

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

IN RE: CHARTERCARE COMMUNITY BOARD;)
ST. JOSEPH'S HEALTH SERVICES OF) CA NO: PC-2019-11756
RHODE ISLAND, AND ROGER WILLIAMS)
HOSPITAL)

ST. JOSEPH'S HEALTH SERVICES OF R.I.)
V.) C.A.: PC-2017-3856
ST. JOSEPH'S HEALTH SERVICES OF R.I.)
RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

REMOTELY ON FEBRUARY 12, 2021

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
THOMAS HEMMENDINGER, ESQUIRE.....RECEIVER
MAX WISTOW, ESQUIRE.....COUNSEL FOR RECEIVER
PRESTON HALPERIN, ESQUIRE.....FOR ANGELL PENSION
STEVEN BOYAJIAN, ESQUIRE.....FOR ANGELL PENSION
MATTHEW PIMENTEL, ESQUIRE.....FOR PROSPECT

GINA GIANFRANCESCO GOMES
COURT REPORTER

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

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 40, inclusive, are a true and accurate transcript produced to the best of my ability of a hearing conducted remotely.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 FRIDAY, FEBRUARY 12, 2021

2 MORNING SESSION

3 (The following hearing was conducted remotely:)

4 THE COURT: Good morning. Carin, if you could turn
5 on the public streaming and call the case.

6 THE CLERK: Public streaming is on, your Honor.
7 There are two matters before the Court. I'm not sure
8 which order you want to go in. We have PC-2017-3856, St.
9 Joseph Health Services of Rhode Island vs. St. Joseph's
10 Health Services of Rhode Island Retirement Plan. And the
11 second case is PC-2019-11756, In Re: CharterCare
12 Community Board. They're both on for interim reports as
13 well as petition for instructions regarding settlement
14 and approval. Would the Plan Receiver please identify
15 himself for the record.

16 MR. DEL SESTO: Good morning, your Honor. Stephen
17 Del Sesto, the Plan Receiver for the St. Joseph's Health
18 Services Retirement Plan.

19 THE CLERK: The Liquidating Receiver, please.

20 MR. HEMMENDINGER: Your Honor, Thomas Hemmendinger,
21 Liquidating Receiver of the Legacy Hospital entity.

22 THE CLERK: Thank you. And we have counsel for the
23 Defendants please on the pension case.

24 MR. HALPERIN: Preston Halperin for the Prospect
25 entities.

1 MR. BOYAJIAN: Steven Boyajian for the Angell
2 Pension Group, Your Honor.

3 MR. PIMENTEL: Good morning, your Honor. Matthew
4 Pimentel for the Prospect entities.

5 THE COURT: Okay. Very good. The Court has before
6 it today the settlement petitions. I will note that the
7 Court has received no objections to the petition. I'm
8 going to turn it over at this point to the Receiver. I
9 don't know whether they want to proceed or have their
10 counsel proceed on the petition.

11 MR. HEMMENDINGER: Your Honor, if I may, the Plan
12 Receiver's counsel and I discussed my going first and
13 addressing my petition for instructions insofar as it
14 relates to the Legacy Hospital entities, and then either
15 the Plan Receiver or his counsel will address the more
16 global issues related to the settlement, if that's all
17 right.

18 THE COURT: That's fine. The Liquidating Receiver
19 may proceed.

20 MR. HEMMENDINGER: Thank you, your Honor. I first
21 want to note that notice of both my fourth report and the
22 petition for instructions were sent to everyone on my
23 service list, which is about 200 parties as well as being
24 filed to the Court and served electronically on all
25 counsel of record who are service contacts, and I believe

1 the Plan Receiver had given similar notice to the plan
2 participants, which are the 27 or 2,800 range of parties.

3 Just a quick note, your Honor, if I may, on how we
4 got here. It's kind of a combination of the Receivers
5 and the Prospect entities fighting on a number of fronts,
6 both in the regulatory sphere in this court and in the
7 federal court on a number of issues and retired Chief
8 Justice Williams stepping in to mediate the controversies
9 and the settlement.

10 Just a few highlights on the settlement with
11 Prospect and Angell Pension. The settlement addresses
12 all open issues between the Liquidating Receiver and
13 Prospect Medical and its subsidiaries and its principals
14 and Angell Pension. I'll just mention quickly that
15 although we were parties to the federal court pension
16 litigation, along with Angell with respect to the Plan
17 Receiver there were many controversies between myself and
18 my entities on the one hand and Angell Pension Group, so
19 I'll concentrate on the Prospect Medical related
20 controversy.

21 First, the settlement preserves in place an
22 arrangement that arises out of the assets as well as a
23 number of other agreements, and, of course, a viewing
24 whereby Prospect and the Legacy Hospital entities have
25 been cooperating with each other winding down the affairs

1 of the Legacy Hospital entities and those arrangements
2 will remain in place and continue to work with each
3 other. And I might add, your Honor, that despite the
4 heat of the controversies on the other issues, we've
5 always been able to work out these wind-down issues and
6 work smoothly and we'll continue to do that.

7 As far as controversies go, this resolves the
8 pension litigation insofar as Prospect and the
9 Liquidating Receiver and the Plan Receiver are concerned.
10 It also resolves the put option that CCCB has required
11 Prospect East Holdings to purchase its 50 percent
12 interest in CharterCare, LLC, and it resolves the
13 litigation in CCCB v. Lee as well as the pending case in
14 Delaware that Prospect has filed against the Legacy
15 Hospital entities at about the same time I was appointed
16 temporary Liquidating Receiver and it has been on hold
17 since the start of this Receivership. It also resolves
18 the pending medicare appeals, which on the one hand I
19 claim entitled the medical center to \$387,000 worth of
20 retroactive adjustments to pre 2014 sale receivables.
21 Prospect objected to that and claimed that it was
22 entitled to those funds. It resolves that \$40,000
23 payment to the receivership. It also resolves all the
24 controversies dealing with the category A directors to
25 the board of Prospect CharterCare, LLC. As I mentioned

1 before resolves any disputes -- and it puts a gross
2 amount of \$30 million into the St. Joseph's --

3 COURT REPORTER: Excuse me, your Honor. I am having
4 difficulty hearing counsel. It seems some words are not
5 coming through.

6 THE COURT: Why don't you continue. We'll let you
7 know if we continue to have a problem.

8 MR. HEMMENDINGER: I'll try to speak more slowly so
9 things get picked up. I just want to address the next
10 points of why this settlement is in the best interest of
11 the liquidating receivership's creditors and come down
12 the list of factors that I think the Court may find
13 relevant in determining the best interest of the
14 receivership interest.

15 First, on probability of success, although I
16 deferred to the Plan Receiver on the probability of
17 success on the pension litigation, it does resolve,
18 certainly to my satisfaction, the controversies that I
19 have directly with Prospect Medical, mainly the put
20 option and the medicare receivables, the director's
21 issues, any challenges in collecting on a judgment, your
22 Honor, for some substantial concerns about the
23 collectability of any judgment in this case. That's why
24 we have the standby letters of credit funding Prospect
25 Medical's share of the settlement is \$27,250,000.

1 The third point, your Honor, on the complexity of
2 the issues both legal and factual before the Court, again
3 I defer to the Plan Receiver who will point out that the
4 pension litigation is enormously --

5 THE COURT: Tom, let me stop you for a moment.
6 Gina, are you still having difficulty?

7 COURT REPORTER: Yes, there is skipping and some
8 words are not coming through.

9 THE COURT: This is important. I want to make sure
10 we get a record. Tom, if you wouldn't mind you can stay
11 on video, just mute it, and on your invitation there is a
12 call in number. If you do that, I think the audio will
13 come in clearer. So if you mute out this one and then on
14 the invitation there is a telephone number and a code,
15 which will also bring you in directly.

16 MR. HEMMENDINGER: Will do, your Honor.

17 THE COURT: We're just going to pause for a minute
18 until Tom comes back.

19 (Pause.)

20 THE COURT: You may proceed.

21 MR. HEMMENDINGER: Thank you, your Honor. So the
22 third point I was going to address on the reasons why the
23 Court should approve the settlement complexity of the
24 issues, and after deferring to the Plan Receiver on the
25 pension litigation issues, I just want to point out that

1 we've got complicated issues involving the liquidating
2 receivership on the regulatory front with the Hospital
3 Conversion Act and the application for change in
4 effective control. There are also a number of
5 complicated corporate governance issues involving
6 Prospect CharterCare, LLC and a number of complicated
7 commercial transactions, what I will call business tort
8 issues, related to Prospect CharterCare, LLC, and the
9 claims that have not really come before the Court
10 directly so far but Prospect has made a substantial
11 indemnity claim as against CCCB, which if Prospect were
12 successful would dilute or eliminate the value of the put
13 option.

14 The fourth factor, your Honor, the litigation cost
15 and the time it would take to resolve this if we didn't
16 settle it. I think based on the travel of the
17 controversy so far, it's pretty clear it would take years
18 to resolve all of the issues on the merits that we have
19 here, and the cost to the liquidating receivership estate
20 could be substantial. Even though the Plan Receiver's
21 counsel is working on a contingency, I am not. I am on
22 the clock. So subject to Court approval, my fees could
23 potentially be substantial if this continued toward
24 trial.

25 As to the last factor, the paramount interest of the

1 creditors, the Court has not acted on any recommendation
2 for allowance or disallowance of claims in this
3 Receivership, but the largest claim filed is the Plan
4 Receiver's claim for over \$100 million and that has been
5 filed as a secured claim. There is another substantial
6 general unsecured claim filed in the case related to a
7 super fund site that I believe the hospital entities are
8 only de minimis parties so see any exposure there and so
9 what we have is far and away the majority of the actual
10 debt of these receiverships is actually a party to and
11 supports to the settlement. Prospect has also filed
12 substantial claims but those are going to be resolved and
13 eliminated as part of this settlement. So, again, those
14 creditors do support the plan -- the settlement rather.

15 I just wanted to point out lastly a few points that
16 related particularly to the liquidating receiverships.
17 As I mentioned before, Prospect has this indemnity claim
18 and they are giving up the indemnity claim, which, as I
19 mentioned, could have potentially eaten up the value of
20 the put option which we put a \$5 million value on the
21 settlement. The settlement also resolves the risk that
22 the receiverships would faced based on the evaluation
23 process in the LLC agreement for determining the price
24 for the put option.

25 And last, the Medicare appeals, your Honor, although

1 it's only a little over a quarter of the actual amount in
2 controversy, this could be some fairly complicated
3 litigation, and we submit that Prospect has a fairly
4 reasonable claim that it would be entitled to these
5 funds. And since we were negotiating this Medicare issue
6 in the context of the global settlement, I felt that the
7 \$100,000 settlement was fair and reasonable based both on
8 the merits of the controversy itself and also on the fact
9 that this could have become the tail wagging the dog on
10 the pension claim and I wasn't going to jeopardize a \$30
11 million settlement over a controversy that was really a
12 fraction of that and there was some controversy at that
13 since I couldn't recover fees from Prospect even if I was
14 successful.

15 With that I would be glad to answer any questions
16 the Court might have as far as the liquidating
17 receivership part of this goes.

18 THE COURT: Thank you very much. So as the
19 Liquidating Receiver, and I know I read this in the
20 papers, in your business judgment after considering what
21 we refer to as the Jeffrey factors, you believe it's in
22 the best of the Liquidating Receiver to enter into the
23 settlement?

24 MR. HEMMENDINGER: Yes, I do, your Honor.

25 THE COURT: Okay. Why don't I hear from the Plan

1 Receiver and then I can circle back with any questions
2 after that. Attorney Del Sesto.

3 MR. DEL SESTO: Thank you, your Honor. Actually,
4 your Honor, I'm going to defer to Attorney Wistow,
5 Sheehan, and Ledsham on the petition for instructions,
6 your Honor.

7 THE COURT: Thank you very much. Counsel, you may
8 proceed.

9 MR. WISTOW: Thank you, your Honor. I just want to
10 support further the comments that Mr. Hemmindinger made
11 about the reasons for settling the Liquidating Receiver's
12 claims against Prospect and vice versa. Angell has a
13 claim in the liquidating receivership for, I believe, if
14 memory serves me, like \$675,000, so that's completely
15 gone. And the claim of Prospect is for indemnity, not
16 only for attorney's fees, but if they lose the case
17 against the Plan Receiver, they're claiming full
18 indemnity against the liquidator. So that would be many,
19 many millions of dollars. It would more than wipe out
20 the put option. Which, by the way, just for technical
21 clarity, the put option is being valued around \$4 million
22 and the additional million that's going to the
23 Liquidating Receiver to be held in trust and turned over
24 to the Plan Receiver is for other hospital interest that
25 the Liquidating Receiver has in the hospitals above and

1 beyond the put option. So, basically, what Mr.
2 Hemmendinger is saying is correct that because of this
3 settlement virtually all the assets of the liquidating
4 receivership will become available to the Plan Receiver
5 to bolster the plan.

6 With regard to the settlement by the Plan Receiver,
7 very simply its payment of \$27,500,000 from Prospect,
8 \$2,500,000 from Angell, for a total, of course, of
9 \$30,000,000. Angell has already deposited in the
10 registry of the court the \$2,500,000 pursuant to the
11 consent order that your Honor and Prospect has obtained a
12 total of \$22,500,000 in letters of credit from JP Morgan
13 Chase. There is actually two letters of credit, one for
14 \$22,500,000 and one for \$5 million. The \$5 million is
15 for the put and the hospital interests that are being
16 released and sold by the Liquidating Receiver. The
17 releases are important for the reasons I stated before
18 that this will free up substantially all of the assets of
19 CCCB, which are themselves in seven figures.

20 If I may have just one moment? I mentioned to --
21 when I was writing this morning, I forgot that I was
22 going to have to read it. The settlement also includes
23 our -- when I say our, the Plan Receiver and Liquidating
24 Receiver withdrawing their objections in the regulatory
25 proceeding and agreeing essentially to non-disparagement

1 agreements with the media. And that was apparently a
2 very important issue for Prospect so that is part of what
3 we agreed to. If for some reason the settlements don't
4 go through, then those provisions will become null and
5 void. Indeed, virtually all the provisions would become
6 null and void except those relating to the directors.
7 The settlement also provides for a tolling agreement by
8 lessors, Lee and Topper. Those two are the individuals
9 who are presently own approximately 40 percent of the
10 shares of the various hospitals through parrot companies
11 and they're buying out or attempting to buy out
12 approximately 60 percent of the equity interest in all of
13 the various Prospect Medical hospitals of which there are
14 17 and that is pending before the regulators now. One of
15 the things we've talked about was in the event that there
16 was no resolution of this case, we were beginning to get
17 close to a possible statute of limitations issue
18 regarding bringing fraudulent transfer claims against Lee
19 Topper, who as your Honor knows, has take millions of
20 dollars from the hospitals so there is a tolling
21 agreement. When I say from the hospitals, I don't want
22 to mislead the Court. I don't mean from two Rhode Island
23 hospitals. I'm talking about from Prospect Medical as a
24 whole.

25 In support of the settlement, we have at least two

1 of the people who have given us affidavits regarding the
2 settlement. I see they're on line, Chris Calacci, who is
3 counsel for the United Nurses and Associated
4 Professionals Union and he is here to talk, if he wishes,
5 on behalf of approximately 400 union members who are plan
6 participants. Mr. Kasle is here, I see also, who
7 represents something like 250 approximately people who
8 are in the plan. We submitted declarations from both of
9 them, and also from Arlene Violet, who I don't see here,
10 but she has submitted a declaration also in support of
11 the plan. All of these declarations are under penalties
12 of perjury. Ms. Violet represents approximately 285
13 plan participants. Your Honor will recall why these
14 lawyers were originally involved and that's because there
15 was a time when it was unclear whether or not there was
16 going to be reduction of 40 percent of the plan as
17 requested by the original petitioner back in August of
18 2017. Various plan participants had different interests.
19 Each said understandably I don't want to bear the brunt
20 of the 40 percent. Some other group should. And the
21 lawyers were working among the group in that regard so
22 they became very familiar with the litigation.

23 I just want to read you briefly from Mr. Calacci's
24 affidavit, which is Exhibit D to the petition. He quotes
25 himself from a prior representation that he made to the

1 Court in one of the original settlements and I'll quote
2 what he said in his present declaration. "Good morning,
3 your Honor. Chris Calacci from the United Nurses and
4 Allied Professionals. I thought it would be worthwhile
5 that the Court hear from the horse's mouth of special
6 counsel, Mr. Wistow's representation now in support. We
7 have about 400 union members who are participants in this
8 plan and they fully trust and are confident with the
9 Receiver's assessment that the settlement agreement is in
10 the best interest of the receivership estate and the plan
11 and the plan participants and we applaud the work that
12 has been done in that regard." Now he goes on. "I have
13 reviewed the settlement between Stephen Del Sesto, the
14 Plan Receiver, Thomas Hemmendinger as Liquidating
15 Receiver, and the seven individual punitive class
16 representatives." And he goes to say, "I understand that
17 the Plan Receiver and his special counsel will be asking
18 for approval to bring that settlement to the United
19 States District Court and in connection therewith for
20 payment of the contingent legal fee agreed upon in the
21 engagement fee agreement approved by this Court on
22 October 17, 2017, that is 23 and a third percent. With
23 regard to the present settlement," says Mr. Calacci, "I
24 repeat to the Court my above-quoted comments which apply
25 to the present settlement as well as to the legal fees

1 requested therewith."

2 The reason I bring this up, your Honor, is of course
3 the Plan Receiver is asking your Honor to approve subject
4 to review by the Federal Court in the class action the
5 agreement that was entered into by my office and
6 Mr. Del Sesto as Receiver and under which the agreement
7 which was approved by your Honor we proceeded. Mr. Kasle
8 and Arlene Violet both say in their declarations
9 substantially the very same thing as to the settlement
10 and as to the fee.

11 I would like to read you very briefly from the
12 mediator's declaration, which is Exhibit B, and that also
13 is under penalty of perjury, and that, of course, is
14 former Chief Justice Williams, formerly of our Supreme
15 Court, and he says in paragraph seven, he says, "I
16 believe that this litigation is unique with the United
17 States." And he goes on to explain why it is. And he
18 ends up saying in paragraph seven, "This matter
19 represents one of the most complex, if not the most
20 complex, matter in which I have been involved in all my
21 years as a lawyer, judge, or mediator." And he
22 previously indicated he has been practicing one way or
23 the other for over fifty years. And I won't read any
24 more details from it but he goes into quite a bit of
25 detail why it's such an unusual and complex case. And he

1 concludes that it's his opinion that a request by Wistow,
2 Sheehan & Lovely for attorney fees in the amount of 23
3 and a third percent of that \$30 million settlement fund
4 in accordance with the court approved fee agreement with
5 the Plan Receiver is reasonable and appropriate given the
6 complexity of this matter and the significant relief
7 recovered by Wistow, Sheehan & Lovely.

8 I hope your Honor forgives me for spending all this
9 time talking about our fees. I would like to read
10 briefly from Mr. Del Sesto's declaration. The petition
11 itself was prepared by our firm, so it's a little bit
12 awkward citing his name talking about our fees without
13 having him separately state how he felt about it.
14 Exhibit 5 is his affidavit and he talks about how he
15 originally back in October of 2017 applied to your Honor
16 for approval of the fee agreement.

17 And then I would like to read from his declaration.
18 He says, "The proposed settlement now presented to the
19 Court if approved by this Court and the United States
20 District Court will result in a payment to the plan in
21 the gross amount of \$30 million before attorneys' fees.
22 Consistent with the court orders approving Wistow,
23 Sheehan & Lovely's fees and expenses, I believe, that a
24 fee application by Wistow, Sheehan & Lovely for 23 and a
25 third percent of the proposed settlement recovery in

1 connection with the pending petition for settlement
2 instructions is fair, reasonable, and most importantly
3 within Wistow, Sheehan & Lovely's express contractual
4 undertaking."

5 He then discusses the First Circuit's attitude about
6 class-actions settlements and the percentage of funds,
7 the range being generally from 20 to 30 percent of the
8 benchmark being 25. Interestingly enough, what we're
9 talking about here is not really the settlement of the
10 class action per se because all of the money is going to
11 the plan itself directly, and of course, obviously, the
12 benefit ultimately to the plan participants and it's
13 going to be presented in this fashion to the federal
14 court. He goes on to explain why it's important in these
15 kind of cases for Plaintiff's counsel to have strong
16 financial incentive to pursue the case.

17 He also goes -- and this is very important, I think,
18 your Honor. I want to point this out in view of some of
19 the advertisements that I've seen that Prospect has put
20 in the newspapers. I'll say no more except it's in their
21 contents. Mr. Del Sesto talks about how hotly contested
22 this matter has been for three years to the point, and he
23 points this out, that Prospect at times attempted to have
24 Mr. Del Sesto and members of my office held in contempt
25 of court and vice versa. He talks about Prospect

1 engaging in a take no prisoners campaign, quote, unquote.
2 He points out, and your Honor may recall it, that
3 Prospect even objected to two prior settlements that we
4 were making and those objections were overruled. And
5 then he says and I quote, "In sum, the proposed
6 settlement represents the culmination of more than three
7 years of intensive and adversarial activity. In my more
8 than two decades of practice," says Mr. Del Sesto, "I
9 have not been involved in another matter so if fiercely
10 litigated or negotiated."

11 Now, the risks stand out by themselves. I'm not
12 going to go on at length. We could easily lose this case
13 in every respect. I don't mean that as a concession. I
14 just mean to say that this is a complex case with matters
15 of first impression on some issues throughout the United
16 States and I could see losses on either side, delays in
17 the First Circuit, and possibly this ending up in the
18 United States Supreme Court with issues regarding ERISA,
19 church plans, many years from now. That delay also gets
20 up into a risk of collection especially from Prospect.
21 We submitted as part of our petition of the settlement
22 Exhibit K, which is an October 30, 2020, submission that
23 we made in the change of effective control proceedings in
24 front of the Department of Health and the Hospital
25 Conversion Application that was submitted regarding the

1 activities of both the Department of Health and Attorney
2 General in approving the underlying transaction and we
3 attached to that an affidavit of an expert we had
4 retained who talks about the insolvency potential
5 involved in here. In other words, the collectability
6 situation, which is why, by the way, we have got the
7 letters of credit. The letters of credit we got only
8 because there is a settlement.

9 So we also were concerned at the time about -- and
10 you will see in our submission of October 30th, Exhibit
11 K, we were very concerned about the work of the monitor
12 that had been appointed by the Attorney General. I just
13 want to say we stated our opinion about the monitor at
14 the time. We have withdrawn our objections. Since that
15 time the monitor has apparently come out with a favorable
16 report in favor of Prospect. We are going to make no
17 comment about that report. We have withdrawn our
18 objection and we are not going to contest anything at
19 this point. The delay if we don't settle this case, not
20 only involves the risk potentially of insolvency, but if
21 there is insolvency, heaven knows what courts we may end
22 up having to litigate this thing in the bankruptcy court
23 in California, in Delaware. We just don't know. In
24 short, we think that this is favorable to the
25 receivership estate considering everything and we ask

1 your Honor's permission to go to the Federal Court with
2 your Honor's blessing as to the settlement and to the fee
3 again subject to the Federal Court's final approval on
4 both issues. I will point out that in the Federal Court
5 the special master that was appointed evaluated the fee
6 arrangement and commented very strongly about the fact
7 that this was approved by the Court, the fee agreement by
8 the Court, et cetera, et cetera. Again, I'm not
9 suggesting that the Federal Court would be bound, but it
10 is part of what the receivership will be asking. We're
11 asking for permission to ask for that amount along with
12 the entire settlement. Unless there are some questions,
13 that concludes my presentation.

14 THE COURT: Receiver Del Sesto, did you say there
15 was anyone else that was going to present or is that all
16 from the Plan Receiver?

17 MR. DEL SESTO: That is all from the Plan Receiver,
18 your Honor. Attorney Wistow was speaking on my behalf.
19 Obviously, if your Honor has any questions specifically
20 for me, but I believe there are other parties that wish
21 to be heard on it, so I will put myself on mute and allow
22 everything to move forward.

23 MS. VIOLET: Your Honor, can I put on the record,
24 Arlene Violet, that I have been here since the inception
25 of the meeting.

1 MR. WISTOW: I'm sorry. I didn't see your
2 attractive face. I see your name now. Forgive me.

3 THE COURT: Attorney Del Sesto, I want to ask you
4 the same question that I had asked Attorney Hemmindinger,
5 which is you're familiar with the Jeffrey factors that
6 both you went through and Attorney Wistow went through.
7 In your business judgment as a Receiver, do you believe
8 that this settlement satisfies those factors and is fair
9 and reasonable with respect to not only the settlement
10 itself, but with respect to the legal fees and costs?

11 MR. DEL SESTO: I do, your Honor. I believe it does
12 satisfy the Jeffrey factors and I do believe that the
13 settlement is absolutely in the best interest of the plan
14 and the participants, and, obviously, I'm supporting it
15 as I'm here asking your Honor to approve it and the
16 contingent fee as well.

17 THE COURT: And I did read your declaration along
18 with a couple of binders of information so I'm aware.
19 And I just want to be clear on the record, you suggested
20 there are some others that wish to address the Court?

21 MR. DEL SESTO: I believe so, your Honor. I believe
22 Mr. Calacci, Ms. Violet, and Mr. Kasle may have
23 something. I don't know if there are others, but I do
24 believe that they may have something to add.

25 THE COURT: Why don't we start with those if any of

1 you wish to be heard. Attorney Calacci first, do you
2 wish to put anything on the record?

3 MR. CALACCI: I do, your Honor. Thank you. Chris
4 Calacci for the United Nurses and Allied Professionals.
5 It's good to see you again. I think the declaration that
6 I submitted speaks for itself and the 400 or so plan
7 participants who I have the privilege of representing are
8 in full support of the settlement. I do have to say a
9 couple of brief things here though. I was also struck by
10 some of the things that Attorney Del Sesto said in his
11 declaration. I was struck by his describing the
12 relationship between the Receivership and Prospect as
13 being one marked by an extraordinary degree of rancor. I
14 was struck by Mr. Del Sesto's comment about the waging of
15 the take no prisoners of war campaign raised by Prospect,
16 and I was unfortunately reminded of Prospect's efforts to
17 block two settlements that brought in a gross recovery of
18 \$17 million. And I can't help but point out that a
19 couple of days after these papers were filed a full page
20 ad was taken out by Prospect in the Providence Journal
21 where they describe this \$27 million figure as their
22 effort to fund the plan because they wanted to help the
23 retirees and the employees. And then in big letters in
24 this ad it said, "We do so because we are fully committed
25 to Rhode Island." I'll be frank that I have some

1 difficulty swallowing that.

2 But, let me just close by saying this, that it is
3 clear to me that the folks who are fully committed to
4 these pensioners are Mr. Del Sesto, Mr. Wistow, Mr.
5 Sheehan, Mr. Ledsham, and the folks that I have the good
6 fortune of representing are greatly appreciative of the
7 fact that the work that these folks have done, their
8 tireless advocacy, has given them a little more hope, a
9 little more income security, and they feel a little bit
10 better now than they did in August of 2017. They are the
11 ones that have done an extraordinary amount of work here
12 and they are the ones that are fully committed to these
13 folks.

14 The last thing I would say is I can't tell you, your
15 Honor, how much the people I represent appreciate the
16 steady hand of this Court. Let me leave it there unless
17 you have any questions.

18 THE COURT: Thank you very much, Attorney Calacci.
19 I think we're going to move to Attorney Kasle if he has
20 any comments. He may have left the call. Attorney
21 Kasle, are you still with us? Okay. We'll see if he
22 logs back on. Attorney Violet, do you wish to be heard?

23 MS. VIOLET: Your Honor, just to comment on the
24 record that certainly the receivers and Max Wistow's firm
25 have thoroughly briefed me on the pros and cons of this

1 settlement. Obviously, I support this settlement. As
2 you know in my affidavit, I demurred on the point that I
3 don't like privatization and the selling of these shares,
4 et cetera, but the totality of the circumstances here
5 that it's not enough to overrule what I think has been a
6 great result negotiated by the Receivers and the Wistow
7 firm. Thank you, your Honor.

8 THE COURT: Thank you very much. Would counsel for
9 Prospect, I believe there is two on the line, wish to be
10 heard before the Court rules?

11 MR. HALPERIN: Yes, your Honor. Preston Halperin.
12 Your Honor, I obviously have not filed an objection on
13 behalf of Prospect. Prospect certainly is in full
14 support of the settlement that it entered into and
15 certainly supports the Court permitting this to take the
16 next step and go on to the Federal Court. But to put a
17 few things in context, it is necessary based on some of
18 the comments that have been made here in this very public
19 process that we have been involved in. Mr. Wistow
20 indicated that this case could have resulted in a loss
21 and neither party could predict exactly where it was
22 going. There were issues of first impression. It's
23 certainly a very complex case, and those factors are
24 certainly among the reasons why both sides were willing
25 to enter into this settlement agreement. That said, you

1 know, the settlement that was entered into may have been
2 in part due to a concern by the Plaintiff as to the
3 financial condition of the Prospect entities and their
4 motivations are their motivations. But I would like the
5 record to be clear that it would be highly unlikely for
6 an entity to be on the brink of insolvency and be able to
7 get a line of credit from a financial institute for
8 \$27,250,000 and to commit to making that payment.

9 Prospect is on solid financial footing despite the views
10 that were obtained by Mr. Wistow along the way during the
11 litigation. I think this isn't a relevant point for
12 settlement but because we're in a public streaming forum,
13 I felt it necessary to clarify that from my client's
14 prospective.

15 Secondly, your Honor, clearly this was a hotly
16 contested lawsuit, but the party on the receiving end of
17 this lawsuit was Prospect, who entered this lawsuit as
18 the defendant starting out with a contractual
19 relationship indicating they had no responsibility. I
20 think the aggressiveness, if you want to call it rancor,
21 I don't believe it was rancor at all. I believe it was
22 quite civil among the attorneys and the parties and
23 filings of motions for contempt not in any way indicate
24 that the attorneys are having difficulties or the parties
25 are having difficulties. It is part of a process. I

1 there the settlement itself was negotiated by all parties
2 in good faith, aggressively. I think the assistance of
3 the mediator, Justice Williams, was critical to help us
4 get to the finish line.

5 Finally, I would like to ask the Court to consider
6 acknowledging that this was a settlement entered into in
7 good faith by the parties for purposes of the state law
8 chapter 23-17.14-35 that determination by the Court would
9 be important for that special act that relates to the
10 rights of the parties for judicially approved settlements
11 specifically in this case cutting off claims of joint
12 tort feasons for contribution. So I would ask the Court
13 to consider including that. I don't believe I have seen
14 an order, maybe I missed it, from the Plan Receiver but
15 we can deal with that hopefully after you have given us
16 approval by the Court. With that said, your Honor, we
17 reiterate Prospect entity's support for the settlement
18 and ask the Court to grant the petition.

19 THE COURT: Thank you very much. Attorney
20 Del Sesto, if the Court was to approve this settlement of
21 both of these petitions and Judge Smith of the Federal
22 Court was to approve the class actions and others, I just
23 want to understand as far as examining the factors. What
24 is left in terms of the lawsuit? I believe the claim
25 against the diocese is still pending. Are there any

1 other defendants that would be left at this point?

2 MR. DEL SESTO: No, your Honor. If the settlement
3 is approved by both your Honor and Judge Smith, the only
4 defendants remaining in the litigation would be the
5 diocesan defendants. So the claims against those
6 defendants would be the only remaining claims.

7 THE COURT: The Court has considered both petitions
8 and what I'm going to do is give you the ruling at this
9 point so orders can come in, but the Court will be
10 issuing a written decision because I think it's important
11 for Judge Smith when this goes for approval of the
12 Federal Court to understand the Court's analysis of the
13 different factors. In no way do I want that to hold up
14 the submission of an order.

15 And first of all, as all of us know from the very
16 beginning of this case when the Receivership was filed
17 with respect to the plan, the Receiver's charge was to
18 marshal together the assets of the estate and bring in or
19 resolve any claims that the estate may have with respect
20 to the third party and that was the basis for bringing
21 Attorney Wistow and his firm, first on an hourly basis
22 during an investigation, and if that turned into a
23 litigation, on a contingency basis with a credit for
24 certain hourly fees that were paid and those hourly fees
25 were taken care of in a prior settlement by this Court

1 and by the Federal Court. And I had before me before
2 Covid and whatever else packed courtrooms on many
3 occasions of retirees that rightly so were extremely
4 concerned about their pension and in the short term even
5 more concerned, I think, about the recommended 40 percent
6 cut that was proposed by the petitioner in this case when
7 the receivership was just filed. And to me that's
8 extremely important in terms of win, lose, or draw with
9 respect to claims of the defendants themselves that the
10 Receiver and counsel for the Receiver pursue these
11 claims.

12 We have before us today the largest by far of
13 proposed settlements in this case with respect to both
14 Prospect the vast amount and also Angell. As I asked the
15 Receiver before, this will bring to a close if it's
16 approved by this Court and the Federal Court the claims
17 with the exception of the diocesan entities, which is
18 currently pending before Judge Smith. There are a number
19 of factors and I think this goes to what counsel has
20 said, both counsel for the Receiver, the attorneys that
21 are representing certain of the pensioners as well as
22 Attorney Halperin, which is the probability of success in
23 the litigation and this litigation being compromised or
24 resolved at this time. I think it's been very clear that
25 there are some good faith arguments on both sides in

1 terms of how this case with respect to both Prospect and
2 Angell would have turned out in the end. Part of that is
3 because counsel is correct as we have gone through this
4 case there are certain issues of what is called first
5 impression that haven't been decided by our Supreme Court
6 having necessarily been decided by either the Court of
7 Appeals or the United States Supreme Court and that
8 brings some risk to the case itself.

9 In addition, at least with respect to Prospect,
10 while the case was stayed there was a case that was filed
11 in, I believe, it was the Chancery Court in Delaware that
12 dealt with certain indemnification rights as well as
13 other issues specifically with respect to the Liquidating
14 Receiver's claims as well as the Plan Receiver's claims.

15 The Court finds after reviewing the entire record,
16 that there was certainly a probability of success in
17 terms of settling and compromising the litigation, but
18 the Court is in complete agreement that this wasn't
19 something that was a hundred percent that the Plan
20 Receiver and Liquidating Receiver were going to prevail
21 on the merits a large part due to not only the issues of
22 first impression, but also some of the transactional
23 documents involved and certainly that is in favor of
24 approving the settlement. The difficulties encountered
25 in the matter of collection, certainly in any case there

1 are issues in terms of where we may be down the road
2 which in this case may have been several years down the
3 road in terms of collection of debt. Certainly, money in
4 the hand today many times is worth the possibility of
5 getting more money down the road and having to deal with
6 the issues of collection.

7 I did read in the papers in terms of the issues that
8 the Receiver raised. As far as this Court is concerned,
9 in a case where we're dealing with hospitals and a
10 variety of entities, it's certainly in the Receiver's
11 interest to have a bird in the hand, so to speak, of a
12 substantial amount of settlement rather than taking any
13 risk that may be down the road.

14 The complexity of the litigation involved: I would
15 confer with everyone who mentioned this is an extremely
16 complex litigation with both some federal questions that
17 are involved, litigation not only in Rhode Island but in
18 Delaware, and a potential that it could have been in
19 other jurisdictions as well. I would concur with what
20 was said. This very much is one of the most, if not the
21 most complicated issue in litigation the Court has before
22 it at this time. The only one that I can think of that
23 may have been more complex was the case before my
24 predecessor, Justice Silverstein, in another very large
25 case involving Attorney Wistow. But there was a large

1 amount of complexity and a large amount of risk in this
2 case.

3 And finally, which I think is extremely important,
4 is the interest of creditors in deference to their
5 reasonable use. This is a case from the beginning that
6 there was a huge amount of uncertainty by the pensioners,
7 who as far as I'm concerned are the creditors in this
8 case or the main creditors in this case. To get to a
9 settlement and to be able to put dollars back into the
10 plan that will give them some comfort in terms of certain
11 payments that can be made for a period of time in the
12 future while this case is not over is a large, large
13 consideration. And that is made that much clearer to
14 the Court by the declarations of Attorney Calacci, Kasle,
15 and Attorney Violet. And the Court really focuses on
16 not only the reasonableness of the settlement but the
17 impact on those retirees. And for those reasons, the
18 Court approves the petition by both the Liquidating
19 Receiver and the Plan Receiver.

20 As the Liquidating Receiver spoke about, he is
21 compensated on an hourly basis and those fees, costs, and
22 expenses will come before the Court in due course for
23 approval. However, the Special Counsel to the Plan
24 Receiver is paid at this point on a contingency fee
25 basis. That contingency fee which was negotiated between

1 the Plan Receiver and Special Counsel was previously
2 approved by this Court and was approved by this Court in
3 the prior settlement as well. With respect to the case
4 presently before the Court and the petition, the Court
5 finds that the contingency fees and costs are fair,
6 reasonable, and certainly for the benefit of the plan
7 receivership estate and that contingency fee as well as
8 reasonable costs are approved.

9 I understand completely that this Court only has the
10 ability to grant the petition that is before the Court
11 which includes allowing this case to proceed before the
12 United States District Court with respect to the class
13 actions and other claims. I understand that Judge Smith
14 and Chief Judge Smith had appointed Attorney Deming
15 Sherman as a special master to look at the fees, costs,
16 and expenses in the prior application, and my
17 understanding is that Attorney Sherman concurred that
18 those fees were, in fact, fair and reasonable. I
19 certainly understand that Judge Smith is going to need to
20 consider these fees with respect to the class action.
21 And that is one of the main reasons, as I mentioned
22 before, that while the Court is giving a decision from
23 the bench at this point so we can proceed forward, I will
24 issue a set of findings as well to supplement the
25 decision.

1 I understand that Attorney Halperin in his
2 presentation made a request for the Court finding this is
3 a good faith settlement. While I am not opposed to that,
4 I spent a lot of time reading through the papers in this
5 case and I just want to see what was asked for. Not that
6 there is any issue and I believe in the prior settlements
7 the Court had made that finding. It's not anything
8 negative against the request. Like I said, there were
9 two binders of documents and I just want to go back
10 through them.

11 With that, I am going to ask both the Plan Receiver
12 and the Liquidating Receiver to circulate an order for
13 entry by this Court so the process can continue with
14 respect to the Federal Court. And before the Court
15 closes out this hearing, is there anything else that we
16 need to address at this time?

17 MR. WISTOW: Your Honor, on the issue of finding Mr.
18 Halperin's request, from my recollection I cannot say
19 that there was an express request for that finding. I'm
20 not sure. But certainly, it was implicit in everything
21 we've asked for. And when your Honor finds, as you
22 apparently have, that it's a fair and reasonable
23 settlement, I would like to make an oral motion that the
24 order include that express finding that Mr. Halperin has
25 asked for.

1 THE COURT: Very good. Attorney Boyajian, are you
2 asking for the same finding to be made with respect to
3 your client's settlement as well?

4 MR. BOYAJIAN: I am, your Honor. And one other
5 thing, this is just a minor correction. Mr. Wistow
6 misspoke at one point about the settlement amount. It is
7 \$2.75 million, not --

8 MR. WISTOW: Not what? What did I say?

9 MR. BOYAJIAN: 2.5. I'll take the 250.

10 MR. WISTOW: Thank you for your gracious
11 correction.

12 THE COURT: As was said before, the Court has signed
13 an order so that money was deposited in the registry of
14 the court. Based on what Attorney Wistow had said that
15 there is no objection to it and Attorney Boyajian wants
16 that finding as well, I would ask, as I will look at the
17 papers, to please include that finding in the proposed
18 order that comes before the Court. Thank you all very
19 much. I appreciate everyone's time this morning. My
20 apologies about some of the connection issues. It's one
21 of the things we are living with in a virtual world, but
22 I'm glad for this virtual world so at least we're able to
23 bring this portion of the case to a conclusion before
24 this Court. Thank you all very much.

25 MR. DEL SESTO: Your Honor, I believe Attorney

1 Hemmendinger and myself also have reports, which may be
2 uneventful based on the proceeding that just happened but
3 I do believe we do have our reports on.

4 THE COURT: You are correct, and I have gone
5 through the reports as well. They are on file. There
6 are no objections. But if you want to briefly take us
7 through that, why don't we start with you, Attorney
8 Del Sesto.

9 Before you do that, if I can ask Clerk Miley if you
10 would send an e-mail out to the attorneys for the 11:00
11 and just tell them we will let them know when we're ready
12 to proceed forward. Attorney Del Sesto, please proceed.

13 MR. DEL SESTO: Thank you, your Honor. I will be
14 brief especially because what just happened before your
15 Honor is the bulk of what is actually relevant to the
16 receivership case right now. Other than the settlement,
17 which is a very, very substantial issue, there is not
18 much. I won't go through the details of my report and
19 there is not much more to speak of. I believe Attorney
20 Wistow, Attorney Hemmendinger, and all the other comments
21 clearly cover that issue.

22 Just from a financial standpoint, your Honor, I just
23 wanted to point out a few highlights. As of the filing
24 of the report, your Honor, the plan had approximately \$70
25 million in assets. As your Honor recalls when this case

1 started, it was \$85 million, just over \$85 million. So
2 as I stated, we have about \$70 million right now. The
3 market has helped to slow the erosion of the plan, which
4 is approximately \$950,000 a month. That amount is for
5 benefit payments. That does not include other fees that
6 are chargeable to the plan such as the actuary, the
7 accountants, the investment managers.

8 Obviously, your Honor, we need to wait to see if
9 Judge Smith approves the settlement, but if it does, it
10 will bring a net amount of approximately \$23 million into
11 the case, which based on today's numbers and my math puts
12 us at about \$93 million, which I'm happy to say, your
13 Honor, not only resets the financial clock from 2017, but
14 actually puts us about \$6 million ahead of that. As
15 always, your Honor, I remain in regular communication
16 with the actuaries, with the accountant, we actually just
17 completed an audit of the plan, and the investment
18 manager. My most recent call with the investment manager
19 was about 25 days ago where we did, again, as I typically
20 do on a maybe every 60-day basis review the investments
21 and review the performance of the market as those
22 investments are to determine whether or not a
23 reallocation of those is appropriate. I plan on speaking
24 with them in about 15 to 20 days, your Honor, because
25 there are some things they were going to come back to me

1 about with reports and recommendations.

2 Beyond that, your Honor, as I said, the settlement
3 with Prospect and Angell are the most significant things
4 that have happened both in this case and will be
5 happening in the federal litigation. Other than some
6 findings of disputed facts and things of that nature,
7 nothing of significance has happened in the federal
8 litigation. This will probably be the most significant.
9 And, also, as your Honor had asked and I had answered, if
10 the settlement is approved by Judge Smith, that will
11 leave the diocesan entities as the sole defendants in
12 that litigation and that litigation absent anything
13 similar to what happened with Prospect will just continue
14 along its process.

15 Based on that, your Honor, unless your Honor has any
16 questions on the report, as I said, I didn't want to
17 rehash the details of the report especially considering
18 the time. If you have any questions, I am happy to
19 answer them.

20 THE COURT: I do not. The only thing I will mention
21 is I did receive an unredacted copy from your office, and
22 thank you, of the fees, costs, and expenses. With this
23 coming up, I didn't have a chance to review them. I
24 would ask if you would submit an order and then just
25 leave the amount blank. After I review them, that way I

1 can just fill them in and get that entered.

2 MR. DEL SESTO: I will do that, your Honor. Just as
3 an administrative issue, just to reiterate, notice of
4 this hearing was sent out to all parties. It was sent in
5 conjunction with the petition that had been presented
6 prior to this. So all 2,700 member of the pension, as
7 well as all other parties, creditors in interest, and
8 attorneys of record received a copy of this. No
9 objection was received by me and I did not see one in the
10 portal this morning.

11 THE COURT: Thank you very much. Why don't we move
12 then to the Liquidating Receiver. Attorney Hemmendinger.

13 MR. HEMMENDINGER: Your Honor, I join in Mr.
14 Wistow's motion for a finding of good faith. And on my
15 report, your Honor, most of the activities in the last
16 quarter were -- if I may, your Honor. I just need to
17 adjust something here.

18 THE COURT: Go right ahead.

19 MR. HEMMENDINGER: Can you hear me now?

20 THE COURT: Yes.

21 MR. HEMMENDINGER: Thank you, your Honor. I was
22 getting feedback on my headphones. The last quarter,
23 your Honor, of 2020 covered by my report really does deal
24 mainly with the controversies in the settlement
25 negotiations with Prospect that included in my report the

1 accounting of receipts and disbursements and also sent
2 the Court an itemized statement of time and expenses
3 spent in the quarter. And I would ask for approval of my
4 actions during the quarter as well as the fees and
5 expenses. I take it the Court has not had a chance to
6 review those time and expenses.

7 THE COURT: That's correct, but the Court is in a
8 position where it can approve your report and ratify the
9 acts and doings and the Court will reserve on the
10 billing, costs, fees, and expenses. I didn't have the
11 opportunity to review it. I will ask you to do the same
12 thing that I asked Attorney Del Sesto, which is submit an
13 order. When it comes to costs, fees, and expenses, just
14 leave that blank. After the review, we'll fill it in and
15 get the order in.

16 MR. HEMMENDINGER: Thank you, your Honor. Should we
17 file those propose orders through the portal or just
18 e-mail them to you? I had filed my proposed order with
19 blanks and served it to counsel before. So I would be
20 sending the same form.

21 THE COURT: If you could just send it by e-mail to
22 Clerk Miley and if you have it in a word format, it will
23 just make it easier.

24 MR. HEMMENDINGER: Thank you, your Honor.

25 THE COURT: And Attorney Del Sesto, if you could do

1 the same thing, I would appreciate it.

2 MR. DEL SESTO: I will, your Honor.

3 MR. HALPERIN: Your Honor, back to the good faith
4 issue, your Honor said you were going to review some
5 papers. I just want to assist the Court in asking you to
6 look at the settlement agreement itself because there's a
7 definition of final approval hearing in the settlement
8 agreement that contemplates that request for a good-faith
9 finding.

10 THE COURT: I very much appreciate that. You sent
11 me a lot of papers. Thank you, Attorney Halperin. Okay.
12 Thank you all very much. The Court will be in recess.

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