

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

IN RE: CHARTERCARE HEALTH) C.A. NO: KM-2015-0035
PARTNERS FOUNDATION)

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND)

VS.) C.A. NO: PC-2017-3856

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON NOVEMBER 21, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER
RUSSELL CONN, ESQUIRE.....FOR CHARTERCARE
SCOTT BIELECKI, ESQUIRE.....FOR CHARTERCARE
DAVID WOLLIN, ESQUIRE.....FOR RI FOUNDATION
JESSICA RIDER, ESQUIRE.....FOR A.G. OFFICE

GINA GIANFRANCESCO GOMES
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 39, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

1 Foundation.

2 MR. WOLLIN: David Wollin for the Rhode Island
3 Foundation.

4 MS. RIDER: Jessica Rider for the Rhode Island
5 Attorney General.

6 THE COURT: That's who I was looking for. Thank you
7 very much.

8 MR. FINE: Robert Fine for St. Joseph and also Roger
9 Williams Hospital.

10 THE COURT: And we have a joint petition. Counsel
11 who is going to be presenting, you may proceed.

12 MR. CONN: Good afternoon, your Honor. Again,
13 Russell Conn for CharterCare Foundation. My co-counsel
14 have introduced themselves. Also in the courtroom is
15 Donna McQueen, who is president of the board of trustees
16 for CharterCare Foundation. She has been, I think, at
17 every important hearing on this case.

18 THE COURT: Counsel, just a quick question and I may
19 have missed it. On page two there is a reference to
20 RSUI.

21 MR. CONN: Yes, RSUI is the TNO insurer for
22 CharterCare Foundation.

23 THE COURT: Thank you. You may proceed.

24 MR. CONN: Thank you, your Honor. Exactly one year
25 ago today the parties in this action put pen to paper on

1 so-called settlement B, a fairly complicated, fully
2 integrated document that was concluded after two months
3 of pretty difficult negotiations. All of the parties put
4 signature to that agreement, meaning CharterCare
5 Foundation, the two Heritage hospitals, the interveners
6 here, both as class-action plaintiffs and Mr. DelSesto.

7 We signed that agreement and three important things
8 have happened in this case before we signed that
9 agreement that were highly relevant in coming to that
10 point. As your Honor will recall, being familiar with
11 this, we were down here quite a bit and there was a
12 motion to intervene filed by Mr. Wistow on behalf of his
13 clients, which we vigorously opposed, that they sought to
14 have a seat at the table to challenge the Cy Pres. Your
15 Honor will recall in a very thorough decision your Honor
16 decided that they did have a right to intervene. We
17 didn't agree with that but that became the law of the
18 case. In reaching that decision, your Honor also ruled
19 that the final April, 2015, was not a final judgment
20 under Rhode Island law. We opposed that. Your Honor
21 explained that and said it's not a final judgment. We
22 didn't have the protection of the final judgment rule
23 anymore, and we had them at the seat of the table
24 claiming entitlement to the \$8 million of funds that had
25 been transferred to CharterCare Foundation back in 2015.

1 The third thing that happened that was fairly
2 important is the intervenors here incident to the
3 so-called Settlement A with the two hospital defendants
4 and their parent, CCCB, and that created another
5 exposure, unfortunately, for CharterCare Foundation where
6 despite CharterCare Foundation strongly believing that as
7 part of what happened in 2015 they were an independent
8 foundation. The I's weren't dotted and the T's weren't
9 crossed with that. Proper papers were never filed with
10 the Secretary of State's office. So we now found
11 ourselves exposed on the back side where CCCB had
12 transferred their of record interest in CCF to the
13 intervenors as part of the Settlement A.

14 We came down here and vigorously opposed that and
15 said that it shouldn't go through. The Court approved
16 it, at least in the receivership part of the case,
17 subject to our right to come back and challenge it in an
18 independent proceeding. We entered those discussions,
19 whether we liked it or not, somewhat disadvantaged
20 legally in that we had lost the first three battles. We
21 entered into the agreement, negotiated with very
22 competent counsel on the other side at arm's length and
23 it called for three different settlements, and here we
24 are a year later at phase three.

25 We came back here in December and your Honor in the

1 receivership action approved it's in the best interest of
2 the receivership. We then had motion practice before
3 Judge Smith in the federal court, two hearings, lots and
4 lots of briefs, opposition over there, but at the end of
5 the day, Judge Smith issued a very thorough 14-page
6 decision finding this had been negotiated in complete
7 good faith and it was fair and reasonable. And in so
8 doing, Judge Smith noted, and it's of record in his
9 decision, that the Court recognized that these are very
10 complex and difficult issues that the parties are dealing
11 with and the Court would deal with.

12 So we get to this stage, which is the final stage,
13 and if the Court approves this, we have an effective
14 agreement. We can go forward and conclude this. It is
15 subject to an appeal and we would have to wait for an
16 appeal period to lapse, but this is the final step. And
17 what is called for in Settlement B, if your Honor looks
18 at page 16 and 17, it's an exhibit to the joint petition,
19 is that the Court issue an order modifying the 2015 order
20 to allow this settlement to go through. In all other
21 respects, the old order will stay in effect and we have
22 submitted as Exhibit A to the joint petition the proposed
23 final judgment that if the Court enters it in that form,
24 again we'll spring this agreement into life subject only
25 to an appeal.

1 The key essentials to the settlement agreement are
2 important to Chartercare Foundation. They had all \$8.2
3 million at risk, and that 8.2 had grown to about 9.1 with
4 interest and what have you. So 3.9 of that would be
5 turned over to the intervenors to the class and the
6 Receiver. And, importantly, there is another \$600,000
7 left on the D & O policy with RSUI. That D & O policy is
8 a wasting policy. It started at one million. We spent it
9 down to 600. RSUI, we are in communication with them
10 regularly, they're ready to fund their share of this for
11 \$600,000, and then the other 3.9 would come from
12 CharterCare Foundation. So that's the consideration
13 going out.

14 The whole issue of the independence of CCF as a
15 charitable foundation is being addressed in these papers
16 and if the Court approves it, papers will be filed with
17 the Secretary of State affirming CharterCare Foundation's
18 independence. The board in the organization is getting a
19 release and we are getting what I would say now clearly
20 and without doubt would be a final judgment. The Court
21 having already ruled we didn't have one back in 2015 that
22 says, okay, as to the rest of it, as to the 5.2 or so,
23 that CharterCare Foundation will hold onto it. They
24 legally own it. They can operate as a legal foundation
25 and they can do their job under the statute and under the

1 purview of the Attorney General's office.

2 Your Honor, we cited case law in our briefs that
3 there is a presumption of reasonableness in settlements
4 especially where as here it has been negotiated, I think,
5 by capable counsel thoroughly at an arm's length
6 relationship that if this case were not to settle because
7 the Court didn't approve it for some reason, it would be
8 somewhat chaotic. We would be back here. We would have
9 to litigate the whole issue of priority, which is a
10 significant issue.

11 Mr. Wistow points to the Rhode Island Nonprofit Act
12 and he says we own all of this. I don't care if it's
13 restricted, non-restricted, if it's a painting on the
14 wall, if it's money in the bank, it's all ours, and
15 number one of that statute says where you have dissolving
16 non-profits, as we have here with St. Joseph's and Roger
17 Williams, you have to pay all your bills first before you
18 can do anything else with it.

19 He cites a case in the Bankruptcy Court in
20 Washington that was affirmed by the District Court.
21 There is no law nationally. We cited a lot of law in New
22 York that's helpful to our position but it's not directly
23 on point. So we're back litigating a priority issue that
24 can be an all or nothing for either side or something in
25 the middle. The whole ownership issue, we would have to

1 come back here and ask for relief from the channelling
2 injunction and litigate that whether we're supposed to be
3 independent, whether this was a scrivener's error,
4 whether they've abandoned it. We have all those issues
5 and we would be back in what I call a forever case.

6 They're over in the Federal Court. They have been
7 there a year and a half. No answers have been filed. We
8 have motions to dismiss that have been argued and not
9 decided. They've got discovery just beginning. We would
10 be back in that morass. We have spent \$400,000 in about
11 a year and three months litigating the very aggressive
12 capable adversaries. That other 600 I would estimate
13 would be gone in a year and we would be here asking for
14 relief from the channelling injunction so we could
15 continue to fight over this issue of charitable assets.
16 At the very end of the day I would submit that both sides
17 here made a sensible decision. We both had a lot of
18 uncertainty. We both had a lot of expense. We could
19 have lost all of these charitable funds either through
20 Court decision or through chewing them up in litigation.
21 We preserved a good amount of them and we made a
22 compromise. I think that's what good lawyers do. They
23 evaluate the downside and the upside and come to an
24 agreement.

25 The only other issue I would like to address -- your

1 Honor, excuse me for a moment -- is this discrepancy
2 issue. Somehow a lot of smart people and careful people
3 looked at the original 2015 Cy Pres petition and didn't
4 catch a discrepancy that in the body of the petition
5 money was noted as being unrestricted funds, when in
6 Exhibit G, when you tally up all the exhibit funds, it
7 doesn't add up. It's a pretty significant discrepancy.
8 We certainly missed it from the beginning. Certainly the
9 parties who did this in 2015 missed it. It wasn't
10 brought to the Court's attention so it sat here dormant.
11 I wouldn't even be raising this but the Attorney
12 General's Office brought it to our attention after we
13 filed a joint petition. They only discovered it just
14 then. They hadn't notice it before either.

15 We have done our homework, your Honor. We've looked
16 at Exhibit G. They don't give you the answer. We've
17 gone to our own client. Our client tells us, look, we,
18 basically, wire funds from Mr. Land, the attorney for the
19 two hospitals. They weren't segregated into little minor
20 accounts for restricted or non-restricted. We got \$8.2
21 million. We cut a deal with the Rhode Island Fund, a
22 very eminent organization in Rhode Island, to have them
23 manage it. They have been managing it. They manage it
24 as a bulk number.

25 We can't explain that discrepancy. We even went

1 back to prior counsel to see if they could shed some
2 light on it. We didn't get any answer from prior counsel
3 as to how that discrepancy is in there. I would submit
4 and I can say it absolutely true to everything I have
5 done in this case is in the end it wouldn't have made a
6 difference in the way I negotiated this with Mr. Wistow,
7 restricted versus non-restricted, did not try to steal.
8 Yes, we put it in the joint petition because we thought
9 it would bootstrap the arguments a little bit. It helped
10 us along.

11 But in the end, we settled for three principle
12 reasons, the privacy argument that they were arguing
13 under the statute, the ownership issue that is very
14 obscure and unsure how that would come out if we had to
15 litigate that, and just the litigation cost that we
16 couldn't fight this to the death. There was no way. So
17 I would submit that we have done a sensible and good
18 thing here.

19 With all due respect to the Rhode Island General
20 Attorney, I understand their authority. They will
21 continue to have oversight over CharterCare Foundation,
22 but I would ask the Court not to issue the order as they
23 have suggested. They told us it was coming, but we
24 didn't actually see it. They didn't tell us what was
25 coming. They told us they were going to file something

1 but we only got it 24 hours ago. They suggested some
2 language in their order they we simply can't comply with
3 their order. The settlement agreement is contingent on
4 the Court approving the judgment or the order submitted
5 by the actual parties, not contingent on submitting it as
6 requested by the Attorney General. So we would ask the
7 Court to enter the final judgment in the form attached to
8 our joint petition as Exhibit A. Thank you very much.

9 THE COURT: Attorney Wistow, you filed a statement
10 as well. Do you wish to be heard?

11 MR. WISTOW: Thank you. The first thing I want to
12 do is congratulate Mr. Conn in how reasonable and
13 gentlemanly he looks today. I know when we were
14 negotiating this, he was like a rampant dog. So he
15 successfully disguised that side of him. As I sat down
16 yesterday to try to put this argument together, I
17 realized how convoluted these proceedings are and how
18 difficult it must be for the Court, which has so many
19 other matters involved, to keep track of where this thing
20 stands.

21 I would like to just state briefly how we got to
22 where we are today. Obviously, the Court remembers that
23 there was a receivership petition in August of 2017,
24 which was filed by St. Joseph's Hospital Society of Rhode
25 Island, and that's the notorious petition where they

1 asked to reduce benefits by 40 percent. Your Honor
2 appointed Mr. DelSesto as temporary Receiver and then as
3 permanent Receiver and I was retained as special counsel
4 to investigate what had happened in this situation.

5 After a period from October up until June of 2018,
6 October of '17 when I came in to June of '18, we were up
7 in front of your Honor more times than I think your Honor
8 wanted to see us fighting about getting records and so
9 forth and so on and we think we did a thorough
10 investigation. And on June 18, 2018, we filed suit in
11 federal court and filed a protective suit in the state
12 court.

13 Now, most specifically, I want to refer to the
14 claims against CharterCare Foundation because that's what
15 we're talking about settling. In that suit in both the
16 state and federal court we accused CharterCare Foundation
17 of fraudulent transfers in violation of general laws
18 6-16-4 and 5. We accused them of a fraudulent scheme for
19 aiding and abetting a breach of obligations by other
20 fiduciaries and we claim that at the time of the transfer
21 from the old Heritage hospitals to the Foundation, we
22 were creditors, the pension was a creditor at that time,
23 and that they made false and misleading statements in the
24 Cy Pres petition to this Court.

25 Now, apropos and most specifically, most

1 specifically, in the statement in the Cy Pres, and I
2 quote, "All that was needed by the old hospitals was,
3 quote, needed only some of the charitable assets to
4 satisfy outstanding pre and post-closing obligations
5 including the pension plan." That was a very important
6 thing. One of the things that's happened here is your
7 Honor can see, as Mr. Conn said, very sophisticated
8 people went through and filed the petition, the A.G. was
9 involved, and your Honor could not be expected to go
10 through. You would have to hire a CPA to go through all
11 this and figure out what it was all about and then put it
12 in context with the pension plan. The Court regularly
13 relies on representations of counsel where everybody is
14 in agreement and your Honor we think was, I'll put it no
15 other way, was misled by what was said in that petition.
16 By the way, the A.G. himself or the institution of the
17 A.G.'s office themselves have in their response that they
18 just filed alluded to the very problem that I'm talking
19 about. By the way, I have to make a comment. This case
20 has been pending forever. At least it seems that way to
21 me. We got the response from the A.G. at 1:44 p.m.
22 yesterday afternoon. We didn't even get it in the
23 morning.

24 Now, I would like to read to you from what the A.G.
25 said on page two of three of their response. This is

1 what was filed yesterday. "As part of the close of the
2 transaction, this is the 2014 application, and in
3 accordance with the Attorney General's HCA, Hospital
4 Conversion Action, decision, a petition of approval of
5 disposition of charitable assets, including application
6 of Cy Pres (2015 Cy Pres petition) was filed requesting
7 that certain assets be transferred to CCF, that's what
8 we're fighting about, to be used in accordance with donor
9 intent and admission CCF, and here is the critical,
10 critical thing, and that other charitable assets remain
11 with Roger Williams Hospital and SJHSRI to satisfy
12 various pre and post-closing liabilities including,
13 including SJHSRI pension liability. On April 20, 2015,
14 this Court entered an order granting the petition
15 approving the transfer of certain assets to CCF allowing
16 other assets to remain with Roger Williams Hospital and
17 SJHSRI imposing reporting requirements on CCF to report
18 to the Attorney General for the funds at issues."

19 The point I want to emphasize here, your Honor, is
20 this transaction in 2014 by the present Attorney
21 General's predecessor was not handled appropriately and
22 they represented to this Court and still represent and
23 correctly represent to this Court today that at the time
24 the petition was filed with your Honor, the Cy Pres, they
25 said that the other charitable assets remaining with

1 Roger Williams and SJH would be sufficient to satisfy and
2 that is an important part of what our allegations are,
3 why we think that Cy Pres is invalid. So it's not only
4 us saying that. We have been reenforced by the A.G.'s
5 present representations to the Court. They go on, by the
6 way, in the federal suit to complain that no notice was
7 given to the pensioners or the participants even though
8 there was a reference in the Cy Pres petition about what
9 affect it would have on the pension plan.

10 And, finally, as Mr. Conn pointed out, we point to
11 the statute on the winding down and dissolution of
12 nonprofit organizations 7-6-5, and we found what so far
13 has apparently been the only case ever decided in the
14 United States on that point and we come away a clear
15 winner. That case is obviously not binding on this
16 Court. So the settlement, as Mr. Conn pointed out, what
17 do we get? We get 3,900 plus 600,000. The Attorney
18 General seems to express some concern about whether or
19 not the 600,000 is going to be forthcoming. Let me see
20 if it's not, I would like to be retained by CCF to go
21 against that insurance company. I think they would have
22 a pretty good case. They will get releases under the new
23 statute that was passed. They are going to get a
24 dismissal with prejudice and they are going to get a
25 final judgment, hopefully, saying the Cy Pres is not

1 applied to the extent we're talking now. And, most
2 importantly, they're going to get back from us the
3 assignment that we just got, by the way, when our
4 original joint motion was put in. We had not yet
5 received the assignment of CCB's interest in CCF. We now
6 have it and I would like to hand up to the Court and
7 counsel the letter of transmittal.

8 (Documents handed to the Court and counsel.)

9 THE COURT: Madam Clerk, if you would just mark one
10 of them as Court's One so it's part of the file.

11 (Exhibit so marked.)

12 MR. WISTOW: So what we now have, your Honor, is the
13 Plaintiff's are actually in a stronger position because
14 previously there was the possibility that if Settlement A
15 with the Heritage Hospitals was approved, then we would
16 get these rights that the Heritage Hospitals had in CCF.
17 Since this was submitted to your Honor, the motion, we
18 have indeed received it. We now own -- we are now the
19 sole member of -- whether the Attorney General likes it
20 or not, it has been transferred to us. Now, the Attorney
21 General has been getting notices about all of the
22 proposed settlements, Settlements A and B. If for no
23 other reason under the Class Action Fairness Act, we have
24 been sending them everything. Oddly enough, Settlement A
25 came up, not oddly enough, logically enough, Settlement A

1 came up for approval before Settlement B, the settlement
2 that's relevant.

3 Now, what happened was the A.G. commented to this
4 Court about Settlement A, the settlement of Heritage
5 Hospitals, and that submission by the A.G. was on
6 September 28, 2018, that's 14 months ago, and it was two
7 months, two months, before we did Settlement B, which as
8 my brother pointed out, today is our happy birthday for
9 that settlement. In the A.G.'s comment about Settlement
10 A -- and this is Exhibit F, your Honor, to the joint
11 motion and it's on page 10. He says flat out, this is
12 two months before Mr. Conn and I negotiated the
13 settlement, "If this Court approves the proposed
14 settlement allowing the Receiver access to those assets,
15 the Attorney General requests that this Court limit
16 transfer of restricted charitable assets for pension
17 purposes to those assets listed under general use in the
18 Cy Pres petition," footnote number five. This is a
19 submission made to your Honor on September 28, 2018,
20 Exhibit F to our joint motion.

21 Now, what does the footnote say? The footnote says,
22 "Council for CharterCare Foundation confirmed to counsel
23 for the Attorney General that the assets at issue were
24 those delineated in paragraphs two and five of the Cy
25 Pres order. Exhibit G to the 2015 Cy Pres petition sets

1 forth approximately \$3,714,310 in charitable assets for,
2 quote, general use." Now, we saw that. We believed it.
3 It was stated by the Attorney General and we went ahead
4 and negotiated in part in reliance on what the Attorney
5 General was saying and also because I accepted the
6 representations opposing counsel, who, by the way, I
7 accept his representations still, and I still accept the
8 representations of the Attorney General that it was
9 \$3,714,310. That's what they told the Court and that's
10 what they were telling the Court in 2015, not to mention
11 in 2018. So about a month later, we were allowed by your
12 Honor to intervene the Cy Pres matter. That was October
13 21, 2018, and we were able to negotiate the settlement on
14 November 21st.

15 So how did the Cy Pres get approved by this Court in
16 the first place? Why did your Honor approve a Cy Pres in
17 April of 2015 that now everybody is saying what is this
18 all about? And I would like to refer your Honor to
19 Exhibit B of our general motion and that's your Honor's
20 order that was entered on April 20, 2015, which allowed
21 the Cy Pres petition. And in your Honor's order you
22 said, "After review of the petition and the responses by
23 the Attorney General for the State of Rhode Island, the
24 Attorney General, and trustee Bank of America, NEA, the
25 trustee, as well as argument by counsel for the

1 petitioners, which were the Heritage banks, the Attorney
2 General, and the trustee, after argument by the
3 petitioner, the Attorney General, and the trustee. You
4 said it by order that you allowed the petition, not
5 surprisingly.

6 Now, the A.G. comes in yesterday afternoon after two
7 class actions have been approved by your Honor in the
8 first instance, at least approved in the sense that we go
9 on to federal court, and we go through the Federal Court
10 and we had spent interminable efforts there. Mr.
11 Del Sesto have been accused and me by inference of
12 collusion and conspiracy with Mr. Fine, likely suspect,
13 and Mr. Land, and that was thrown out. There has been a
14 great deal of activity. What should have been checked
15 out was what was going on in 2015 when this was presented
16 to your Honor, not four years later, actually, more than
17 four years, four and a half years.

18 By the way, I don't blame the present Attorney
19 General, but I have to say their papers that they just
20 filed yesterday shows and I don't blame them for this
21 because it's such a convoluted thing, but there is still
22 a misunderstanding of what the transaction was. I'm not
23 talking about the CCF transaction. I'm talking about the
24 2014 Hospital Conversion Act, and what I refer to
25 specifically is in the introduction to what was filed

1 yesterday.

2 It says, "The Attorney General understands that this
3 Honorable Court is well versed in the facts of the
4 matter, so we will be brief. On June 20, 2014, a closing
5 on the transaction that was approved by the Attorney
6 General and the Department of Health occurred -- and this
7 is the part that's just plain wrong -- in which certain
8 assets of CharterCare Community Board, formerly known as
9 CharterCare Health Partners, CCCB, Roger Williams
10 Hospital, SJHSRI were transferred to the newly formed
11 for-profit venture between CCB and Prospect Medical
12 Holders."

13 That's not right. That's not what happened. They
14 were direct transfers of assets from the underlying
15 hospitals from the old Roger Williams and the new. I
16 point that out for two reasons. One, this litigation is
17 continuing on and I don't want somebody to say that we
18 acquiesced, and, two, to show how difficult it is to
19 follow what has happened in this case. In their response
20 that was filed, as I said, yesterday, the Attorney
21 General says, "It has been represented to the office that
22 CCF has not been able to specifically identify which
23 money belongs to which funds," meaning restricted and
24 unrestricted. "This causes concerns." And this part
25 I'm really at a loss. "However, this does not change the

1 Attorney General's position on the transfer of the
2 \$3,900,000 to the fund." What it means is the pension
3 fund. "And for purposes of expediting Settlement B, the
4 Attorney General would reserve any action on this."

5 I don't know how they're expediting Settlement B by
6 asking for a change in the settlement agreement. And, by
7 the way, a change in the settlement agreement means that
8 we've got to go back to the Federal Court. This was
9 approved as a class action. If your Honor says we can't
10 do this, we'll be in chaos in more ways than is
11 immediately apparent and I'll get into it.

12 So the A.G. ends up by saying, you know, they would
13 like CCF -- they would like it if CCF could keep all of
14 the money and not give us any. That's a position that is
15 shared by CCF. They would also like it if they could
16 keep all the money. Conversely, the pensioners would
17 like it if we could get all of the money.

18 This settlement was approved by Judge Smith on
19 9/30/19. Settlement A was not approved because of the
20 accusations of collusion until a couple of weeks later.
21 But I guess what's important about this is when Judge
22 Smith, who spent even more time than your Honor on this
23 case, as much as your Honor spent, what he said, he
24 described the claim against CCF and the settlement as
25 being fair and reasonable and he specifically,

1 specifically, referred to, quote, "The complexity of this
2 case and lack of settled law with respect to the claim
3 against CCF." That's Exhibit E to the joint motion page
4 ten.

5 By the way, that's not just Judge Smith's opinion.
6 Guess who else says that? The A.G. in their response
7 that they filed yesterday and I'll read it to your Honor.
8 It says, "Unquestionably, it would be the Attorney
9 General's preference that the entity of CCF's charitable
10 assets stay with CCF to be used in accordance with the
11 charitable mission. In fact, under different
12 circumstances the Attorney General may have insisted on
13 such an outcome, however this office appreciates the
14 unique, unique circumstances presented here, the
15 complexity of the case, novelty of legal issues, and the
16 inherent uncertainty that comes with litigation."

17 Now, CCF says to your Honor what they will have to
18 do, if your Honor doesn't approve it. One, they've got
19 to litigate the Federal Court action. Were they guilty
20 of fraudulent transfer? Were they in conspiracy in
21 aiding, abetting other fiduciaries? And they say that
22 because at the time this was filed there had not been a
23 transfer. They said we're going to have to bring an
24 injunctive action against CCB to prevent the transfer of
25 CCB's right to us. If it's too late to do that, they're

1 going to have to bring suit against the Receiver and the
2 Plaintiffs to get enjoined the exercise of the rights we
3 would have as the sole member of CCF, which rights we are
4 not going to exercise, obviously, if the settlement is
5 approved, and we will simply turn those rights over to
6 CCF. They will now own the right regarding the sole
7 membership.

8 What is going to happen here, your Honor, among
9 other chaos, is if we don't settle this Mr. Conn and Mr.
10 Dennington, both of whom I consider excellent lawyers,
11 will be back here in front of your Honor asking for
12 permission to get an injunction against the Receiver. I
13 would think your Honor has kind of had it with us at this
14 point and would like to see us not coming back here
15 again.

16 What do we have here? We have a situation where we
17 are now being told that, yes, the Cy Pres is a mess.
18 That's what we've been saying from day one and it's in no
19 way your Honor's fault for obvious reasons. Because none
20 these people were supposed to spend time including the
21 petitioner, who is represented by another distinguished
22 law firm, understood what this was all about.

23 So what I'm saying to your Honor is all good things
24 have to come to an end, and what we've got here is a
25 bizarre situation where there really is not an objection

1 by the Attorney General. I don't know what a request is
2 supposed to mean in this circumstance, and I really think
3 that the Attorney General's interest in protecting
4 general charities has to be some concern for protecting
5 the general public's interest here. There is 2,700
6 participants who are directly affected by this thing. In
7 fact, the gross settlement amount is \$4.5 million. If
8 you divide that by the number of people, it's like \$1,700
9 for each participant in the gross. That's not a
10 significant sum for people who are retired.

11 Let me say one other thing, and it's very
12 significant, notice was given by CCF to the original
13 donors. No one has filed an objection, no one. So I
14 respectfully ask your Honor to put an end to this chaos
15 and allow this settlement to go forward.

16 THE COURT: Thank you. Would the Attorney General's
17 office like to be heard?

18 MS. RIDER: Good afternoon, your Honor. Just a few
19 things. I do want to initially apologize that we weren't
20 able to get our response in sooner than it was filed.

21 THE COURT: Actually, it is concerning to me because
22 the reason that this Court issued a ruling over a year
23 ago which said three days before and this is six weeks
24 ago that it was filed so the Court has the opportunity to
25 read and consider it and the other parties have an

1 opportunity to file a reply so we don't have to spend all
2 this time on the record going through everything. That
3 being said, please proceed.

4 MS. RIDER: Your Honor, I also want to point out
5 that the Attorney General's Office is not objecting to
6 the transfer of this money and to allow settlement to
7 continue to go forward. I guess it wasn't clear from the
8 response that we aren't concerned that the 600 isn't
9 going to be paid. In fact, I think the footnote says
10 that we have been assured that under all circumstances it
11 will be paid.

12 And I just briefly want to address the discrepancy.
13 Of course, the Attorney General's Office was involved in
14 2015 as was CharterCare Foundation and a lot of smart
15 people worked on this matter. We are simply bringing
16 these discrepancies to your attention because it was
17 something that was just recently identified. It doesn't
18 change our position on this transfer and it doesn't
19 change the amount of money that was being transferred
20 over to CharterCare Foundation. We are not asking for a
21 change in the settlement agreement. It's our position
22 that the funds that stay, if there is an issue with how
23 they are segregated based on the other paragraphs in the
24 Cy Pres order, that we'll deal with them at a later time.
25 The point there is so we're not holding this up. The

1 money can be transferred and what is left over for the
2 foundation, if the Attorney General, under their
3 charitable trust authority, has any concerns with how the
4 funds are being managed, we'll deal with that with
5 CharterCare Foundation.

6 MR. WISTOW: I apologize for all the time we spent.
7 I didn't realize they would flat out say there was no
8 objection.

9 THE COURT: Thank you very much. Finally, I would
10 just like to get the position of the Receiver. What is
11 the Receiver's position of whether this is fair,
12 reasonable, and for the benefit of the receivership
13 estate?

14 MR. DEL SESTO: Thank you, your Honor. For obvious
15 reasons, your Honor, I did participate in the
16 negotiations. Obviously, it was spearheaded by
17 Wistow, Sheehan & Lovely as special counsel. I was aware
18 all the way through of the process. I do believe it is
19 fair and reasonable. As your Honor is well aware, the
20 pension needs the funds. While we would certainly prefer
21 all of the funds, for all of the reasons that Attorney
22 Conn and Attorney Wistow expressed to the Court this
23 morning, I think the settlement is an appropriate
24 settlement. It is fair and reasonable, and it will go a
25 long way to assist the pension holders who need this

1 money so their benefits can continue. So consistent with
2 the parties, your Honor, I would recommend that the Court
3 approve this.

4 THE COURT: Thank you, very much. Before the Court
5 this morning or this afternoon is the joint petition to
6 modify the April 20, 2015, Cy Pres order and also to
7 vacate the June 29, 2018, order issued by this Court with
8 respect to preservation of assets. As counsel is aware,
9 this Court has had the opportunity as we started through
10 this process prior to going to Federal Court to get the
11 approvals under the Class Action Fairness Act to
12 authorized that to happen and approve terms of the
13 settlement itself.

14 We are now back here today after Chief Judge Smith
15 has approved this settlement for the Court to deal with
16 the 2015 Cy Pres order that this Court had, in fact,
17 entered and also with its own 2018 order. The Court has
18 been through before some of the reasons and some of the
19 factors for approving the settlement. And one of the
20 reasons I asked the Receiver is just to get the Receiver
21 on the record in terms of whether the settlement is fair
22 and reasonable for the receivership estate because the
23 Court in most cases will defer to the Receiver's
24 recommendation, understanding that the Receiver and the
25 special counsel was involved in the settlement

1 negotiations.

2 The Court also has had the opportunity to review the
3 petition as well as the extensive exhibits including the
4 decision by Judge Smith. This Court agrees, while I
5 think both CCF and special counsel has expressed that in
6 a perfect world as litigants each side would either want
7 nothing to go to the receivership estate or everything to
8 go to the receivership estate, that's not the reality in
9 this situation especially when, as put on the record and
10 the Court agrees, there are some novel issues of law that
11 place some risk on both sides of the litigation.

12 In addition, we're dealing with the cost of
13 continued litigation, as CCF had mentioned, and the
14 timeframe to eventually go to a full judgment or another
15 settlement, which affects the fact that we have a
16 receivership estate with far less funds in the pension
17 plan that is necessary to satisfy the pension commitments
18 that were made to the retirees. And this Court finds
19 that under those circumstances this settlement is fair,
20 reasonable, and for the benefit of the receivership
21 estate. And when I say the receivership estate, that is
22 the pension plan, and the Court thinks that this
23 settlement is for the benefit of that plan. And that it
24 is completely reasonable not to continue to litigate this
25 case in the hopes of receiving all the money or something

1 substantially more.

2 I believe that able counsel on both sides, special
3 counsel and Attorney Conn, I'm sure has been far more
4 animated than in court today trying to work out a
5 settlement that is in the best interest of both of their
6 clients and the Court agrees.

7 As a result, the Court grants the petition to modify
8 the April, 2015, Cy Pres order, will issue the order, and
9 I have reviewed the judgment that has been entered in
10 this case, and will vacate the June 29, 2018, order. As
11 the Court already has that judgment, the Court will
12 execute the order and the judgment either later this
13 afternoon or at the latest first thing tomorrow morning.
14 So at that point any appeal period to our Rhode Island
15 Supreme Court can begin to run so the settlement can be
16 effectuated.

17 With respect to this first matter that is on before
18 the Court on the joint motion, KM-2015-0035, is there
19 anything else now that the Court has ruled that needs to
20 be addressed? Hearing none, thank you very much.

21 Madam Clerk, if you would please call the other
22 matter, which is the report from the Receiver.

23 THE CLERK: Your Honor, that matter is Case Number
24 PC-2017-3856, St. Joseph's Health Services of Rhode
25 Island v. St. Joseph's health Services of Rhode Island

1 Retirement Plan. This is on for the Receiver's eleventh
2 interim report and tenth request for fees. Would counsel
3 please identify themselves.

4 MR. DEL SESTO: Good afternoon, your Honor. Stephen
5 Del Sesto, the Receiver for the plan. I'll wait for my
6 brother.

7 THE COURT: Please. Thank you, counsel.

8 THE COURT: You may proceed.

9 MR. DEL DESTO: Thank you, your Honor. Your Honor,
10 as the clerk stated, we are here on the Receiver's
11 eleventh interim report and tenth request for approval of
12 fees, costs, and expenses. We were last before your
13 Honor in September of this year on the tenth interim
14 report. Unless your Honor has some specific questions, I
15 believe the report provides substantial detail regarding
16 the comings and goings both before this Court as well as
17 the Federal Court. So absent any questions on that, I
18 will hit a few of what I will call the high points. One
19 of which the wind was taken out of my sails a little bit
20 with the hearing prior to this with regard to the
21 settlements, which have been called Settlement A and
22 Settlement B. More specifically, the settlement between
23 the Receiver and the other class plaintiffs and St.
24 Joseph, Roger Williams, the old hospital, St. Joseph and
25 Roger Williams and CharterCare Community Board and then

1 Settlement B, which is those parties with CharterCare
2 Foundation.

3 As your Honor knows, this Court authorized the
4 Receiver to present those settlements to the Federal
5 Court. Those were presented to Judge Smith and they both
6 received both preliminary and final approval from Judge
7 Smith. And as a result of the hearing that preceded us
8 today, the final approval was this Court with the
9 modification of the Cy Pres to finalize the terms of the
10 CCF settlement subject only to the appeal period, which
11 will result in less fees that are based on the engagement
12 with special counsel will be a gross amount of \$4.5
13 million. The CCB settlement, I'll call it, with the
14 Heritage Hospitals was also given final approval by Judge
15 Smith, and the cash portion of that settlement, your
16 Honor, was approximately a gross number of \$12.5 million.

17 I will tell your Honor that was a little bit more
18 complicated because not only were those funds segregated
19 between the two hospitals, St. Joseph and Roger Williams,
20 but they were also held by Charles Schwab in various
21 investment accounts. So in order to get those funds,
22 they were made up of Hedge fund investments, T-bills and
23 cash, treasury bills, your Honor. In order to get those
24 funds, I had to take possession of the accounts with
25 Charles Schwab, open up new accounts with Charles Schwab

1 and now I am working with Mercer, who is the investment
2 manager as well as Bank of America as the trustee for the
3 plan to liquidate those investments to the extent it is
4 practical to do so, so that those funds can be allocated
5 in the same investments as the plan has for the other
6 funds.

7 To be clear, those funds are in the possession of
8 the Receiver and the Plan and they are benefitting the
9 plan right now even though they may not be allocated the
10 same way in terms of investments that the other funds
11 are. We are doing that. We are moving those over.
12 Mercer is coordinating that with Bank of America and
13 Charles Schwab to do so. I will note that there was
14 approximately a million dollars of that money, your
15 Honor, which is held in restrictive Hedge funds, which
16 ironically enough were Mercer restrictive Hedge funds,
17 and the restriction on those is that they cannot be taken
18 out of those investments for a set period of time and
19 that period of time is approximately seven to eight
20 months from now. So they will remain in those funds.
21 They are performing and we do have possession of them but
22 we will not be able to take them out of that investment
23 vehicle and put them into a new one until that time
24 period expires.

25 But I am, at least, happy to report, your Honor,

1 that with your Honor's decision today, subject to the
2 appeal period expiring, all of the funds which total
3 approximately \$17 million gross will be here to benefit
4 the plan and the participants and that, your Honor,
5 ironically is a number which almost is equal to the
6 erosion in the plan over the past two years.

7 THE COURT: With the payments.

8 MR. DEL DESTO: With the payments that have been
9 made. So as I reported to your Honor in the past, the
10 plan is eroding at a base of approximately a million
11 dollars a month. So that would be approximately as we
12 have been here for 27 months now, about \$27 million. But
13 the erosion has been about \$17 to \$18 million and the
14 difference between those two is the performance of the
15 assets, the investment income that the asset investments
16 are generating. So we are now, relatively speaking, back
17 to where we were two years ago in terms of the amount of
18 money in the Plan, which is absolutely not a bad thing.
19 Obviously, we need more but certainly the efforts of
20 special counsel to get that \$17 million gross money into
21 the Plan were substantial and I know it's appreciated by
22 the pension holders. I meet with them approximately
23 every five to six weeks and they express to me during
24 those meetings their appreciation for the efforts of the
25 Court and of special counsel in these matters, your

1 Honor.

2 THE COURT: My rough calculation based on what we
3 said before, based on the growth, that's about \$6,000 per
4 every pension plan participant.

5 MR. DEL DESTO: That's correct, your Honor. So in
6 addition to that, which is the most significant piece and
7 I think it's the most important piece for the people who
8 are affected by this pension was getting those funds in
9 and also understanding that we continue the efforts,
10 special counsel continues the efforts with regard to
11 getting additional funds in, although we are through
12 litigation on that piece.

13 In addition to that, I did want to bring up two
14 other points. I did file this as the eleventh report and
15 tenth request for fees. I have not submitted my invoice
16 to the Court. As the Court is aware, and I am asking the
17 Court to defer on that. There are reasons why I am
18 asking the Court to defer on that. One of them had to do
19 with today's hearing. I wanted the Cy Pres issue to be
20 closed before I dealt with that.

21 THE COURT: That's fine. We will just address your
22 report. We can address any fee requests when it comes to
23 the Court.

24 MR. DEL DESTO: That's fine. The other issue I
25 wanted to bring to your Honor's attention, as in prior

1 reports, this report references a request for the Court
2 to defer on making any ruling relative to a cut to
3 benefits so as to extend the plan. As your Honor is well
4 aware, and it was referenced in the last hearing, the
5 original petition requested a 40 percent cut across the
6 board. That was intended to extend the life of the plan,
7 and I have asked this Court to defer on making any
8 decisions or direct me to do so or accept a
9 recommendation by me to do so.

10 Putting aside the argument that has been in
11 litigation as to whether or not this is or is not a
12 church plan versus an ERISA plan and when it became one
13 or the other or when it ceased to be one or the other, I
14 made an election, as your Honor knows, in April to
15 definitely say I was treating this and I consider this to
16 be an ERISA plan. Under ERISA, I would not be able to
17 make a cut to extend the life of the benefits. So I am
18 asking the Court to push that issue aside from now on. I
19 won't be mentioning it in reports going further, and to
20 the extent that I am going to request any type of
21 modification, it would have to be in compliance with
22 ERISA and it would be after notifying the Court and
23 getting approval from the Court to do so.

24 THE COURT: Just to be clear, that was a motion that
25 was filed by the petitioner when it was part of the

1 receivership petition and the Court just passed or got
2 rid of that request and then at some point under ERISA or
3 whatever else that's something the Court has to address.
4 This way that 40 percent issue is gone at this point.

5 MR. DEL DESTO: That's correct, your Honor. I will
6 not be mentioning it again and I will not be including it
7 in an order again.

8 THE COURT: The prior petition that the issue has
9 been on hold for the 40 percent will pass, which means
10 there is nothing before the Court to cut the pension
11 benefits.

12 MR. DEL DESTO: That's correct. And unless your
13 Honor has any questions with regard to any of the details
14 of the report, your Honor, I will just advise the Court
15 that as of the last report I had cash on hand in the
16 estate, this is not the plan itself, of \$97,975.92.
17 There have been disbursements totaling \$11,492.65.
18 Leaving cash on hand in the amount of \$86,483.27. I have
19 attached a schedule of receipts and disbursements to the
20 report which reflects all those dollars in and out for
21 that time period, your Honor. Unless your Honor has any
22 questions, I would ask the Court approve the eleventh
23 interim report and request for fees, approve, confirm,
24 and ratify all the acts and doings of the Receiver and
25 special counsel relative to this receivership, to defer

1 until a further point, I will submit my invoice, until
2 the Court has had an opportunity to review it and the
3 appeal period on the Cy Pres piece concludes, and push
4 this hearing over or set a hearing rather for the twelfth
5 interim report at a date that is approximately two months
6 from now, which is the time frame we have been working on
7 which would put us somewhere in the middle of January
8 subject to your Honor's schedule, your Honor.

9 THE COURT: Very good. The only question I have is
10 in terms of communications, I know for a while and I just
11 wanted to know whether it was still happening, you've
12 conducted meetings in the town hall just to keep the
13 pensioners in the loop in terms of what was going on.
14 Where do we stand in terms of that?

15 MR. DEL DESTO: Yes. I thought I mentioned that,
16 your Honor. Every four to six weeks I hold a town hall
17 meeting at Rhodes on the Pawtuxet. That meeting is
18 digitally recorded. So the recordings of those meetings
19 in full are posted to the website and accessible by any
20 participant who does not live in Rhode Island or who
21 could not participate to, at least, hear the discussion
22 that went on.

23 In addition to that, your Honor, we regularly update
24 the website that has been established, a dedicated
25 website, with any pleadings that are filed in either the

1 receivership, the Federal Court action, or the Cy Pres
2 action in this matter, your Honor. So I continually
3 provide those updates, and, like I said, I try to do that
4 Rhodes on the Pawtuxet meeting within four to six weeks
5 of each other. If I know that there is something of
6 significance is coming up, I try to schedule it just
7 after the matter of significance we have the meeting
8 because I know the participants will have questions about
9 what happened.

10 THE COURT: Very good. With no objections being
11 filed to the report, and, again, we're not dealing with
12 the fee issue, the Court grants the relief requested by
13 the Receiver ratifying the acts and deeds of the Receiver
14 and approving those in the report filed with the Court.
15 I would ask the Receiver to file the appropriate order.

16 MR. DEL DESTO: Do you have a date preference or
17 should I get that from the clerk?

18 THE COURT: Why don't you get that from the clerk.

19 MR. DEL DESTO: Thank you, your Honor. I will
20 present an order.

21 MR. WISTOW: I apologized once to the Court. I'm
22 going to do it a second time. We're going to be back.
23 As part of Settlement A is a petition to dissolve. I'm
24 working with Mr. Land and Mr. Fine to get that to you
25 soon. I know you're looking forward to it.

1 THE COURT: Just let me know and I will hear it
2 whenever it's ready.

3 (A D J O U R N E D.)
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