UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN et al.	:	
Plaintiffs	:	
v.	:	C.A. NO.: 1:18-cv-00328
PROSPECT CHARTERCARE, LLC, et al.;	:	
Defendants.	:	

DEFENDANT CHARTERCARE FOUNDATION'S REPLY BRIEF IN FURTHER SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT WITH RESPECT TO CHARTERCARE FOUNDATION [DKT. # 77]

Defendant CharterCARE Foundation ("CCF") f/k/a CharterCARE Health Partners Foundation respectfully submits this reply brief in further support of the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval by Plaintiffs and Defendants CharterCARE Foundation, St. Joseph Health Services of Rhode Island ("SJHSRI"), Roger Williams Hospital ("RWH"), and CharterCARE Community Board ("CCCB") (hereinafter the "CCF Settlement Motion") (Dkt. # 77).[1] In so doing, CCF responds to the oppositions to the CCF Settlement Motion filed by the Prospect Entities[2] and the Diocesan Defendants[3] (collectively referred to herein as the "Objecting Parties"). (Dkt. # 80 & 81).

[1] SJHSRI, RWH, and CCCB collectively are referred to herein as the "Heritage Hospital Defendants."

[2] The "Prospect Entities" herein refers to Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC.

[3] The "Diocesan Defendants" herein refers to Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation.

FACTUAL AND PROCEDURAL BACKGROUND

CCF is a non-profit foundation that currently administers certain charitable assets that originally were donated to SJHSRI and RWH. CCF acquired those assets as a result of the 2014 regulatory approval of Prospect CharterCARE, LLC's acquisition of SJHSRI's and RWH's health care assets. More specifically, the Rhode Island Attorney General ("Rhode Island AG") required SJHSRI and RWH to file a petition in the Rhode Island Superior Court seeking *cy pres* approval for such transfer to CCF (hereinafter the "*Cy Pres* Petition"). (First Amended Complaint, ¶ 391). On April 20, 2015, the Rhode Island Superior Court issued an order approving that *Cy Pre*s Petition (hereinafter the "*Cy Pres* Order"). (Id. ¶ 403). On the basis of that order, SJHSRI and RWH transferred approximately $8.2 million of their respective charitable assets to CCF (hereinafter, the "Transferred Funds"). (Id. ¶ 404). Since then, CCF has been administering the Transferred Funds as close to the original donors' intent as possible. CCF uses those assets for grants and scholarships to promote better access to health care services in the Rhode Island community.

In this action, plaintiffs allege that SJHSRI and RWH never should have transferred any funds to CCF, and that all of the Transferred Funds instead should have gone to the SJHSRI Retirement Plan (the "Plan"). More specifically, plaintiffs principally allege that CCF's receipt of the Transferred Funds was a voidable transaction under Rhode Island's fraudulent transfer statute, R.I. Gen. Laws §§ 6-16-1 et seq. (Id. ¶¶ 477-485). Plaintiffs further allege that CCF (together with SJHSRI and RWH) are liable for making actionable misrepresentations to the Superior Court in connection with the *Cy Pres* Petition. (Id. ¶¶ 389-403). CCF vigorously disputed all of these claims. Significantly, plaintiffs' operative Amended Complaint does not allege that any of the parties now objecting to the CCF Settlement Motion – i.e., the Prospect

Entities and the Diocesan Defendants – played any role whatsoever in the preparation and filing of the *Cy Pres* Petition, or SJHSRI's and RWH's subsequent transfer of charitable assets to CCF. (Id. ¶¶ 382-409).

In addition to filing suit against CCF in this Court, plaintiffs contemporaneously filed a motion to intervene in the 2015 *Cy Pres* Proceeding[4] for the purpose of seeking to vacate the *Cy Pres* Order. That led to contested motion practice between plaintiffs and CCF between June, 2018 and October, 2018. Following the Superior Court's allowance of the plaintiffs' intervention motion, CCF's and plaintiffs' counsel then proceeded to engage in extended, thorough, arms' length settlement negotiations. These discussions culminated in a settlement agreement dated November 21, 2018, which is attached at Exhibit A to the CCF Settlement Motion (Dkt. 77-2) (hereinafter the "CCF Settlement Agreement").

Boiled down to its essence, the CCF Settlement Agreement calls for CCF to pay to the plaintiffs the total sum of $4.5 million (consisting of $3.9 million of its charitable assets plus $600,000 representing the balance of CCF's limits under its Directors and Officers Liability Policy[5]) in exchange for: (1) plaintiffs' release of all claims against CCF; (2) a stipulation of dismissal with prejudice; and (3) plaintiffs' transfer of certain rights in CCF as described in further detail below at page 8. The CCF Settlement Agreement is further conditioned, *inter alia*, upon this Court's making a factual finding that it is as a good faith settlement under R.I. Gen. Laws § 23-17.14-35 (hereinafter, the "Settlement Statute") and that it is "fair, reasonable, and adequate" under Fed. R. Civ. P. 23(e). (Dkt. # 77-2 at 10, ¶ 20). CCF joins with plaintiffs in requesting that this Court make those findings at this time.

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[4] The "2015 *Cy Pres* Proceeding" refers to the Superior Court action known as *In re: CharterCARE Health Partners Foundation et al.*, C.A. No. KM-2015-0035.

[5] That policy was issued by RSUI Indemnity Company. The policy limits are $1 million per claim but have eroded through payment of defense costs.

ARGUMENT

As this Court is aware, the Objecting Parties have raised an Equal Protection and Due Process challenge to the Settlement Statute. They further argue that the Settlement Statute is preempted by ERISA, and challenge the jurisdiction of the state court receivership action. In the interest of brevity, CCF will not herein address the substance of those arguments because plaintiffs already have addressed them thoroughly in separate briefs. (Dkt. # 82 & 83).

Instead, CCF now takes this opportunity to focus on: (1) whether the Objecting Parties have standing to object to the CCF Settlement Agreement; (2) whether the CCF Settlement Agreement is a good faith settlement under the Settlement Statute; and (3) whether there is any basis for the Objecting Parties to seek discovery into that second issue.

The Objecting Parties Demonstrate No Concrete Legal Injury Sufficient to Confer Standing To Object To The CCF Settlement. The Prospect Entities and the Diocesan Defendants cannot demonstrate any concrete legal injury that they will suffer if this Court makes a factual finding that the CCF Settlement Agreement is a good faith settlement. See Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 538 (1st Cir. 1995) (discussed in plaintiffs' briefing at Dkt. # 83 at 50-51) (holding that non-settling defendant had no suffered no legal injury sufficient to confer standing to object to trial court's factual finding that plaintiffs' settlement agreement with settling defendant was a "good faith" settlement under Rhode Island's DEPCO settlement statute, R.I. Gen. Laws § 42-116-40). It is true that, by virtue of the Settlement Statute, that factual finding *might* later have the effect of immunizing CCF from any *potential* contribution claims that the Prospect Entities and the Diocesan Defendants might *potentially* assert against CCF in the future. But to date, neither the Prospect Entities nor the Diocesan Defendants actually have asserted any such contribution claims against CCF.

Moreover, as a practical matter, it is highly doubtful that any Objecting Party would ever have a good faith basis to assert any contribution claim against CCF. This is true irrespective of whether Rhode Island law or ERISA applies to such claims.

If Rhode Island law applies, then the Objecting Parties would need to establish that they are "joint tortfeasors" with CCF. R.I. Gen. Laws § 23-17.14-35.[6] "Joint tortfeasors" are parties whose "respective wrongful conduct cause the 'same injury' to the original plaintiff." Wampanoag Grp., LLC v. Iacoi, 68 A.3d 519, 522 (R.I. 2013). "The same injury is caused by parties who engage in common wrongs." Wilson v. Krasnoff, 560 A.2d 335, 339-40 (R.I. 1989).[7] Here, plaintiffs' claims against CCF arise out of the preparation and filing of the 2015 *Cy Pres* Petition and CCF's ensuing receipt of the Transferred Funds. Plaintiffs do not allege that either the Prospect Entities or the Diocesan Defendants participated in those alleged wrongs. Accordingly, there is no future scenario in which the Objecting Parties are held liable to plaintiffs for "common wrongs" that they engaged in together with CCF.

Turning next to the Objecting Parties' putative rights of contribution under ERISA, CCF joins with plaintiffs in noting that it is open to serious question whether or not there is an implied, common-law right to contribution under ERISA. See (Dkt. # 55 at 55-56). Even if such a right does exist, it is one that exists only "among defaulting fiduciaries." Chemung Canal Trust Co. v. Sovran Bank/Maryland, 939 F.2d 12, 16 (2nd Cir. 1991). CCF is not alleged to have acted as a fiduciary with respect to the Plan, or played any direct or indirect role as administrator

[6] This would be true even if the Court declared R.I. Gen. Laws § 23-17.14-35 unconstitutional (which it should not do). In that case, Rhode Island's Uniform Contribution Among Tortfeasors Act, R.I. Gen. Laws §§ 10-6-1 et seq., would apply instead of the Settlement Statute. Under either statute, the plaintiff asserting the contribution claim must plead and prove that the defendant is a "joint tortfeasor."

[7] In analyzing whether an occurrence between two or more parties is a "common wrong," Rhode Island courts consider "the time at which each party acted or failed to act and whether a party had the ability to guard against the negligence of the other." Wilson, 560 A.2d at 340.

or advisor to the Plan in any way. Accordingly, the Objecting Parties and CCF may not be held liable together under ERISA as "defaulting fiduciaries" with respect to the Plan. Id.[8]

Because the Objecting Parties do not have any viable contribution rights against CCF in the first place, their potential future loss of such rights does not constitute an cognizable injury sufficient to confer standing to object to the CCF Settlement Agreement.

The CCF Settlement Agreement Is A Good Faith Settlement. The Settlement Statute provides as follows:

> For purposes of this section, a good-faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), ***irrespective of the settling or non-settling tortfeasors' proportionate share of liability***.

R.I. Gen. Laws § 23-17.14-35(3) (emphasis added). Neither of the Objecting Parties point to any evidence of "collusion, fraud, dishonesty, or other wrongful or tortious conduct" in the context of the CCF Settlement Agreement. In fact, the Diocesan Defendants expressly contrasted the non-collusive nature of the CCF Settlement Agreement with what they characterized as the allegedly collusive nature of the Heritage Hospital Defendants Settlement Agreement. In this respect, Diocesan Defendants noted as follows.

> The CCF Settlement contains no admission of liability or concession on damages, no tactical statements concerning proportionate fault, and no consent to judicial liquidation by the Receiver, and more restrictive release language. See generally Ex. 1 (CCF Settlement). Rather, the CCF Settlement ensures CCF's continued survival, which the Agreement had jeopardized by purporting to transfer CCCB's membership interest in CCF to the Receiver. See Agreement ¶ 13.[9]

(Dkt. No. 73 at 73). CCF agrees with those statements, which point to the good faith nature of the CCF Settlement Agreement.

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[8] The Objecting Parties also both deny that they are or were "fiduciaries" of the Plan.

[9] For a discussion of CCCB's purported membership interest in CCF, see infra at 8.

In the last paragraph of its two-page opposition to the CCF Settlement Agreement, the Prospect Entities argue in passing that "there has been no showing that the amount of [the CCF Settlement Agreement] is a fair amount." (Dkt. # 81 at 2). That is not proper grounds to object to approval under the Settlement Statute. Under that statute, the Court assesses good faith "irrespective of the settling or non-settling tortfeasors' proportionate share of liability." R.I. Gen. Laws § 23-17.14-35(3). In other words, approval under the Settlement Statute does not depend upon whether one believes that CCF is paying too much or too little in relation to CCF's proportionate share of liability.

The amount of the settlement payment is, however, relevant to whether the CCF Settlement Agreement is "fair, reasonable, and adequate" under Fed. R. Civ. P. 23(e). Neither Objecting Party advances a serious challenge to the fairness, reasonableness, and adequacy of the CCF Settlement Agreement with reference to the case law applicable to Rule 23(e). As this Court is aware, plaintiffs' counsel and counsel for the Plan participants are better suited than Objecting Parties' counsel to evaluate whether the CCF Settlement Agreement is in the best interests of the putative class.[10] Both plaintiffs' counsel and counsel for the Plan participants support this CCF Settlement Agreement.[11]

CCF now takes this opportunity to explain why the CCF Settlement Agreement is fair and reasonable. *First*, a key element of plaintiffs' fraudulent transfer claims against CCF rests upon their interpretation of certain provisions of the Rhode Island Nonprofit Corporation Act concerning how dissolving nonprofit corporations such as SJHSRI and RWH should distribute

[10] Plaintiffs' counsel is highly experienced and capable, and has been aggressive in advocating on behalf of the Plan participants. It strains credulity for the Prospect Entities to suggest that CCF somehow has hoodwinked plaintiffs' counsel into agreeing to an unreasonably low settlement payment that shortchanges the Plan participants.

[11] Additionally, CCF notes that the Rhode Island AG has been informed of this CCF Settlement Agreement, and has not objected to its approval.

their assets. R.I. Gen. Laws § 7-6-51. In their Amended Complaint, plaintiffs allege that R.I. Gen. Laws § 7-6-51 conferred upon creditors such as plaintiffs an absolute right to be paid before a dissolving nonprofit corporation (such as SJHSRI and RWH) can transfer any funds to entities such as CCF pursuant to the *cy pres* doctrine. (Amended Complaint, ¶¶ 396-401). CCF disputes plaintiffs' interpretation of that statute. There are no reported Rhode Island cases deciding whose interpretation was correct. If plaintiffs and CCF did not settle, the statutory interpretation dispute concerning R.I. Gen. Laws § 7-6-51 likely was headed to the Rhode Island Supreme Court. Both sides faced an uncertain result and significant consequences for the viability of their claims and defenses. Accordingly, plaintiffs could not rule out the possibility that their claims against CCF might be entirely unsuccessful, and they could end up recovering nothing from CCF. Likewise, CCF could not rule out the possibility that plaintiffs might entirely prevail on their claims against CCF, forcing CCF to surrender all of the Transferred Funds.

Second, CCF and plaintiffs also were engaged in an increasingly protracted dispute regarding whether or not CCCB had the right to essentially sell CCF (and with it, all the Transferred Funds) to plaintiffs in the Heritage Hospital Defendants Settlement Agreement. Plaintiffs contended that CCCB was and is CCF's controlling parent corporation. CCF disputed that assertion in light of the fact it had operated independently of CCCB for several years. CCF argued that, while CCCB *formerly* was CCF's sole controlling member, that sole membership interest previously had terminated through wavier and/or abandonment. Accordingly, in the absence of settlement, plaintiffs and CCF faced further litigation with an uncertain outcome as to the enforceability of any rights in CCF that plaintiffs may have acquired through the Heritage Hospital Defendants Settlement Agreement.

Third, and against the backdrop of those first two considerations, both CCF and plaintiffs appreciated that prolonged litigation likely would result in CCF having to seek approval to use its charitable funds to defend itself in this action and the 2015 *Cy Pres* Proceeding. If that happened, that would reduce the funds available to benefit the Plan, even if plaintiffs were successful in obtaining a judgment against CCF.[12]

Those three considerations were just some of the many reasons why CCF and plaintiffs decided to settle on the terms reflected in the CCF Settlement Agreement.

The Prospect Entities suggest in passing that there is something unfair about the Heritage Hospital Defendants proposing to pay plaintiffs virtually 100% of their assets, while CCF are proposing to pay plaintiffs approximately 50% of its assets. (Dkt. # 81 at 2). The Prospect Entities are comparing apples to oranges. The plaintiffs' liability claims against the Heritage Hospital Defendants (one of whom, SJHSRI, was the Plan Administrator) are much more straightforward than their liability claims against CCF (which never administered or serviced the Plan). That is one of the basic, fundamental reasons why the Heritage Hospital Defendants are proposing to pay plaintiffs a significantly higher percentage of their total assets than CCF.

The Court Should Not Permit Confirmatory Discovery. The Prospect Entities have requested "limited discovery to evaluate whether the settlement is fair." (Dkt. # 81 at 2). For purposes of the Settlement Statute, the relevant inquiry is not whether the settlement is "fair," but instead whether "it is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), ***irrespective of the settling or non-settling tortfeasors' proportionate share of liability***." R.I. Gen. Laws § 23-17.14-35(3) (emphasis added). Neither Objecting Party proffers any evidence of "collusion, fraud,

[12] As noted above, supra at fn. 6, CCF's D&O insurer, RSUI, was providing a defense under a wasting $1 million policy. Continued litigation almost certainly would have exhausted the policy limits.

dishonesty, or other wrongful or tortious conduct" that would warrant discovery into CCF's and plaintiffs' settlement communications. Such discovery would entail an expensive, time-consuming, and intrusive fishing expedition that would further deplete CCF's limited resources. This Court should summarily deny the Prospect Entities' request for confirmatory discovery.

CONCLUSION

The Court is presented with a detailed settlement agreement that is the product of careful, thorough, and good faith negotiation between experienced counsel for litigation adversaries. None of the Objecting Parties' challenges to the CCF Settlement Agreement – based upon Equal Protection, Due Process, ERISA preemption, potential loss of contribution rights against CCF, or any other grounds – is ripe for adjudication at this time. The Prospect Entities' and the Diocesan Defendants' objections to the CCF Settlement Agreement appear to be objections for the sake of objection. CCF respectfully requests that this Court expeditiously proceed to make a factual finding that the CCF Settlement Agreement is indeed a good faith settlement agreement under the Settlement Statute and that it is "fair, reasonable, and adequate" under Fed. R. Civ. P. 23(e).

CHARTERCARE FOUNDATION,

By its counsel,

/s/ Russell F. Conn

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Dated: January 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2019, I filed and served this document through the ECF filing system. This document is available for viewing and downloading from the ECF system, and the ECF system will automatically generate and send a Notice of Electronic Filing to the following Users of Record:

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