prejudice that is ripe for adjudication.

Third, the Prospect Entities, as debtors (rather than putative creditors) of the Receivership Estate, are not parties in interest for purposes of the Receiver's Ninth Interim Request. Indeed, the Prospect Entities' interest is even more attenuated here with respect to the Receiver's Ninth Interim Request than it was with respect to Settlement A.

Fourth, even if (*arguendo*) the Prospect Entities were parties in interest with standing and asserted ripe objections to the Receiver's Ninth Interim Request, the Prospect Entities cite no authority in support of their contention that this Court must refrain from taking any action until the federal court rules on the Prospect Entities' arguments concerning ERISA preemption. Instead, the Prospect Entities rely on generalities concerning the scope of federal court jurisdiction over ERISA, which have no application to the specific issue of whether the Court has the authority to consider and approve the Receiver's report and periodic request for fees. The Plan and its assets

are currently within the Superior Court's *in rem* jurisdiction, to the exclusion of any other court (including the U.S. District Court).

Finally, the Court can and should find that the Receiver's appointment as Plan Administrator comported with the requirements of ERISA. Accordingly, ERISA poses no obstacle to granting the Ninth Interim Request.

## II. The Prospect Entities Lack Standing to Object to the Ninth Interim Request

In this Court's prior consideration of the Prospect Entities' standing, the test was laid out clearly and the same result should obtain. See St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, 2018 WL 5792151, at *6 (R.I. Super. Oct. 29, 2018) (rejecting the Prospect Entities' objections to the Receiver's Petition for approval of Settlement A). Standing is a threshold inquiry to determine whether the party, rather than its claim, is properly before the court. Id. To say a party has standing and is properly before the court an "injury in fact" must be shown, and "[t]he injury must constitute an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or 'hypothetical." Id. (citing Narragansett Indian Tribe v. State of Rhode Island, 81 A.3d 1106, 1110 (R.I. 2014)) (internal quotations and deletions omitted).

The Prospect Entities do not even assert any injury in fact sufficient to give them the standing to object to the Receiver's pending request for fees.

## III. The Prospect Entities' Objection Is Not Ripe

Ripeness requires that a party possess a dispute with true adverseness, and "[a] claim is not ripe when it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." St. Joseph Health Services of Rhode Island, Inc., 2018 WL 5792151, at *7 (citing State v. Gaylor, 971 A.2d 611, 614-15 (R.I. 2009)) (internal quotations omitted).

Since the Prospect Entities do not claim any legal prejudice from the granting of the Receiver's Ninth Interim Request, they do not even begin to present an objection that is actually ripe for adjudication.

## IV. The Prospect Entities Are Not Parties in Interest for Purposes of the Receiver's Ninth Interim Request

The Prospect Entities, as debtors (rather than putative creditors) of the Receivership Estate, are not parties in interest for purposes of the Receiver's Ninth Interim Request. The Court previously held, in connection with its prior approval of Settlement A, that the Prospect Entities "do not have party in interest status sufficient to interject themselves into this receivership proceeding." St. Joseph Health Services of Rhode Island, Inc., 2018 WL 5792151, at *9. See id. at *7 (noting that bankruptcy courts "generally only grant party in interest status to 'a creditor of a debtor' or those who are 'able to assert an equitable claim against the estate.'"). The Prospect Entities' interest is even more attenuated here with respect to the Receiver's Ninth Interim Request than it was with respect to Settlement A, which at least concerned the transfer of certain rights in one of the Prospect Entities to the Receiver.

## V. The Superior Court Is Not Divested of Jurisdiction by the Implication of ERISA and Is the Proper Forum for Consideration of Receiver's Ninth Interim Request

The Court is the proper forum to consider and grant the Receiver's Ninth Interim Request, because the Plan's assets are within the *in rem* jurisdiction of the Superior Court. Because the Superior Court was the first such forum to exercise jurisdiction over the *res*, its jurisdiction over the Plan's administration and the disposition of Plan assets is exclusive. See United States v. One 1986 Chevrolet Van, 927 F.2d 39, 44 (1st Cir. 1991) (citing inter alia Princess Lida v. Thompson, 305 U.S. 456 (1939)). "According to this rule, the first court to exercise *in rem* jurisdiction over the *res* exercises jurisdiction to the exclusion of a second court that later attempts to proceed against the same *res*." Id. See also Mattei v. V/O Prodintorg, 321 F.2d 180, 184 (1st Cir. 1963) (dismissing admiralty suit for replevin of cargo taken into custody of Superior Court of Puerto Rico through its court-appointed guardian, because "a federal court may not seize and control the property which is in the possession of the state court"). The Prospect Entities' contention that the Federal Court is the proper forum for the pending request for fees is utterly baseless.

The prior-exclusive-jurisdiction rule (also known as the Princess Lida doctrine[1]) applies to ERISA plan funds the same as any other types of *res*. See Dailey v. National Hockey League,

[1] In Princess Lida, the Supreme Court considered parallel state and federal lawsuits concerning the handling of a trust. The state court action, in which the trustees' sought to confirm an account

987 F.2d 172, 178-179 (3d Cir. 1993) (concluding that "ERISA does not negate the continuing applicability of *Princess Lida*") (dismissing ERISA suit alleging mismanagement of ERISA pension plan where parallel Canadian suit had been filed first).

As the Dailey case makes clear, the fact that ERISA embodies important federal policies and laws does not exempt ERISA cases from the Princess Lida doctrine. See also Asbestos Workers Local 14 v. Hargrove, No. CIV. A. 93-0728, 1993 WL 183990, at *5 (E.D. Pa. May 25, 1993) (receivership) ("As the earlier discussion of *Dailey* indicated, the Third Circuit dismissed a federal ERISA claim even though the plaintiffs' [ERISA] claims were going to be lost when the case was limited to the Canadian court system under *Princess Lida*. The holding in *Dailey* forecloses the Union's current argument that 'important federal policies and laws' require this Court to exercise its jurisdiction.") (citing Dailey v. National Hockey League, 987 F.2d at 176). Similarly, the Prospect Entities' argument that the pending ERISA issue requires the Federal Court address the instant issue of fees is incorrect under Princess Lida, inasmuch as the Superior Court properly has exclusive jurisdiction over the receivership assets.

## VI. The Court Should Find That the Receiver Was Validly Appointed Plan Administrator under ERISA, and Accordingly ERISA Is No Obstacle to Granting the Ninth Interim Request

Lastly, the Superior Court has concurrent jurisdiction with the federal courts to decide whether the Receiver was validly appointed Plan Administrator. See Int'l Ass'n of Entrepreneurs of Am. v. Angoff, 58 F.3d 1266, 1269 (8th Cir. 1995) ("ERISA nowhere makes federal courts the exclusive forum for deciding the ERISA status *vel non* of a plan or fiduciary. Unless instructed otherwise by Congress, state and federal courts have equal power to decide federal questions.").

For the reasons recited in the Receiver's Reply Memorandum to the Prospect Entities' Objection to the Joint Motion for Authorization to Exercise the Put Option and/or Direct its Exercise, the Receiver was validly appointed Plan Administrator in accordance with the operative Plan provisions and the requirements of ERISA. See id. at 12 (discussing 29 U.S.C. §

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of their management, had been filed first, while the subsequent federal action was brought by the beneficiaries to challenge the trustees' management and sought their removal. The Supreme Court concluded that because the state court had first exercised in-rem jurisdiction over the trust res, the federal court lacked jurisdiction and the federal lawsuit must be dismissed. See Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 467–68 (1939).

1002(16)(a)(i), section 8.1(a) of the Plan concerning appointment of the Plan Administrator, and the October 20, 2017 resolutions of the Trustees of St. Joseph Health Services of Rhode Island irrevocably appointing the Receiver as Plan Administrator).

Accordingly, the Superior Court can, and should, determine that the Receiver has been validly appointed Plan Administrator for purposes of ERISA, and therefore for this additional reason it is appropriate to grant the Receiver's Ninth Interim Request.

## CONCLUSION

WHEREFORE, for the reasons set forth herein, the Court should overrule the objection filed by the Prospect Entities to the Receiver's Ninth Interim Request for Approval of Fees, Costs, and Expenses.

Respectfully submitted,

***/s/ Stephen F. Del Sesto***

Stephen F. Del Sesto, Esq. (#6336)
Solely in his capacity as Permanent Receiver for St. Joseph Health Services of Rhode Island Retirement Plan, and not individually
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Dated: September 12, 2019

## CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2019, I electronically filed and served the within document via the Electronic Case Filing System of the Superior Court with notice to all parties in the system.

***/s/ Stephen F. Del Sesto***