

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

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

VS.)

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

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

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON NOVEMBER 2, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL
STEPHEN SHEEHAN, ESQUIRE.....FOR THE RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER
JOSEPH CAVANAGH, ESQUIRE.....FOR PROSPECT MEDICAL
W. MARK RUSSO, ESQUIRE.....FOR PROSPECT MEDICAL
REBECCA PARTINGTON, ESQUIRE.....FOR ATTORNEY GENERAL

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 47, inclusive, are a true and accurate transcript of my stenographic notes.



GINA GIANFRANCESCO GOMES
COURT REPORTER

1 FRIDAY, NOVEMBER 2, 2018

2 MORNING SESSION

3 THE CLERK: The matter before the Court is
4 PC-2017-3856, St. Joseph Health Services of Rhode Island
5 v. Saint Joseph Health Services of Rhode Island
6 Retirement Plan. This is on for the Receiver's motion to
7 adjudge in contempt and also the Attorney General's
8 motion to strike. Would counsel please identify
9 yourselves for the record.

10 MR. DELSESTO: Good morning, your Honor. Steven
11 DelSesto, Court Appointed Receiver.

12 MR. WISTOW: Good morning, your Honor. Max Wistow,
13 counsel for the Receiver.

14 MR. SHEEHAN: Good morning, your Honor. Stephen
15 Sheehan for the Receiver.

16 MR. LEDSHAM: Good morning, your Honor, Benjamin
17 Ledsham for the Receiver.

18 MR. CAVANAGH: Good morning, your Honor. Joseph
19 Cavanagh for Prospect CharterCare, LLC.

20 MR. RUSSO: Mark Russo for Prospect CharterCare,
21 LLC.

22 MS. PARTINGTON: Rebecca Partington for the Attorney
23 General.

24 THE COURT: We're going to begin with the motion for
25 contempt and then we'll deal with the motion to strike

1 afterwards. Counsel can step forward to counsel table,
2 and, Attorney Sheehan, you may proceed with your
3 argument.

4 MR. SHEEHAN: Thank you, your Honor. Your Honor,
5 the documents that were the subject or are the subject of
6 the motion for contempt were the documents that were
7 required to be provided to the Attorney General under a
8 specific request, and the subpoena we have provided the
9 Court with the excerpt from the Attorney General's
10 opinion approving the 2014 conversion that sets forth the
11 requirement that these reports be filed annually. Your
12 Honor, the documents are extremely important to the
13 Receiver. Indeed, essential for the Receiver to
14 responsibly and intelligently address an asset of the
15 receivership estate that may be worth somewhere in the
16 low eight figures.

17 It's hard at this point to know because, as the
18 Court knows, the evaluation we are going on was from
19 2014, in which it was valued at about \$15 million. The
20 valuation was broken down at that time into two
21 components. One was a value based upon the community
22 board's 15 percent interest in the \$50 million capital
23 commitment, which would have been \$7.5 million reduced to
24 present value came to \$6 million and a figure up from
25 that. We need to know whether that money has indeed been

1 contributed to the hospitals in order to determine the
2 value of the interest that the Receiver is obtaining.
3 And we have a very short timeframe. We have June, 2019,
4 six months away and then it's a 30-day window, your
5 Honor. And the request to exercise the put option sets
6 into play an extremely complicated valuation procedure
7 and to be prepared for that we need to indeed retain an
8 expert in hospital valuations. The contract stipulates
9 that the expert has to have so many credentials. There
10 are probably two of them in the United States. We really
11 need that information.

12 Now, also the information also has an issue as to
13 whether we have a 15 percent interest in Prospect
14 CharterCare through the settlement agreement or up to a
15 27 percent interest. And that's because when the 15
16 percent interest was determined, it was on the assumption
17 that, you know, that Prospect East would contribute the
18 \$45 million cash. Purchase price was \$50 million and the
19 ratio between the \$95 million that Prospect East was
20 expected to contribute and the approximate \$17 million of
21 value that was allocated between the community board and
22 the sale of the assets reached a 15 percent valuation for
23 the community board and 85 percent for Prospect East. If
24 you take the \$50 million out of the equation, the ratio
25 is \$45 million to \$16 million and change and the number

1 comes out to be 27 percent, which is a huge difference
2 when we're talking about the assets in question, which
3 are two operating hospitals.

4 Now, CharterCare knew that these documents were
5 crucial for the Receiver to perform his function, and one
6 of the reasons they knew is this was brought up before
7 your Honor at the October 10th hearing. Mr. Wistow made
8 the point. He said, "I do want to add this one point.
9 This 13 percent -- 15 percent is a huge deal because I
10 can tell as part of the settlement process that we have
11 been trying to get the 15 percent holder, CCCB, an
12 accounting of the promised \$50 million that was supposed
13 to be put in by Prospect CharterCare." That's what he
14 told the Court. Now, Prospect CharterCare was here in
15 the courtroom when that statement was made and that's how
16 they understood it.

17 In the memorandum that they filed in opposition to
18 our motion for contempt at pages 12 to 13, they address
19 their understanding of Mr. Wistow's statements to the
20 Court and they say, "What is plain from the Receiver's
21 statements to this Court is that he is seeking the
22 information that is the subject of this contempt motion
23 in order to help him proceed under his purported
24 acquisition of the CCCB's interest and his power to
25 exercise CCCB's put option and force Prospect East

1 Holdings, Inc., the 85 percent member of the PCLLC to
2 acquire that interest."

3 They knew from that point, your Honor. The
4 statement was made in open court. And what they did,
5 your Honor, is they intentionally blocked the Receiver,
6 and we provided the Court with the letters that out and
7 out state that they would refuse to provide that
8 information to the community board because the community
9 board they feared would give it to the Receiver. They
10 also had the settlement agreement which obligated the
11 community board to cooperate with the Receiver. They
12 knew to the extent that the community board would provide
13 that information to the Receiver, it was by a
14 contractual obligation. It was a contract right to the
15 receivership estate.

16 Now, the subpoena itself, your Honor, is a Court
17 order. There can be no question about that. The only
18 question is whether it should be enforced, rather a
19 violation of the subpoena should be enforced as a
20 contempt or the appropriate procedure would be to move to
21 compel production of the documents were not produced in
22 response to the subpoena and that really turns on the
23 facts, your Honor. And we and Prospect CharterCare are
24 in agreement that contempt should be very sparingly
25 applied, But in these particular facts, your Honor, we

1 believe it's entirely appropriate. And I would say that
2 in addition to this intentional blocking of the Receiver,
3 the manner in which Prospect CharterCare violated the
4 subpoena is crucial. They, in their response asserted
5 certain boiler plate objections and then they said, "We
6 will produce all responsive documents," and they, in
7 fact, did not produce all responsive documents and they
8 seek to justify their failure to produce them today by
9 virtue of that objection. That is a mousetrap, your
10 Honor, that has been addressed by the courts on a number
11 of occasions. It only causes a great deal of confusion
12 and interferes with discovery for a party of one hand to
13 object to producing documents and then saying without
14 prejudice to the objection we're producing the documents.
15 And then when it turns out they didn't, they say, well,
16 don't blame me. I objected to producing the documents.
17 The courts have held that kind of response is a waiver of
18 the objection.

19 Now, Prospect CharterCare advocates that this motion
20 be treated as a motion to compel production or I should
21 say more appropriately they argue that Plaintiffs should
22 have sought a motion to compel production rather than a
23 motion for contempt. Based on Rule 45(c) which sets
24 forth a procedure when objections are properly made that
25 the procedure to be followed is that the party producing

1 the subpoena should move for an order compelling
2 production. But the key, your Honor, is properly made
3 and this Court has addressed this issue of boiler plate
4 objections and it did so at the end of the year in
5 December of 2017 when CharterCare was also in attendance.

6 So the combination, your Honor, of the obstruction
7 of the Receiver obtaining information that is extremely
8 important to the administration of the receivership
9 estate, the intentional obstruction with the manner in
10 which they violated the subpoena, we believe justifies a
11 finding of contempt particularly, your Honor, in the
12 context of receivership law, that the receivership estate
13 whether in the actual possession of the Receiver or in
14 the constructive possession of the Receiver is in
15 custodial ledgers, meaning it's in the custody of the
16 court.

17 Now, whether or not your Honor finds that Prospect
18 CharterCare should be adjudged in contempt in these
19 particular facts, we would ask the Court to please on the
20 shortest possible notice direct Prospect CharterCare to
21 provide the necessary documents. We explained to the
22 Court in our papers that the federal statute that governs
23 class actions, the Class Action Fairness Act, known as
24 CAVA sets forth a fairly lengthy time period for a --

25 THE COURT: Counsel, before you get to that, the

1 motion for contempt is based on the subpoena that was
2 issued. So what are you suggesting? Are you suggesting
3 everything we have been talking about now is covered by
4 the subpoena, a portion, is it a monetary report that was
5 sent to the Attorney General? I'm just trying to
6 understand.

7 MR. SHEEHAN: Thank you, your Honor. What we're
8 focusing on is the Attorney General's requirement that
9 they submit annual reports concerning their capital
10 contributions. It's conditioned under 18 in the attorney
11 general's report. It's specific to that issue of capital
12 contributions. And let me say, your Honor, that Prospect
13 CharterCare produced documents concerning the back and
14 forts with the Attorney General at the time of the
15 conversion as to the Attorney General, but these
16 documents have to do with the annual reports that were
17 withheld.

18 THE COURT: That's why I'm just looking to separate
19 out. We have these monitoring, in quotes, reports, but
20 then you're also talking about information that will
21 allow you to evaluate the value and that may be
22 information whether or not you're entitled to, you're not
23 claiming that falls under this.

24 MR. SHEEHAN: I'm only saying, your Honor, that
25 these reports themselves --

1 THE COURT: Understood.

2 MR. SHEEHAN: -- are information that the Receiver
3 needs for that purpose because if Prospect CharterCare
4 complied, and we're presuming that they did, if they
5 complied, you will be able to determine whether the value
6 has been put into Prospect CharterCare.

7 THE COURT: Understood.

8 MR. SHEEHAN: You are right, your Honor, that there
9 are additional documents that would bear on this issue,
10 but these are directly covered by the subpoena and they
11 are core to the Receiver's function. Now, my brothers
12 from Prospect CharterCare seek to avoid the conclusion
13 that they are in violation of the subpoena by a
14 construction of the language of their subpoena request.
15 They construe the phrase "inclusive of" to mean solely
16 supplemental submissions and that is simply not the
17 obvious meaning of "inclusive of". Then they say your
18 Honor's decision issued at the beginning of this week
19 moots the Receiver's right to obtain this information.
20 Now, that decision was issued in the context of a broad
21 receivership order giving the Receiver the power to issue
22 subpoenas to investigate facts necessary to marshal the
23 assets of the receivership estate.

24 THE COURT: It actually did more than that. In
25 September of last week, it gave you the ability to serve

1 subpoenas, which was done, and actually take depositions.

2 MR. SHEEHAN: Yes, your Honor. And, consequently,
3 the argument that the conditions your Honor imposed
4 earlier this week in your Honor's approval of the
5 settlement somehow restricted the Receiver's ability to
6 exercise that power as to the right of the Receiver's
7 contract rights represented by the settlement agreement
8 is a position we considered to be preposterous. Your
9 Honor, to the extent there is any ambiguity as to what
10 your Honor's conditions are intended to do, we intend for
11 your Honor's authority that we submit an order to settle
12 the Court's approval of the settlement pursuant to that
13 permission. We intend to submit a proposed order that we
14 hope will add additional clarity to an issue that we
15 don't believe even needs clarification and we hope to do
16 that later today. We expect that given the nature of the
17 case that we will be back before your Honor perhaps with
18 respect to our proposed order.

19 THE COURT: Thank you very much. And, counsel, I
20 just want to, because I think we talked about a lot of
21 things. It sounds like what we're talking about is
22 monitoring reports that your client may or may not have
23 filed with the Attorney General.

24 MR. CAVANAGH: That's right, your Honor. And my
25 brother in casting this issue as one that arises out of

1 the subpoena position through this Court doesn't fairly
2 set the table, your Honor, for what really is going on,
3 and that is that these are reports that the Receiver said
4 in its motion that it is looking to have and use only
5 derivatively of its position that it has obtained an
6 asset, that being the 15 percent share in CCCB. Of
7 course, we dispute that position. We've objected before
8 this Court. We have identified --

9 THE COURT: I understand that. Isn't the inquiry
10 when you received a subpoena, which is before all that,
11 there is certain things you needed to respond to and you
12 may disagree. The question is did the monitoring reports
13 fall within the scope of the subpoena or not, and if they
14 did, were they covered by some of the other arguments
15 that you made?

16 MR. CAVANAGH: Our position is they weren't covered,
17 your Honor.

18 THE COURT: Tell me why because I'm looking at the
19 plain language. Are you saying it's subpoena all
20 documents submitted inclusive or supplemental submissions
21 that exist, that's in parens, to the Attorney General's
22 office. Why would a monitoring report fit under that?

23 MR. CAVANAGH: We related that request, your Honor,
24 to the application themselves. Okay. The subpoena was
25 issued with investigative purpose to identify claims that

1 the Receiver might have against the broad range of
2 parties. Okay. We complied with the subpoena. We
3 objected to the subpoena during the compliance course and
4 it was in large part a cooperative exercise. Attorney
5 Sheehan and I were in regular communications through the
6 process. The claims that the Receiver had and has it
7 identified and brought in Federal Court in June of this
8 year. Okay. We, of course, during that process had the
9 right and did assert our objections to the breadth of
10 what was being requested and when we did so, we knew full
11 well that there would be litigation going forward in
12 Federal Court that it's in the federal forum that we
13 believe these issues should be orderly presented. We
14 believe we have sound consensus that will be presented in
15 that court.

16 And, your Honor, in their motion papers they said
17 that in addition to looking to value the interest, the 15
18 percent interest, what I urge your attention toward is
19 the second purpose. It's on page five of their moving
20 papers and that says that they want to assess the
21 monitoring reports for the purpose of initiating a
22 lawsuit in the shoes of CCCB against Prospect for
23 specific performance in order to try to improve or
24 enhance that asset. We have taken the position that it
25 would be inconsistent fundamentally for us to recognize

1 they have that asset at this stage particularly in light
2 of your ruling of Monday afternoon, your Honor.

3 What you heard from counsel for the Receiver at the
4 October 10th hearing was an extensive discussion about
5 the settlement. Two themes is what emerged. Number one,
6 you're not really deciding much, your Honor, in that you
7 are limited in your review, as urged by them, to look to
8 whether the settlement is in the fair and reasonable
9 interest, the best interest, of the Receiver. I have a
10 litany of quotes before me, I won't read them to you,
11 from that record that convey that theme.

12 And the second part of that was to say that issues
13 would remain for resolution in other forums, and that
14 once those forums opened up and we did litigate on those
15 issues and those collateral places, there would be a fair
16 and orderly process to do it.

17 The other thing that they said was that the
18 settlement itself was expressly designed and crafted so
19 as to disadvantage the other Defendants in the federal
20 lawsuit. That is out of their own mouths. That's why
21 they included the language that was challenged that was
22 collusive by the Prospect parties. Okay. And they said,
23 your Honor, that this is litigation, that tactical
24 strategies sometimes need to be employed in order to
25 achieve that purpose. We are in litigation in Federal

1 Court. We believe we have sound defenses to the claims
2 presented. We would like to present those orderly in
3 that forum. What they're using now at this point in
4 time, because nobody has these documents on their radar
5 during the course of the subpoena compliance, not even
6 the Receiver. I stood here before you and listened as
7 they brought motion after motion against the A.G.,
8 including for contempt, where they had the A.G. report to
9 you daily for about a six-week stretch over the scope of
10 that production. And through that course there was
11 nothing uttered about these monitoring reports. These
12 only surfaced after the settlement that emerged in
13 August. It was not related to an investigation of
14 claims.

15 Now, what they want to do, on the one hand saying
16 we're playing litigation tactics, and that's permissible
17 under the circumstances, and that these things should be
18 weeded out in Federal Court. They're trying to use this
19 Court as a special forum where they're cloaked with the
20 power of contempt. And the other thing that they're
21 saying, they want to hold us with our arms tied around
22 our back and not let us litigate these issues as they
23 should be. They are federal issues of procedure before
24 Judge Smith, the federal magistrate, and they have
25 identified in their papers any independent need for the

1 information other than that which is derived from their
2 position still unapproved or unconfirmed, unendorsed,
3 that they have presently an asset in the form of the 15
4 percent interest.

5 THE COURT: Counsel, are we focusing on the wrong
6 issue here? The issue is that well before the federal
7 lawsuit was filed, a subpoena was issued that
8 specifically authorized by the Court. And what I'm
9 hearing, putting the rest aside, is if it was covered by
10 that subpoena and you didn't respond to that subpoena,
11 how does everything going forward effect them? The
12 Court's September 13, 2017, order is still in full
13 effect.

14 MR. CAVANAGH: Understood.

15 THE COURT: So what this really comes down to does
16 monitoring reports fall within the definition of what was
17 asked for in the subpoena?

18 MR. CAVANAGH: Your Honor, even assuming it does,
19 and our position is that it doesn't, we have the right
20 certainly to object to the relevance of the information
21 and the overbreadth of the request. And to say that it's
22 not germane to the investigation and they have gone ahead
23 and proven that when they say that it arises out of their
24 settlement with another Defendant which is part of their
25 litigation strategy to disadvantage Prospect.

1 THE COURT: So you're saying you have a right to
2 object because of the general objections that this Court
3 ruled on. In fact, last week in a large product
4 liability case, the Court tossed all the general
5 objections out because of what the Supreme Court said
6 about them. I'm just trying to understand that.

7 MR. CAVANAGH: A couple of points on that issue,
8 your Honor. They weren't general objections and they
9 weren't set forth at the beginning of the response in
10 order to cover everything else. They were specifically
11 tailored and further incorporated into the balance of the
12 individual requests. Okay. Mr. Sheehan and I have
13 agreed that they would weekly, Prospect would, as the
14 review team in out of state marshal through a massive
15 amount of information, produce whatever the fruits of
16 that weekly effort had been and we marched along in this
17 process for months, your Honor. It was cooperative, as I
18 said, and generally what happened at the end of the week
19 on a Friday, I would currier over a thumb flash drive to
20 his office and I would say, "Can you extend the subpoena
21 return date one more week?", because we knew that the
22 objections needed to be asserted by the return date,
23 which was extended by the agreement of parties.

24 And on May 11th when I sent that customary e-mail, I
25 received no response. I sent midday about 2:00, 2:30

1 another e-mail to this time Mr. Sheehan, Ledsham, and
2 Wistow. I made the copies personally too, I believe. I
3 put an urgent stamp, an exclamation point on it and I
4 said, We're coming to the close of business. I need to
5 know. I need to get closure so we can do this. I heard
6 radio silence, your Honor. You know a more cynical
7 prospective on that would have been to say that perhaps
8 the dynamics had been shaped up where the return date may
9 come and go and we would have waived our objections.

10 Okay.

11 So what we did at 4:46 in the afternoon on May 11th
12 is I served objections duly timely to the subpoena, and
13 then I heard later after hours, and I don't dispute that
14 this is a bona fide representation, that they were busy,
15 and, you know, the extension is fine and we can move on.
16 Your Honor, just so you know, that is the back story on
17 that and I have a trail of e-mails here. If the Court
18 would prefer to see that, I don't know. It basically
19 bears out that exact account. So that's the genesis of
20 those objections.

21 THE COURT: Let's assume that you lodged objections,
22 what is your objection if the Court determines it falls
23 within the breadth of the subpoena, with respect to the
24 subpoena to not produce any of those documents? It
25 sounds like you certainly knew about them at the time. I

1 don't know if anyone reviewed them or anything else.

2 MR. CAVANAGH: The answer is no to that, your Honor.

3 THE COURT: I'm sure getting the subpoena you had
4 the opportunity to look at the documents or if you made
5 an objection there was a reason why. What is the basis
6 of why it should not be provided assuming for a moment
7 that it falls within the terms of the subpoena?

8 MR. CAVANAGH: Because I don't know why we would
9 exceed to the position that they currently enjoy an asset
10 of CCCB, the receivership estate that is, when we have
11 been consistent from the moment the proposed
12 settlement --

13 THE COURT: I'm sorry. I guess I asked the question
14 wrong. The subpoena was issued prior to the lawsuit.
15 Your contention is the monitoring reports were not within
16 the scope of the subpoena. I understand that. Putting
17 that aside, if we assume hypothetically they are, what is
18 the objection to not producing under the subpoena?

19 MR. CAVANAGH: It's relevance, your Honor. I'm
20 sorry. That's what I was articulating.

21 THE COURT: It's not relevant to the Special
22 Master's investigation or not relevant to what?

23 MR. CAVANAGH: Well, it's only relevant, your Honor,
24 if and when the Federal Court approves the settlement in
25 earnest or in full, okay, because in that case the

1 purported need for the information arises and becomes
2 real.

3 THE COURT: I'm not talking about the federal
4 litigation. I'm saying let's take a snapshot in time
5 when the subpoena was issued. You would agree that was
6 well before the federal lawsuit was and an investigation
7 was going on. You received a subpoena. You claim your
8 position is that the language here does not require that
9 you produce monitoring reports. If the Court says I'm
10 looking at the language, I disagree, then what we're left
11 with is do you have objections and I'm going to say also
12 let's say you had objections, what were the objections to
13 respond at that time to the subpoena?

14 MR. CAVANAGH: The same ones we asserted at the
15 time, which was that request is overbroad, that the
16 request calls for information not relevant, and that it
17 calls for information equally available to both parties.
18 And when I say not relevant, your Honor, that ordinarily
19 means not reasonably calculated to lead to admissible
20 evidence. That entire standard is even difficult to
21 apply under the circumstances. I say that because it's a
22 special investigative subpoena. When you're a non-party
23 receiving a subpoena under Rule 45 in the ordinary
24 course, you can at least go to a complaint. You can go
25 to a complaint in the case, the adversarial case that has

1 been initiated in which the subpoena emanates out of it
2 and try to assess its relevancy. We didn't have that as
3 a guiding post until June 18th when they filed their
4 claim for the class action suit.

5 THE COURT: We had that provided in the other areas
6 of the rules that precede discovery that the Court can
7 authorize.

8 MR. CAVANAGH: I comment on that because it's not --

9 THE COURT: So if the Court determines that it did
10 fall within the scope of the subpoena, then your
11 objections are it was equally available to both you and
12 the Special Master. The subpoena was overbroad and it's
13 not relevant or won't lead to relevant evidence?

14 MR. CAVANAGH: Yes.

15 THE COURT: Thank you very much.

16 MR. CAVANAGH: Thank you, your Honor.

17 MR. SHEEHAN: If I may briefly? Your Honor, if I
18 may start with your Honor's question to my brother and my
19 brother's response with respect to whether the subpoena
20 covered these documents and his response was they
21 interpreted their request in the subpoena to be limited
22 to the application for the 2014 asset sale. However,
23 your Honor, the last line of the request said, "Including
24 without limitation the conversion transactions approved
25 in 2009 and 2014." It's clear in the subpoena itself

1 that there is no limitation. All the documents produced
2 to the Attorney General is what is being requested. So
3 the suggestion that they construed it in a different way,
4 if indeed they did that, your Honor, is no defense. The
5 language is the language, and the Court makes the
6 decision based on the language, not someone coming in
7 after the fact and saying I misunderstood especially when
8 there is no legitimate basis on the language to
9 misunderstand.

10 Now, the next point I'd like to make, your Honor, is
11 my brother's suggestion that the Receiver's interest in
12 the 15 percent is somehow a tactic and a strategy to help
13 in the Federal Court. What my brother is doing is taking
14 part of the settlement that our litigation focused and
15 language pertaining to those parts and applying them to
16 this asset and they are completely different. As we
17 argued to your Honor recently, we could lose every claim
18 in the Federal Court and this asset, this 15 percent
19 asset remains an asset of the receivership estate. This
20 is valuable property that is being conveyed now
21 regardless of the Federal Court case. So this idea of
22 put it off to the Federal Court case ignores what we're
23 talking about, a 15 percent interest in two operating
24 hospitals, maybe a 27 percent interest in two operating
25 hospitals.

1 THE COURT: Again, all we're here for today is it
2 sound like the monitoring report. When counsel raises
3 the issue of equally available, did you get these from
4 the Attorney General's Office?

5 MR. SHEEHAN: No, your Honor, we did not. They are
6 not equally available. We don't have them and they do.
7 We wouldn't be asking. I assure, your Honor, we would
8 not pursuing them from Prospect CharterCare if we already
9 had them. We do not.

10 Now, the argument that they're not relevant, as your
11 Honor pointed out, the order permits the Receiver to
12 issue subpoenas to investigate claims and assets of the
13 receivership estate. It's a hundred percent relevant to
14 that. The idea that it's overbroad, the request is very
15 specific, documents produced to the Attorney General by
16 Prospect Chartercare, LLC. And my brother suggests, your
17 Honor, that these are not boilerplate objections. If
18 your Honor looks at his response, he has a section of
19 general objections which define what equally available
20 means, what overbroad means, and what not relevant means,
21 and then in response to each request he says object on
22 the grounds that it's equally available, overbroad, and
23 not relevant. They are as boilerplate as boilerplate can
24 be. There is no specificity between requests. There is
25 no argument as to why this particular request is subject

1 to these objections. It's simply the application of
2 general objections to a specific request. So him arguing
3 before your Honor that he didn't do this by general
4 objection is really astounding.

5 Now, my brother's objection that we should postpone
6 the Receiver's efforts in this regard for the Federal
7 Court proceeding is particularly troublesome in that we
8 will not be even through the motion to dismiss phase in
9 the Federal Court until sometime in the mid to late
10 spring and discovery has been stayed in the Federal Court
11 until we get through the motion to dismiss phase, and
12 then there's a period of time for automatic disclosure of
13 about a month and then parties can issue document
14 requests and interrogatories. We're not going to obtain
15 discovery in the Federal Court case until the summer of
16 2019. By then the put option will have either expired or
17 be on the verge of expired.

18 So the disconnect between my brother's suggestion
19 and the assets that we're talking about really shows the
20 extent to which Prospect CharterCare is intentionally
21 blocking the Receiver. This is not an effort to work
22 together in an appropriate manner, your Honor. It's
23 making arguments that are really absurd in the context of
24 the assets that we're talking about. My brother's
25 suggestion that we had a cooperative exercise in the

1 document production consisted of him calling me and
2 asking me for more time and me giving it to him on a
3 weekly basis. I never requested specific documents, your
4 Honor, and I don't believe my brother has said otherwise.

5 THE COURT: Counsel, one thing I explained to your
6 brother in terms of some of the issues, I'm still having
7 some difficulty why it's not a motion to compel before
8 the Court. The quickest most effective way to kind of
9 deal with this, and the Court under a motion to compel
10 would have the authority under the rules to impose costs
11 or sanctions. So I know you've explained, but can you
12 tell me a little bit why we're not going through that?

13 MR. SHEEHAN: Your Honor, we believe that the
14 intentional interference with the Receiver actually is an
15 interference of the Receiver's possession of the
16 receivership estate and is a violation of the order. But
17 if it were only that, perhaps we wouldn't be here on a
18 motion to compel. On the other hand, if we only had a
19 subpoena, we would be here on -- I'm sorry, on a motion
20 to compel, we wouldn't be here on a motion for contempt.
21 But the combination of intentional open interference with
22 the Receiver when there is a court order outstanding and
23 the subpoena are what makes this a case that we felt
24 really the behavior was contumacious. It was not merely
25 a run-of-the-mill request for production to be followed

1 by an order to compel. If Prospect CharterCare had not
2 set out to intentionally frustrate the Receiver, we would
3 not be here on the motion to compel. Thank you, your
4 Honor.

5 THE COURT: Very briefly.

6 MR. CAVANAGH: Your Honor, my brother defines the
7 need for the information as emanating from your order and
8 permitting them to discover matters related to the assets
9 of the receivership. I point out that at the time the
10 subpoena was issued and at the time of our objection up
11 until the time of late August they didn't even have the
12 ability to assert the 15 percent interest was an asset of
13 the receivership estate. So my brother also mentions
14 that the 15 percent interest will prevail and remain even
15 if other proponents of the settlement are not approved
16 and that's in Federal Court. What he's overlooking
17 though is that we have had already asserted a breach of
18 contract claim by virtue of the breach of the LLC
19 agreement and that that would be an issue potentially
20 determined in Delaware and not in Federal Court so that
21 would certainly vitiate the existence of a 15 percent.
22 So, again, it's not an asset presently in the
23 receivership estate. The Attorney General apparently
24 took the same view of the subpoena that we did. I didn't
25 know until my brother represented that they have not

1 received the monitoring report from the Attorney General
2 as well.

3 As I mentioned, that was a robust and contentious
4 course of compliance that your Honor oversaw. And on the
5 relevance question, again, to the form of the objection,
6 what hasn't been mentioned yet is that this compliance
7 effort was also being done within an umbrella of ESI
8 search terms that had been agreed to between counsel.
9 Where that fits into the relevancy question, we had
10 crafted a list and the review team was using that list.
11 As your Honor knows, from dealing with new discovery and
12 the realities of discovery practice and litigation today,
13 that is an entirely different overlay that goes on top of
14 the relevancy analysis.

15 Finally, since he did go back to the form of the
16 objections, I would like to submit to the Court for the
17 record the e-mail exchange we had as well.

18 THE COURT: That's fine.

19 MR. CAVANAGH: Thank you.

20 MR. SHEEHAN: May I make one statement?

21 THE COURT: Yes, I would like to know there was a
22 comment made about the monitoring reports weren't
23 provided by the Attorney General.

24 MR. SHEEHAN: That's what I would like to address.

25 THE COURT: Yes, that's the only issue.

1 MR. SHEEHAN: Before my brother ascribes an intent
2 or mental state to the Attorney General with respect to
3 the scope of the subpoena having to do with the
4 monitoring report, he must first establish they gave them
5 to the Attorney General. My suspicion, your Honor, at
6 the end of the day is we are going to find out that they
7 never, in fact, complied with the Attorney General's
8 conditions on this \$50 million. But until we get the
9 response from them as to whether or not they submitted
10 the reports, we can't proceed.

11 THE COURT: The Court has another motion of contempt
12 with respect to Prospect, which the Court will be issuing
13 its decision on Monday. I would like to issue this on
14 Monday as well. But the Court puts the parties on notice
15 that there is a motion for contempt, the Court may also
16 consider it in the alternative as a motion to compel, and
17 the Court will allow the parties until the end of today
18 if there is any supplemental arguments they wish to make
19 in writing before the Court. Certainly, on the first
20 motion I will be ruling on Monday, the Court will make
21 every effort because whichever way the Court rules, I
22 think the parties need clarity on the issues.

23 MR. SHEEHAN: Thank you, your Honor.

24 THE COURT: Now we will move on to the next motion
25 by the Rhode Island Attorney General.

1 Good morning. Counsel, whenever you are ready, you
2 may proceed.

3 MS. PARTINGTON: Thank you, your Honor. May it
4 please the Court, Rebecca Partington, Assistant Attorney
5 General. Your Honor, the Attorney General made a motion
6 to strike certain portions of the memorandum filed by the
7 Receiver. Recently your Honor assured us all that you
8 were able to separate law and fact from mere commentary
9 and anybody that sat through any of these proceedings
10 understands that you have had to sit through a mountain
11 of commentary, and no doubt the Court can do that, but
12 you also had to discard an enormous amount of commentary.
13 And my remarks today are going to be along two lines, the
14 permanency of these words in the Court's record and the
15 seriousness and the worldwide and global effect of these
16 potential comments. We are referring to Section C of the
17 Receiver's replay memo regarding the settlement.
18 Specifically, that begins at the bottom of page 54.

19 The Attorney General believes that the words used,
20 the allegations of criminal and legal conduct directed at
21 the staff of the Attorney General's Office, has a harmful
22 undisputable and immediate effect on the public's trust
23 in the office of the Attorney General, the public's trust
24 in the process, the trust of other regulatory agencies
25 both in this state and in other states that might be

1 involved in future hospital conversions, and other
2 people. All we are asking for is a very narrowly
3 tailored motion that these comments be stricken from the
4 record.

5 Your Honor, the documents filed with the Court are
6 clearly an official record of the proceedings before the
7 Superior Court. The Receiver yesterday filed something
8 indicating that the Receiver is a judicial officer. The
9 Receiver has been appointed by the Court. We believe the
10 Receiver is an arm of the Court. So when the Receiver
11 says the Attorney General has committed criminal acts,
12 that carries with it a certain amount of heft and that is
13 why we replied to the statement and no others. And the
14 problem is and what we foresee happening is that the
15 Receiver has been tasked by this Court to investigate and
16 make findings. Then when the Receiver says the Attorney
17 General's staff has committed crimes, people might
18 believe that the Attorney General's staff has committed
19 crimes, which is the furthest thing from the truth. So
20 that is our objection is that the record be cleared up to
21 make sure the Receiver has not found any such thing.

22 And the Receiver in the reply has basically the
23 strongest argument that, well, parties and the Receiver,
24 as the arm of the Court, has a license to say anything as
25 long as it's in something called a memoranda. Very

1 clearly we do not believe that is the law in this state,
2 nor should it be. The consequences, I think, are obvious
3 to the Court. It would turn into the wild wild west.
4 The rules in the law contemplate let's look at the
5 substance and not the form of the document. The
6 substance of what has been said in the commentary of
7 Section C in this memo, clearly would violate Rule 12.
8 And, again, the reason we are here, we are concerned
9 about remaining and retaining the confidence of the
10 public, the parties, and others in what we are indeed
11 perceived as a regulatory office. Out of 66 pages in
12 that memo, we're only asking for a few comments to be
13 taken out. It's narrow. It's focused. The permanence
14 of them, they're very serious allegations of criminal
15 conduct. We are the chief law enforcement officer for
16 the state. It is wrong, it is scandalous, and then they
17 were immaterial, so they clearly fit within Rule 12 and
18 they're permanent, your Honor.

19 THE COURT: Counsel, I understand the argument.
20 What the Court is wrestling with is the fact that, and
21 the Supreme Court last year in a separate case dealing
22 with Rule 26 dealing with this issue, is that the Court
23 needs to follow the rule as well, which is Rule 12 talks
24 about pleadings. Pleadings are defined. This a memo
25 attached, so under the rules it doesn't appear to fall

1 under the definition of pleadings. So how is the Court
2 permitted to give you the relief that you're asking for?

3 MS. PARTINGTON: Thank you, your Honor. We believe
4 in two ways. The question that has come up in this case
5 has never come up before. We believe there is still some
6 inquiry, some findings that need to happen. Every time
7 the Court is in session has the inherent power to control
8 the proceedings before it and what parties say and what
9 counsel says and what is written and filed before it.
10 That is 100 percent of the time. And I would jump ahead
11 and refer the Court to the case of Michalopoulos v. C&D
12 Restaurant, and while that was a Rule 11 case --

13 THE COURT: I've read that case.

14 MS. PARTINGTON: The Court said you can't say
15 whatever you want to whenever you want to. There are
16 bounds, and in this case the Receiver stepped out of
17 bounds. And the permanence, your Honor, I think you
18 should consider that in considering our motion. That is
19 important, because while the Court I have no doubt is
20 able to sort law, fact, commentary, others may not
21 because they may not have sat through all of the
22 proceedings and read all of the filings. Now that we
23 file electronically people anywhere can log on and say,
24 oh my goodness, the Rhode Island Attorney General's
25 Office is so corrupt. Well, that is the furthest thing

1 from the truth. Someone writing a law review article in
2 five or ten years, this can't remain in the record as an
3 official commentary by the Receiver.

4 I point to something that just happened that
5 highlights this. Recently our office obtained a Columbia
6 Minute Book from the Court of Common Pleadings in the
7 1740s. If you look at that, you know who the judge was,
8 what the trial was about, you know the names of the
9 jurors, who sat there in the 1740s. So it is the
10 official record. It's that dreaded permanent record that
11 we all had growing up and feared, but it's the permanent
12 record of this Court and statements like these cannot go
13 unchallenged and should not be allowed in the record.

14 I think I have given the Attorney General's
15 concerns. If the Court has any further questions, I will
16 be glad to answer them.

17 THE COURT: Not at this point. Thank you very much.

18 MS. PARTINGTON: Thank you.

19 MR. WISTOW: Your Honor, I take full responsibility
20 for what we said about the Attorney General's office and
21 I repeat what we said about the Attorney General's
22 Office. We have two bases for our argument today. One
23 is the procedural one about whether or not you can have a
24 motion to strike regarding a memo and I'll address that.
25 But there is a more important thing here. I don't want

1 to simply hide behind the procedural problem. On the
2 merits what we said we stand by and I would like to
3 address that. The question was left that we're just out
4 in the wild west throwing out accusations that have no
5 basis. Now, we submitted to your Honor extensive
6 reasoning of the basis on the merits why we believe we
7 are right. But, you know, this is a matter of
8 significant public concern and I think people here today
9 are entitled to understand what is going on. The fact
10 it's the Attorney General doesn't set him up above the
11 law, doesn't put him beyond criticism, doesn't put him in
12 some special place. It doesn't put him in a place where
13 he can make extortionate statements in papers, and I'll
14 get into that. That is specifically a very serious thing
15 that the Attorney General did in this case.

16 Now, on some level, your Honor, on some level, we're
17 kind of wasting the Court's time in the sense that in a
18 way this is moot because on October 29th in the evening
19 your Honor issued a decision overruling the objections
20 that the Attorney General had to the proposed settlement.
21 And the papers that we're talking about arose in that
22 context. Let me explain what I mean by that. We put in
23 a petition to ask your Honor's approval to submit a
24 settlement agreement that we had entered into with
25 CharterCare Community Board and the old Roger Williams

1 Hospital corporation and the old St. Joseph's corporation
2 who are part of the original transaction in 2014.

3 Now, the Attorney General's office objected to our
4 proposed settlement, and in their objection flat out
5 said, and I'll get into the details, flat out said that
6 if CCCB, old Roger Williams, and old St. Joseph's went
7 forward with this settlement, that they were subject to
8 indictment and conviction for violation of conditions
9 that had been posed by the Attorney General in the
10 transaction. And I'm going to get into that
11 specifically.

12 Now, when we saw that, your Honor, that expressed
13 threat, we responded, we thought, accordingly. Now, put
14 this in context, your Honor, the A.G. -- and I keep
15 calling them that and I shouldn't do that. The Attorney
16 General's office in 2014 reviewed this transaction, when
17 not-for-profit hospitals were turned over to for-profit
18 hospitals, specifically looked at the pension and told
19 the world, adopted the view, that the pension fund was
20 going to be 92 percent funded. It gave the impression
21 that that was some wonderful result. In fact, it was a
22 meaningless statement, because at the time of the
23 transaction this pension fund would inevitably fail.
24 And, in fact, three years later, with pension obligations
25 going for another 50 odd years, three years later after

1 the transaction, boom, the pension plan is in
2 receivership, the receivership we are here on.

3 So we negotiated. We bring suit and we negotiate a
4 settlement with CharterCare Community Board, the old
5 hospitals. Some of them Defendants have said that this
6 settlement we negotiated was so good that it must have
7 collusion between us and those Defendants. So we're
8 starting to get maybe some mitigation of the pensioners
9 concerns. It looks like maybe we're going to get
10 something. In comes the Attorney General and not only
11 objects but threatens CCCB and the old hospitals with
12 criminal prosecution if they go forward with the
13 settlement. That's express.

14 Now, the Attorney General points out in the motion
15 to strike that the Plaintiffs; namely the Receiver and
16 the individual pension owners, who are the putative class
17 action representatives in the lawsuit that we filed in
18 Federal Court, paint the Attorney General, quote, as an
19 innocent victim, unquote, and they cite various
20 paragraphs from the complaint which they contend shows
21 that we consider the Attorney General to be an innocent
22 victim.

23 In fact, your Honor, we supplied in the papers the
24 table to your Honor that sets forth every single one of
25 the paragraphs without exception that the Attorney

1 General relies on and we show where that appears and what
2 the context is in our complaint. And the context is that
3 we have brought suit against all Defendants, there is
4 fourteen them, with the exception of the Rhode Island
5 Foundation alleging that they violated two specific
6 statutes, that is, that they put in false statements to
7 the Attorney General's Office and the Department of
8 Health in connection with the hospital conversion and
9 another statute, which is more general, that makes it a
10 crime to submit false statements to any state or local
11 official.

12 Now, none of those violations that we're alleging,
13 none of those charges have anything to do with whether
14 the Attorney General did a good job, no job, a corrupt
15 job. The basis is they put false statements in, end of
16 story. We have never suggested and do not believe, by
17 the way, that the Attorney General did a good job. Why
18 we didn't sue the Attorney General is another matter for
19 another day. It involves tactical considerations.
20 Specifically after saying that we painted the Attorney
21 General as an innocent victim, which we believe
22 conclusively we showed we did not.

23 They have four particular grievances that they set
24 forth. The first two grievances related to the 2015 cy
25 pres. And, again, we allege in the Federal Court as

1 follows: I will read your Honor paragraph 381 in our
2 complaint in Federal Court. "However, Defendants SJHSRI,
3 Roger Williams, CCCB Foundation, all of the Defendants
4 with the exception of the Rhode Island Foundation,
5 request and the Rhode Island Attorney General agreed,
6 that this statute would be ignored notwithstanding as
7 provisions are mandatory such that failure to follow the
8 provisions would violate the statute." That's what we
9 allege and that's what we intend to prove. We did not
10 paint and do not paint the Attorney General as an
11 innocent victim.

12 Then they go on and they talk for the third reason
13 they give a truncated version of our statements about the
14 \$50 million commitment. We gave the full quote. They
15 left out a portion, the significant portion. And then
16 that's what Mr. Sheehan was talking about earlier, this
17 \$50 million commitment. That issue came up on October
18 10th, as was pointed out, when I made the point that this
19 15 percent was very critical. We also filed a motion to
20 adjudge Prospect CharterCare in contempt on October 23rd,
21 the day before the Attorney General's office filed a
22 motion to strike saying what is this all about. They
23 knew exactly what they were talking about. But by far,
24 your Honor, the most serious thing they had, by far, and
25 I'm not looking to see that there is a special prosecutor

1 appointed or anything like that. We've got enough going
2 on here.

3 THE COURT: Counsel, the question here is, okay,
4 number one, does Rule 12 apply. Counsel is right. Even
5 if Rule 12 applies, Rule One gives the Court --

6 MR. WISTOW: Absolutely.

7 THE COURT: If we go back and look and possibly it's
8 some wording in the Attorney General's objection and
9 possibly it's some wording in your reply. Have the
10 parties intended to meet and talk about -- I mean, I
11 think the factual issues you're talking about, but some
12 of the conclusion in terms of criminal -- I understand
13 you've got to read them in context. My question is that
14 you and Attorney DelSesto are arms of the Court. I
15 understand that in formal litigation there are certain
16 things and what the Court is concerned about is more the
17 conclusions than the facts. I know we can go through all
18 of this and I will allow you to finish, but I'll tell you
19 at the end of the day where I'm going to be is that 12
20 doesn't apply, but Rule One does apply as far the Court's
21 authority and I'm not going to pick through each and
22 every one until the two of you, or two people from your
23 office sit in a room and see if they can come to an
24 agreement and realize that, yes, these things are going
25 to be here forever. I understand what you're saying, but

1 everybody can take a step back.

2 MR. WISTOW: I am happy to do that, but, your Honor,
3 very serious allegations have been made about me this
4 morning and I would like an opportunity.

5 THE COURT: I'm just want to tell you where I'm at.

6 MR. WISTOW: And, by the way, I have something very
7 interesting to say about in perpetuity of the record on
8 this and, I believe, in interest to the A.G. also. I
9 want to be clear why we're reacting strongly. Remember
10 now, your Honor, we're asking the Court to approve a
11 settlement with CCCB, the old Roger Williams and the old
12 St. Joseph's, in their objection they flat out said and I
13 quote, "The General Assembly has authorized the Attorney
14 General to take corrective action both civilly and
15 criminally should information come to light suggesting
16 that the parties which engaged in the original hospital
17 transaction have failed to adhere in whole or in part to
18 the department's conditions."

19 Then they said, this is after saying we can go
20 forward civilly or criminally, then they say flat out,
21 "More fundamentally it seems apparent that the
22 implementation of the proposed settlement agreement as
23 currently drafted, which at the least violates conditions
24 one and two concerning the CharterCare Foundation board
25 membership and condition nine, which requires Prospect

1 CharterCare's acquisition to be implemented as outlined
2 in the initial application. We put in our reply why we
3 think that is absolutely wrong. That is not the issue
4 whether it's wrong or right. The issue is that's an
5 express statement that if CCCB goes forward, right now
6 the Attorney General is saying they believe they're in
7 violation and they have the right to criminally prosecute
8 them. They should not have put that in in the first
9 place, and we have every right to be upset that the
10 prosecutor had contracted with, which we consider to be a
11 good settlement, was being told if they go forward with
12 the settlement, they would be criminally prosecuted.

13 By the way, 11-42-2 is the extortion statute
14 prohibiting the threatening of criminal prosecution, the
15 threatening, and 11-42-1.1 makes it applicable to elected
16 or appointed officers or employees of the State, which is
17 the Attorney General. If he wants to indict somebody,
18 let him indict them but don't threaten them ahead of
19 time.

20 Now, on this issue your Honor, I think, agrees that
21 Rule 12(f) is not applicable and that is a basis for
22 this, but your Honor does have inherent authority to deal
23 with this matter and I respect that and I respect your
24 Honor's even handling this in this matter. On the other
25 hand, this is a matter of significant public concern.

1 This is a country where we are still free, still, to
2 criticize the government and its agents and not only free
3 to do that, we ought to be allowed to do that openly.

4 Now, what's very interesting is in the reply to --
5 the first is their motion to strike, our objection, and
6 finally yesterday the Attorney General's Office puts in a
7 reply. What do they say in the reply to all of our
8 allegations regarding the merits? In other words, we
9 said, look, what we said is right. We're entitled to say
10 it. They don't said a word in response to that. All
11 they do is come back and say, oh, no, 12(f) does apply.
12 That's it. And then they cite interestingly -- I bring
13 this up because I think it's important. They bring up
14 the decision of Magistrate Martin in the Ungar case,
15 which was against the Palestinian Liberation Army and
16 Hamas involving the murder of an American in Israel.

17 The reason I bring that up, your Honor, is for the
18 following reason -- and, by the way, at the time of Judge
19 Martin's decision, I can tell you I became trial counsel
20 in that case years later in 2010 and stayed until there
21 was a confidential settlement in 2011. I can tell you
22 categorically and this is available on PACER that nobody
23 argued that 12(f) was not applicable. But what was more
24 important was the Court did grant the motion to strike
25 believing 12(f) was applicable. By the way, so you

1 understand the context, and this is on PACER, there was a
2 motion for a protective order. Bear with me on this,
3 your Honor, it sounds irrelevant but it's very relevant.
4 There was a motion for protective order against the
5 taking of the deposition of Yasser Arafat and the
6 Defendants attached exhibits saying flat out that the
7 husband of the referring lawyer who sent the case to the
8 United States was a Jewish terrorist involved killing
9 Arabs.

10 I mean, it completely had nothing to do with the
11 case. It was extraordinary. And the Court granted the
12 motion to strike. But if your Honor goes on PACER, if
13 anybody goes on PACER, that motion to strike was granted
14 in 2003. All of the material is available on PACER. I
15 went yesterday and it's all there. So this idea that if
16 your Honor says it should be stricken, it's going to
17 disappear. It isn't. If your Honor thinks I violated
18 Rule 11, punish me. But, please, your Honor, I believe
19 what we said was relevant in the context. I think if
20 anything we should have properly filed a motion to strike
21 statements about convicting and indicting the contracting
22 parties.

23 Having said all that, your Honor, your Honor made a
24 wonderful suggestion. We'll talk and see if we can work
25 something out. There is a level of civility that ought

1 to be involved. I agree with that. But when I saw that
2 thing about the threat of criminal prosecution, that
3 didn't seem to me very very civil. So that's my piece,
4 your Honor.

5 THE COURT: Thank you, your Honor.

6 MS. PARTINGTON: Just briefly, your Honor.

7 THE COURT: Yes.

8 MS. PARTINTON: Your Honor, that was a great example
9 of the level of commentary that has been made in this
10 case constantly, and part of the commentary is witnesses
11 have to swear that they're going to tell the truth, the
12 whole truth, and nothing but the truth, we've heard today
13 partial truth. For example, I cannot leave the courtroom
14 without pointing out the Attorney General didn't object
15 to the entire settlement. The Attorney General, like
16 everybody else in front of the bar, stood up and said we
17 have no objection to transferring the 12 whatever
18 million. So to say to these people gathered here today
19 that the Attorney General objected to the settlement
20 isn't the whole truth. That's for another day or that's
21 not for a day at all. The record reflects what we, in
22 fact, did say.

23 I do not believe that our papers threatened, and the
24 exact words, indictment and conviction. Didn't happen.
25 In fact, they doubled down saying we extorted, and that's

1 another threat of crime on behalf of the Attorney
2 General. So orally here today I would like to add Mr.
3 Wistow's claims in trying to work toward completion of
4 the conversion, the last conversion we were threatening
5 people, I would add that to the motion to strike.

6 And, finally, the Supreme Court has said numerous
7 times that debate on matters of public concern, should be
8 robust, wide open, and uninhibited. That is why this
9 motion is focused on the one pleading and only a certain
10 few pages of a pleading filed with this Court and nothing
11 else. Thank you.

12 MR. WISTOW: May I have five seconds?

13 THE COURT: Five seconds.

14 MR. WISTOW: I misspoke. The Attorney General
15 objected to the settlement because of the 15 percent that
16 was coming over to the pensioners and was going into the
17 plan so they objected to the entire settlement. It's
18 true that they do not object to the \$12 million coming
19 in, but the settlement contemplated both and they
20 objected to it.

21 The bottom line is, your Honor, I am not here
22 testifying about anything. I'm relying on the memorandum
23 submitted by the Attorney General's Office where they
24 flat out said what I read to your Honor and I stand on
25 that.

1 THE COURT: As the Court indicated during oral
2 argument, this Court finds that the section of the rules
3 that the Attorney General moving under on the motion to
4 strike, Section 12(f) only contemplates pleadings. This
5 is not a pleading as defined, and as a result based on
6 12(f), the Court cannot grant the motion. That being
7 said, under Rule 1 of our civil rules that calls for a
8 just, expeditious, and extensive determination. I'm
9 relying on the word "just." This Court believes that
10 this Court, and neither side disagrees, has the inherent
11 authority to deal with these types of issues including
12 this one.

13 And our Supreme Court has also talked about how
14 disfavored the motions in general are because they said
15 the dilatory character and pendency create piecemeal
16 litigation, and that's in the Narragansett case. It's an
17 Indian case, I apologize, in Federal Court. But there
18 are enough issues going on here that the Court is not
19 going to turn this into motions on everything that is
20 said in court and every paper that is filed.

21 However, if the parties feel it's such an extreme,
22 they do have the ability to file a motion before it. But
23 before the Court is going to go and cross hairs at every
24 reference that is being made and go through, and I have
25 looked at the papers, the Court also under its inherent

1 authority is going to require the Movant and the
2 Respondent in this motion to meet and confer in person to
3 see if they could come up with a resolution that
4 preserves what counsel is saying, if there are things by
5 agreement can be worked through. If they can't, the
6 Court will reserve and the Court will make a decision.

7 But I strongly suggest to both sides that if they
8 see -- again, still allowing them to make their argument,
9 that both sides to take a step back and say maybe there
10 were certain characterizations that were made that could
11 have been said in a different way or could have been
12 read in a different way, I urge the parties to do that.
13 And the parties will meet by the end of next Friday to
14 see if they can come up with a resolution.

15 I want to be very clear. The Court is not ruling or
16 taking the position one way or another about how it's
17 going to rule. I understand both sides argument. All
18 I'm saying is it makes sense for the parties to sit down
19 and if there are concerns, quite frankly, both the
20 Special Master as well as the Attorney General are going
21 to have a large amount of interaction throughout this
22 case and sometimes sitting down in the same room, while
23 there may be disagreements, you may be able to come to a
24 conclusion at least with respect to what you find
25 offensive and what you find offensive in the papers that

1 are filed.

2 So the Court is going to reserve. Counsel should
3 get back to me if something is worked through an e-mail,
4 copying the other is fine by Friday. If there is not a
5 resolution, notify me again that there has not been a
6 resolution and the Court will take that up in the
7 decision. Are there any other issues that were on? I
8 believe we've covered all of them.

9 MR. WISTOW: No.

10 THE COURT: Thank you very much. The Court is in
11 recess.

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

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