

STATE OF RHODE ISLAND  
 PROVIDENCE, SC.

SUPERIOR COURT

In re:

CHARTERCARE COMMUNITY BOARD,

ST. JOSEPH HEALTH SERVICES OF  
 RHODE ISLAND

AND

ROGER WILLIAMS HOSPITAL

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C.A. NO: PC-2019-11756

**AFFIDAVIT OF AMY C. VITALE, ESQ.**

I, Amy C. Vitale, Esq., being duly sworn, depose and state as follows:

1. I am Vice-President and General Counsel of The Beacon Mutual Insurance Company (“Beacon”).

2. The information in this Affidavit is based on my personal knowledge and/or records generated in the ordinary course of Beacon’s business.

3. On November 1, 2010, Beacon entered into the Third Party Administration Agreement (“TPA”) with St. Joseph Health Services of Rhode Island (“SJHSRI”). A true and accurate copy of the TPA is attached as **Exhibit 1**. Under the TPA, Beacon agreed to provide claims administration services for twelve claims that arose during SJHSRI’s self-insured period (the “covered claims”). Beacon also agreed to administer any closed claims that required further handling that may be identified while the Agreement is in effect. One additional claim was added which closed prior to the Liquidating Receivership.

4. All but two of the covered claims originated between 1986 and 1989; the other two originated in 1995 and 1998.

5. Pursuant to the TPA, Beacon would make all required payments for the covered claims; Beacon would provide a Claims Paid Report monthly to SJHSRI listing the payments made per claimant; and SJHSRI would then remit reimbursement by check or wire to Beacon for the amounts Beacon paid. Beacon also would apply periodically (2-4 times per year) to applicable secondary payment sources to secure reimbursement to SJHSRI for payments covered by those sources. The secondary sources include excess insurance carriers and the Rhode Island Department of Labor and Training (“DLT”) Second Injury Fund (“SIF”).

6. Payments from the secondary sources generally came in the form of checks payable to St. Josephs Hospital RI c/o Beacon Mutual Insurance Co. or St. Joseph Health Services c/o Beacon Mutual Insurance, which checks Beacon would forward to SJHSRI. On occasion larger lump sum settlement payments would be transmitted by wire to Beacon. Beacon would then either forward the funds to SJHSRI or, with SJHSRI’s knowledge and approval, apply the funds to reimburse Beacon for claim payments made.

7. Beacon received no compensation from SJHSRI for performing these services other than an initial one-time payment of \$1,000.00. *See Exhibit 1* sec. 3.1.

8. During the period of the Liquidating Receivership, only five of the covered claims being administered by Beacon under the TPA remained open. Of the five open claims (the “Open Claims”), two arose between August 1987 and August 1992, a period for which SJHSRI carried excess insurance coverage from Employers Reinsurance Corporation, which was assumed by SwissRe (“SwissRe”). Two other Open Claims arose between August 1986 and August 1987, a

period for which SJHSRI carried excess insurance coverage from General Reinsurance Corporation (“GenRe”). The fifth Open Claim arose in 1995 and qualifies for payment by the SIF.

9. The files provided to Beacon at the outset of the TPA did not include a complete copy of the SwissRe excess insurance policy. The policy documents Beacon received confirm that the SwissRe coverage is subject to a cumulative retention per claim. True and accurate copies of the SwissRe policy documents are attached as **Exhibit 2**.

10. The two Open Claims within the SwissRe coverage both met their applicable cumulative retention prior to the Liquidating Receivership, and excess insurance payments have been obtained by Beacon for the benefits paid prior to and during the Liquidating Receivership on those claims.

11. The GenRe excess insurance policy applicable to two other Open Claims is subject to annual, as opposed to, cumulative retentions in the amount of \$17,000 for annual indemnity payments per claim and over \$25,000 in annual medical benefits paid per claim. True and accurate copies of the GenRe policy documents are attached as **Exhibit 3**. SJHSRI’s former legal counsel, Richard Land, who was engaged by the Liquidating Receiver to assist with transition matters, corresponded with Beacon in 2018 about the GenRe policy. Beacon forwarded a copy of the policy to Mr. Land on September 17, 2018, together with correspondence from GenRe’s claims administrator explaining that the policy has annual individual retentions for indemnity and medical payments. Copies of correspondence in 2018 between Beacon and SJHSRI counsel Richard Land regarding the GenRe coverage are attached as **Exhibit 4**.

12. For one of the Open Claims, the indemnity benefit rate is under \$213 per week, and for the other, the indemnity benefit rate is \$320 per week. Neither claim has generally accumulated more than a few hundred dollars in medical benefits per year. Therefore, the benefits Beacon has

paid each year on each of those Open Claims have been less than the GenRe policy's annual retention amounts. Accordingly, the benefits paid on those claims prior to and during the Liquidating Receivership have not qualified for reinsurance payments.

13. In the initial months of the Liquidating Receivership, the Liquidating Receiver and Beacon continued to perform under the TPA as described above. In April 2020, the Liquidating Receiver stopped reimbursing Beacon for payments Beacon made to claimants on the Open Claims. Beacon emailed the Liquidating Receiver repeatedly over the ensuing months asking when reimbursement payments owed to Beacon would be made. True and accurate copies of emails I sent to the Liquidating Receiver about the unpaid reimbursements are attached as **Exhibits 5 – 9**. The Liquidating Receiver initially did not respond. When he finally did, he asked Beacon to continue paying claims while he considered whether to adopt or reject the TPA.

14. Over the next several months, Beacon assisted the Liquidating Receiver in his pursuit of information he requested. Among other things, Beacon helped the Liquidating Receiver research whether SJHSRI ever obtained a bond to secure its self-insured liability. Beacon's responsibilities with regard to claims administration are expressly limited to those identified in the TPA and do not include any obligation to provide insurance coverage to SJHSRI. Nothing in the TPA required Beacon to pursue recovery under any indemnity bonds issued in favor of the DLT. Nonetheless, Beacon has cooperated fully with the Liquidating Receiver and provided all information it has to assist him in researching that bond. It contacted former agents of SJHSRI and undertook other actions to assist the Liquidating Receiver with his inquiry.

15. In December 2020, the Liquidating Receiver still had not determined whether to adopt or reject the TPA. By that point, Beacon had made tens of thousands of dollars of unreimbursed payments to claimants on behalf of SJHSRI. Accordingly, Beacon notified the

Liquidating Receiver that it was terminating the TPA. A true and accurate copy of the notification letter is attached as **Exhibit 10**. The TPA, which has no set term, provides that it can be terminated by either party without cause upon sixty days' prior written notice. *See Exhibit 1* sec. 1.2. The Liquidating Receiver took the position that Beacon could not terminate the TPA without Court approval and asked Beacon to continue performing under the agreement. By the end of February 2021, Beacon had made over \$84,000 in unreimbursed payments to claimants.

16. In late April 2021, the Liquidating Receiver requested that Beacon provide him with information to allow him to contact SwissRe directly to obtain a full copy of that insurance policy. Beacon provided the information requested and the Liquidating Receiver subsequently obtained information directly from SwissRe about the policy.

17. In late April 2021, the Liquidating Receiver also asked Beacon to provide an accounting on open claims for the period of the Liquidating Receivership as well as the period covered by specific excess insurance payments received on two claims during the Liquidating Receivership. **Exhibit 11**. Beacon provided the requested accounting on June 10, 2021. A true and accurate copy of the accounting is attached as **Exhibit 12**. The accounting shows all claim payments made by and reimbursements paid to Beacon for the period requested.

18. At this time, the Liquidating Receiver also pursued discussions with the DLT regarding the Open Claims. At the Liquidating Receiver's request, Beacon attended meetings and assisted the Liquidating Receiver in his efforts to have DLT assume responsibility for administering and paying those claims. The Liquidating Receiver acknowledged that my presence was very helpful for his meetings with the DLT.

19. Meanwhile, Beacon continued to press the Liquidating Receiver to reimburse Beacon for the mounting balance of unreimbursed claims payments that Beacon had accrued. The

Liquidating Receiver indicated that he would not object to Beacon filing a late claim for the unreimbursed amount. In late April the Receiver “suggest[ed]” that the Receiver file a proof of claim by May 31, 2021. *See Exhibit 11.* 56. Beacon did not understand the May 31 date to be a firm deadline, particularly in light of their ongoing efforts to reach an agreement with the DLT.

20. On June 2, 2021, the Liquidating Receiver told Beacon that he needed it to file a proof of claim in order to evaluate the Receivership’s workers’ compensation issues and he set a “firm deadline” of June 16. *See Exhibit 13.* Up to that point, Beacon had understood that a claim might not be necessary if talks with the DLT resulted in an agreement. Beacon filed its proof of claim on June 10, just eight days after the Liquidating Receiver made his request and six days before the deadline.

21. On June 29, 2021, Beacon’s outside counsel Patricia Antonelli and I participated in a video conference call with the Liquidating Receiver, the Liquidating Receiver’s Special Counsel Max Wistow and others. This was the first time Special Counsel Max Wistow had met with Beacon about this matter. On the call, Special Counsel stated his belief that every one of the covered claims under the TPA should have been reimbursed by excess insurance.

22. I recall the June 29 conference call vividly not only because of Special Counsel’s unfounded assertion but also because during the call the Special Counsel became very animated and belligerent. He repeatedly interrupted me and spoke over Ms. Antonelli and me when we attempted to respond to his statements.

23. I did not state in that conference that the self-insured retentions applicable to the Open Claims were all annual and not cumulative. The Liquidating Receiver knew that that was not the case. Beacon had provided the Liquidating Receiver with documentation relating to the SwissRe policy long before this call that clearly states the cumulative retention amounts for the

relevant years. The Liquidating Receiver also obtained documents directly from SwissRe which likewise confirm the policy's cumulative retention terms.

24. Beacon has always administered the SwissRe covered claims with the knowledge and understanding that the retention amounts are cumulative and has received reimbursement from Swiss Re based on requests for claim payments that exceeded the applicable self-insured retentions.

25. After the conference, at the Special Counsel's request, Beacon produced copies of the GenRe excess insurance policy and the SwissRe policy documents with Bates Stamps.

26. Despite Special Counsel's inappropriate behavior during our conference call, Beacon continued to cooperate with the Liquidating Receiver. As Special Counsel's demand, Beacon's counsel Patty Antonelli drafted the settlement agreement by which the DLT would assume liability for both the administration and payment of the remaining workers' compensation claims. Special Counsel then asked Beacon for yet more assistance, this time with his research into a Bank of America account maintained by SJHSRI. Beacon researched its records to identify the check images for the TPA payments made by SJHSRI to Beacon.

27. On or about out August 10, 2021, out of the blue, Special Counsel issued subpoenas to Beacon seeking records already produced and adding requests that far exceed any requests ever made previously by the Liquidating Receiver or others. In discussions about the requests, Special Counsel claimed he had evidence that Beacon had not secured all available reinsurance payments for the Receivers, but he would not say what the evidence was.

28. The Liquidating Receiver attached three reinsurance payments and related correspondence to its motion. The correspondence is addressed to the address that Beacon had on file at the time for SJHSRI's finance department. Emails between Beacon and Richard Land, who

was SJHSRI's counsel at the time, show that upon receiving the checks, ProspectCharterCARE, which had acquired assets of SJHSRI the prior year, forwarded them to Mr. Land's office. Attorney Land then instructed Beacon's claims representative to send all future checks directly to his office. True and accurate copies of the emails between Mr. Land and Beacon are attached as **Exhibit 14**. Beacon did so from that point forward.

29. The Liquidating Receiver also attached to his motion a letter dated February 15, 2012, from Albert Risk Management Consultants ("ARMC") to the Director of Finance for CharterCARE Health Partners. Beacon is not copied on the letter and has no record of having any involvement in the engagement or resulting letter.

30. As of August 31, 2011, SJHSRI had thirteen open claims, only certain of which had exceeded the applicable retention under SJHSRI's excess coverage and were being reimbursed from excess insurance. Beacon is unable to explain the statements attributed to it in the ARMC letter, which are contrary to information that Beacon provided to SJHSRI as well as information in the TPA.


31. The Receivers claim that Beacon misdirected or failed to secure reinsurance payments under the TPA. That claim was never raised by SJHSRI before the Receivership or by the Liquidating Receiver in the many months he worked with Beacon. This allegation was made for the first time by the Liquidating Receiver's Special Counsel in the June 29, 2021 conference call. To date, he has not identified any evidence to support the allegation.

32. Prior to issuing the subpoena at issue in the pending motion, neither the Liquidating Receiver nor any agent of his asked Beacon for an accounting of the period prior to the Liquidating Receivership. The only accounting requested was for the period of the Liquidating Receivership, and that accounting was provided by Beacon to the Liquidating Receiver on June 10, 2021.




33. Enforcement of the subpoena as drafted would impose an undue burden and expense on Beacon. Identifying and collecting the documents requested would require a manual search of voluminous claims files associated with each of the thirteen claimants identified in the subpoena. Beacon began this process for one of the claimants. The process took over thirty hours and, after that time, was still not completed. Beacon expects that searching the files associated with the other eleven claimants will take ten weeks and hundreds of manhours of work. In addition, before responsive documents can be produced, Beacon would have to carefully review each document to ensure that medical and other personal information about the claimants be redacted.

IN WITNESS WHEREOF, the undersigned has executed this document this 18<sup>th</sup> day of October 2021.

  
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Amy C. Vitale, Esq.

STATE OF Rhode Island  
COUNTY OF Kent

On this 18<sup>th</sup> day of October 2021, before me, the undersigned notary public, personally appeared Amy Vitale, who is personally known to the notary to be the person whose name is signed on the preceding or attached document, and acknowledged to the notary that she signed it voluntarily.

  
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Notary Public: Kimberly A. Sousa-Vallone  
My Commission Expires: 4-3-2025  
ID: 36549

**KIMBERLY A. SOUSA-VALLONE**  
Notary Public, State of Rhode Island  
Commission # 36549