

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN; GAIL J. MAJOR; :
NANCY ZOMPA; RALPH BRYDEN; :
DOROTHY WILLNER; CAROLL SHORT; :
DONNA BOUTELLE; and EUGENIA :
LEVESQUE, :

Plaintiffs :

v. :

C.A. NO.: 1:18-CV-00328

PROSPECT CHARTERCARE, LLC; :
CHARTERCARE COMMUNITY BOARD; ST. :
JOSEPH HEALTH SERVICES OF RHODE :
ISLAND; PROSPECT CHARTERCARE :
SJHSRI, LLC; PROSPECT CHARTERCARE :
RWMC, LLC; PROSPECT EAST HOLDINGS, :
INC.; PROSPECT MEDICAL HOLDINGS, :
INC.; ROGER WILLIAMS HOSPITAL; :
CHARTERCARE FOUNDATION; THE RHODE :
ISLAND COMMUNITY FOUNDATION; :
ROMAN CATHOLIC BISHOP OF :
PROVIDENCE; DIOCESAN :
ADMINISTRATION CORPORATION; :
DIOCESAN SERVICE CORPORATION; and :
THE ANGELL PENSION GROUP, INC., :

Defendants. :

**JOINT MOTION BY PLAINTIFFS AND DEFENDANT CHARTERCARE
FOUNDATION TO STAY CHARTERCARE FOUNDATION’S DEADLINE TO
ANSWER OR OTHERWISE RESPOND TO AMENDED COMPLAINT, PENDING
JUDICIAL APPROVAL OF PROPOSED SETTLEMENT**

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque,

individually as named plaintiffs (“Named Plaintiffs”) and on behalf of all class members¹ as defined herein (collectively “Plaintiffs”), and Defendant CharterCARE Foundation (“CCF”) hereby jointly move to stay CCF’s deadline to answer or otherwise respond to Plaintiffs’ Amended Complaint pending the disposition of the proposed judicial approvals of their recently executed proposed settlement agreement (the “Proposed Settlement”) involving CCF.²

The new Proposed Settlement is contingent upon three layers of judicial approval. First, in the Rhode Island Superior Court case captioned *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan*, PC-2017-3856 (the “Receivership Proceedings”), the Receiver will be seeking an order: (i) approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants; (ii) authorizing and directing the Receiver to proceed with the Proposed Settlement; and (iii) granting such further relief as the Superior Court may determine to be reasonable and necessary under the circumstances. That process already has begun, as the Receiver filed his Petition for Settlement Instructions on November 29, 2018 seeking such relief. Exhibit 1 (Petition for Settlement Instructions).³ The Superior Court has scheduled the hearing on the Petition for Settlement Instructions for December 14, 2018.

¹ Contingent upon the Court certifying the Settlement Class and appointing them Class Representatives.

² Defendants Roger Williams Hospital (“RWH”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and CharterCARE Community Board (“CCCB”) (collectively, the “Heritage Hospital Defendants”) are also parties to the Proposed Settlement, and they assent to the instant motion. The Heritage Hospital Defendants are parties to the new Proposed Settlement so that CCF may resolve certain claims arising from CCCB’s proposed transfer to the Receiver of CCCB’s purported rights and interest in CCF, as provided for in a prior settlement agreement executed between the Plaintiffs and the Heritage Hospital Defendants. (See Dkt. # 63).

³ The Petition for Settlement Instructions is attached hereto as Exhibit 1, without exhibits to avoid unnecessarily burdening this record.

Second, if the Superior Court grants that Petition for Settlement Instructions allowing the settlement in the Receivership Proceedings, then Plaintiffs and CCF will jointly move for settlement approval with this Court.

Third, if this Court approves the Proposed Settlement, then Plaintiffs and CCF will file in the Rhode Island Superior Court case captioned *In re: CharterCARE Health Partners Foundation et al.*, C.A. No. KM-2015-0035 (hereinafter, the “2015 *Cy Pres* Action”) an Amended *Cy Pres* Petition seeking judicial approval of a payment of \$4,500,000 (including \$3,900,000 of CCF’s funds) by CCF to the Receiver, and entry of a final judgment thereon (hereinafter, the “*Cy Pres* Final Judgment”). (Petition for Settlement Instructions at 2-3).⁴

Plaintiffs and CCF anticipate that the process of seeking all three layers of judicial approvals will take several months. If all three layers of judicial approvals are obtained and the Proposed Settlement is carried out, then, as provided in the Proposed Settlement, Plaintiffs and CCF will stipulate to, or jointly move for, the dismissal of Plaintiffs’ claims against CCF. Under current deadlines, CCF must answer or otherwise respond to the Amended Complaint by December 4, 2018. Neither the Rhode Island Superior Court nor this Court will have sufficient time to consider the Proposed Settlement before that December 4, 2018 deadline.

In view of all the foregoing, and in the interests of judicial economy and efficiency, Plaintiffs and CCF now jointly move that the Court issue an Order providing that CCF’s deadline to answer or otherwise respond to Plaintiffs’ Amended Complaint is enlarged until thirty (30) days after the latest of: (a) the Superior Court in the Receivership Proceeding refuses to approve the Proposed Settlement, (b) this Court refuses to approve the Proposed Settlement, or (c) the

⁴ It is anticipated that the total \$4,500,000 payment by CCF to the Receiver will include \$600,000 funded by CCF’s liability insurer, RSUI Indemnity Company (“RSUI”).

Superior Court in the 2015 *Cy Pres* Action (including after an appeal to the Rhode Island Supreme Court) refuses to enter the *Cy Pres* Final Judgment.

Defendants RWH, SJHSRI, and CCCB assent to this motion.

Pursuant to LR Cv 7(c), no oral argument is requested unless the instant motion is opposed.

PLAINTIFFS,

CHARTERCARE FOUNDATION,

By their attorneys,

By its attorneys,

/s/ Stephen P. Sheehan
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

/s/ Andrew R. Dennington
Russell F. Conn, Esq. (admitted *pro hac vice*)
Andrew R. Dennington, Esq. (#7528)
Christopher K. Sweeney, Esq. (#9689)
CONN KAVANAUGH ROSENTHAL PEISCH & FORD
LLP
One Federal Street, 15th Floor
Boston, MA 02110
(617) 482-8200
(617) 482-6444 (fax)
rconn@connkavanaugh.com
adennington@connkavanaugh.com
csweeney@connkavanaugh.com

ASSENTED TO BY:

ROGER WILLIAMS HOSPITAL, ST.
JOSEPH HEALTH SERVICES OF RHODE
ISLAND, and CHARTERCARE
COMMUNITY BOARD,

By their attorneys,

/s/ Robert D. Fine

Robert D. Fine (#2447)
CHACE RUTTENBERG & FREEDMAN,
LLP
One Park Row, Suite 300
Providence, RI 02903
Tel: (401) 453-6400
rfine@crflp.com

Dated: November 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2018, I have caused this document to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants identified on the Notice of Electronic Filing.

s/ Andrew R. Dennington

Andrew R. Dennington

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

vs. :

C.A. No: PC-2017-3856

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND RETIREMENT PLAN, :
as amended :

RECEIVER'S PETITION FOR SETTLEMENT APPROVAL

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Permanent Receiver (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby Petitions this Court to approve the proposed settlement ("Proposed Settlement") of claims the Receiver and certain individual Plan participants (the Receiver and such individuals collectively being the "Plaintiffs") have asserted against CharterCARE Foundation ("CCF") and Rhode Island Community Foundation ("RIF") in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No: 1:18-CV-00328-WES-LDA) (the "Federal Court Action"), and in a lawsuit filed in the Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the "State Court Action"), which lawsuits concern the alleged underfunded status of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), as well as claims asserted in another lawsuit pending in Rhode Island Superior Court (C.A. NO.: KM-2015-0035) (the "2015 *Cy Pres* Proceeding") into which the Plaintiffs have been granted intervention.

The Settlement only concerns claims against CharterCARE Foundation and Rhode Island Community Foundation. The Proposed Settlement does not resolve

the Plaintiffs' claims against the non-settling Defendants, or the Plaintiffs' efforts to avoid the sale of Our Lady of Fatima Hospital and Roger Williams Hospital to the current owners and to secure those assets for the Plan. Those claims will continue to be asserted.

Attached hereto as Exhibit A is the settlement agreement ("Settlement Agreement") that the Plaintiffs have entered into subject to obtaining the approval of this Court. The Receiver believes that the Proposed Settlement is in the best interests of the Receivership Estate, the Plan, and the Plan participants, and recommends that this Court approve the Proposed Settlement.

If this Court accepts the Receiver's recommendation, there will be two additional levels of judicial approval required. The next step will be that the Receiver's Special Counsel will file a motion in the Federal Court Action asking that the Proposed Settlement be approved by that court, both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because judicial approval of a good faith settlement is a condition for the applicability of the recently enacted Rhode Island statute specifically addressed to settlements involving the Plan, R.I. Gen. Laws § 23-17.14-35. If that approval is approved, the Settlement Agreement provides that the Settling Parties, with notice to the Rhode Island Attorney General, will petition the Court in the 2015 *Cy Pres* Proceeding, to approve the payment of four million five hundred thousand dollars to the Receiver (for deposit into the Plan after payment of fees and costs), and after such payment to otherwise affirm the continued validity and enforceability of the Court's Order of April 20, 2015 in the 2015 *Cy Pres* Proceeding, and after such payment to vacate the order currently in effect in the 2015

Cy Pres Proceeding restricting the disposition of CCF's funds pending the determination of the Receiver's claims against CCF.

As grounds for this Petition, the Receiver hereby states as follows:

1. The relevant facts and circumstances giving rise to this Receivership Action, the Federal and State Court Actions, and the 2015 *Cy Pres* Proceeding are set forth in the Court's Decision of October 29, 2018¹, concerning the Receiver's settlement (the "Prior Settlement") with CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively the "Heritage Hospitals"), which is incorporated herein by reference.

2. Over the last several weeks, counsel for CCF and Special Counsel in consultation with the Receiver have conducted settlement negotiations. In addition, counsel for CCCB, SJHSRI, and RWH, participated in the instant settlement discussions, inasmuch as the Heritage Hospitals have asserted certain rights concerning CCF and have previously agreed to transfer those rights to Plaintiffs. Moreover the Rhode Island Foundation ("RIF")² was consulted concerning the form of releases it would receive from Plaintiffs and the Heritage Hospitals. Thereafter, Plaintiffs, CCF, and the Heritage Hospitals agreed on the terms set forth in the instant Settlement Agreement. The proposed settlement would bind the Receiver, the named Plaintiffs, and the settlement class consisting of "[a]ll participants of the St. Joseph Health Services of Rhode Island Retirement Plan," including:

- a) all surviving former employees of St. Joseph Health Services of Rhode Island ("SJHSRI") who are entitled to benefits under the Plan; and

¹ St. Joseph Health Services of Rhode Island, Inc. v St. Josephs Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, 2018 WL 5792151 (R.I. Super. Oct. 29, 2018).

² The RIF holds CCF's funds for investment purposes.

- b) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 1, 11-12.

3. The Settlement Agreement establishes the terms of the Proposed Settlement. In summary, it provides for:

- a) payment by CCF to the Receiver of a total settlement payment of four million five hundred thousand dollars (\$4,500,000) to be used for the benefit of the Plan, after payment of certain attorneys' fees and costs incurred by the Receiver. This amount consists of three million nine hundred thousand dollars (\$3,900,000) to be funded using charitable assets that CCF received in 2015 from SJHSRI and RWH, now held through the Rhode Island Foundation ("RIF"), plus an additional six hundred thousand dollars (\$600,000) that will be paid by CCF's liability insurer, RSUI Indemnity Company;
- b) transfer to CCF all of "CCCB's Foundation Interests" (as that term is defined in the prior Settlement Agreement that was the subject of the October 29, 2018 Decision: "Settlement A Agreement") that the Receiver may acquire or which he did acquire in the Settlement A Agreement (whether Settlement A is ultimately approved or not); as well as agreement to certain other terms and conditions reflecting CCF's independence as a Rhode Island non-profit independent foundation; and
- c) an exchange of certain releases among Plaintiffs, CCF, RIF, and the Heritage Hospitals as provided in the Settlement Agreement, and dismissal of claims that were asserted or could have been asserted in the Federal Action or the 2015 *Cy Pres* Proceeding.

4. Concurrently with the filing of this Petition, the Receiver is posting the Petition on his website, at <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, for all Plan participants and the general public to view. The Receiver will also send each Plan participant a notice by first class mail informing them of the date of the hearing on the Receiver's Petition for Settlement Approval, and directing them to the Receiver's web site to obtain the Petition.

5. Pursuant to the WSL Retainer Agreement, the attorneys' fees to be paid to Special Counsel in connection with the proposed settlement is 23 1/3% of the gross

settlement amount.³ Special Counsel in the Federal Court Action intends to ask that court to award fees for Special Counsel's representation of the Settlement Class based upon the fee this Court approved for Special Counsel's representation of the Receiver.

6. The instant settlement meets the standard articulated by the Court in its October 29, 2018 Decision, including application of the following factors:

- a) The probability of success in the litigation being compromised;
- b) The difficulties to be encountered in the matter of collection;
- c) The complexity of the litigation involved and the expense, inconvenience and delay in pursuing the litigation; and
- d) The paramount interest of the creditors and a proper deference to their reasonable views.

See October 29, 2018 Decision at 7 (quoting the "*Jeffrey*" factors").

7. The Receiver believes that the Proposed Settlement advances the interests of the Receivership Estate, the Plan, and the Plan participants, and that the terms of the Proposed Settlement are fair and reasonable given the ordinary risks of litigation and the complexity of the matter, as well as other considerations.

8. In connection with the settlement between the Receiver and CCCB, RWH, and SJHSRI, the Rhode Island Attorney General raised objections regarding CCCB's transfer to the Receiver of CCCB's interests in CCF. The Court in its October 29, 2018 Decision held that the Attorney General's objections regarding the Prior Settlement were premature and not ripe, because the transfer of CCF's interests will not take effect unless that settlement has been approved by the court in the Federal Court Action. Insofar as the Attorney General has any concerns with the Proposed Settlement, those concerns are even more premature and even more unripe because if the Court grants

³ See Exhibit B (WSL Retainer Agreement at 2).

this Petition, there will be two more levels of judicial approval before CCF's funds will be paid to the Receiver, viz the court in the Federal Court Action and this Court in the 2015 *Cy Pres* Proceeding. Indeed, the final level of judicial approval in the 2015 *Cy Pres* Proceeding would be the most appropriate forum to litigate issues raised by the Attorney General pursuant to the Attorney General's role as protector of charitable funds since that proceeding, by definition, is concerned with determining the appropriate disposition of charitable funds.

9. Accordingly, the Receiver recommends that the Court approve the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants, and authorize and direct the Receiver to proceed therewith.

