STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: October 29, 2018]

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

DECISION

STERN, J. Stephen Del Sesto, Permanent Receiver (Receiver) for the St. Josephs Health Services of Rhode Island Retirement Plan (Plan), petitions this Court (Petition) for approval of a proposed settlement agreement (PSA) regarding claims asserted by the Receiver in a federal lawsuit (Federal Court Action), pending in the United States District Court for the District of Rhode Island.[1] The PSA has been executed by and between the Receiver,[2] several named Plan participants acting individually and on behalf of a class of Plan beneficiaries,[3] and various defendants—CharterCARE Community Board (CCCB), St. Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH) (collectively, Settling Defendants)—in the subject claims. Granting the Petition would enable the Receiver to petition the federal court for approval of the PSA, which is a prerequisite for settling a class action arising under Rule

[1] The Federal Court Action is filed as C.A. No. 1:18-CV-00328-WES-LDA. The Receiver filed a parallel action in the Rhode Island Superior Court (C.A. No. PC-2018-4386) (State Court Action), which has been stayed pending further order from this Court. Order, Jul. 11, 2018.

[2] The Receiver acts solely in his representative capacity.

[3] The PSA would bind all Plan participants, including surviving former SJHSRI employees and representatives of the deceased. *See* Receiver's Pet. for Settlement Instr., Ex. A ¶ 1(bb).

23(e) of the Federal Rules of Civil Procedure.[4] The Receiver and counsel for the Plan participants have submitted memoranda in favor of the Petition. Non-settling entities in the Federal Court Action, CharterCARE Foundation (CCF) and the Prospect Entities,[5] as well as the Attorney General (AG), have objected (collectively, Objectors).

I

Facts and Travel

SJHSRI, owner and operator of Our Lady of Fatima Hospital (Fatima), sponsored the Plan as a retirement benefit for its employees. Receiver's Second Interim Report and Req. for Approval of Fees, Costs, and Expenses ¶ 2. After years of financial distress and in the pursuit of operational efficiencies, SJHSRI entered into an affiliation agreement with RWH, a corporation that formerly owned and operated Roger Williams Hospital. Pet. for the Appointment of a Receiver, ¶ 2 n.2, Aug. 18, 2017. Pursuant to the affiliation, RWH and SJHSRI organized into CharterCARE Health Partners ((CCHP) n/k/a CCCB). *See id.* Even after affiliating, CCHP continued to lose money and solicited bids from potential acquirers. Mem. Supp. of Joint Obj. of Prospect Medical Holdings, Inc. 3-4, Sept. 27, 2018. In 2014, CCHP entered into an Asset Purchase Agreement (2014 Sale) in which it transferred substantially all of its operating assets to a newly-formed entity owned by Prospect Medical Holdings, Inc. (Prospect), known as Prospect CharterCARE, LLC, (PCC), in exchange for a cash payment and a grant to CCCB of a fifteen percent interest in PCC.[6] *See id.* To complete the 2014 Sale, SJHSRI, RWH, CCCB, and the

[4] Such judicial approval is also a condition for applicability of G.L. 1956 § 23-17.14-35 concerning good-faith settlements.

[5] The Prospect Entities include the following corporate bodies: Prospect Medical Holdings, Inc., Prospect East Medical Holdings, Inc., Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, Prospect CharterCARE RWMC, LLC.

[6] PCC in turn owns Prospect CharterCARE SJHSRI, LLC and Prospect CharterCARE RWMC, LLC, the holding companies that own the hospitals after the 2014 Sale.

Prospect Entities (collectively, Transacting Parties) sought approval from the AG and the Rhode Island Department of Health as required under the Hospital Conversions Act (HCA). *See* G.L. 1956 §§ 23.17.14-1, *et seq.*[7] Corrected Obj. of CharterCARE Foundation to Receiver's Pet. for Settlement Instr., Ex. A at 1-2.

To satisfy the AG's conditions for approval, SJHSRI, RWH, and CCF (f/k/a CharterCARE Health Partners Foundation)—a charitable foundation capable of receiving and administering the charitable assets previously under CCHP's control—petitioned this Court for *Cy Pres* (*see* C.A. No. KM-2015-0035). *Cy Pres*, in essence, allows a court to modify the use of certain charitable funds where the previous use is no longer possible and "it appears that the donor . . . had a general charitable intent." *See Industrial Nat'l Bank of R.I. v. Glocester Manton Free Pub. Library of Glocester*, 107 R.I. 161, 165-66, 265 A.2d 724, 727 (1970). This Court granted the *Cy Pres* petition on April 20, 2015 (*Cy Pres* Order), which allowed the transfer of various restricted charitable assets (Foundation Interest)[8] from the control of SJHSRI/RWH into the hands of CCF; the assets are currently "held, managed, and administered" by the Rhode Island Foundation. Order Preserving Assets Pending Litigation ¶ 1, June 29, 2018 (*Cy Pres* docket).

On August 18, 2017, this Court entered an order appointing the Receiver to temporarily "take control" of the Plan which, due to its severe undercapitalization, had been placed into receivership. Order Appointing Temporary Receiver ¶¶ 1-3. Soon after appointing the Receiver,

---

[7] The HCA provides: "A conversion shall require review and approval from the department of attorney general and from the department of health in accordance with the provisions of this chapter. . . ." Sec. 23-17.14-5.

[8] The PSA defines the "Foundation Interest" as "all of the claims, rights and interests of CCCB against or in [CCF] . . . including but not limited to the right to recover funds transferred to [CCF] in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to CCCB's present or former status as a member or sole member of [CCF]." *Id.* ¶ 1 (c).

this Court entered another order allowing the Receiver's petition to hire the law firm Wistow, Sheehan, & Lovely PC as counsel (Special Counsel) to investigate the circumstances resulting in the Plan's underfunding. Order Approving Receiver's Emergency Pet. to Engage Special Legal Counsel. On October 27, 2017, this Court entered an order converting the Receiver's temporary appointment into a permanent one. Order Appointing Permanent Receiver (Appointment Order). The Appointment Order gave the Receiver broad powers, including the authority to prosecute and compromise claims on the Plan's behalf. *Id.* ¶ 5. As a result of Special Counsel's investigation, the Receiver filed suit in the Federal Court Action alleging, among other theories, that the 2014 Sale was a "fraudulent transfer" designed to evade the Plan's obligations to pensioners. *See* Receiver's Pet. for Settlement Instr., Ex. F. Recently, and in relation to the Receiver's ultimate goal to use the *Cy Pres* funds to satisfy the Plan's liabilities, this Court allowed the Receiver to intervene in the *Cy Pres* proceeding to present arguments in support of vacating the *Cy Pres* Order.

On September 4, 2018, the Receiver filed the Petition asking this Court to approve the PSA executed by and between the Receiver and the Settling Defendants. *See* Receiver's Pet. for Settlement Instr. 1. In particular, the Petition asks this Court to find that the PSA is in the "best interests" of the Plan's estate and authorize the Receiver to proceed in petitioning the federal court for settlement approval pursuant to Federal Rules of Civil Procedure 23(e). *See* Receiver's Pet. for Settlement Instr. 2. The Objectors contest various terms and assignments contained in the PSA. The PSA contemplates the following pertinent terms:

> 1. An immediate payment of a lump sum (Lump Sum) of at least $11,150,000, which represents 95% of the Settling Defendants' combined liquid operating assets, up to a maximum of $11,900,000 if the Rhode Island Department of Labor and Training agrees to release, prior to the due date for payment of

the Lump Sum, the entirety of certain funds held in escrow (approximately $750,000);
2. An assignment of CCCB's rights in CCF[9];
3. An assignment to the Receiver the beneficial interest in CCCB's interest in PCC,[10] including the right to request CCCB exercise the put option[11];
4. An obligation that the Settling Defendants not object to the Plaintiffs' intervention in the *Cy Pres* proceedings;
5. An admission by the Settling Defendants regarding some of the claims asserted in the Complaint, including an admission that the Plaintiffs' damages are at least $125,000,000;
6. An obligation that the Settling Defendants, upon the Receiver's request, petition the Rhode Island Superior Court for judicial liquidation;
7. A provision providing the Settling Defendants and the Receiver will execute a security agreement and file a UCC-1 financing statement to secure payment of the Lump Sum and the Settling Defendants' other obligations under the PSA. *See id.* at 6, 7.

This Court will further discuss the PSA as necessary in its subsequent analysis. After a thorough examination, this Court renders the following order.

II

Standard of Review

The Rhode Island Supreme Court has not articulated a standard for reviewing a receiver's recommendation to settle a civil action on an estate's behalf. Our Supreme Court has noted, however, that this Court "look to the Bankruptcy Act for guidance" in receivership proceedings.

[9] CCCB specifically agrees to deliver, within five (5) business days of the Proposed Settlement's Effective Date, a document evidencing consent by CCCB (as the purported sole member of CCF) electing a new Board of Directors chosen by the Receiver. CCCB further agrees that within ten (10) days it will deliver to the Receiver an irrevocable assignment of CCCB's Foundation Interests. *Id.* ¶¶ 2, 13.

[10] The PSA refers to CCCB's interest in PCC as the "Hospital Interests," which is defined as "all of the claims, rights and interests against or in [PCC] that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in [PCC] and any rights or interests that SJHSRI or RWH may have in connection therewith." *Id.* ¶ 1 (d).

[11] CCCB agrees to exercise a put option contained in PCC's LLC agreement, at the Receiver's option, and remit the proceeds to the Receiver for the Plan's benefit. *See id.* ¶ 18.

Reynolds v. E & C Assocs., 693 A.2d 278, 281 (R.I. 1997) (referencing federal law governing priority between secured creditors to assess priority in receivership proceeding); *see also Philadelphia Indemnity Ins. Co. v. Providence Community Action Program, Inc.*, C.A. No. 15-388 S, 2017 WL 354279, at *3 (D.R.I. Jan. 24, 2017) (citing Bankruptcy Code in considering insured-versus-insured exclusion in the receivership context); *Patel v. Shivai Nehal Realty LLC*, No. KB-2012-0301, 2012 WL 5380060, at *2-3 (R.I. Super. Oct. 26, 2012) (explaining "where state receivership law provides minimal guidance, this Court instead 'looks to the Bankruptcy [Code] and to decisions by the federal courts for guidance'").

Moreover, prior rulings of this Court propose that the Bankruptcy Code is an appropriate lens through which to analyze a receiver's petition to settle a legal action. *See, e.g., Brook v. Educ. P'ship, Inc.*, No. PB 08-4185, 2010 WL 1456787, at *3 (R.I. Super. Apr. 8, 2010). Further, even courts that do not refer to the Bankruptcy Code in considering whether to approve a settlement follow an approach akin to that of the Code, explained more fully below, by inquiring into whether a settlement is in the "best interest" of the receivership estate. *See In re Liquidation of American Mut. Liability Ins. Co.*, 747 N.E.2d 1215, 1217 (Mass. 2001); *SEC v. Learn Waterhouse, Inc.*, Case No. 04-CV-2037, 2008 U.S. Dist. Lexis 45825, at *2 (S.D. Cal. June 11, 2008); *Davis v. Lifetime Capital, Inc.*, Case No. 3:04 CV 0059, 2006 WL 1111960, at *2 (S.D. Ohio Mar. 30, 2006). Therefore, for purposes of our analysis, this Court will look to the federal standard for approving a motion to compromise a claim pursuant to Federal Rules of Bankruptcy Procedure 9019(a), as promulgated by the United States Supreme Court. *See* 28 U.S.C. § 2075.

In considering a motion to compromise under Rule 9019(a), a bankruptcy judge must "'assess and balance the value of the claim[s] . . . being compromised against the value . . . of the

compromise proposal.'" *Hick, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.)*, 136 F.3d 45, 50 (1st Cir. 1998) (quoting *Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir. 1995)); *In re Anolik*, 107 B.R. 426, 429 (Bankr. D. Mass. 1989). A bankruptcy judge must consider the following factors:

> "(i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and, (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise." *See In re Yacovi*, 411 F. App'x 342, 346 (1st Cir. 2011) (citing *Jeffrey*, 70, F.3d at 185) [hereinafter "*Jeffrey* Factors"].

In analyzing the *Jeffrey* Factors, a bankruptcy judge should "accord deference to a trustee's judgment by reviewing that judgment only for abuse of discretion." *In Re Whispering Pines Estates, Inc.*, 370 B.R. 452, 460 (1st Cir. BAP 2007); *see also In re Moorhead Corp.*, 208 B.R. 87, 89 (1st Cir. BAP 1997). "The court's consideration of [the *Jeffrey* Factors] should demonstrate whether the compromise is fair and equitable, and whether the claim the debtor is giving up is outweighed by the advantage to the debtor's estate." *Jeremiah v. Richardson*, 148 F.3d 17, 23 (1st Cir. 1998). The bankruptcy judge need not decide contested legal or factual issues in passing on a settlement's fairness; rather, the reviewing court must "canvass the issues" to assess whether the settlement "fall[s] below the lowest point in the range of reasonableness." *In re Healthco Int'l, Inc.*, 136 F.3d at 51.

III

Analysis

A

Whether the Receiver Acted Within his Authority

Before considering the merits of the Petition, this Court must determine whether the Receiver exceeded the scope of his authority by (i) entering into a contingent agreement or (ii)

filing a Uniform Commercial Code-1 (UCC) financing statement, prior to petitioning this Court for approval. The Prospect Entities argue it was inappropriate for the Receiver to "consummate and implement a settlement" and file a UCC-1 effectuating the settlement *before* interested parties could object. Mem. Supp. of Joint Obj. of Prospect Medical Holdings, Inc. 2. The Receiver responds that he acted within the confines of the Appointment Order and that the Prospect Entities, if given the chance to object in advance, would have stalled negotiations and impaired any meaningful progress toward settlement.

To determine whether the Receiver exceeded his authority, this Court must consider the concept of receivership generally. The use of receivers originated in the English chancery court and was considered an important inherent power of the equity courts. *See* Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers* §§ 10, 283 (3d. ed. 1959). Receiverships serve to protect property during an equitable proceeding in favor of those "ultimately entitled to possess it." See *Peck v. Jonathan Michael Builders, Inc.*, C.A. No. KM 06-0236, 2006 WL 3059981, at *5 (R.I. Super. Oct. 27, 2006). This Court retains the power to appoint a receiver in long-term wind-downs (such as the present) falling outside the scope of the Rhode Island Business Corporations Act because the Act's grounds for appointing a receiver "are not exclusive." *See id.*at *6 (explaining the Rhode Island Business Corporation Act merely supplements, rather than supplants, the superior court's equitable power); *Cambio v. G-7 Corp.*, No. 96-0705, 1998 WL 1472896, at *4 (R.I. Super. Feb. 11, 1998). Possessing permission to appoint a receiver, this Court has broad authority to define the receiver's duties. *Cf.* G.L. 1956 § 7-1.2-1323 ("[T]he superior court has full power to appoint a receiver, with any powers and duties that the court, from time to time, directs. . . .").

The Appointment Order, which controls the Receiver's duties in this case, gives the Receiver broad authority to prosecute and compromise claims on the Plan's behalf: "said Receiver . . . is authorized, empowered, and directed to . . . collect and receive the debts, property and other assets and effects of said Respondent (the Plan), with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent. . . ." In fact, the Appointment Order does not expressly dictate the Receiver needs to seek this Court's approval prior to compromising a claim on the Plan's behalf. Though petitioning this Court for approval is certainly the prudent approach—particularly because court approval is customary—this Court notes the absence of mandatory language to evidence that the Court intended the Receiver to have a wide range of oversight and administrative authority.

In light of the Appointment Order's breadth, this Court can find no usurpation of authority on the Receiver's part. The Prospect Entities argue that the Receiver has presented the PSA to this Court as a "*fait accompli*"; however, the terms of the PSA express an agreement to the contrary. Paragraph 2 of the PSA best illustrates the point where it states the PSA "will be null and void and the Settling Parties will return to their respective positions . . ." absent this Court's approval.[12] Because the Receiver has the authority to settle claims on the Plan's behalf and the terms of the PSA dictate the agreement is contingent upon this Court's approval, the Receiver did not exceed the scope of his authority by conditionally entering into the PSA. In a recent bankruptcy case, the First Circuit held that the failure to seek bankruptcy-court approval for a settlement pursuant to Bankruptcy Rule 9019(a) does not render the settlement agreement nonbinding; rather, sidestepping court approval merely renders the agreement unenforceable. *In*

[12] Attorney Sheehan emphasized at oral argument that the security agreement is likewise contingent upon this Court's approval: "[the security agreement] is in no way a recovery and it goes away automatically if the settlement is not approved." Hr'g Tr. 24:21-23, Oct. 10, 2018.

re Manuel Mediaville, Inc., 568 B.R. 551, 572 (1st Cir. BAP 2017) (*Manuel*) (holding "[t]he requirement of bankruptcy court approval of a compromise does not create a right of unilateral repudiation pending the court's consideration of the proposed compromise"). The implication of the *Manuel* Court's ruling is that merely *executing* a settlement without court approval is perfectly permissible; however, if either of the parties later wishes to *enforce* the settlement, the failure to seek bankruptcy court approval would preclude that party from doing so. *See id.* Accordingly, this Court can find no usurpation of authority on the Receiver's part by merely executing the PSA in advance of this Court's approval.

Nor did the Receiver exceed his authority by prefiling a UCC-1 financing statement to secure payment of the Lump Sum and the Settling Defendants' other obligations under the PSA. The UCC specifically authorizes secured parties to file financing statements in advance of the consummation of an unconditional security agreement. *See* UCC § 9-322. Parties are actually encouraged to prefile—thereby putting other creditors on notice of a forthcoming security interest—because priority pursuant to the UCC is retroactive to the time of filing. *See id.* (as between competing perfected security interests, priorities rank according to the "time of filing or perfection"); *see, e.g., In re SemCrude, L.P.*, 407 B.R. 82, 102 (Bankr. Del. 2009) (applying Article 9 provision) ("Priority dates from the earlier of the time of a filing covering the collateral is first made or the security interest . . . is first perfected."). Thus, far from acting presumptuously or exceeding his authority, the Receiver acted sensibly in filing the UCC-1 to secure the Plan's priority position pending this Court's ruling on the present Petition. In short, while the Receiver acted zealously and anticipatorily by entering into a conditional agreement and prefiling, he did not exceed the scope of his authority.

B

Whether the Objectors' Claims Are Presently Justiciable

1

Standing

Next at issue is whether the Objectors' opposition to the PSA is presently justiciable. The concept of justiciability concerns both a court's power to "entertain disputes," as well as the "wisdom of their doing so." *See Renne v. Geary*, 501 U.S. 312, 315 (1991). Two well-known justiciability doctrines, applicable here, are the interrelated concepts of "standing" and "ripeness." *See Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341-42 (2014); *see also Reddy v. Foster*, 845 F.3d 493, 500 (1st Cir. 2017) (collecting cases noting the overlap between the various justiciability doctrines). In either case, whether involving standing or ripeness, courts must assess if the "harm asserted has matured sufficient to warrant judicial intervention." *Warth v. Seldin*, 422 U.S. 490 n.10 (1975). Rhode Island courts recognize both doctrines. *See Watson v. Fox*, 44 A.3d 130, 135 n.12 (R.I. 2012) (including standing and ripeness in a list of justiciability categories); *see also Vose v. R.I. Bhd. of Corr. Officers*, 587 A.2d 913 n.2 (R.I. 1991) (explaining that even though the Rhode Island Constitution does not confine the Rhode Island Courts' judicial power to "cases and controversies," the courts should not "issue advisory opinions or rule on abstract questions").

Standing is a "threshold inquiry" into whether a party is properly before a court. *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1110 (R.I. 2014); *see also Blackstone Valley Chamber of Commerce v. Pub. Utils. Comm'n*, 452 A.2d 931, 932, 933 (R.I. 1982). When standing is at issue, "'the focal point shifts to the claimant, not the claim'" and a court must decide if the party whose standing is in question "'is a proper party to request an adjudication of

a particular issue and not whether the issue itself is justiciable.'" *Cruz v. Mortg. Elec. Registration Sys., Inc.*, 108 A.3d 992, 996 (R.I. 2015) (quoting *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005) (alteration omitted)) ("The essence of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to ensure concrete adverseness that sharpens the presentation of the issues."). *Id.* at 996.

In assessing standing, the "pivotal question" is "whether the party alleges that the challenged action has caused him or her ***injury in fact***." *See Narragansett Indian Tribe*, 81 A.3d at 1110 (emphasis added). The injury must constitute "an invasion of a legally protected interest which is [ ] concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *See id.* (quoting *Pontbriand v. Sundlun*, 699 A.2d 856, 863 (R.I. 1997)). The standing inquiry leaves no gray area: "'[t]he line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury.'" *See Pontbriand*, 699 A.2d at 862 (quoting *Matunuck Beach Hotel, Inc. v. Sheldon*, 121 R.I. 386, 396, 399 A.2d 489, 494 (1979)).

Turning to the present context, "[a] nonsettling defendant does not ordinarily have standing to object to a court order approving a partial settlement since the nonsettling defendant is generally not affected by the settlement," and, therefore, suffers no injury. *See In re Viatron Computer Sys. Corp. Litig.*, 614 F.2d 11, 14 (1st Cir. 1980) (finding non-settling defendant (auditing and accounting firm), which certified financial statements in prospectus alleged to be materially misleading, was without standing to contest order approving settlement since the benefits of allowing the defendant to be heard were "minimal" and "outweighed by the unnecessary frustrations of the settlement process . . ."). *Id.* at 15. The weight of authority suggests a non-settling defendant can only object to a partial settlement "where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement." *See*

Smith v. Arthur Andersen LLP, 421 F.3d 989, 998-99 (9th Cir. 2005) (collecting cases); *City of Bangor v. Citizens Commc'ns Co.*, 532 F.3d 70, 92-93 (1st Cir. 2008) (holding non-settling defendants had the right to contest provision in settlement agreement where they were potentially affected and injured by the settlement, since, by virtue of the settlement, the settling parties had the right to collect from the non-settlors).

2

Ripeness

Much like the standing requirement that a party must suffer an injury in fact, ripeness requires that a party present a dispute evidencing "a real adverseness." *Vose*, 587 A.2d at 915 n.2. 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.'" *See, e.g., State v. Gaylor*, 971 A.2d 611, 614-15 (R.I. 2009) (issue of whether probation officer was entitled to credit for time served while awaiting sentencing was not ripe for review after probationer completed his prison sentence; the issue could only be considered when the probationer was again adjudged a violator); *State v. McKenna*, 512 A.2d 113, 115 (R.I. 1986) (finding defendant's double jeopardy challenge was not ripe until a second prosecution commenced). Nor is a claim ripe where it would require a court to engage in "premature adjudication." *See Faerber v. City of Newport*, 51 F.Supp. 2d 115, 124 (D.R.I. 1999) (holding issue of fact regarding whether city's personnel appeals board presented opportunity to review termination decision, thereby precluding summary judgment as to ripeness). The ripeness doctrine is "peculiarly a question of timing." *See Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974). The concept of ripeness is grounded in the idea that a court "will not render advisory opinions or function in the abstract." *See R.I. Ophthalmological Soc'y v. Cannon*, 113 R.I. 16, 27, 317 A.2d 124, 130-31 (1974).

3

Party in Interest Analysis

Rhode Island courts have expounded on the concepts of standing and ripeness with respect to general litigation; however, this Court has not found—and the parties have not cited—cases addressing standing in receivership proceedings. Bankruptcy courts require that for a party to object and be heard in a bankruptcy proceeding, he or she must demonstrate (1) his or her objections are presently justiciable (*i.e.*, standing and ripeness) and (2) the bankruptcy proceeding is the proper one for litigating the objector's arguments. That second prong is an additional, statutorily-imposed dimension of standing embodied in Rule 1109 of the Bankruptcy Code. *See In re Newcare Health Corp.*, 244 B.R. 167, 170 (1st Cir. BAP 2000) (distinguishing between the "constitutional dimension" of standing involving an inquiry into the existence of a "case or controversy," as opposed to Rule 1109 standing, which turns on whether a party can be considered a "party in interest"); *see also In re Sapphire Dev., LLC*, 523 B.R. 1, 6 (D. Conn. 2014); *In re Motors Liquidation Co.*, 430 B.R. 65, 92 (S.D.N.Y 2010) (rejecting contention that Rule 1109(b) of the Bankruptcy Code supplants constitutional standard). This Court again looks to the Bankruptcy Code in the absence of relevant receivership law. *Reynolds*, 693 A.2d at 281. Therefore, this Court will look to the federal cases addressing the party in interest analysis.

Bankruptcy Rule 1109(b) sets forth a limited class of persons that "may raise and may appear and be heard on any issue in a case under [the Bankruptcy Code]"; those persons include the debtor, the trustee, and creditors, as well as "'parties in interest'"—or those parties "'whose pecuniary interests are directly affected by the bankruptcy proceedings.'" *See In re Torres Martinez*, 397 B.R. 158, 164 (1st Cir. BAP 2008) (quoting *In re Davis*, 239 B.R. 573, 579 (10th Cir. BAP 1999)). 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." *See In re Wolf Creek Valley Metro. Dist. No. IV*, 138 B.R. 610, 615-16 (D. Colo. 1992). Because of the amorphous nature of a vague term like party in interest, courts have explained that the determination of a party's status must be made "on a case by case basis." *See In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985) (holding future asbestos claimants who had not yet manifested symptoms had sufficient stake in reorganization of manufacturer of asbestos-containing material to require representation).

While policy principles suggest "a very broad and elastic interpretation as to those entities entitled to party in interest status," this Court must remain mindful of the equally important countervailing goal of ensuring expeditiousness and efficiency in the bankruptcy process, which is necessarily hampered "by allowing numerous parties to interject themselves into the case on every issue." *In re Public Service Co. of New Hampshire*, 88 B.R. 546, 550, 554 (Bankr. N.H. 1988); *cf. In re Hyde Park P'ship*, 73 B.R. 194 (Bankr. N.D. Ohio 1986) (holding unsecured creditors' committee in individual partner's case had at best a contingent interest in partnership's bankruptcy insufficient to warrant intervention); *In re Charter Co.*, 50 B.R. 57 (Bankr. W.D. Tex. 1985) ("The principal consideration is whether such intervention will 'unduly delay or prejudice the adjudication of the rights of the original parties.'"). Stated another way, "it is important that a bankruptcy court is not too facile in granting applications for standing." *See In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 850 (Bankr. S.D.N.Y. 1989). A receivership court, like a bankruptcy court, strives for equilibrium between allowing parties' objections while maintaining expeditiousness and efficiency in the process.

Party in interest status is determined on a circumstantial basis; therefore, this Court looks to whether bankruptcy courts confer party in interest status to non-parties contesting a proposed

compromise. *See In re Amatex Corp.*, 755 F.2d at 1042. The Second Circuit, in *In re Refco Inc.*, considered whether investors had party in interest status to object to a proposed settlement entered by and between an unsecured creditors' committee and a segregated portfolio company responsible for managing the investors' funds. 505 F.3d 109, 117 (2d Cir. 2007) (*Refco*). The investors argued that the settlement was an unauthorized corporate act, the board members and lawyers who approved the settlement were subject to conflicts of interest, and the settlement was not an arms-length transaction; the investors contended the settlement "was the product of tortious misconduct, collusion, and fraud." *Id.* at 119.

In affirming the bankruptcy court's refusal to grant party in interest status, the Second Circuit reasoned that "the Code's goal of a 'speedy and efficient reorganization' would have been frustrated" by unwinding the "litany of wrongs allegedly wrought by the officers and directors. . . ." *Id.* (internal citation omitted). The court continued that its obligation was to "determine whether a settlement is in the best interest of *the estate*" and that to "permit [i]nvestors to lodge objections to the [s]ettlement . . . would entirely skew the task of the Bankruptcy Court. . . ." *Id.* (internal quotations omitted). The *Refco* Court explained that investors still had an alternative remedy for alleged fiduciary breaches in another proceeding where the investors could conduct discovery on the issues they sought to contest. *Id.* Likewise, the Second Circuit held a law firm lacked standing in a bankruptcy proceeding to challenge a settlement term's validity, and therefore, the law firm preserved the right to contest the term's validity in a resulting malpractice suit. *See In re Teligent, Inc.*, 640 F.3d 53, 60 (2d Cir. 2011) (*Teligent*). Both *Teligent* and *Refco* stand for the proposition that a hearing on a motion to approve a settlement is not the proper proceeding for an objecting party to contest secondary effects of a settlement or its terms.

4

The Objectors' Ability to Contest the PSA

a

Prospect Entities

Here, the Prospect Entities argue in chief that they are injured by the PSA's provisions assigning to the Receiver CCCB's beneficial interest in PCC—sufficient to confer standing—as such an assignment violates PCC's LLC agreement.[13] However, for standing purposes Rhode Island law holds to the contrary. In particular, our Supreme Court has consistently held that "strangers to a contract lack standing to either assert rights under that contract or challenge its validity." *See, e.g.*, *DePetrillo v. Belo Holdings, Inc.*, 45 A.3d 485, 492 (R.I. 2012) (prospective purchaser lacked standing to challenge purchaser's exercise of right of first refusal where prospective purchaser was a stranger to a contract between the vendor and purchaser providing for first refusal rights); *Sousa v. Town of Coventry*, 774 A.2d 812, 815 n.4 (R.I. 2001) (rejecting argument that "an individual who is not a party to a contract may assert the rights of one of the contracting parties in order to void a contract or have it declared unenforceable"). The Supreme Court has outlined a very narrow exception to the above-stated principles in the context of a homeowner "challeng[ing] the assignment of mortgages on their homes . . . to contest the foreclosing entity's authority to foreclose." *Cruz*, 108 A.3d at 996. In expounding its rationale

[13] The Prospect Entities also argue that PSA evidences collusion under § 23-17.14-35 (Settlement Statute); therefore, this Court should not approve the settlement. This argument fails for two reasons. First, the Settlement Statute goes to the question of whether the settling parties are entitled to a credit for purposes of contribution—not whether a settlement agreement should be approved. Second, the court presiding over the compromised civil action is the far more appropriate proceeding for determining whether a settlement was negotiated in good faith. *See Healthco Int'l, Inc.*, 136 F.3d at 52 (doubting whether a bankruptcy court even has the power to make a "good faith" finding for contribution purposes and recognizing the validity of the appellants' concern that one of the settling defendants could misuse a "good faith" finding in state court were the appellants to later seek contribution).

for carving out the narrow exception, the Supreme Court explained that absent such standing "homeowners would be without legal recourse to contest this injury." *See Mruk v. Mortg. Elec. Registration Sys., Inc.*, 82 A.3d 527, 536 (R.I. 2013). This Court sees no reason not to apply the same standing principles just outlined whereas here, non-parties (the Prospect Entities) are contesting an assignment contained in a settlement agreement.

Clearly, the Prospect Entities are not parties to the PSA. Therefore, Rhode Island law dictates that the Prospect Entities would only have standing to object to the PSA's substantive terms in the homeowner context. *See id.* Unlike in the foreclosure cases where banks actually instituted foreclosure proceedings and homeowners faced a present threat of eviction, here, the PSA does not even mandate CCCB exercise the put option or take any other action arising out of CCCB's interest in PCC; thus, the Prospect Entities suffer from no comparably imminent threat. *Id.* (finding homeowner had standing to challenge assignment in declaratory action after assignee-bank sought to foreclose). As stated, whether a party has or has not suffered an injury in fact is a black-and-white proposition, *Pontbriand*, 699 A.2d at 863; the Prospect Entities cannot possibly point to any injury in fact, much less legal prejudice, because CCCB has not even attempted to exercise any rights in favor of the Receiver.

Ripeness is the underlying defect with the Prospect Entities' claims: any potential injury to the Prospect Entities depends on future contingent events. *See Gaylor*, 971 A.2d at 614-15. As in *McKenna* where the Supreme Court held a double jeopardy claim was not ripe for adjudication because the prosecutor had not yet instituted a second prosecution. Similarly, here, the Prospect Entities' claim of future harm is not yet ripe because CCCB has not attempted to exercise any rights in favor of the Receiver. 512 A.2d at 115. This Court understands that the Receiver, *if* granted Rule 23(e) approval by the federal court, might request that CCCB exercise

the put, for instance. However, for strategic reasons, the Receiver might choose not to do so. Further, if the Receiver is successful in the Federal Court Action in asserting that PCC received the subject assets in a "fraudulent transfer," then the base of assets under PCC's charge may change significantly—a put option in PCC might have considerably less value. Unless and until the Receiver attempts to enforce any rights in PCC (through CCCB), this Court does not "have the luxury of rendering advisory opinions" whereas here, the points "are of an academic nature only." *See Blue Cross of Rhode Island v. Cannon*, 589 F. Supp. 1483, 1494 (D.R.I. 1984) ("In the absence of a dispute ripe for adjudication in the legal sense, these itches cannot be scratched by this court."). The Prospect Entities have not suffered formal legal prejudice that would justify this Court engaging in the non-traditional task of dissecting a settlement agreement like the PSA.

Moreover, even assuming *arguendo* the Prospect Entities could establish standing and ripeness, they are not parties in interest for purposes of this receivership proceeding. Like the investors in *Refco*, the Prospect Entities would have this Court consider PCC's LLC agreement and engage in contract interpretation to determine whether CCCB is authorized to exercise certain rights in favor of the Receiver. 505 F.3d at 119. Here, as in *Refco*, there can be no doubt that this Court, presiding over a receivership, is not the appropriate proceeding to unwind the litany of objections the Prospect Entities lodge. This Court, similar to the Second Circuit's rationale in *Refco*, finds that a dispute between CCCB and the Prospect Entities belongs in a different proceeding—one where a court can dedicate appropriate judicial resources to resolving that isolated dispute. *See id.* Because the Prospect Entities have no right to contest the terms they find objectionable in this proceeding, they do not waive the right to do so in another. *See Teligent*, 640 F.3d at 60. Thus, the Prospect Entities are not parties in interest entitled to object here.

While admittedly tedious for the Prospect Entities to assert the same arguments again in a different proceeding, the minimal burden attendant thereto is "outweighed by the unnecessary frustrations of the settlement process" that would result if this Court unwound the PSA and waded into conjectural injuries. *See In re Viatron Computer Sys. Corp. Litig.*, 614 F.2d at 14. As the Seventh Circuit explained, delaying the arguments and objections of non-settling parties "strike[s] the proper balance between the policy consideration of encouraging voluntary resolutions of litigation and the court's duty to protect the rights of the parties before it." *See Quad/Graphics, Inc. v. Fass*, 724 F.2d 1230, 1233 (7th Cir. 1983). Thus, the Prospect Entities do not have standing to object to the PSA; their objections to the PSA are not ripe; and the Prospect Entities do not have party in interest status sufficient to interject themselves into this receivership proceeding.

b

CCF

Turning to CCF's alleged basis for standing, this Court is similarly unpersuaded. CCF argues that the PSA "impairs CCF's rights because it would require its purported sole member, CCCB, to discharge all CCF's directors and irrevocably assign CCF's [Foundation Interest] to the Receiver." CCF's Corrected Obj. to Pet. For Settlement Instr. 2. The weakness of CCF's argument is that CCCB's rights in CCF are heavily disputed. Once unpacked, it appears logically impossible for CCF to suffer injury from the PSA, either now or anytime in the future. Assuming without deciding that CCCB abandoned (or never had) a membership interest in CCF then, by definition, CCCB cannot elect a new CCF board or liquidate the Foundation Interest. *See U.S. v. Craft*, 535 U.S. 274, 278 (2002) (describing property rights as a "bundle of sticks"—an analogy used to explain a person cannot exercise rights in something he or she does not own).

On the other hand, if CCCB did not abandon its membership interest, as succinctly stated by the Receiver, then "whoever is objecting to the [PSA] under the name of [CCF] clearly will suffer no legally cognizable impact of the [PSA] because they have no lawful interest in [CCF]." *See Rhode Island Joint Reinsurance Ass'n v. Rosario*, 116 A.3d 168, 171 (R.I. 2015) (affirming lower court ruling holding that because a party had no interest in insurance proceeds, he had no right to assert benefits appurtenant to the interest). Because CCF has not alleged an injury in fact or legal prejudice, it has no standing to object to the PSA.

Perhaps more importantly, the Foundation Interest is far from being liquidated in favor of the Plan, suggesting CCF's claims are not ripe. At least all of the following steps need to occur before liquidation is legally permissible: (1) this Court must vacate its *Cy Pres* Order; (2) this Court must lift the stand-still order; (3) it must be established that CCCB has rights in CCF and that CCCB did not abandon its interest; (4) a court needs to segregate the funds in the Foundation Interest, presumably during a liquidation proceeding, and determine if none, some, or all of the assets are legally available to satisfy the Plan's liability; (5) the Rhode Island Foundation must release the charitable funds; (6) the Receiver must attempt to remit proceeds from the Foundation Interest to Plan participants; and (7) the federal court in the Federal Court Action must approve the settlement under Rule 23(e).

Even after all of that, if the Receiver is successful in establishing via its "fraudulent transfer" theory that CCF never should have received the charitable assets, the value of CCCB's membership interest in CCF might change materially. As the Supreme Court has stated, ripeness is "peculiarly a question of timing," *see Reg'l Rail Reorganization Act Cases*, 419 U.S. at 140. Here, this Court cannot help but conclude that the above-stated contingencies establish CCF's arguments have not matured into a ripe dispute. *See R.I. Ophthalmological Soc'y*, 113 R.I. at 26-

27, 317 A.2d at 130-31. The more appropriate time for CCF to contest its arguments relating to abandonment would be in a proceeding where the Receiver is actually asserting rights in CCF, during which time, of course, it would need to be established that CCCB has (or had) the rights in CCF it purports to possess. In the absence of a ripe dispute, this Court cannot presently render a well-reasoned opinion on CCF's objections to the PSA.

Finally, much like the Prospect Entities, CCF is not a party in interest for purposes of this receivership proceeding. CCF's objections to the PSA call for a laborious factual and legal analysis, requiring that this Court probe whether: (1) CCF properly received the *Cy Pres* funds in the first instance; (2) CCCB abandoned its membership interest in CCF; and (3) private use of the *Cy Pres* funds violates the Charitable Trust Act. To delve into the "litany of wrongs," CCF alleges, would "skew" this Court's task in determining whether the settlement is in the best interest of the Plan's creditors. *See Refco*, 505 F.3d at 119. This Court is mindful of the broad policy principles which would allow an expansive interpretation of party in interest status; however, on the facts presented here, this Court believes that the interest in efficiency triumphs as a countervailing policy principle. *See In re Ionosphere Clubs, Inc.*, 101 B.R. at 850. Thus, like the Prospect Entities, CCF does not have standing to object to the PSA; its objections to the PSA are not ripe; and CCF lacks party in interest status to object in this receivership proceeding.

c

AG

Next, this Court must consider how the justiciability doctrines apply with respect to the AG. Our Supreme Court has recognized that "the Attorney General is vested with the authority to maintain suits seeking redress of a public wrong . . . ." *Newport Realty, Inc v. Lynch*, 878 A.2d 1021, 1032 (R.I. 2005) (citing *McCarthy v. McAloon*, 79 R.I. 55, 62, 83 A.2d 75, 78

(1951)); *see also Secretary of Admin. & Fin. v. Attorney General*, 376 Mass. 154, 326 N.E.2d 334, 338 (1975) ("The Attorney General . . . has a common law duty to represent the public interest.").

Turning first to standing, it is well-settled that the AG has a unique role as overseer of public charities. Some courts have gone so far as to say an Attorney General is "a necessary party to proceedings affecting the disposition of the assets of a charitable trust." *Gackstetter v. Frawley*, 135 Cal. App. 4th 1257 n.3 (Cal. Ct. App. 2006) (collecting cases); *see also* 12 Cal. Jur. 3d *Charities* § 48, Westlaw (database updated Aug. 2018) Rhode Island law makes clear that our AG has both a common law and statutory basis for involving itself in proceedings affecting the distribution of charitable assets. For example, with respect to the common law, our Supreme Court held the AG has "common law authority" to bring an action to prevent the diversion of trust funds from their use in Rhode Island to use in the general armed forces. *See Israel v. Nat'l Bd. of Young Men's Christian Ass'n*, 117 R.I. 614, 618, 369 A.2d 646, 649 (1977). The AG also has a statutory obligation to supervise and enforce the "due application of funds given or appropriated to charitable trusts within the state and for the prevention of breaches of trust." *See* G.L. 1956 § 18-9-1. The PSA contemplates diverting charitable assets the AG specifically instructed should flow from SJHSRI/RWH to CCF, arguably triggering the AG's common law and statutory standing. Thus, this Court assumes for purposes of analysis that the AG has standing to object to the Petition.

In terms of the party in interest analysis, at least one bankruptcy court was more inclined to afford party in interest status to an attorney general where the state had a statutory basis for involving itself in reorganization. *See, e.g., In re Pub. Service Co. of New Hampshire*, 88 B.R. at 555-56 (holding State of New Hampshire was entitled to party in interest status where it has a

statutory basis involvement in a reorganization through its authority to approve rate changes in the debtor's plan of reorganization, as well as the additional basis that the reorganization implicated questions concerning the debtor's regulatory compliance).[14] As a practical matter, allowing a single governmental body, the AG, to interject in receivership proceedings would hardly frustrate the efficiency of this Court's receivership process. *See Refco*, 505 F.3d at 119. In other words, this Court can contain its narrow inquiry into whether a settlement is in the best interest of a receivership estate while allowing the AG to raise objections. *See id.*

Nevertheless, for the same reasons explained above regarding CCF and the Prospect Entities' objections, the AG prematurely anticipates the distribution of charitable trust funds to Plan participants. *See Gaylor*, 971 A.2d at 614-15. Granting the Petition would not give the Receiver *carte blanche* to liquidate CCF in favor of the Plan; the AG even recognized the prematurity issue, which is why counsel for the AG proposed that this Court delay its ruling on the Petition before hearing the Receiver's arguments on the motion to vacate the *Cy Pres* Order. Therefore, even assuming the AG has standing to object to the distribution of charitable trust funds to Plan participants and satisfies the party in interest analysis, the AG's underlying objections are not ripe for dispute in this Petition.

C

Whether the PSA is in the Best Interest of the Plan's Estate

1

Probability of Success

Finally, this Court will address whether the PSA satisfies the *Jeffrey* Factors for this Court's approval. In analyzing the first factor, the probability of success of a compromised

[14] Our analysis diverges from that of the New Hampshire court because, as explained herein, the AG's objections are not ripe.

claim, a reviewing court should consider the claim's viability and the premise of the lawsuit. *See Jeffrey*, 70, F.3d at 187 (considering potential defense in discrimination claim where debtor failed to schedule action as an asset during bankruptcy proceeding). A low-probability claim militates in favor of settlement, as proceeding to trial with a bird in hand would typically jeopardize an estate's "best interest." *In re Healthco Int'l, Inc.*, 136 F.3d at 52 (reasoning compromised claim's weakness suggested it was in the estate's "best interest" to settle).

In particular, a reviewing judge must analyze whether any "serious question" might call into doubt a "debtor's ability to prevail." *In re Anolik*, 107 B.R. at 430 (questioning premise of suit where it was unclear whether debtor's approval was required to transfer property); *see also In re Yacovi*, 411 F. App'x at 346-47 (noting weaknesses in potential malpractice suit); *In re Healthco Int'l, Inc.*, 136 F.3d at 51 (doubting whether estate could satisfy burden that bank liquidated collateral in a "commercially unreasonable manner"). Again, the point here is not to resolve contested issues, but to forecast probable outcomes. *See In Re Fibercore, Inc.*, 391 B.R. 647, 655 (Bankr. D. Mass. 2008) ("[r]esolving these legal questions is not only beyond the scope of [the motion to approve], but, in fact, the point of the proposed compromise . . .").

This Court need not even engage in the typical balancing of strengths and weaknesses of the Receiver's underlying claims to assess whether they raise a "serious question." *See In re Anolik*, 107 B.R. at 430. The only reason to engage in such a balancing test, weighing the pros and cons of proceeding to trial or compromising a claim, is to determine whether a receiver is satisfying his or her obligation to realize the "largest possible amount" of money/assets for a receivership estate. *Cf. Golden Pacific Bancorp v. FDIC*, 375 F.3d 196, 201 (2d Cir. 2004). The PSA presents the rare settlement agreement where the terms are so favorable to the Plan's estate that the Receiver is unlikely to recover a higher sum by proceeding to, and prevailing at, trial.

Pursuant to the PSA, the Settling Defendants have agreed to pay to the Receiver 95% of the Settling Defendants' liquid assets in exchange for a release. Further, the PSA obligates the Settling Defendants to seek judicial liquidation with the hope that the remaining, non-liquid assets can be distributed in the Plan's favor. Hence, even assuming this Court was to conclude the Receiver had a 100% chance of prevailing in his claims against the Settling Defendants, in all likelihood, the Receiver could not net a higher sum by proceeding to judgment at trial. The probability factor weighs in favor of approving the PSA.

2

Difficulties in Collection

In addition to balancing the probable outcome of a claim, courts should consider any attendant difficulties that might complicate collection of a judgment. Although not contested in most cases, the principal inquiry under this prong is whether the defendant "has the ***ability*** to satisfy a judgment." *See, e.g.*, *In re Aldrich*, 325 B.R. 493, 498 (Bankr. D. Mass. 2005) (emphasis added). *Cf. In re C.R. Stone Concrete Contractors, Inc.*, 346 B.R. 32, 50 (Bankr. D. Mass. 2006) (reasoning there was no evidence defendants in adversary proceeding were "in any particular financial distress"). The other common scenario causing collection difficulty arises where a debtor would need to maintain a separate legal action to collect. *See In Re Fibercore, Inc.*, 391 B.R. at 655 (expressing concern that "collection of any judgment against [defendants] . . . would require additional legal action by the Trustee in a forum over 2,000 miles away"). *But see In re Hydronic Enterprise, Inc.*, 58 B.R. 363, 367 (Bankr. D.R.I. 1986) (finding "sufficient likelihood of a substantial money recovery (even if it requires an action against shareholders and/or principals) of two defunct corporations").

In this case, the difficulty of collection turns in favor of approving the PSA. As explained, the Defendant's ability to pay is a key consideration, and here, the Settling Defendants have a limited pool of assets that will only continue to deteriorate as litigation wears on. *Cf. In re McDonald*, 430 B.R. 5, 12 (Bankr. D. Me. 2010) (expressing concern that the defendant's own litigation costs might drain her recoverable assets was the litigation to wear on). The PSA obligates the Settling Defendants to remit the bulk of their assets in favor of the Plan's estate and, therefore, it appears every dollar the Settling Defendants spend in continuing to litigate is a dollar less available to the Plan for the ultimate benefit of the Plan's beneficiaries.[15] Stated differently, the Receiver would jeopardize the Plan's recovery by continuing to litigate against the Settling Defendants in lieu of accepting the PSA's terms. The Settling Defendants' solvency has always been a real and concrete concern, which is why the Settling Defendants entered into the 2014 Sale in the first place. Thus, the collection factor weighs in favor of approving the PSA.

3

Complexity of the Litigation

In terms of complexity—whether involving expense, delay, or inconvenience—courts consider the likelihood that "any recovery would [ ] be offset by the fees and costs incurred in pursuing litigation." *See In Re Beaver St. P'ship*, 355 F. App'x 432, 437 (1st Cir. BAP 2009) (reasoning high cost associated with continued litigation justified settlement). Stated another way, courts consider whether the compromised claim involves "protracted investigation or

[15] At oral argument, Attorney Sheehan stated he was "not aware that any claim has been filed against any insurer that has the defense obligations by the [S]ettling Defendants, and I believe that is the case that it would just be a cannibalizing of the actual estate. Hr'g Tr. 23:5-9, Oct. 10, 2018. The record does not reflect that the Settling Defendants' objected to Attorney Sheehan's characterization.

potentially costly litigation," and, in such a case, the trustee is given "wide latitude should he conclude the game is not worth the candle." *See In re Kavlakian*, 403 B.R. 159, 162 (D. Mass. 2009) (holding settlement outweighed attendant costs in resolving environmental issues) (citing *In re Mailman*, 212 F.3d 632, 635 (1st Cir. 2000)).

To assess the potential costs, courts generally analyze whether the claim under compromise involves multiple parties, complex or novel legal issues, or intricate factual determinations. *In re Anolik*, 107 B.R. at 430 (multiple party-suit concerning disputed ownership of a corporation which may or may not own subject property); *In re Wolverine Proctor & Schwartz, LLC*, No. 06-10815-JNF, 2009 WL 1271953, at *2 (Bankr. D. Mass. May 5, 2009) ("myriad" of legal issues relating to ERISA, including discount rates and unsettled law), *affirmed* 436 B.R. 253 (D. Mass. 2010) (*Proctor*). Courts also consider the history of the litigation to forecast the probability of protracted litigation. *In re Servisense.com, Inc.*, 382 F.3d 68, 72 (1st Cir. 2004); *In re Moorhead Corp.*, 208 B.R. at 89 (recognizing that estate had already expended relatively large sums to litigate claim and fact that defendant was prepared to "defend the suit vigorously").

Here, the underlying Federal Court Action is highly complex as it involves fourteen related entities, most, if not all, of which were involved in the 2014 Sale. At a minimum, the Federal Court Action presents many of the same complications underlying any multi-party suit. *See In re Anolik*, 107 B.R. at 430. Moreover, much like in *Proctor*, a case which involved a "myriad" of legal issues relating to ERISA, similarly here, the Federal Court Action invokes questions pertaining to ERISA as well as dozens of other complicated counts arising under fraudulent-transfer law. 2009 WL 1271953, at *2. Many of the underlying counts involve allegations of bad intent and issues of first impression, which are necessarily difficult to

establish. At the very least, the 139-page Complaint filed in the Federal Court Action will take a great deal of time to unwind, and protracted litigation is all but guaranteed. *Cf. In re Servisense.com, Inc.*, 382 F.3d at 72 (citing to "acrimony which was evident during the hearings . . . and which permeated the affidavits" in suspecting litigation costs and complexity were likely to be high). The Federal Court Action's associated complexity suggests settlement via the PSA is an approach that favors the Plan's estate. This way, even if the Receiver is unable to prevail against the remaining non-settling entities, the Receiver ensures some source of recovery for the underfunded Plan.

4

Paramount Interest of Creditors

The creditors' perspective also sheds light on the soundness of a proposed settlement, and courts afford deference to creditors' reasonable views. *In re Healthco Int'l, Inc.*, 136 F.3d at 50. This does not mean a trustee is "'required to demonstrate'" a settlement agreement operates "'to the satisfaction of every individual creditor.'" *See id.* at 51 (quoting *Kowal v. Malkemus* (*In re Thompson*), 965 F.2d 1136, 1141, 1145 (1st Cir. 1992)). Nevertheless, where creditors offer wide-scale support or resistance to a proposed settlement, courts tend to accommodate such views. See *id.* at 52 (citing unsecured creditors' strong support for proposed settlement); *see In re Beaver St. P'ship*, 355 F. App'x at 438 ("none of the non-insider creditors objected to the settlement"). *Cf. In re Aldrich*, 325 B.R. at 498 (single largest creditor holding half of unsecured claims objected).

This Court has received no objection to the PSA by any creditors with claims against the Plan, suggesting the PSA does an adequate job of sweeping assets into the Plan's estate for those parties "ultimately entitled to possess [them]." See *Peck*, 2006 WL 3059981, at *5. Moreover,

this Court has received widespread support of the PSA from the Plan's participants. In particular, Attorney Arlene Violet, lead counsel for over 285 participants in the Plan, stated the PSA "is an excellent first step in attempting to secure additional funds to bolster the [ ] Plan." Similarly, Attorney Jeffrey W. Kasle, representative for over 200 Plan participants, wrote that he "represent[s] wholeheartedly and unequivocally" his support for the PSA. Attorney Christopher Callaci, counsel for about 400 Plan participants, expressed similarly "unwavering support" for the PSA. The creditors' perspective favors approving the PSA for purposes of this proceeding.

IV

Conclusion

After "canvassing" the issues presented by the PSA, this Court can definitively say that the PSA falls well within a "range of reasonableness," and therefore, the Receiver did not abuse his discretion in entering into the settlement. *In re Healthco Int'l, Inc.*, 136 F.3d at 51. In summary, the Prospect Entities and CCF lack standing; they are not parties in interest for purposes of this receivership; and, their objections are not yet ripe. Further, even assuming the AG has standing or party in interest status, the AG's claims are not ripe either. The Objectors, collectively, suffer little prejudice from having to raise the same arguments expounded herein at a later time. On the other hand, the Plan's creditors entitled to benefit from the PSA would suffer a great setback were this Court to disapprove the PSA. On balance, the PSA provides the Plan with much needed relief via an influx of capital, and, for the reasons explained above, the PSA is in the best interest of the Plan's estate.

Therefore, this Court hereby approves the PSA for purposes of this proceeding, subject to the following two conditions: (1) the Receiver refrains from exercising any rights under the PSA prior to the federal-court's determination of whether to approve the PSA; and (2) prior to implementing, or directing that CCCB implement, any rights, whatsoever, in favor of the

Receiver (or the Plan) derivative of CCCB's rights in CCF or PCC, the Receiver provides all parties, including but not limited to the Objectors, with twenty (20) days written notice. These two conditions are designed to ensure the Objectors have an appropriate opportunity—in an appropriate proceeding—to contest objectionable terms prior to their implementation by the Receiver.[16] Further, these conditions strike a balance between allowing the Receiver to proceed with the PSA while protecting the Objectors from any possible prejudice. Counsel for the Receiver shall prepare and submit an appropriate order for entry.

[16] At oral argument, this Court specifically asked Attorney Sheehan whether he would be opposed to a notice condition to the PSA to which Attorney Sheehan responded he would actually welcome such a stipulation. *See* Hr'g Tr. 35, Oct. 10, 2018.