

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 SEPTEMBER 7, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER  
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL  
STEPHEN SHEEHAN, ESQUIRE.....FOR THE RECEIVER  
SCOTT BIELECKI, ESQUIRE.....FOR CHARTERCARE  
ANDREW DENNINGTON, ESQUIRE.....FOR CHARTERCARE  
RUSSELL CONN, ESQUIRE.....FOR CHARTERCARE  
SEAN LYNESS, ESQUIRE.....FOR THE ATTORNEY GENERAL  
PRESTON HALPRIN, ESQUIRE.....FOR PROSPECT MEDICAL  
JOSEPH CAVANAGH ESQUIRE.....FOR PROSPECT CHARTERCARE

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

  
GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 FRIDAY, SEPTEMBER 7, 2018

2 AFTERNOON SESSION

3 THE COURT: Good afternoon. Madam clerk, if you  
4 would please call the case.

5 THE CLERK: Yes, your Honor. PC-2017-3856, St.  
6 Joseph's Health Services of Rhode Island vs. St. Joseph's  
7 Health Services of Rhode Island as amended Bank of  
8 America, Trustee. Counsel, please identify yourselves  
9 for the record.

10 MR. DEL SESTO: Good morning, your Honor. Good  
11 afternoon, your Honor. Stephen Del Sesto, Court  
12 Appointed Receiver.

13 MR. WISTOW: Max Wistow, counsel for the Receiver.

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

16 MR. BIELECKI: Good afternoon, your Honor. Scott  
17 Bielecki for CharterCARE Foundation.

18 MR. DENNINGTON: Andrew Dennington for CharterCARE  
19 Foundation.

20 MR. CONN: Good afternoon, your Honor. Russell Conn  
21 for CharterCARE Foundation.

22 Mr. LYNESS: Good afternoon, your Honor. Sean  
23 Lyness on behalf of the Department of Attorney General.

24 MR. HALPRIN: Preston Halprin for Prospect Medical  
25 Holdings and Prospect Medical Holdings, Inc.

1 MR. CAVANAGH: Good afternoon, your Honor. Joseph  
2 Cavanagh for Prospect CharterCARE, LLC; Prospect  
3 CharterCARE SJHSRI LLC, Prospect CharterCARE RWMC, LLC.

4 THE COURT: Thank you very much. This emergency  
5 motion was filed and the Court took it up yesterday in a  
6 hearing on another matter by CharterCARE Foundation for  
7 the Receiver's petition for settlement instructions and  
8 an emergency motion postponing the September 13th  
9 hearing. The Court set this matter down for 3:00 p.m.  
10 today. The Court has received the Receiver's objection  
11 to the emergency motion.

12 In addition, and the last check was probably about  
13 ten minutes ago, the Court also received a motion from  
14 the Attorney General's Office joining in the emergency  
15 motion asking that the September 13th hearing be  
16 postponed. And also the Court did receive a motion from  
17 Prospect Medical Holdings, Prospect East, Prospect  
18 CharterCARE SJHS RI, and Prospect CharterCARE RWMC to  
19 also continue the hearing.

20 I understand that earlier today -- and the response  
21 that I received only dealt with the objections from  
22 CharterCARE. I'm going to start with if the CharterCARE  
23 Foundation would like to add anything to the papers.

24 MR. CONN: Good afternoon, your Honor.

25 THE COURT: Good afternoon.

1 MR. CONN: And thank you for hearing us on short  
2 notice and making the Court available on a Friday  
3 afternoon at 3:00 to hear an emergency motion. That's  
4 not lost on me. As you know, I represent CharterCARE  
5 Foundation along with Mr. Dennington from my office and  
6 Mr. Bielecki, who is here as our local counsel. Mr.  
7 Donald McQueen is sitting in the back of the courtroom.  
8 He is the president of the CharterCARE Foundation and the  
9 president of the board.

10 So we got this Monday at 5:00, looked at it as best  
11 we could Monday night and Tuesday, and put together a  
12 fairly quick four-page emergency motion requesting more  
13 time. We requested a little more than three weeks to  
14 respond to this on the merits. The four-pager that we  
15 filed on Tuesday was by no means an exhaustive recitation  
16 of the issues we see with this petition. Make no doubt  
17 about it in the wherefore clause of the petition it does  
18 ask this Court to approve the settlement, and if the  
19 Court is going to approve the settlement, there is a lot  
20 at stake here. We start with the \$11 million but then  
21 there is the transfer of whatever interest CCCB has and  
22 CCF. We have the Prospect issue, which I'm sure their  
23 counsel can address.

24 We're just simply asking for more time. It's a very  
25 important motion. A lot is at stake for everybody. Mr.

1 Wistow filed this at 5:00. He gave us -- I mean if we  
2 count Monday, it's one day and we got that at the end of  
3 the day. It only gives us nine days, and it's just not  
4 enough to fully brief this.

5 I wasn't trying to put all of my arguments in a four  
6 pager, but I would add a couple of things to it since Mr.  
7 Wistow choose to write a very impressive and put together  
8 a 24-page brief overnight, not overnight, but filed it by  
9 10:30 last night.

10 I want to address one thing that wasn't really in  
11 our four-pager and flushed out very well. We can address  
12 standing, we can address prematurity and all of that  
13 stuff in our briefing when we get to it, but the Attorney  
14 General actually made the point better than we did,  
15 frankly, in our papers and that is the Court should be --  
16 standing aside, the Court should not approve a settlement  
17 that contains an illegal term, and we feel that divesting  
18 the independent board of CharterCARE from the stewardship  
19 of these \$8 and a half million of charitable assets,  
20 something that was approved by the Attorney General,  
21 approved by this Court.

22 And I understand that this Court's order is under  
23 attack in a collateral proceeding. That's fine. We can  
24 deal with that in due course with due process and  
25 everything else. And Mr. Wistow will have a fair shot at

1       arguing that he is entitled to that \$8 and a half million  
2       and this Court can decide or the federal court can decide  
3       it, the First Circuit, Rhode Island Supreme Court,  
4       somebody can decide in the end whether the pension fund  
5       is a creditor for these restricted assets and they should  
6       take them ahead of the interests of the donors of those  
7       restricted assets that resulted in those moneys being put  
8       in the foundation. That's the ultimate legal issue that  
9       has to be decided. What this settlement would do is do  
10      an end around all of that and put all of these funds in  
11      the hands of  
12      Mr. Del Sesto and his board which is largely receivership  
13      control, and there isn't any doubt that if you did that,  
14      we would go from having charitable funds administered by  
15      an independent charitable foundation to having charitable  
16      funds now being administered by a Receiver of a pension  
17      fund. And we need some time to brief the legality or  
18      illegality of that issue, number one.

19             Number two, however you look at it, that's an end  
20      around. This Court has already ruled on April, 2015,  
21      that those moneys should go to this foundation to be  
22      administered independently by the foundation for  
23      charitable purposes. In fact, for three years the  
24      charitable foundation had to report to the attorney  
25      general and make sure and satisfy the attorney general

1 that they were operating independently and not under the  
2 control of the former hospital entities and they did  
3 that, I believe, to the attorney general's satisfaction.  
4 However you look at it, we also think this settlement  
5 agreement is tainted because it is an end around this  
6 Court's order. It just undoes by the fee item of the  
7 settlement agreement what the Court has already  
8 adjudicated.

9 So we think these are really important issues. You  
10 know, we were able to negotiate. I had to agree to a  
11 stand still order to get it. We were able to negotiate a  
12 really fair, I thought, schedule to address the  
13 intervention thing that we're going to address next  
14 Thursday. And the Court got, I think as you indicated  
15 yesterday, some very thorough briefing. I think we are  
16 up over a hundred pages now. At least the Court can  
17 consider that and now decide that motion fully briefed on  
18 the law. To try to ram this through on basically eight  
19 days notice and not give us a fair chance to bring to the  
20 Court's attention why we think this settlement agreement  
21 is tainted by illegality, we think it's not fair to us.  
22 It's not in the best interest of justice. And to do a  
23 three or four-week continuance as we did with the motion  
24 to intervene, respectfully I would suggest doesn't  
25 prejudice the pension fund that significantly. They



1 still have to go through federal court even if they make  
2 it through here. That's a long process. So their papers  
3 are always talking about doing justice and doing what's  
4 right. And doing justice and doing what's right we would  
5 submit is to give us sufficient time to fully brief this.  
6 I suggest we set up a briefing schedule and do this the  
7 right way. I'm not going to get into the abandonment.

8 THE COURT: I guess my question is in reading your  
9 papers is your issue that portion of the settlement that  
10 is going to be before the Court on the next week or  
11 another time dealing with the foundation?

12 MR. CONN: Correct. That is our part of the case  
13 and that's what we object to and that's where we think  
14 the illegality taints this settlement agreement. Again,  
15 I don't intend to go over the abandonment independence  
16 issues because we really need to develop the record for  
17 the Court on that. There is a lot more we have to  
18 present that you haven't seen. I will say that Mr.  
19 McQueen is here. If it ever comes to it that we have an  
20 evidentiary hearing, he will certainly raise his right  
21 hand and swear that they have been operating as an  
22 independent foundation for at least the last three or  
23 four years without oversight interference from CCCB, and,  
24 certainly, he will testify to numerous conversations with  
25 the people on the CCCB Heritage Hospital side that they

1 understood that they are going to be separate. They were  
2 even kicked out of their space.

3 THE COURT: I think you're right, counsel. It's not  
4 an issue for today. For good or bad, I spent three hours  
5 in another hearing specifically on waiver issues so  
6 that's fine.

7 MR. CONN: Okay. So we respectfully suggest this be  
8 put over at least until the week of October 8th. As I  
9 indicated in my papers, as I told Mr. Wistow, I hated to  
10 put it in there, but it is a reality. I am going out of  
11 the country from the 16th to the 30th. I can have people  
12 working on this while I'm gone but I would like to come  
13 back to this and have some time to look at it. Thank  
14 you.

15 THE COURT: Thank you. Does the attorney general  
16 wish to be heard with respect to the joinder and the  
17 motion?

18 MR. LYNESS: Just briefly, your Honor, and thank you  
19 for the opportunity to speak. You mentioned earlier you  
20 received our papers and we appreciate the Court's  
21 willingness to do so even just a couple of hours before  
22 the hearing. I will be brief. I think the attorney  
23 general has a unique perspective on this in addition to  
24 what you just heard. Certainly, I'll start off by saying  
25 the attorney general is certainly sensitive to the need

1 to resolve this matter expeditiously. Certainly, we in  
2 no way wish to unduly burden the process or draw it out  
3 in any way, but not withstanding having received this  
4 proposed settlement just a short time ago, the attorney  
5 general, like the other parties, has not had a full and  
6 fair opportunity to make sure that the terms comply with  
7 the statutory obligations and responsibilities of our  
8 office. Specifically, that is the decision and  
9 conditions under the Hospital Conversion Act and the  
10 charitable trust rules that are entrusted to the attorney  
11 general to enforce.

12 I don't want to get into the specifics of those. We  
13 haven't had time to really delve into those, but  
14 certainly they raise concerns in our office and we would  
15 like some time to be able to ascertain whether or not our  
16 statutory obligations are going to be interfered with by  
17 this proposed settlement. We would join CharterCARE  
18 Foundation's motion to continue this out a couple of  
19 weeks to give us that time to fully examine the proposed  
20 settlement. Thank you, your Honor.

21 THE COURT: Thank you. Attorney Wistow, would you  
22 like to address all at once or do you want to just  
23 address CharterCARE?

24 MR. WISTOW: I think for the sake of good order, I  
25 would like to do CharterCARE at the moment.

1 THE COURT: That's fine. You may proceed.

2 MR. WISTOW: Thank you. With regard to the  
3 submission by CharterCARE Foundation that your Honor has  
4 seen, I regard it as a fairly high hypocrisy. The reason  
5 I say that, your Honor, is within the submission to you,  
6 they expressly say that we seek to sacrifice CharterCARE  
7 Foundation and its charitable mission in the interest of  
8 pressing expediency for St. Joseph Hospital Society,  
9 Rhode Island, Roger William's Hospital, and CharterCARE  
10 Community Board. I want to say, your Honor, that the  
11 "charitable mission" is being carried out with money that  
12 should be in the hands of the participants of this plan.  
13 It's very easy to be charitable with other people's  
14 money, and that I believe is what is happening here. The  
15 settlement is not for the benefit of St. Joseph's  
16 Hospital, for Roger William's Hospital, for CharterCARE.  
17 It's for the benefit of the estate, which really as a  
18 practical matter, the only creditors with any substance  
19 at stake are the participants in that plan.

20 Now, I want to say, your Honor, that the  
21 participants in this plan have been under tremendous  
22 anxiety and pressure for more than a year now, from the  
23 filing of the petition to cut their pension benefits by  
24 40 percent. Now that we have given them some indication  
25 of some hope of getting this resolved, we're going to put

1 it over again.

2 I want to say something about the charitable nature  
3 of the foundation, and I have submitted to your Honor  
4 their filing with the I.R.S. for the fiscal years 2015  
5 and 2016. And the fact of the matter is that during that  
6 period of time -- and that's all that is available.  
7 That's the most recent filings. During that period of  
8 time they gave away to "charitable" purposes some  
9 \$210,000. For administration they used up \$254,000. The  
10 majority of that for the salary of the executive  
11 director, Paula Iacono, \$167,000 during that two years.  
12 And by the way, that's the same Paula Iacono who was  
13 present in the courtroom during the cy pres proceedings  
14 in 2015 and did not inform the Court, nobody informed the  
15 Court, that when there were questions about the donor's  
16 intent, she determined what the donor's intent was by  
17 communicating with "family members." That should have  
18 been told to the Court, so I'm not terribly impressed  
19 with the charitable standards of these philanthropists.

20 Now, on the merits of where we are today, our  
21 principle argument is that there is absolutely no  
22 standing whatever on the part of CharterCARE Foundation  
23 to involve itself in whether or not this settlement is  
24 beneficial to the estate, which is the ultimate question.  
25 On top of that, I think their submissions to the Court

1 about the present ownership interest is again misleading  
2 the Court. I'm not suggesting Mr. Conn did it on  
3 purpose, but it's not the factual representation of where  
4 CharterCARE Community Board stands, and I will get into  
5 it very, very briefly.

6 We have made full disclosure to the Court that the  
7 ownership interest that we are going to be getting if the  
8 settlement is approved, not only by your Honor but by the  
9 federal court, is disputed. We have said that flat out.  
10 We have given you exhibits. It's Exhibit 13 talks about  
11 the ownership of the CharterCARE Foundation and we said  
12 it flat out, potentially dispute paragraph 25 of the  
13 submission we gave your Honor. We said can we please  
14 settle this case.

15 I'll quote you what we said, "The proposed  
16 settlement gives the Receiver the beneficial interest in  
17 settling Defendant's CCCB's interest in CharterCARE  
18 Foundation. However, the nature and value of that  
19 interest is disputed. Accordingly, the settlement value  
20 of that interest cannot be estimated at this time. So  
21 what we bought is another lawsuit, which we're happy to  
22 pursue. Your Honor may decide on the motion to intervene  
23 that we have no standing to intervene or if you allow us  
24 to intervene, or the Court may say I'm not vacating my  
25 order and we'll be confronted with a res judicata,

1 collateral estoppel problems, and the like.

2 So what is going to happen here today is if your  
3 Honor approves this settlement, looking at it from the  
4 point of the estate, we still have to go to the federal  
5 court to get approval. And, by the way, I suspect even  
6 approval of the federal court is really going to be no  
7 different. For example, if the federal court says it's  
8 fine, you can have the CharterCARE Community Board convey  
9 to you whatever interest there is, we are going to have  
10 to get that enforced. It's not going to be  
11 self-enforced. The reason we want that it's an  
12 additional piece of armor with regard to the fraudulent  
13 transfer claims that, by the way, the attorney general  
14 has known about for three months. We have been saying  
15 for three months that money belongs to us. This is no  
16 big shock. We filed a motion to intervene on June 18th  
17 saying that we want your Honor to vacate the order. So  
18 the idea that this is all coming out of the blue is not  
19 fair.

20 By the way, I want to correct something. My brother  
21 said in his brief that if we ultimately succeed, we are  
22 going to emasculate or euthanize, I think was the word,  
23 CharterCARE Foundation because we're going to take \$8.2  
24 million. I want it very clear that is what was  
25 transferred at the time. We believe we are entitled to

1 the entire corpus of \$8.7 million. I don't have to leave  
2 that floating around. I say to your Honor flat out if  
3 your Honor approves this settlement on September 13th, we  
4 will not take the position that your Honor has said that  
5 CharterCARE Community Board is, in fact, the sole member  
6 and is entitled to do anything. We flat out said that  
7 it's disputed. So what we're buying is almost like a  
8 quit claim deed to property. The fact of the matter is  
9 there really is no standing.

10 Some of these arguments will relate -- I don't know  
11 when we're going to have the arguments for Prospect  
12 CharterCARE and for the attorney general, but the purpose  
13 of this -- you're hearing a receivership proceeding, your  
14 Honor. That's what this is. The purpose of the  
15 receivership, as I understand, is to maximum the assets  
16 for the estate and the estate here is literally the  
17 retirement plan. That is what was put into the  
18 receivership and as a practical matter the plan is really  
19 the over 2,700 participants. The purpose, as I  
20 understand the receivership, is not to protect debtors or  
21 punitive debtors who come in to the court and say, you  
22 know, let's litigate here within the receivership whether  
23 or not we owe them money or not. That is going to be  
24 litigated sometime down the line.

25 The other reason there is no standing is this is all



1 completely contingent on whether or not the federal court  
2 approves this. Your Honor can say I think this is good  
3 for the estate, good for the plan. We go to federal  
4 court. This is a class action and the federal court can  
5 hear whatever it wants to hear and say forget about it.  
6 This may never come to pass.

7 I also want to point out, your Honor, the issue  
8 raised about -- I want to supplement the record. In my  
9 submission Exhibit 9 where I based my statement that they  
10 gave away \$210,000 and spent in administrative expenses  
11 254. If your Honor looks at that exhibit, there is an  
12 entry under expenditures for \$200,000, which needs to be  
13 explained. And I would like to submit to your Honor a  
14 copy of the document that was furnished to us by  
15 CharterCARE Foundation as part of the discovery. It's  
16 CharterCARE Foundation 0006804, and basically what it  
17 says is that the \$200,000 that was given to Rhode Island  
18 Foundation is not a charitable expenditure, and,  
19 therefore, my numbers that I gave you are correct, but I  
20 would like to submit this so there is no issue about it.

21 THE COURT: That's fine. Madam Clerk, if you would  
22 mark that.

23 THE CLERK: Yes, your Honor.

24 MR. WISTOW: The bottom line, your Honor, and I  
25 think this is important. I think our fundamental issue

1 is what is the purpose of this hearing and it's really is  
2 there standing and so forth. But I can't help but tell  
3 your Honor that we have submitted documents to show you  
4 how meritless the accusations, the allegations, are that  
5 are being made here. For example, on October 30, 2014 --  
6 by the way, the Articles of Incorporation of CharterCARE  
7 Foundation to this minute as we speak, their public  
8 records show that CharterCARE Community Board is the sole  
9 member. That's what you will find when you go to the  
10 Secretary of State and look at the articles as of today.

11 Now, here is how cynical CharterCARE Foundation has  
12 been. On October 30, 2014, this is in our exhibits, the  
13 board of CharterCARE Foundation sought to amend the  
14 bylaws to say that CharterCARE Foundation will be the  
15 sole member. That is to substitute CharterCARE  
16 Foundation for the CharterCARE Community Board. Those  
17 bylaws were supposed to be amended on October 30, 2014.  
18 When CharterCARE came in on the cy press to your Honor,  
19 three months later, the very first thing they said in  
20 their petition was that CharterCARE Community Board was  
21 the sole member.

22 They also told the attorney general in their  
23 applications that CharterCARE Community Board would be  
24 the sole member and submitted during the application  
25 process the articles and the bylaws showing it. But then

1 they adopted in October different bylaws even though they  
2 told you three months later that CharterCARE Community  
3 Board was, in fact, the sole member and this is all in  
4 exhibits.

5 So what do we have? We have regardless of that  
6 vote, the law in Rhode Island is absolutely clear.  
7 7-6-16, regarding nonprofit organizations, if there is  
8 any inconsistency between the bylaws and the articles,  
9 the articles control. Those not a surprising result.

10 I want to say very briefly on the abandonment  
11 question. We addressed the Schroeder case and the  
12 Raulston case, which are the only two cases relied on by  
13 the encyclopedias and the treatises which my brother  
14 cites, which stand for very general propositions. In  
15 Schroeder, by the way, which is a Washington State case,  
16 the bylaws of a nonprofit said flat out if you don't pay  
17 your dues, member, you forfeit your interest in the  
18 entity. So you forfeit your interest if the entity  
19 splits up in owning any of the property. That's not a  
20 very surprising result. That's what that case expressly  
21 stands for and we discussed it.

22 In Raulston, there was grazing land that was used by  
23 a nonprofit corporation. The grazing land was purchased  
24 by a nonprofit with a loan from the federal housing firm  
25 and in case of default, the land would be lost. The

1 members who used the grazing land were required to pay  
2 dues so that they could pay the mortgage. And that was  
3 provided for in the bylaws. They didn't to it, and they  
4 lost their interest. That has nothing to do with what  
5 we're talking about. The Ninth Circuit, however, in  
6 1981, in Owyfee Grazing Association, 637 F.2d 694, it's a  
7 1981 case, flat out said you need "Clear unequivocal  
8 decisive act by the abandoning party." We don't have  
9 anything like that. We have the exact opposite and what  
10 we got here is let's destroy anything we can and delay  
11 this situation.

12 Your Honor, when we go to federal court, if we're  
13 fortunate enough and your Honor approves this, we are  
14 under the terms of the settlement agreement to file a  
15 motion with the federal court within five business days  
16 of your Honor's approval and there is a response due  
17 within 14 days thereafter. It's completely up to the  
18 Court, obviously, when to schedule the hearing for that.  
19 So I can't predict what will happen except I don't  
20 believe it will be a week after the 14 days are up. The  
21 schedule for hearing will simply be for preliminary  
22 approval. If the federal court grants preliminary  
23 approval, then we have to schedule a hearing for final  
24 approval, which cannot be sooner than 90 days after three  
25 month after the preliminary approval and we have to give

1 notice under CAFA, the Class Action Fairness Act, to  
2 every attorney general of the United States where there  
3 is a planned participant.

4 So I guess what I'm saying, your Honor, is your  
5 Honor's decision saying this is good or reasonable for  
6 the plan in no way binds -- I'm going to say it on the  
7 record now and I will be confronted if I try to get out  
8 of this. I'm saying right now if this is approved, we  
9 will not take the position that your Honor has instructed  
10 CCCB, CharterCARE Community Board, to transfer this to us  
11 and that will have the affect that we would like it to  
12 have. It's free for them to fight about all these  
13 things.

14 By the way, the A.G.'s comments, which was quoted by  
15 Mr. Conn, he says that his concern that this is going to  
16 violate one of the conditions that the A.G. imposed, and  
17 he specifically refers to the A.G. who took care of this.  
18 Condition number two, this is the decision allowing the  
19 2014 conversion, and I quote, "There shall be no board or  
20 officer overlap between or among the Prospect entities  
21 and the CCHP Foundation, CCHP, and the Heritage  
22 Hospitals." I promise you if you look at what we have  
23 agreed to, there is not going to be any overlap of  
24 officers or directors in any way, shape, or form. That  
25 objection is on its face unavailing. By the same token,

1 and I shouldn't really get into, well, I will anyway, the  
2 attorney general says he is concerned about another  
3 condition and that's reason number eight about there  
4 being a proposed cy pres petition satisfactory to the  
5 attorney general promptly filed after this. This was  
6 done, but I hope the attorney general is not suggesting  
7 that merely because the parties submit cy press to the  
8 Court that there is some automatic approval by the court,  
9 and we discovered, we believe, since then that the  
10 cy pres petition did not accurately present to the Court  
11 what the facts were.

12 So for all these reasons, and I reserve the right to  
13 comment further if we are going to hear the other  
14 objections, that the bottom line is your Honor's charge  
15 is, I believe, is to maximize the result for the  
16 Receiver. And you know what, your Honor, the most  
17 eloquent, the most eloquent evidence that we have done  
18 that is the objections from these people. That shows you  
19 that if we've somehow prejudiced them, which I suggest we  
20 have not, good for us, good for the plan, good for the  
21 estate. Thank you, your Honor.

22 THE COURT: Counsel, let me kind of take it back to  
23 the beginning. I understand also all the arguments, but  
24 the bottom line request, if I strip it down, is there is  
25 a motion on for nine day's notice. It's 10 day's notice

1 if the Court signs the omnibus form. We had another  
2 hearing on for that day, and if the hearing gets  
3 continued out for several weeks because what I'm hearing  
4 is what we have a large binder of settlement documents.  
5 We need to go through and submit our papers. The Court  
6 may say yay or nay. What is the prejudice to the  
7 receivership estate? Is it purely time?

8 MR. WISTOW: Yes.

9 THE COURT: Okay. Thank you very much. Counsel.

10 MR. CONN: Your Honor, I would just like to make  
11 some brief points. I know you heard enough. The math  
12 that he keeps bringing up that suggests that CharterCARE  
13 Foundation is not running itself efficiently. That first  
14 year they were waiting for cy pres money. They were  
15 gearing up and getting their operations going. If you  
16 look at the most recent years, I'm doing this from  
17 memory, they take in about \$500,000 a year mostly from  
18 the Rhode Island fund and they're running about \$150,000  
19 in expenses. This is before they got hit with legal fees  
20 with all of the litigation. That's the normal ratio is  
21 about 150 out of 500 goes to their expenses. So Mr.  
22 Wistow is so mistaken to suggest there is some  
23 mismanagement of charitable assets.

24 The other issue very briefly and that is Mr. Wistow  
25 makes a statement that the money does not belong to you.

1 We disagree with that, obviously. We are holding it  
2 under an order from this Court, a valid order, and it  
3 does belong to us. It doesn't belong to us. We  
4 administer it as a trustee-type steward for charitable  
5 purposes. We understand he has a claim against it and  
6 he's saying they're creditors with a priority under the  
7 statutes. When you read the briefing on that, as I know  
8 your Honor has, there are big issues here, probably  
9 appellate issues, quite frankly. That's where it should  
10 be decided who owns the money. It should be done fairly  
11 and by judicial decision, not by fiat because they put it  
12 in a settlement agreement.

13 THE COURT: But, counsel, reading through your  
14 papers and reading through Attorney Wistow's, I  
15 understand the money is going to go and the sky is  
16 falling. But isn't what the settlement, and I haven't  
17 had a chance to go through it line by line, basically  
18 saying that the receivership estate is going to step into  
19 the shoes of whatever rights or liabilities they may have  
20 and they have contested. They are just as part of the  
21 settlement taking over that interest but not necessarily  
22 a lot of the issues, and I understand it's kind of at  
23 first blush to be raised, but not that they're  
24 necessarily going to be able to do it. They're just  
25 taking that. Am I incorrect there?



1 MR. CONN: Well, I think it starts with your  
2 judicial approval. That becomes Exhibit A to the federal  
3 court position and they're off and running. If it's in  
4 the illegal settlement to include that in there, this  
5 Court ought not to approve it.

6 THE COURT: I guess that's my question. If what  
7 we're talking about is taking the interest of the  
8 settlement party and transferring it over as part of the  
9 settlement to the receivership estate, doesn't that give  
10 the receivership whatever right and interest they may  
11 have had? I'm trying to understand --

12 MR. CONN: I think it's illegal to begin with  
13 because the charitable foundation has a charitable  
14 purpose to administer these funds according to the  
15 mission, according to this Court's cy pres order. This  
16 is sort of referenced in the attorney general's brief  
17 filing today. You know, the federal court may or may  
18 not get into that. I respectfully submit your Honor  
19 should not put this Court's seal of approval on something  
20 that would substitute Mr. Del Sesto with now arguing that  
21 he's the sole member and he basically controls the assets  
22 of CharterCARE Foundation.

23 THE COURT: I guess we may be able to deal with that  
24 another time. Isn't that what is normal in both  
25 receivership or bankruptcy law with the trustees? You

1 step in the shoes of what they have, rights and  
2 interests, and they may be able to assert it. I'm just  
3 trying to understand what you're claiming has been  
4 abandoned or whatever else in a settlement agreement and  
5 taking that on gives them any more rights.

6 MR. CONN: I don't think your Honor would want to  
7 approve something that is tainted by illegality.

8 THE COURT: So you're saying the Court should first  
9 make the determination whether they have a right to use  
10 it for some purpose?

11 MR. CONN: I think the Court should determine  
12 whether it's legal for CCCB to transfer a sole membership  
13 interest to a receivership that is standing in the shoes  
14 of a pension. That's a straight issue of law and this  
15 Court ought not to approve the settlement within the  
16 legal term. It's as simple as that.

17 THE COURT: So what you're saying is what you  
18 believe is in violation of the law is not necessarily the  
19 use of that interest but the transfer itself.

20 MR. CONN: Yes. If I could just pass up to the  
21 Court Rhode Island General Laws 23-17.14-22. Again, I  
22 was trying to walk a fine line over there, not arguing  
23 the merits.

24 THE COURT: I understand. I'm just trying to  
25 understand at the end of the day is there a controversy.

1 MR. CONN: And I believe there is. May I pass this  
2 up?

3 (Document handed to the Court.)

4 MR. CONN: Again, I would like an opportunity to  
5 brief this and develop this but this says, "Distribution  
6 of proceeds from acquisition - selection and  
7 establishment of an independent foundation." And then  
8 Section A says, "In the event of the approval of a  
9 hospital conversion involving a not-for-profit  
10 corporation and a for-profit corporation results in a new  
11 entity as provided," et cetera. That is exactly what we  
12 have here. "It shall be required that the proceeds from  
13 the sale and any endowments, restricted, unrestricted,  
14 and specific purpose funds" -- and that's what we're  
15 talking about here, the cy pres. All the unrestricted  
16 funds stay with the hospitals and what is left is being  
17 swept into the settlement. We're talking about  
18 restricted and specific purpose funds -- "shall be  
19 transferred to a charitable foundation operated by the  
20 board of directors." And it says about an independent  
21 foundation.

22 Clearly, the intent of that, and I think it's in the  
23 attorney general's papers, people like Mr. McQueen who  
24 are stewards of charitable funds to give those out  
25 consistent with their mission and the intent of the

1 original donor. To put them in the hands of the  
2 Receiver and have the Receiver with a claim to that, we  
3 feel violates Rhode Island law and we would like an  
4 opportunity to brief that and suggest to the Court that  
5 the Court ought not approve the settlement that  
6 potentially puts them in a driver's seat that they don't  
7 have a right to be in.

8 THE COURT: Briefly.

9 MR. WISTOW: Your Honor, not to be repetitive, we're  
10 saying again we stipulate that if your Honor approves  
11 this, we are not saying that anything here was valid.  
12 Now, Mr. Conns, unfortunately, has taken the wind out of  
13 my sail in some respect by introducing the statute. I  
14 was going to bring this up later in the federal court.  
15 The statute that he gives to your Honor, he reads you  
16 paragraph (a). He doesn't read you paragraph (b).  
17 Paragraph (b), "The presiding justice of the Superior  
18 Court shall have the authority to appoint the initial  
19 board of director." That was not done. That is another  
20 violation.

21 THE COURT: Counsel, I also received this afternoon  
22 the emergency motion by Prospect to postpone. Are you  
23 prepared to address that at this point?

24 MR. WISTOW: Yes, your Honor.

25 THE COURT: That would be fine. The Court will

1 issue its ruling at the end, but why don't we proceed  
2 with Attorney Halprin.

3 MR. HALPRIN: Thank you, your Honor. Preston  
4 Halprin for Prospect Medical Holdings and Prospect  
5 Medical Holdings, Inc. Your Honor, I listened to the  
6 argument here today and it appears that we have really  
7 gone into the merits of the issues that will come before  
8 the Court at the time of the approval process, and I  
9 think that the issue you heard today is just one of the  
10 issues that are going to have to be grappled with by the  
11 Court. Mr. Wistow is an extremely able and zealous  
12 advocate and I fully understand why he wants to see this  
13 go as quickly as possible for the benefit of his clients.  
14 But the Court on the other hand has a judicial  
15 responsibility under the statute to judicially approve  
16 this. And in looking at this, the number of parties and  
17 the number of issues and the potential impact, it seems  
18 that the Court ought to permit a sufficient amount of  
19 time for the parties to fully comprehend, brief, and  
20 respond to some very, very complex issues and that's what  
21 the motions are about today. It's not about the merits.  
22 It's about the timeline.

23 In the papers, the settlement document itself, Mr.  
24 Wistow says that he had a lengthy and intensive  
25 negotiation, am's length negotiation, paragraph 37.

1 And, clearly, they are ready to go and are well prepared  
2 for the hearing, but it came as a complete surprise to  
3 all of the other parties who have not had the benefit of  
4 weeks and weeks to anticipate, prepare, and be able to  
5 turn out a 20-page brief while we were at the same time  
6 preparing motions to dismiss in the federal court that  
7 happen to be due on the 14th of September. This is about  
8 a fair opportunity for the parties to present their case  
9 to the Court and for the Court to have all the necessary  
10 information where there are such complex issues involved.

11 What I did in my submission, your Honor, is try to  
12 flag what I think are some very difficult issues, and I  
13 want to say at the outset that the Prospect entities are  
14 not opposed to all aspects of the settlement. We are  
15 simply opposed to certain provisions which we think are  
16 overreaching on the part of the Receiver and do not even  
17 belong in the settlement agreement. One of the statutory  
18 provisions of the settlement statute, which is 23-17.14,  
19 is that the settlement does not exhibit collusion.  
20 There are provisions in the settlement agreement that  
21 cause us to want more information. Why is it necessary  
22 in this settlement agreement for the settling parties to  
23 not only admit liability but to agree on a \$125 million  
24 in damages and then to say they think their proportionate  
25 share is small among the various defendant parties. That

1 sounds to me like an effort to position for the future  
2 rather than something that is necessary or relevant to a  
3 financial settlement. So we think that there is things  
4 here that need to get a much closer look by the Court and  
5 not be decided on a nine-day notice.

6 The issue with respect to the non-profit I'm not  
7 going to go into because you heard that extensively.  
8 But, clearly, there is a very important issue there that  
9 needs to be heard and the attorney general and the other  
10 parties certainly want to have the opportunity to do  
11 that.

12 From the Prospect entity's prospective there is  
13 another issue which is there is an entity, there is an  
14 agreement there, which is an amended restated operating  
15 agreement. It's not actually called an operating  
16 agreement. It's an amended restated limited liability  
17 company agreement of Prospect CharterCARE, LLC. This  
18 agreement if approved by the Court, this settlement  
19 agreement would be allowing the party to violate that  
20 agreement. Transfers of interest are pursuant to that  
21 agreement. Would the Court be suggesting that that  
22 agreement has no import by approving this and now the  
23 transfer takes place and now we have another lawsuit  
24 about whether the transfer was appropriate, and does the  
25 Court's stamp of approval mean that issue has now been

1 resolved? Maybe that falls into the same category as the  
2 last issue when Mr. Wistow was saying maybe it doesn't  
3 have that affect. But the Court ought not to be  
4 comparing the contractual relationship of the parties  
5 without a full hearing and an opportunity to understand  
6 exactly where that leads us.

7 So the long and short of it is, your Honor. We just  
8 need time. We need time to develop the record, submit  
9 the memos, and do the research, and for the Court to  
10 conduct a proper hearing and decide whether to judicially  
11 approve this under the statute. In my papers, your  
12 Honor, I asked for the opportunity to conduct discovery  
13 on whether or not there is some collusion involved by  
14 these very unusual provisions finding their way into a  
15 settlement where there is ongoing unrelated litigation  
16 amongst these parties. It looks like an attempt to gain  
17 an advantage and we don't think the Court should  
18 participate in that by approving it in its current form.  
19 Thank you.

20 THE COURT: Thank you very much.

21 MR. WISTOW: I think the key to what Mr. Halprin  
22 said is he described himself as one of the parties. He  
23 is not one of the parties. This is not the ultimate  
24 litigation. You can see he's trying to make it so. Is  
25 this Court going to start getting into an inquiry as to



1           whether or not under the original acquisition agreement  
2           there can be an assignment? You can see your Honor is  
3           going to end up trying 90 percent of the issues that are  
4           ultimately going to be the issue in the federal court  
5           case. I said it before and I'll say it again. If your  
6           Honor allows the settlement, we are not going to take the  
7           position that your Honor has approved the form of relief  
8           on the basis that there is no collusion involved. If he  
9           wants to say there is collusion, let him say it in the  
10          federal court where ultimately -- and let him ask the  
11          federal court for discovery. Your Honor, we're not just  
12          talking about prejudice of time. Now, he wants to start  
13          deposing us and sending requests for production. Was  
14          there collusion? I don't know what collusion means. I  
15          don't want to sound like Rudy Giuliani. Okay, but I will  
16          tell you this, did we work together? Did the Plaintiffs  
17          and the Defendants work together and come to an  
18          agreement? Absolutely. Am I supposed to give Mr. Land  
19          part of whatever fee we get here? No. So, yes, we  
20          worked together. Can your Honor see where there is  
21          going, the request that is being made here?

22                I said it once and I will say it again. If there is  
23                any violation of the agreement, the acquisition  
24                agreement, that's a problem that we're going to have  
25                ultimately enforcing the terms of this. He also said

1       that the settlement relates to ongoing unrelated  
2       litigation. I have no idea what that could possibly  
3       mean. The litigation in federal court couldn't be more  
4       related. That's what we're talking about settlement. We  
5       are asking for permission from this Court to allow the  
6       Receiver to go into federal court and settle that  
7       litigation as to the settling Defendants. Some of the  
8       stuff that we got here is just wild. The submission by  
9       Prospect says, for example, there is an agreement by CCCB  
10      to turn over to the Receiver more than a \$11 million in  
11      cash that is currently available to fund the nonprofit  
12      programs and grants and offered by CCCB to the Rhode  
13      Island community. This is like nonsense. What we have  
14      here is a fundamental lack of understanding of what is  
15      going on and what we're asking for.

16             Your Honor, it may be tempting to say what harm is  
17      there in another three-week delay. The problem is I  
18      think your Honor should be focused on do these people  
19      have standing to get into these things or don't they?  
20      And as to the issues that my brother said he wants to  
21      litigate, he wants to litigate in front of you whether  
22      there is a violation of the hospital acquisition  
23      agreement. He said that flat out. We will be here for  
24      years. So I respectfully ask your Honor to just focus on  
25      that. Do they have standing? If they do, I agree three

1 weeks is not a big deal. It's going to hurt the 2,700  
2 people. They are going to be anxious. But in fairness  
3 to the Court, I have to admit it's not a big deal. On  
4 the other hand, if they don't have standing and that's  
5 the issue, then there is no reason.

6 THE COURT: Thank you very much. Anything further  
7 counsel?

8 MR. HALPRIN: I want to say one thing, your Honor, I  
9 neglected to mention one important point. That is we do  
10 believe that there is an implication with the Hospital  
11 Conversion Act. I put that in my papers and the  
12 Department of Health really needs to also be considered  
13 that we've got an administrative decision as to whether  
14 the voting rights need to be for this Prospect entity and  
15 they may be impacted by this decision and I think the  
16 Court should take that into account.

17 THE COURT: We heard a lot this afternoon about some  
18 of the arguments and the potential arguments. The Court  
19 takes very seriously its responsibility to determine  
20 whether a proposed settlement is fair and reasonable and  
21 for the benefit of the receivership estate. I had told  
22 Attorney Wistow and Attorney Del Sesto as we were going  
23 through the -- I'll call it in the investigative part of  
24 the proceeding, and I told all the pensioners here in  
25 attendance, that it's better to take the time to make

1       sure that we get it right.

2               I started to go through the binder of materials on  
3 the agreement and reviewing the papers, and while I  
4 understand that this may take time I want to be very  
5 clear that there may be issues at the hearing in terms of  
6 standing that the Court dismisses all of it out of hand.  
7 There may be argument in there that the Court doesn't  
8 necessarily have to get to and I understand that. But I  
9 am going to allow a short continuance to allow the  
10 parties to submit their papers so we can have a full  
11 hearing with respect to the settlement and whether the  
12 Court should approve it under the statute.

13              Again, the last thing I want is to tie this case up  
14 further with writs or other things because counsel  
15 believes they didn't have time. However, in doing that,  
16 the Court wants to make it clear to all parties that the  
17 Court is going to mark this hearing a date certain so the  
18 papers will be in and we'll hear the hearing.

19              With respect to the motion of Prospect Medical  
20 Holdings and others, this Court denies outright the  
21 relief requested in Subsection (b) in terms of discovery  
22 that is denied. The Court will move this, and I made  
23 sure the Court can set aside as much of the day as  
24 possible, if needed, to the 10th of October in this  
25 courtroom. I am going to ask the parties and I

1 understand they couldn't agree on these motions to  
2 endeavor to get the Court a scheduling order. I want to  
3 make sure that I have all the papers in hand so we can  
4 have a productive hearing and I can review them. So it  
5 will be several days and possibly a week. I understand  
6 there is some vacation schedules that we can work around.  
7 We're going to fill up some of this time with what may  
8 have been a delay of the Court hearing the hearing and  
9 being able to issue a decision so the Court can make sure  
10 that it's not only up to speed, but based on the  
11 statutory requirements for the approval or this approval,  
12 the Court will be in a position where it can go forward  
13 at that point. The hearing on the request for approval  
14 on the 13th is continued to October 10th. The motion to  
15 intervene that is currently pending for the 13th will go  
16 forward as scheduled.

17 So as far as the clerk is concerned for the record,  
18 the Court is going to grant CharterCARE Foundation's  
19 request for a continuance and also the motion of Prospect  
20 Medical Holdings, the Court will grant the continuance in  
21 Section (a) of the request for relief and Section (b) for  
22 discovery is denied at this time. Counsel.

23 MR. WISTOW: Your Honor, please, based on my  
24 experience during the investigation of this I implore  
25 your Honor not to ask us to agree on a briefing schedule

1 but that you impose one on us.

2 THE COURT: You know what, it's probably easier. At  
3 the end of the day I know when I need the papers. I will  
4 send out an order tomorrow, actually it will be on  
5 Tuesday or Wednesday to the parties. I will send it out  
6 there. If I don't get an objection within 24 hours, I  
7 will enter it, and if there is, I will look at it.  
8 Again, my main goal is to get the papers in time, and  
9 we're going out about 30 days, so that I can review it.  
10 I know as far as CharterCARE Foundation, we have other  
11 counsel and local counsel but I am certainly willing to  
12 work around your schedule if I need to review some of  
13 those things.

14 MR. CONN: Thank you, your Honor. With that in  
15 mind, it would be helpful for me if our initial briefing  
16 was due perhaps on the third, a week before. That would  
17 give me at least three days back from the United States.

18 MR. WISTOW: We would like to reply, your Honor. I  
19 would like to accommodate my brother. I promise not to  
20 call ICE and tell them you're trying to get back in the  
21 country, but in all fairness --

22 THE COURT: I will send out a schedule that you can  
23 reply and also the Court can have some time. Thank you  
24 very much. The Court is in recess.

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