UNITED STATE 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, et al	:	
Plaintiffs,	:	
v.	:	C. A. No. 18-cv-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, et al.	:	
Defendants.	:	

JOINT MOTION FOR SETTLEMENT CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND PRELIMINARY SETTLEMENT APPROVAL, BY PLAINTIFFS AND DEFENDANTS ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, AND CHARTERCARE COMMUNITY BOARD

All Plaintiffs and Defendants CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital (the "Settling Defendants") hereby move for entry of the proposed order attached to their Settlement Agreement, or as the Court may otherwise direct, which essentially:

1. Grants approval of the settlement between Plaintiffs and the Settling Defendants as a good faith settlement pursuant to R.I. Gen. Laws § 23-17.14-35;

2. Preliminarily certifies all of the Plan participants as the Settlement Class;

3. Grants preliminary approval of the settlement pursuant to Fed. R. Civ. P. Rule 23(e);

4. Preliminarily appoints Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class;

5. Authorizes the Receiver to issue the Class Notice to the Settlement Class;

6. Directs the Settling Defendants to issue the notice to federal and state officials required by the federal Class Action Fairness Act, 28 U.S.C. § 1711 et seq.; and

7. Schedules the hearing for final approval of the settlement and approval of Wistow, Sheehan & Loveley, P.C.'s motion for an award of attorneys' fees.

Movants rely in support on their Memorandum of Law submitted herewith and on the Declaration of Max Wistow dated November 21, 2018.

Respectfully submitted,

All Plaintiffs,

By their Attorney,

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Dated: November 21, 2018

Defendants CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital

By their Attorney,

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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 21st day of November, 2018 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Max Wistow

UNITED STATE 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, ET AL.,	:	
Plaintiffs,	:	
v.	:	C.A. No:1:18-CV-00328
PROSPECT CHARTERCARE, LLC, ET AL.,	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR SETTLEMENT CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND PRELIMINARY SETTLEMENT APPROVAL, BY PLAINTIFFS AND DEFENDANTS ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, AND CHARTERCARE COMMUNITY BOARD

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November 21, 2018

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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 members[1] as defined herein (collectively "Plaintiffs"), and Defendants CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively the "Settling Defendants") (Plaintiffs and the Settling Defendants are referred to collectively as the "Settling Parties") submit this memorandum in support of their joint motion for preliminary approval of a class action settlement (the "Proposed Settlement").

The Settling Parties seek judicial approval both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because it is required by the recently enacted Rhode Island statute specifically addressed to settlements involving the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), R.I. Gen. Laws § 23-17.14-35.

INTRODUCTION

A copy of the settlement agreement (the "Settlement Agreement") is attached hereto as Exhibit A.[2] As detailed below, if approved, the Proposed Settlement entails the transfer to the Receiver, for liquidation and deposit into the Plan assets pursuant to

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

[2] Attached as Exhibit A is an executed copy of the Settlement Agreement between and among the Plaintiffs and the Settling Defendants, with exhibits attached.

the orders of the Rhode Island Superior Court in the Receivership Proceedings, after payment of attorneys' fees and costs, of:

1. an initial lump sum (the "Initial Lump Sum") of not less than $11,150,000 in value, constituting more than 95% of the Settling Defendants' current operating funds;

2. the assignment of Settling Defendant RWH's interests in an escrow account required by the Rhode Island Department of Labor and Training (the "DLT Escrow") with a current balance of $750,000;

3. certain rights that the Settling Defendants have in Defendant CharterCARE Foundation[3] and Defendant Prospect CharterCare, LLC; and

4. the proceeds to be awarded the Plaintiffs from the remaining assets of the Settling Defendants pursuant to judicial liquidations of the Settling Defendants that will take place in Rhode Island Superior Court in the near future.

The Plaintiffs will continue to pursue their claims against the remaining Defendants.

In this Joint Motion, the Settling Parties ask the Court to

1. certify that the Proposed Settlement is a good faith settlement within the meaning of R.I. Gen. Laws § 23-17.14-35;

2. preliminarily certify the class consisting of all Plan participants ("the Settlement Class") solely for purposes of the Proposed Settlement;

3. preliminarily approve the Proposed Settlement of the class action;

4. approve the Notice Plan to Class Members;

5. preliminarily appoint Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class; and

6. schedule the hearing on final settlement approval and final class certification.

[3] Plaintiffs are presently close to consummating a separate settlement with CharterCARE Foundation and hope to file a petition for approval of that separate settlement with the Superior Court sometime next week. Such settlement would moot CharterCARE Foundation's objections to the instant settlement with CCCB, SJHSRI, and RWH.

By separate motion served herewith, Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. are seeking an award of attorneys' fees and costs, that they ask be heard in connection with the hearing on final settlement approval.

Plaintiffs also separately file the Declaration of Max Wistow in Support of Joint Motion for Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval, by Plaintiffs and Defendants St. Joseph Health Services of Rhode Island, Roger Williams Hospital, and CharterCARE Community Board, and Plaintiffs' Counsel's Motion for Attorneys' Fees, dated November 21, 2018 ("Wistow Dec.").[4]

TRAVEL OF THE CASE AND SETTLEMENT

I. Prior to Commencement of Suit

The Plan is a defined benefit plan established by SJHSRI with 2,729 participants.[5] In August 2017, Defendant SJHSRI petitioned ("the "Receivership Petition") the Rhode Island Superior Court to place the Plan into receivership, in the case captioned *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Receivership Proceedings").

The Receivership Petition alleged that the Plan was insolvent and requested a hearing authorizing the Receiver to reduce benefits under the Plan by 40%.[6] Attorney

[4] Numbered exhibits referred to herein, unless otherwise stated, refer to exhibits to the Wistow Dec.

[5] Exhibit A (Settlement Agreement) at 2; Declaration of Max Wistow dated November 21, 2018 ("Wistow Dec.") ¶ 3, Exhibit 4 (Transcript of Hearing in Receivership Proceedings on October 11, 2017) at 6.

[6] Wistow Dec. ¶ 2, Exhibit 1 (Petition for Receivership) (without exhibits for purposes of brevity) at 7.

Stephen Del Sesto was appointed Receiver of the Plan by the Superior Court.[7] He thereafter obtained permission from the Superior Court to retain Wistow, Sheehan & Loveley, P.C. ("WSL") as "Special Counsel" to investigate and assert possible claims that may benefit the Plan, pursuant to Special Counsel's retainer agreement which was approved by the Superior Court.[8]

WSL issued thirteen *subpoenas duces tecum* on fifteen individuals or entities in the Receivership Proceedings, including all of the Defendants in this case (or their affiliates), except Defendant The Angell Pension Group, Inc. ("Angell") who produced copies of their files in compliance with the order appointing the Receiver, for which no subpoena was required.[9]

This discovery entailed the production of over 1,000,000 pages of documents, which were obtained and reviewed by Special Counsel over an eight-month period.[10] In total, Special Counsel devoted more than 1,470 hours of attorney time to this pre-suit investigation.[11]

II. The Rhode Island Superior Court Has Instructed the Receiver to Proceed with the Proposed Settlement

The Receiver filed a Petition for Settlement Instructions with the Rhode Island Superior Court. The Receiver's Petition for Settlement Instructions was made available to all of the Plan participants and the general public, on the web site established by the

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[7] Wistow Dec. ¶¶ 4 & 10, Exhibits 2 & 6 (Orders appointing Attorney Stephen Del Sesto as Temporary and then Permanent Receiver).

[8] Wistow Dec. ¶ 9, Exhibit 5 (Order authorizing Receiver to retain WSL as Special Counsel).

[9] Wistow Dec. ¶¶ 11-12.

[10] Wistow Dec. ¶ 16.

[11] Wistow Dec. ¶ 18.

Receiver in connection with the Receivership Proceedings.[12] There were no objections by any of the Plan participants.[13] All of the non-settling Defendants—with the exception of Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, and the Angell Pension Group, Inc.—objected. In addition, the Office of the Rhode Island Attorney General objected to a portion of the Settlement Agreement relating to CCCB's rights in and claims against CharterCARE Foundation.

The court in the Receivership Proceedings held a hearing on the Petition for Settlement Approval on October 10, 2018.[14] On October 29, 2018, Superior Court Justice Brian Stern issued his decision (hereinafter the "Decision") expressly finding that the Proposed Settlement was in the best interests of the Plan and the Receivership Estate. See 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, at *14 (R.I. Super. Oct. 29, 2018). On November 16, 2018, the Order was entered pursuant to his Decision.[15] The Order authorizes and directs the Receiver to apply to this Court for settlement approval. The Order also imposes two conditions: "(1) the Receiver refrains from exercising any rights under the PSA prior to the federal court's determination of whether to approve the PSA; and (2) prior to implementing, or directing that CCCB implement, any rights, whatsoever, in favor of the Receiver (or the Plan)

[12] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018).

[13] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018).

[14] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018).

[15] Wistow Dec. ¶ 34, Exhibit 21 (Order by the Hon. Brian P. Stern, Associate Justice of the Rhode Island Superior Court entered on November 16, 2018).

derivative of CCCB's rights in CCF or PCC, the Receiver must provide all parties, including but not limited to the Objectors, with twenty (20) days written notice."[16]

Although issued in connection with the Receivership Proceedings, Judge Stern's Decision also addressed many issues that are likely to be raised before this Court, most notably the issue of whether the Court should address the validity and enforceability of rights that the Settlement Agreement accords to the Receiver in non-settling Defendants CharterCARE Foundation ("CCF") and Prospect Chartercare LLC ("Prospect Chartercare"), or, instead, refrain from addressing those issues in anticipation that they will be addressed in due course if and when the Receiver attempts to enforce those rights.

Judge Stern addressed the objections of CCF and Prospect Chartercare as raising issues of justiciability, including the "[t]wo well known justiciability doctrines" of standing and ripeness. Decision at 11. He concluded that neither CCF nor Prospect Chartercare could meet the requirement for standing of demonstrating that they would suffer any injury in fact from the Proposed Settlement. Judge Stern concluded that "the Prospect Entities cannot possibly point to any injury in fact, much less legal prejudice, because CCCB has not even attempted to exercise any rights in favor of the Receiver." Decision at 18. With respect to CCF, Judge Stern concluded that "it appears legally impossible for CCF to suffer injury from the PSA, either now or anytime in the future." Decision at 20 (noting that the key issue was whether CCCB was entitled to control CCF, but, if CCCB was so entitled, then CCF had no right to complain when CCCB or

[16] Wistow Dec. ¶ 34, Exhibit 21 (Order by the Hon. Brian P. Stern, Associate Justice of the Rhode Island Superior Court entered on November 16, 2018).

the Receiver sought to enforce CCCB's rights, whereas if CCCB was not entitled to control CCF, then any efforts to do so would be unavailing such that CCF would suffer no injury).

Judge Stern concluded that neither Prospect Chartercare nor CCF had demonstrated legal prejudice from the Proposed Settlement to bring them within the exception to the rule followed in the federal courts that non-settling defendants lack standing to object to a partial settlement. Decision at 12-13 (citing rule), 18 (noting that Prospect Chartercare "cannot possibly point to…legal prejudice"), and 21 (noting that "CCF has not alleged…legal prejudice").

Judge Stern also concluded that neither Prospect Chartercare nor CCF qualified for the exception from the rule recognized by the Rhode Island Supreme Court that non-parties to a contract (*viz* the Settlement Agreement) lack standing to object to its injurious impact on them, *i.e.* that absent such standing, the objecting party "would be without legal recourse to contest this injury.'" Decision at 18 (quoting Mruk v. Mortg. Elec. Registration Sys., Inc., 82 A.3d 527, 536 (R.I. 2013)). To the contrary, Judge Stern noted that both Prospect Chartercare and CCF will have legal recourse to assert their objections if and when the Receiver seeks to enforce his claims against them based upon the Proposed Settlement. Decision at 18 ("Unlike in the foreclosure cases where banks actually instituted foreclosure proceedings and homeowners faced a present threat of eviction, here, the PSA does not even mandate CCCB exercise the put option or take any other action arising out of CCCB's interest in PCC; thus, the Prospect Entities suffer from no comparably imminent threat.") and 22 ("The more appropriate time for CCF to contest its arguments relating to abandonment would be in a

proceeding where the Receiver is actually asserting rights in CCF, during which time, of course, it would need to be established that CCCB has (or had) the rights in CCF it purports to possess.").

Judge Stern also held that the objections of the Prospect Entities and CCF to the Proposed Settlement were not ripe. See Decision at 18 ("Ripeness is the underlying defect with the Prospect Entities' claims: any potential injury to the Prospect Entities depends on future contingent events.") and 21 ("Perhaps more importantly, the Foundation Interest is far from being liquidated in favor of the Plan, suggesting CCF's claims are not ripe.").

Judge Stern held that the objections of the Prospect Entities were not ripe "because CCCB has not attempted to exercise any rights in favor of the Receiver." Decision at 18. He noted that even if this Court approves the Proposed Settlement Agreement, the objections of the Prospect Entities still will not be ripe, because the Receiver may not attempt to exercise CCCB's rights in Prospect Chartercare. Id. at 19 ("However, for strategic reasons, the Receiver might choose not to do so."). In short, Judge Stern held that adjudicating the Prospect Entities' objections before the Receiver or CCCB asserted rights against Prospect Chartercare would improperly obligate the court to issue an advisory opinion:

> Unless and until the Receiver attempts to enforce any rights in PCC (through CCCB), this Court does not "have the luxury of rendering advisory opinions" whereas here, the points "are of an academic nature only." *See Blue Cross of Rhode Island v. Cannon*, 589 F. Supp. 1483, 1494 (D.R.I. 1984) ("In the absence of a dispute ripe for adjudication in the legal sense, these itches cannot be scratched by this court."). The Prospect Entities have not suffered formal legal prejudice that would justify this Court engaging in the non-traditional task of dissecting a settlement agreement like the PSA.

Decision at 19.

With respect to CCF's objections, Judge Stern listed seven contingencies that would have to occur before they would become ripe, only one of which involved this Court's approval of the Proposed Settlement. Id. at 21. He also noted that the value of the Receiver's rights in CCF may change dramatically depending upon whether the Receiver is successful in obtaining CCF's assets through the Receiver's fraudulent transfer claims, rather than via the Settlement Agreement. Id. In light of these uncertainties, he held that CCF's objections were not ripe:

> Here, this Court cannot help but conclude that the above-stated contingencies establish CCF's arguments have not matured into a ripe dispute. See *R.I. Ophthalmological Soc'y*, 113 R.I. at 26- 22 27, 317 A.2d at 130-31. The more appropriate time for CCF to contest its arguments relating to abandonment would be in a proceeding where the Receiver is actually asserting rights in CCF, during which time, of course, it would need to be established that CCCB has (or had) the rights in CCF it purports to possess. In the absence of a ripe dispute, this Court cannot presently render a well-reasoned opinion on CCF's objections to the PSA.

Decision at 20-21.

Judge Stern also noted that adjudication of the validity and enforceability of the rights against CCF and Prospect Chartercare that the Receiver will obtain under the Proposed Settlement was inappropriate in connection with settlement approval. Specifically Judge Stern noted that "the Prospect Entities would have this Court consider PCC's LLC agreement and engage in contract interpretation to determine whether CCCB is authorized to exercise certain rights in favor of the Receiver." Decision at 19. Judge Stern noted that "CCF's objections to the [Settlement Agreement] call for a laborious factual and legal analysis, requiring that this Court probe whether: (1) CCF properly received the Cy Pres funds in the first instance; (2) CCCB

abandoned its membership interest in CCF; and (3) private use of the Cy Pres funds violates the Charitable Trust Act." In the absence of Rhode Island precedents, Judge Stern relied upon federal court decisions, most notably of the Second Circuit, that "stand for the proposition that a hearing on a motion to approve a settlement is not the proper proceeding for an objecting party to contest secondary effects of a settlement or its terms." Decision at 16 (citing In re Refco Inc., 505 F.3d 109, 117 (2d Cir. 2007) and In re Teligent, Inc., 640 F.3d 53, 60 (2d Cir. 2011)).

Instead of those issues being adjudicated in connection with settlement approval, Judge Stern held that they should be determined in subsequent proceedings. With respect to the dispute over the validity and enforceability of the settlement terms concerning CCCB's interest in Prospect Chartercare, Judge Stern held as follows:

> This Court, similar to the Second Circuit's rationale in *Refco*, finds that a dispute between CCCB and the Prospect Entities belongs in a different proceeding—one where a court can dedicate appropriate judicial resources to resolving that isolated dispute.

Decision at 19 (citing In re Refco Inc., *supra*). Judge Stern similarly held with respect to the Receiver's rights (through CCCB) in CCF:

> To delve into the "litany of wrongs," CCF alleges, would "skew" this Court's task in determining whether the settlement is in the best interest of the Plan's creditors.

Decision at 22 (quoting In re Refco Inc., supra, 505 F.3d at 119).

Although the Attorney General chose to merely file a "Response" rather than an "Objection" to the Receiver's Petition for Settlement Instructions, Judge Stern also addressed the Attorney General's criticisms of the Proposed Settlement. Based upon the Attorney General's "unique role as overseer of public charities," Judge Stern "assume[d] for purposes of analysis that the AG has standing to object to the Petition."

Decision at 23. However, he concluded that, even if the Attorney General had standing, the Attorney General's objection to the settlement provisions concerning CCF was not justiciable, because it was not ripe for determination:

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

Decision at 24.

III. The Proposed Settlement has the Support of all of the Plan Participants that are Represented by Counsel in the Receivership Proceedings

Over one thousand (1,000) of the Plan participants are represented by counsel in the Receivership Proceedings: Attorneys Arlene Violet and Robert Senville represent 357 Plan participants;[17] Attorney Jeffrey Kasle represents 247 Plan participants;[18] and Attorney Christopher Callaci, as General Counsel of for the United Nurses & Allied Professionals ("UNAP"), represents 400 Plan participants.[19] Their representation is limited to negotiations with the Receiver concerning possible cuts in benefits, an issue in which Plaintiffs' Counsel is not involved. Although they have differing interests

[17] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018) at 2.

[18] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018) at 107.

[19] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018) at 2.

concerning that issue, all of these Plan participants through their counsel have affirmatively indicated their support for the Proposed Settlement.[20]

IV. Commencement of Suit and Related Litigation

On June 18, 2018, Plaintiffs' Counsel commenced this action on behalf the Receiver, by filing a detailed and highly fact-specific complaint ("the Complaint") that was the product of the discovery in the Receivership Proceedings and Special Counsel's independent investigation. The Receiver is joined in the Complaint with seven named individuals who are Plan participants (the "Individual Named Plaintiffs"), who are asserting claims individually and on behalf of their fellow Plan participants.

At the same time, the Plaintiffs filed a companion complaint in the Rhode Island Superior Court (the "State Court Action").[21]

Simultaneously, the Plaintiffs also moved for leave to intervene in a civil action that SJHSRI, RWH, and another entity, Defendant CharterCARE Foundation,[22] had commenced in the Rhode Island Superior Court in 2015 (the "2015 *Cy Pres* Proceeding"), pursuant to which certain assets of SJHSRI and RWH were transferred to CharterCARE Foundation, which Plaintiffs now seek to recover for deposit into the Plan.[23] That motion was granted on October 2, 2018.

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[20] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018) at 4, 101-07.

[21] Wistow Dec. ¶ 20, Exhibit 7.

[22] Defendant CharterCARE Foundation is not a party to the Settlement Agreement. However, the Settlement Agreement obligates the Settling Defendants to assign ownership and control of CharterCARE Foundation as more fully discussed below.

[23] Wistow Dec. ¶ 21, Exhibit 8 (Proposed Intervenor's motion and supporting memorandum), Exhibit 9 (Defendant CharterCARE Foundation's opposition memorandum), and Exhibit 10 (Proposed Intervenors' reply memorandum).

Since the Federal Court Action was filed, all of the Defendants filed motions to dismiss. Plaintiffs then filed their First Amended Complaint. Defendants are currently required to answer of otherwise respond to the Complaint by December 4, 2018.

V. Settlement Negotiations

Over the several weeks prior to entering into the Settlement Agreement as of August 31, 2018, Counsel for the Settling Defendants and Plaintiffs' Counsel engaged in good faith settlement negotiations, which involved extensive disclosure and analysis of the Settling Defendants' assets, including an initial disclosure and several additional or supplementary disclosures based upon the requests of Plaintiffs' Counsel for additional information and clarification.[24]

The negotiations also involved negotiations by Plaintiffs' Counsel and Settling Defendants' Counsel with the Rhode Island Department of Labor and Training ("DLT") and a joint meeting with DLT concerning the DLT Escrow account, which was then in the amount of approximately $2,500,000, that Settling Defendant RWH had funded, securing RWH's self-insured workers' compensation liabilities.[25] As a result of these negotiations, DLT agreed to reduce the DLT Escrow account to $750,000, and released the balance, which is included in the Initial Lump Sum being paid by the Settling Defendants in connection with the Proposed Settlement.[26]

Thereafter, Plaintiffs and the Settling Defendants agreed on the terms set forth in the Settlement Agreement.

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[24] Wistow Dec. ¶ 22.

[25] Wistow Dec. ¶ 24.

[26] Wistow Dec. ¶ 24.

FACTS

I. Concerning Liability and Damages

The allegations concerning the merits of the claims of the Plaintiffs against the Settling Defendants are set forth in Plaintiffs' First Amended Complaint ("Complaint") filed in this action, the State Court Complaint,[27] and Plaintiff's memorandum in support of their motion to intervene in the 2015 *Cy Pres* proceeding,[28] and are not repeated herein.

Essentially, as they relate to the Settling Defendants, this case and the State Court Action seek money damages and specific performance to fund the Plan, based upon the Settling Defendants' alleged breach of contract and their statutory and/or common law duties to fully fund the Plan.[29]

The Complaint is unusual not only for its length but also because of the level of detail and the great extent to which it lays out specific evidence in support of Plaintiffs' claims. On the other hand, and although the Plaintiffs deny the efficacy of such provisions, it is noteworthy for purposes of considering the reasonableness of the Proposed Settlement that the Plan documents themselves contain various provisions which purport to relieve SJHSRI of any obligation to fund the Plan, and to limit the Plaintiffs' recovery to the assets in the Plan.[30]

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[27] Wistow Dec. Exhibit 7 (Plaintiff's Complaint in the State Court Action).

[28] See Wistow Dec. Exhibits 8-10 (Proposed Intervenors' memorandum in support of their motion to intervene in the 2015 *Cy Pres* proceeding, CharterCARE Foundation's memorandum in opposition thereto, and Proposed Intervenors' reply memorandum).

[29] The Settling Defendants have denied any intentional misconduct relating to the activities of the Settling defendants after November, 2014.

[30] Complaint ¶¶ 219-223.

Moreover, although the Plaintiffs contend that such agreements are unenforceable, at least some of the Plan participants have signed employment agreements with their new employer[31] that, if they apply to their claims against their prior employer SJHSRI, purport to require arbitration and to eliminate the right to proceed by class action, compelling them to proceed separately against the Settling Defendants, as well as against Defendants Prospect CharterCare, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Prospect CharterCare SJHSRI, LLC, and Prospect CharterCare RWMC, LLC (the "Prospect Entities").

The relief Plaintiffs seek includes damages or funds from the Settling Defendants and the non-settling Defendants "in an amount necessary to fully fund the Plan on a termination basis and ensure the pensions of all Plan participants."[32] In the Proposed Settlement, the Settling Defendants admit liability, at least for breach of contract, and acknowledge that this sum, in addition to the existing assets of the Plan, is at least one hundred and twenty five million dollars ($125,000,000).[33]

II. Concerning the Settling Defendants Ability to Pay a Judgment

The relative merits of Plaintiffs claims against the Settling Defendants of course need to be considered, but, for purposes of this motion, the key facts concern the limited fund that is available now, and the even more limited fund that will be available later, to satisfy Plaintiffs' claims against the Settling Defendants if no early settlement is reached.

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[31] Complaint ¶¶ 421-28.

[32] Complaint ¶ 57.

[33] Exhibit A (Settlement Agreement) ¶ 26.

Until June 20, 2014, the Settling Defendants, either directly, or (in the case of CCCB) through subsidiaries, owned and operated two hospitals in Rhode Island, Roger Williams Hospital and Our Lady of Fatima Hospital, and various other health care facilities.[34] Virtually all of their assets (including the two hospitals but excluding cash and most accounts receivable) were transferred in an asset sale on June 20, 2014 (the "2014 Asset Sale") to Defendant Prospect Chartercare and various affiliates, for $45,000,000 in cash, the transfer to Defendant CCCB of a 15% membership interest in Prospect Chartercare, and various undertakings to capitalize the hospitals under their new ownership.[35] The parties to the 2014 Asset Sale contractually stipulated that liability for the Plan would remain with SJHSRI,[36] but Plaintiffs claim in this case that such stipulations were ineffective and that the Prospect Entities have successor liability for the Plan, both under state law and under the Employees Retirement Income Security Act of 1974, as amended ("ERISA").[37] The cash proceeds of the sale were used to retire bonded indebtedness of the two hospitals ($31,000,000), and to make a deposit into the Plan of $14,000,000.[38]

The Settling Defendants have listed their estimated assets and liabilities in schedules that are attached to the Settlement Agreement, and which the Settling Defendants have certified constitute their best estimates thereof.[39] After the 2014 Asset Sale, the Settling Defendants were left with essentially three forms of assets: 1) cash

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[34] Complaint ¶¶ 16 & 18.

[35] Wistow Dec. ¶ 35, Exhibit 22 (Asset Purchase Agreement).

[36] Wistow Dec. ¶ 35, Exhibit 22 (Asset Purchase Agreement) at 8.

[37] See, e.g., Complaint ¶¶ 429-30.

[38] Wistow Dec. ¶ 37, Exhibit 24 (Resolution of CCCB's Board of Trustees dated February 27, 2014).

[39] See Ex. 1 (Settlement Agreement ¶¶ 20-21, Exhibits 12-17).

and cash equivalents available for operating expenses; 2) accounts receivable and reserve accounts that may or may not become available for operating expenses in the future;[40] and 3) membership interests in other entities, consisting of Settling Defendant CCCB's 15% membership interest in Prospect Chartercare and Settling Defendant CCCB's alleged membership interest in Co-Defendant CCF.[41]

The precision by which their assets can be valued for purposes of evaluating the Proposed Settlement differs among these three asset classes.

A. Liquid Operating Assets

Since the 2014 Asset Sale, some of the liquid operating assets (*i.e.*, cash and cash equivalents) of the Settling Defendants have been expended to settle liabilities to some of the Settling Defendants' remaining creditors. In addition, as alleged in the Complaint, after the 2014 Asset Sale, approximately $8,200,000 of liquid assets as well as certain rights to future income belonging to SJHSRI and RWH were transferred to Defendant CCF, in connection with the 2015 *Cy Pres* proceeding, leaving the Settling Defendants with even less cash and rights to future income.[42]

According to the schedule prepared by the Settling Defendants and made an exhibit to the Settlement Agreement, the value of the remaining liquid operating assets of the Settling Defendants is approximately $11,525,000.[43] The Initial Lump Sum to be paid by the Settling Parties is a minimum of $11,150,000, which will increase dollar for

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[40] Although not technically "accounts receivable," this category includes income and other beneficial interests in certain charitable trusts. The charitable trusts of which the Settling Defendants are aware are listed on the schedules.

[41] See Ex. 1 (Settlement Agreement ¶ 20, Exhibits 12-14).

[42] Complaint ¶ 404.

[43] See Ex. 1 (Settlement Agreement) ¶ 20, Exhibit 13.

dollar if and to the extent that their liquid operating assets on the Effective Date exceed $11,750,000.[44] In addition, Settling Defendant RWH has approximately $750,000 in an escrow account required by DLT to fund potential workers' compensation liabilities,[45] which the Settling Defendants have requested be released to them and are obligated to apply to the Proposed Settlement as an additional part of the Initial Lump Sum or subsequently if it is received after the Initial Lump Sum has been paid.

B. Reserve Accounts and Accounts Receivable

According to the same schedules, the Settling Defendants' restricted cash and accounts receivable are approximately $2,327,186, but those assets are tied up in various reserve accounts that may or may not be collectible in full or even in part.[46] As discussed below, to the extent possible, the value of these assets will be determined and realized in judicial liquidations proceedings in the Rhode Island Superior Court (the "Liquidation Proceedings").

C. Membership Interests

1. Settling Defendants' Interests in Prospect Chartercare

In connection with the 2014 Asset Sale, Settling Defendant CCCB received a 15% membership interest in Prospect Chartercare, which through subsidiaries owns

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[44] See Exhibit A (Settlement Agreement) ¶1(q) ("Initial Lump Sum" includes any portion of the DLT Escrow that has been released from escrow by the time that payment of the Initial Lump Sum is due, plus the greater of the sum of 1) all cash and investments in hedge funds and other securities held by the Settling Defendants as of the Effective Date, less $600,000, or 2) eleven million one hundred and fifty thousand dollars ($11,150,000).").

[45] See Ex. A (Settlement Agreement) ¶ 20, Exhibits 12-14.

[46] See Ex. A (Settlement Agreement) ¶ 20, Exhibits 12-14.

and operates Roger Williams Hospital and Our Lady of Fatima Hospital.[47] Documents obtained pursuant to subpoena show that, at least shortly after the 2014 Asset Sale, Prospect Chartercare valued CCCB's interest in excess of $15,000,000.[48] However, that was over four years ago, and the current value of those interests is unknown to Plaintiffs. Moreover, provisions in the Prospect CharterCare Limited Liability Agreement ("LLC Agreement") provide that such interest may be diluted under certain circumstances, and purport to restrict and even prohibit CCCB from transferring that interest for five years, *i.e.* until on or about June 20, 2019, at which time CCCB also has the right over a ninety (90) day period to exercise a put option to compel co-Defendant Prospect East Holdings, Inc. ("Prospect East") to purchase its membership interests, pursuant to a complicated valuation procedure that includes arbitration if values are not agreed.[49]

It also cannot be assumed that Prospect East and the other Prospect Entities will pay the fair value of this interest without further litigation. Accordingly, it is impossible to value CCCB's interest on Prospect Chartercare in connection with the Proposed Settlement at this time.

2. Settling Defendants' Rights in CharterCARE Foundation

The Proposed Settlement assigns to the Receiver, and gives the Receiver the beneficial interest in, Settling Defendant CCCB's interest in non-settling Defendant

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[47] Wistow Dec. ¶ 35, Exhibit 22 (Asset Purchase Agreement) at 9.

[48] Complaint ¶¶ 419-23. The beneficial interest of this 15% membership interest has presently been transferred to the Receiver, pending the Court's decision approving or disapproving the instant Settlement.

[49] Wistow Dec. ¶ 36 Exhibit 23 (LLC Agreement) at 31-33.

CCF. As of April 30, 2018 CCF's assets were valued at approximately $8,780,000.[50] At one time, Defendant CCCB was the Sole Member of CCF.[51] Plaintiffs contend that it still is. However, CCF disputes that contention. Moreover, even if CCCB is the Sole Member of CCF, that would not necessarily entitle CCCB or the Receiver to the charitable assets of CCF. Judge Stern's approval of the Proposed Settlement imposed on the Receiver the obligation to give the non-settling Defendants and the Attorney General prior notice of any exercise of rights against CCF. If the Attorney General objects, he can litigate his objection at that time. Thus, the nature and value of that interest is disputed. Accordingly, the settlement value of that interest cannot be estimated at this time.

3. Plaintiffs Are Already Seeking to Recover These Assets

The rights that Plaintiffs will receive in connection with the Proposed Settlement in the interests that Settling Defendant CCCB has in CCF and Prospect Chartercare will only supplement claims to these assets that Plaintiffs have already asserted in the Complaint.

Plaintiffs claim that the $8,200,000 transferred to CCF in the 2015 *Cy Pres* Proceeding should have gone to pay creditors, including the Plan, pursuant to R.I. Gen. Laws § 7-6-51, and the decisions of a bankruptcy court and the United States District

[50] Wistow Dec. ¶ 22, Exhibit 11 (Order Preserving Assets Pending Litigation) at 1 n.2.

[51] Wistow Dec. ¶ 38, Exhibit 25 (By-Laws of CharterCARE Health Partners Foundation (since re-named CharterCARE Foundation) revised as of October 8, 2013).

Court interpreting an identical District of Columbia statute to reach that result.[52] In addition, Plaintiffs claim that it was a fraudulent transfer for two reasons: the transfers were made with intent to defraud, and because the transferors were insolvent and the transferee gave no value.[53]

Plaintiffs also claim that CCCB's receipt of the 15% membership interest in Prospect Chartercare was a fraudulent transfer because SJHSRI and RWH were entitled to that interest but they allowed CCCB to receive it at a time that SJHSRI and RWH were insolvent and CCCB gave no equivalent value (indeed, no value at all).[54]

THE PROPOSED SETTLEMENT

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

A. Immediate payment of the Initial Lump Sum consisting of at least $11,150,000 and any excess in the Settling Defendants' combined liquid operating assets over $11,750,000, plus an additional sum of up to $750,000 if DLT releases any portion of the balance of the DLT Escrow prior to the due date for payment of the Initial Lump Sum;

B. Assignment of the Settling Defendants' rights to whatever is left in the DLT Escrow;

C. Transfer to the Receiver of the Settling Defendants' rights in CCF;

D. Transfer to the Receiver of the beneficial interest in Defendant CCCB's interest in Defendant Prospect Chartercare;

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[52] See Wistow Dec. Exhibit 8 (Proposed Intervenors' initial Memorandum at 33-39) (discussing Rhode Island's statutes and In re Crossroad Health Ministry, Inc., 319 B.R. 778 (Bankr. D.D.C. 2005), *aff'd, sub nom.* Bierbower v. McCarthy, 334 B.R. 478 (D.D.C. 2005)).

[53] Complaint ¶¶ 456 & 464.

[54] Complaint ¶¶ 411, 419-23, 456 & 464.

E. The Settling Defendants admit liability on at least some of the claims asserted against them in the Complaint, including breach of contract, and that Plaintiffs' damages are at least $125,000,000; and

F. Finally, the Settlement Agreement requires the Settling Defendants to petition the Rhode Island Superior Court for judicial liquidations, pursuant to R.I. Gen. Laws § 7-6-63, whereby all of their remaining assets will be liquidated and distributed to their creditors, including Plaintiffs, in accordance with the orders of the court in the Liquidation Proceedings.

Thus, the potential total gross recovery for the Plan from the Settling Defendants, or otherwise as a result of the Settlement Agreement, could be as low as the minimum Initial Lump Sum of $11,150,000, or considerably more than that, but, except for the minimum Initial Lump Sum, the amount of the final recovery cannot be determined at this time. All that can be done at this time, and what Plaintiffs' Counsel has attempted to do, is to put the Receiver in the position to pursue and hopefully maximize the value of those assets for the benefit of the Plan, and, ultimately, the Plan participants.

Given that Plaintiffs are already pursuing these assets based upon other claims, and that the Proposed Settlement contemplates the liquidation and dissolution of the Settling Defendants in the Liquidation Proceedings, it is more cost-effective and beneficial to the Plaintiffs and the Settlement Class to arm the Receiver with CCCB's interests in Prospect Chartercare and CCF, rather than leave it for the Settling Defendants to decide whether and when to incur the expense of pursuing those, as well as the choice of forum, and control over that litigation. In other words, the Receiver on behalf of the Plan is better situated to obtain these assets for Plan participants than the Settling Defendants.

In return, the Settlement Agreement obligates the Plaintiffs to provide the Settling Defendants with releases in the form attached thereto, which preserve any claims

concerning breach of the Settlement Agreement by the Settling Defendants, and the following "Excepted Claims":

i. any claims to the extent that there may be assets of CCCB, SJHSRI, or RWH available to be distributed by the court in the Liquidation Proceedings,

ii. any claims concerning the assets of CCCB that were transferred to CharterCARE Foundation in connection with the 2015 Cy Pres Proceeding, and

iii. any claims to the assets of the Settling Defendants that were transferred in connection with the 2014 Asset Sale.

Exhibit A (Settlement Agreement) Exhibits 9-11 (Releases to the Settling Defendants). The releases provide that with respect to the Excepted Claims, the Plaintiffs agree to limit their recourse to the assets referred to in (i) through (iii). Plaintiffs and the Settlement Class also will be obligated to release the current officers and directors of the Settling Defendants, excluding Monsignor Timothy Reilly.[55]

ARGUMENT

I. The Proposed Settlement Satisfies R.I. Gen. Laws § 23-17.14-35

R.I. Gen. Laws § 23-17.14-35 provides:

> The following provisions apply solely and exclusively to judicially approved good faith settlements of claims relating to the St. Joseph Health Services of Rhode Island Retirement Plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:
>
> (1) A release by a claimant of one joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release

[55] Plaintiffs presently assert no claims against Monsignor Reilly, and exclude him from the releases in order to moot any possible argument that Monsignor Reilly is an agent or employee of Defendants Roman Catholic Bishop of Providence, Diocesan Service Corporation, or Diocesan Administration Corporation (collectively the "Diocesan Defendants") in connection with the Plan, and that therefore his release will have also effectively released the Diocesan Defendants.

> so provides, but such release shall reduce the claim against the other joint tortfeasors in the amount of the consideration paid for the release.
>
> (2) A release by a claimant of one joint tortfeasor relieves them from liability to make contribution to another joint tortfeasor.
>
> (3) For purposes of this section, a good faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors' proportionate share of liability.

R.I. Gen. Laws § 23-17.14-35.

This statute marks the fifth time the Rhode Island General Assembly has enacted a statute retroactively amending the law of joint tortfeasor releases for claims pending at the time of enactment. See R.I. Gen. Laws § 42-116-40 ("the DEPCO statute"); R.I. Gen. Laws § 27-1-16.2 (receivers of domestic insurance companies); R.I. Gen. Laws §§ 10-6-7 and 10-6-8 (mass torts resulting in 25 or more deaths from a single occurrence[56]); and R.I. Gen. Laws § 42-64-40 (the "38 Studios statute"). In order to facilitate settlements of claims falling within their ambits, these statutes eliminate the statutory joint tortfeasor right of set-off based on proportionate liability, and limit the set-off to the amount paid by the settling party. Rhode Island Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 99 (R.I. 1995).

The constitutionality of the DEPCO statute was affirmed by the Rhode Island Supreme Court in R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995). R.I. Gen. Laws §§ 10-6-7 and 10-6-8 were construed and applied by the United States District Court for the District of Rhode Island in Gray v. Derderian, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) (Lagueux, S.D.J., accepting Report and

[56] Most notably—and, thus far, exclusively—the Station Night Club Fire.

Recommendation of Martin, M.J.). The Rhode Island Superior Court upheld the constitutionality of the 38 Studios statute in Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at *13 (R.I. Super. July 22, 2014) (Silverstein, J.), as to which the Rhode Island Supreme Court denied the non-settling defendants' petition for *certiorari*. Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et al., No. 14- 230 M.P. (R.I. Supreme Court, Oct. 20, 2014) (Order).

Federal courts have likewise acknowledged the importance of eliminating contribution claims against settling defendants in order to encourage settlements, notwithstanding that this negates proportional liability. For example, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) provides in 42 U.S.C. § 9613(f)(2) as follows:

> A person who has resolved its liability to the United States or a State in **an administrative or judicially approved settlement** shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, **but it reduces the potential liability of the others by the amount of the settlement**.

42 U.S.C. § 9613(f)(2) (emphasis supplied). Because only the amount of the settlement, and not the proportionate liability attributable to the settling party, is subtracted from the aggregate liability of the remaining parties, § 9613(f)(2) "envisions that nonsettling parties may bear disproportionate liability." United Technologies Corp. v. Browning-Ferris Indus., Inc., 33 F.3d 96, 103 (1st Cir. 1994). As the First Circuit has noted, "[t]his paradigm is not a scrivener's accident." Id. Rather, it "was designed to encourage settlements" by providing settling parties "a measure of finality in return for their willingness to settle." Id.

> The statute immunizes settling parties from liability for contribution and provides that only the amount of the settlement—not the pro rata share attributable to the settling party—shall be subtracted from the liability of the nonsettlors. This can prove to be a substantial benefit to settling PRPs—and a corresponding detriment to their more recalcitrant counterparts. Although such immunity creates a palpable risk of disproportionate liability, that is not to say that the device is forbidden. To the exact contrary, Congress has made its will explicit and the courts must defer. Disproportionate liability, a technique which promotes early settlements and deters litigation for litigation's sake, is an integral part of the statutory plan. discouraging "exhaustive litigation" over "who is 'really' responsible for how much[.]"

U.S. v. Cannons Engineering Corp., 899 F.2d 79, 91-92 (1st Cir. 1990) (quoting Akzo Coatings, Inc. v. Aigner Corp., 30 F.3d 761, 773 (7th Cir. 1994)) (other citations omitted). The First Circuit, like other circuits, has upheld the constitutionality of CERCLA's retroactive application to contribution claims. See O'Neil v. Picillo, 883 F.2d 176, 183 n.12 (1st Cir. 1989). In recent years, the U.S. Supreme Court has upheld the constitutionality of other retroactive special legislation directed at pending litigation.[57]

Likewise, the design and purpose of R.I. Gen. Laws § 23-17.14-35 was to increase the likelihood of settlements by reducing the risk of Plan participants or their representatives that otherwise would be entailed in reaching early settlements with only some defendants before the proportionate shares of all defendants' liabilities have been judicially determined. The primary mechanism to achieve that design and purpose was the elimination of the role of proportionate liability in settlements, while providing settling defendants with protection from contribution claims. The risk for Plaintiffs of early

[57] See Bank Markazi v. Peterson, 136 S. Ct. 1310, 1326 (2016) (upholding statute that retroactively prescribed a rule for a single pending case identified by caption and docket number); Patchak v. Zinke, 138 S. Ct. 897, 905 (2018) ("[T]he legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.") (upholding a statute that directed that a particular pending lawsuit "shall be promptly dismissed").

settlement under R.I. Gen. Laws §§ 10-6-7 and 10-6-8 has now been transformed, under R.I. Gen. Laws § 23-17.14-35, into the risk to Defendants of not settling and incurring disproportionate liability.

For the risk-shifting benefits of R.I. Gen. Laws § 23-17.14-35 to apply to a settlement, however, it must be a "judicially approved good faith" settlement. As quoted *supra* at 24, R.I. Gen. Laws § 23-17.14-35 defines a "good faith settlement" as "one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), **irrespective of the settling or non-settling tortfeasors' proportionate share of liability**." Id. (emphasis supplied). It should be noted, however, that this statute deals exclusively with the effect of such settlements on the non-settling Defendants' right of set-off. It does not prevent the Court from approving a settlement of the claims of the settlement class even if the settlement does not qualify under R.I. Gen. Laws § 23-17.14-35. See Decision at 17 n.13 ("[T]he Settlement Statute goes to the question of whether the settling parties are entitled to a credit for purposes of contribution—not whether a settlement agreement should be approved.").

This statute expressly adopts the standard of "good faith" judicially adopted in cases such as Noyes v. Raymond, 548 N.E.2d 196, 199 (Mass. App. Ct. 1990) and Dacotah Marketing & Research, L.L.C. v. Versatility, Inc., 21 F. Supp. 2d 570 (E.D. Va. 1998). Under the provisions of Massachusetts General Laws c. 231B, § 4(b), "[w]hen a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor."

The Noyes court concluded that the primary and legitimate objective of the Massachusetts "good faith" settlement statute was to encourage settlements. Noyes, 548 N.E.2d at 189. The term "good faith" was intended to mean the absence of "collusion, fraud, dishonesty, and other wrongful conduct[,]" and the fact that a settlement might be low in comparison to the plaintiff's estimated damages is not, by itself, material to that question. Id. "A relatively low settlement might reflect uncertainty about whether the settling party would be found liable, the uncertainty of the plaintiff's provable damages, or "the general unpredictability of juries on both liability and the damages issues." Id.

Likewise, the Dacotah Marketing court concluded that Virginia's joint tortfeasor contribution statute barred only releases "based on collusion or other tortious or wrongful conduct such as fraud or dishonesty between the plaintiff and the settling tortfeasor." Dacotah Marketing, 21 F. Supp. 2d at 576. Collusion in violation of this standard occurs only where "the principal purpose of a release is to facilitate a collusive alliance" against the remaining defendants, id. at 579, and:

> when the release is given with the tortious purpose of intentionally injuring the interests of nonsettling parties, rather than as the product of arm's length bargaining based on the facts of the case and the merits of the claim.

Dacotah Marketing, 21 F. Supp. 2d at 578. In short, "[w]hen an alliance harmful to the nonsettling party is the **essential** object of a release, that release is not given in good faith." Id. at 579 (emphasis supplied).

Under the "non-collusive, non-tortious" standard, the court's inquiry is focused on the settling parties' negotiations and intent, and whether the negotiation of the settlement was motivated by a collusively fraudulent or dishonest intent to prejudice the

remaining defendants. However, the parties opposing settlement have the burden of proof:

> It is the non-settling Defendants' burden to prove that the settlement was not made in good faith. *See Dacotah Mktg. & Research, L.L.C. v. Versatility, Inc.*, 21 F. Supp. 2d 570, 578 (E.D. Va. 1998); *Gray v. Derderian*, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) ("[T]here is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.").

Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at *2 n.3 (R.I. Super. July 22, 2014) (Silverstein, J.) (construing R.I. Gen. Laws § 42-64-40). See also Barmat v. John & Jane Doe Partners A-D*:*

> Once the settling party introduces proof of the settlement and the amount thereof, the burden shifts to the party challenging the settlement to show that the amount paid by the claimant in settlement was not paid in good faith. We note that other jurisdictions that have adopted the Uniform Contribution Among Tortfeasors Act (UCATA) place the burden on the challenging party to prove lack of good faith. . . . We do not assume that parties to an agreement acted collusively. We presume that they acted in good faith and require the challenging party to prove a lack thereof.

Barmat v. John & Jane Doe Partners A-D, 797 P.2d 1223, 1227-28 (Ariz. App. 1990) (citations and quotations omitted). See also Fairfax Radiological Consultants, P.A. v. My Q. Bui, 72 Va. Cir. 570 (2002):

> Analysis begins with the presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct." *Dacotah Marketing and Research, L .L.C. v. Versatility, Inc*., 21 F. Supp. 2d 570, 578 (E.D. Va. 1998); *see also Smith v. Monongahela Power Co.*, 429 S.E.2d 643 (W. Va. 1993) ("Settlements are presumptively made in good faith. A defendant seeking to establish that a settlement made by a plaintiff and a joint tortfeasor lacks good faith has the burden of doing so

> by clear and convincing evidence."). Accordingly, the burden is on Fairfax Radiological to show that the Benitez–Bui settlement agreement was not a good faith settlement.

See also Gray v. Derderian, No. 03-483L, 2009 WL 1575189 (D.R.I. June 4, 2009) ("Thus, there is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.") (Lagueux, S. D. J., adopting report and recommendation of Martin, Mag. J.); Noyes, 548 N.E. 2d at 191 (same).

The Proposed Settlement so clearly meets this definition of "good faith" that is difficult to conceive how the non-settling Defendants might contend otherwise. The Receiver is a judicially appointed officer of the Rhode Island Superior Court, charged with maximizing the potential recovery for the Plan, acting under the supervision and with the approval of the Superior Court. The Proposed Settlement itself was reviewed and approved by Judge Stern. Notably, Judge Stern handled both the 2015 *Cy Pres* Proceeding, and the Receivership Proceedings that have been pending for over a year, and thus has extensive knowledge and experience concerning many of the important facts in the case before this Court and concerning the Proposed Settlement. Given this context, it cannot be argued that the Proposed Settlement somehow exhibits "collusion, fraud, dishonesty, or other wrongful conduct," so as to fail the good faith standard set forth in R.I. Gen. Laws § 23-17.14-35.

The Proposed Settlement would easily pass muster even if the standard for judicial approval pursuant to R.I. Gen. Laws § 23-17.14-35 extended beyond the determination that it was made in good faith, because of the risks to the Plaintiffs and the Settling Defendants that are avoided by this settlement. Indeed, as discussed

below, this is a case in which it makes no economic sense for the Settling Parties or the Settlement Class to proceed to trial rather than proceed with the proposed settlement. See Decision at 25 ("The PSA presents the rare settlement agreement where the terms are so favorable to the Plan's estate that the Receiver is unlikely to recover a higher sum by proceeding to, and prevailing at, trial.").

The risks to the Plaintiffs if the settlement is not approved concern both the risk that they may not prevail on their claims against the Settling Defendants, and the absolute certainty that, if the Proposed Settlement is not approved, the Settling Defendants' assets will be further dissipated by litigation expenses and claims of other creditors, such that it is indisputable that the sum that the Plaintiffs may collect from the Settling Defendants if they prevail will be substantially less than what is being offered in settlement. After all, the Proposed Settlement contemplates the payment to the Receiver of more than 95% of the Settling Defendants' current operating assets, and transfer to the Receiver of their only significant illiquid assets consisting of their interests in Prospect CharterCARE LLC and CharterCARE Foundation, to be followed by judicial liquidation of all of the Settling Defendants' accounts receivable and other remaining assets, and distribution to the Receiver of as many of those assets as the court will allow in the Liquidation Proceedings.

On the other hand, this case is very complex, involves many Defendants, and the complications of proceeding as a class action, and, therefore, Plaintiffs' claims against the Settling Defendants could take years to litigate, at the level of this Court and possibly on appeal, during which time the assets of the Settling Defendants could be

significantly diminished if not fully expended, if only by the costs of litigation and the Settling Defendants' various ongoing operating expenses.

As for the risk that Plaintiffs may not prevail against the Settling Defendants, the Complaint itself notes that the Plan documents contain provisions that may tend to exculpate the Settling Defendants,[58] and that at least some Plan participants have signed arbitration agreements prohibiting class actions, that, if enforceable, might apply to their claims against the Settling Defendants and make those claims economically infeasible by requiring they be pursued on an individual basis.[59] Although Plaintiffs contend that the exculpatory provisions and arbitration agreements are unenforceable, it would not be prudent to contend that there is absolutely no risk of these defenses prevailing.

There is also no assurance that Plaintiffs will obtain any recoveries from any of the remaining Defendants. In that case, the Proposed Settlement may be the only opportunity to significantly increase the assets of the Plan available to pay benefits as and when they are due. See Decision at 29 ("The Federal Court Action's associated complexity suggests settlement via the PSA is an approach that favors the Plan's estate. This way, even if the Receiver is unable to prevail against the remaining non-settling entities, the Receiver ensures some source of recovery for the underfunded Plan.").

[58] See *supra* at 14 n.30.

[59] See *supra* at 15 n.31.

II. The Court Should Preliminarily Approve the Settlement

The requirements for approval of class action settlements are set forth in Rule 23(e) of the Federal Rules of Civil Procedure, as follows:

> **(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> > **(1)** The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
> >
> > **(2)** If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
> >
> > **(3)** The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
> >
> > **(4)** If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
> >
> > **(5)** Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Fed. R. Civ. P. 23(e).

"[T]he goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement's fairness. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase." 4 Newberg on Class Actions, *supra*, § 13:13 (citations omitted). "At the

preliminary approval stage, on motion of the plaintiffs, the court reviews the proposed terms of the settlement and makes a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms." McLaughlin on Class Actions § 6:7 (14th ed.) (citations omitted). "At this stage, the court can only determine whether the proposed settlement appears to fall within the range of possible final approval. . . . All findings and rulings for purposes of preliminary approval are contingent on the parties achieving successful final approval of the Settlement Agreement." Trombley v. Bank of America Corp., No. 08-CV-456-JD, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011) (citing Am. Int'l Group, Inc. v. ACE INA Holdings, Inc., 2011 WL 3290302, at *6 (N.D. Ill. July 26, 2011)).

Thus, the inquiry for purposes of preliminary settlement approval is whether the Proposed Settlement "appears to fall within the range of possible final approval," *viz* within the range of the requirements for final approval under Rule 23(e)(2) that the settlement be "fair, adequate, and reasonable." Martin v. Cargill, Inc., 295 F.R.D. 380, 383 (D. Minn. 2013) ('At the preliminary-approval stage, 'the fair, reasonable and adequate standard is lowered, with emphasis only on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies.'") (quoting Schoenbaum v. E.I. DuPont de Nemours & Co., No. 4:05CV01108, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009)).

"The First Circuit has not established a fixed test for evaluating the fairness of a settlement" in connection with a motion for final approval. Gulbankian v. MW Mfrs., Inc., No. CIV.A. 10-10392-RWZ, 2014 WL 7384075, at *1 (D. Mass. Dec. 29, 2014) (citing New England Carpenters Health Benefits Fund v. First Databank, Inc., 602 F. Supp. 2d

277, 280 (D. Mass. 2009)). "There is no single litmus test for a settlement's approval; it is instead examined as a gestalt to determine its reasonableness in light of the uncertainty of litigation." Id. (citing Bussie v. Allmerica Fin. Corp., 50 F. Supp. 2d 59, 72 (D. Mass. 1999)).

> The courts of this district have frequently used the factors articulated by the Second Circuit to examine the fairness of settlements:
>
> > (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.
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> *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F. Supp. 2d 277, 280 81 (D. Mass.), *aff'd sub nom. Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30 (1st Cir. 2009) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).
>
> Where the settlement was the product of arms-length negotiation following extensive discovery, its fairness is presumed. *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 32–33 (1st Cir.2009); *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL 09–2067–NMG, 2014 WL 4446464, at *5 (D. Mass. Sept.8, 2014).

Gulbankian v. MW Mfrs., Inc., *supra*, 2014 WL 7384075, at *2.

Given the terms of the Proposed Settlement, it is difficult to even make an argument that the Proposed Settlement does not "fall within the range of possible final approval" as "fair, adequate, and reasonable." The genesis and *raison d'etre* of the Complaint is the underfunded status of the Plan. The Gross Settlement Amount includes substantially all of the Settling Defendants' assets. The Proposed Settlement

provides that all of the Net Settlement Amount will be paid into the Plan. Under these circumstances, it clearly meets the criteria for preliminary approval, that "the proposed settlement appears to fall within the range of possible final approval," Trombley v. Bank of America Corp., *supra*, 2011 WL 3740488, *4, such that the "notice of the proposed settlement should be sent to the class." Newberg on Class Actions, *supra*, § 13:13 (citations omitted).

The fact that the total value of the Proposed Settlement is unknown and will not be determined until sometime in the future does not prevent the Proposed Settlement from being approved by the Court. See In re AremisSoft Corp. Securities Litigation, 210 F.R.D. 109, 126 (D.N.J. 2002) ("Furthermore, even though the pecuniary gain the settlement affords the Class is somewhat speculative, the Settlement is fair in light of the attendant risks of litigation."). In AremisSoft, the Court granted final approval to a class action settlement in a securities fraud case, under which the settlement fund consisted of 1) common stock in a newly formed company, which could not be valued because of the lack of an active market in the stock, and 2) the right to share in the future proceeds from class counsel's liquidation of the defendant's remaining assets and prosecution of the settling defendant's claims against third parties, both in and outside of the United States. The court approved the settlement notwithstanding that the court could not assign a "specific dollar value" to the settlement, "absent a present market for SoftBrand shares, and absent an ability to estimate either the maximum potential recovery or the likelihood of making such recoveries. . . ." Id., 210 F.R.D. at 130. Rather than criticizing this outcome for its lack of certainty, the court lauded it as

"an innovative settlement," in which "[t]he creative settlement devised by counsel demonstrates the vigor of their representation." Id., 210 F.R.D. at 113 & 121-22.

Given Special Counsel's extensive discovery in the Receivership Proceedings, and the indisputable arms-length negotiations that led to the Proposed Settlement, its fairness is presumed. In re Pharm. Indus. Average Wholesale Price Litig., *supra*, 588 F.3d at 32–33. The possible objection that the Proposed Settlement is premature given the lack of formal discovery *in this case* should be rejected. Although there has been no formal discovery in this action, such discovery would serve no purpose here. It would not assist in the determination of either liability or damages: the Settling Defendants have admitted liability in the Settlement Agreement and agreed to essentially turn over the vast majority of all of their assets. On the other hand, requiring such discovery would unjustifiably diminish the potential settlement fund by litigation-related expenses that the Settling Defendants likely would incur to participate in formal discovery in this case, and other possible future expenses that are not known or knowable at this time. See Decision at 27 ("The PSA obligates the Settling Defendants to remit the bulk of their assets in favor of the Plan's estate and, therefore, it appears every dollar the Settling Defendants spend in continuing to litigate is a dollar less available to the Plan for the ultimate benefit of the Plan's beneficiaries.").

Formal discovery is not always required for class action settlement approval:

> A lack of much formal discovery is not necessarily fatal: given the law's preference for speedy resolution of complex litigation, making extensive formal discovery a prerequisite for approval could be counterproductive. Hence, courts will look beyond formal discovery to see if the parties had other avenues to gather information concerning the merits of the case. These "informal" avenues can include:

> • past litigation presenting similar legal issues or factual similarities;
>
> • the results of publicly available government investigations;
>
> • documents exchanged and witnesses produced informally, perhaps through the mediation process; and
>
> • so-called "confirmatory discovery" that may occur after the parties reach a tentative settlement.

4 Newberg on Class Actions, *supra*, § 13.50 (citations omitted). It is noteworthy that the AremisSoft class action settlement also occurred before any discovery took place in the action in which the settlement was approved, and in that case class counsel had engaged only "in informal discovery and fact finding." AremisSoft, *supra*, 210 F.R.D. at 133. The court nevertheless approved the settlement, stating that this informal "factual discovery allowed the parties to achieve settlement at an early stage, avoiding considerable litigation expenses." AremisSoft, *supra*, 210 F.R.D. at 133.

Moreover, the discovery in the Receivership Proceedings can hardly be described as an "informal avenue" for information gathering. Rather, it was both formal and conducted under the supervision of the Superior Court who adjudicated numerous discovery disputes in the Receivership Proceedings.[60] The Proposed Settlement was only entered into after all of the aforementioned avenues of information have been explored in this case, including the Settling Defendants' asset disclosure after the Settling Parties reached a tentative settlement.

It also should be noted that amendments to Rule 23 have been adopted by the United States Supreme Court, and are scheduled to become law on December 1, 2018 unless Congress disapproves them. Proposed Amendments to the Federal Rules of

[60] Wistow Dec. ¶ 15.

Civil Procedure, Rules 5, 23, 62, and 65.1, Slip Order at *9–15 (U.S. Apr. 26, 2018).[61] These amendments include revisions to the provisions of Rule 23(e) governing settlement approval. The Proposed Settlement complies with both the existing rule and these revisions. However, portions of the Advisory Committee Note to the revised rule provide helpful insight concerning the standards applicable to preliminary approval of settlement of a class action:

> **Subdivision (c)(2).** As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of class certification and approval of the proposed settlement justifies giving notice. This decision has been called "preliminary approval" of the proposed class certification in Rule 23(b)(3) actions. It is common to send notice to the class simultaneously under both Rule 23(e)(1) and Rule 23(c)(2)(B), including a provision for class members to decide by a certain date whether to opt out. This amendment recognizes the propriety of this combined notice practice.
>
> * * *
>
> **Subdivision (e)(1).** The decision to give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object. The parties must provide the court with information sufficient to determine whether notice should be sent. At the time they seek notice to the class, the proponents of the settlement should ordinarily provide the court with all available materials they intend to submit to support approval under Rule 23(e)(2) and that they intend to make available to class members. The amended rule also specifies the standard the court should use in deciding whether to send notice—that it likely will be able both to approve the settlement proposal under Rule 23(e)(2) and, if it has not previously certified a class, to certify the class for purposes of judgment on the proposal.

[61] Available at https://www.supremecourt.gov/orders/courtorders/frcv18_5924.pdf.

> The subjects to be addressed depend on the specifics of the particular class action and proposed settlement. But some general observations can be made.
>
> One key element is class certification. If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted. But if a class has not been certified, the parties must ensure that the court has a basis for concluding that it likely will be able, after the final hearing, to certify the class. Although the standards for certification differ for settlement and litigation purposes, the court cannot make the decision regarding the prospects for certification without a suitable basis in the record. The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement. If the settlement is not approved, the parties' positions regarding certification for settlement should not be considered if certification is later sought for purposes of litigation.

Fed. R. Civ. P. 23 Advisory Committee's Note (2018).

The Proposed Settlement meets the requirements for preliminary approval under the revisions to Rule 23(e) that are expected to become effective on December 1, 2018. In other words, the Settling Parties have provided the Court with "a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." 2018 Advisory Committee Note, *supra*.

That "solid record" includes the Settlement Agreement itself, in which the Settling Defendants' admit liability and that Plaintiffs' damages greatly exceed Settling Defendants' collective assets, and which includes schedules of the Settling Defendants' assets and liabilities which the Settling Defendants have certified as based upon the best available information.[62] That record also includes the Receiver's Petition for

[62] See Exhibit A (Settlement Agreement) ¶¶ 22 & 23 and Exhibits 13-18 to Exhibit A.

Settlement Instructions in the Receivership Proceedings,[63] the transcript of the hearing on that Petition,[64] and Judge Stern's Decision and Order based upon the court's extensive knowledge of the facts, authorizing and directing the Receiver to proceed with the Proposed Settlement because it is fair and equitable for the Plan and the Plan participants.[65] Finally, the "solid record" includes the fact that the Proposed Settlement has the support of the over one thousand Plan participants that are represented by counsel in the Receivership Proceedings.[66]

III. The Prospect Entities and CCF Lack Standing, and Their Objections Are Not Ripe

A. Adopting Judge Stern's Reasoning

The Decision of Superior Court Justice Stern held that the objections of the Prospect Entities, CCF, and the Attorney General were not justiciable, in that the Prospect Entities and CCF lacked standing and their objections were not ripe, and the Attorney General's objections claims were not ripe even assuming *arguendo* that he had standing. The Settling Parties offer Judge Stern's reasoning in asking that this Court also hold that the objections of the Prospect Entities, CCF, and the Attorney General are not justiciable.

It is possible that the Prospect Entities, CCF, and/or the Attorney General may argue that, even if Judge Stern's conclusion that their objections are not justiciable is

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[63] Wistow Dec. ¶ 31, Exhibit 19 (Petition for Settlement Instructions).

[64] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018).

[65] Wistow Dec. ¶ 34; 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).

[66] Wistow Dec. ¶ 33, Exhibit 20 (transcript of hearing on October 10, 2018) at 4, 101-07.

correct, that Decision is distinguishable because it was rendered in connection with the Receivership Proceedings and the Receiver's Petition for Settlement Instructions. However, although Judge Stern's Decision certainly involved a preliminary proceeding to the Settling Parties' request that this Court preliminarily approve the Proposed Settlement, Judge Stern's holding is not distinguishable, because it was based upon contingencies inherent in the objections of CCF, the Prospect Entities, and the Attorney General that will continue to exist *after this Court's possible approval*. Moreover, Judge Stern's Decision was based in large part upon federal law precedents, in the absence of controlling state law precedents.

Specifically, Judge Stern concluded that, until the Receiver attempts to assert claims against them, the Prospect Entities and CCF have not suffered an injury in fact and, therefore, lack standing. He also concluded that until such time, the objections of the Prospect Entities, CCF, and the Attorney General are not ripe. Moreover, Judge Stern's concerns over embroiling a court in resolving the merits of disputes in connection with proceedings for settlement approval apply *in pari materia* to the Settling Parties' Joint Motion for Settlement Approval by the Court. Neither the Rhode Island Superior Court in a Receivership Proceeding, nor this Court in a class action, should be required to conduct a trial in order to approve a settlement, nor should the Settling Parties be required to demonstrate in connection with a proceeding for settlement approval in either forum that the rights they are receiving are so incontestable that they would be entitled to summary judgment or some other pre-trial disposition.

Indeed, if that level of proof were required concerning the merits of the Plaintiffs' claims against third parties such as non-settling Defendants, then by the same standard

the Court would have to adjudicate the merits of the Plaintiffs' claims against the Settling Parties before the Court could determine if the Proposed Settlement is fair and reasonable for purposes of Rule 23(e) of the Federal Rules of Civil Procedure. However the law is clear that such an inquiry is neither required nor advisable. See Newberg on Class Actions § 13:49 ("Because of the preliminary stage at which the fairness of a settlement is evaluated, courts must avoid 'resolving the merits of the controversy or making a precise determination of the parties' respective legal rights.'") (quoting American International Group, Inc. v. ACE INA Holdings, Inc., 2012 WL 651727, *3 (N.D. Ill. 2012), appeal dismissed, 710 F.3d 754 (7th Cir. 2013)). If the merits of the claims between the Settling Parties need not and, indeed, should not be determined in connection with settlement approval, why should there be a different rule requiring or even allowing determination of the merits of the Plaintiffs' claims against non-settling Defendants obtained pursuant to the Proposed Settlement?

The Settling Parties therefore assert that the validity and enforceability of the Receiver's rights under the Proposed Settlement against the Prospect Entities and CCF are not relevant, and do not address them in connection with this joint motion for settlement approval. However, insofar as any of the non-settling Defendants or the Attorney General raise those issues in objecting to the Proposed Settlement, the Settling Parties reserve the right to reply to their arguments. Any objecting parties that seek to raise such issues should address the Settling Parties' position on the merits. The Settling Parties' arguments in support of their contention that the rights the Receiver is obtaining in Prospect Chartercare and CCF are both valid and enforceable were fully briefed in connection with the Receiver's Petition for Settlement Instructions,

because Prospect Chartercare, CCF, and, to a lesser extent, the Attorney General, unsuccessfully sought to have Judge Stern decide these issues in connection with the Receiver's Petition for Settlement Instructions.

Rather than burdening this memorandum with a *repris* of those arguments, the Settling Parties are filing herewith the following documents, which establish that the validity and enforceability of the Receiver's rights were vigorously and extensively asserted and argued before Judge Stern:

1. The Receiver's Petition for Settlement Instructions;
2. CCF's Objection and Supporting Memorandum in Opposition to the Receiver's Petition for Settlement Instructions;
3. The Prospect Entities' Objection and Supporting Memorandum in Opposition to the Receiver's Petition for Settlement Instructions;
4. The Receiver's Reply Memorandum; and
5. The Transcript of the hearing before Judge Stern on October 10, 2018 that the Court attended.

Exhibits B - F. If the objecting parties intend to address the merits, they should be expected to respond to and otherwise take account of the Plaintiffs' position on those issues.

B. The Prospect Entities and CCF Lack Standing

"A nonsettling defendant does not ordinarily have standing to object to a court order approving a partial settlement since the nonsettling defendant is generally not affected by the settlement." In re Viatron Computer Systems Corp. Litigation, 614 F.2d 1, 6 (1st Cir. 1980). "This rule advances the policy of encouraging the voluntary settlement of lawsuits." Waller v. Fin. Corp., 828 F.2d 579, 583 (9th Cir. 1987). "Thus, '[w]hen the partial settlement reflects settlement by some defendants, appeals by

nonsettling defendants have been dismissed, on grounds that mingle concerns of standing with finality concerns.' " In re Integra Realty Resources, Inc., 262 F.3d 1089, 1102 (10th Cir. 2001) (quoting 15B Wright, Miller & Cooper, Federal Practice & Procedure § 3914.19 (2d ed. 1991 & 2001 Supp.)) (footnote omitted).

The exception under which non-settling defendants may have standing is if he or she can meet "the burden of demonstrating that [he or] she will suffer 'plain legal prejudice' through effectuation of the settlement," and that exception is "narrowly construed and occurs only when a partial settlement deprives a non-settling party of a substantive right." 4 Newberg on Class Actions § 13:24 (5th ed.) (citations omitted). "[A] showing of injury in fact, such as the prospect of a second lawsuit or the creation of a tactical advantage, is insufficient. . . ." Quad/Graphics, Inc. v. Fass, 724 F.2d 1230, 1233 (7th Cir. 1983). As the court stated in Quad/Graphics:

> [W]e do not believe that a court should inquire into the propriety of a partial settlement merely upon a showing of factual injury to a non-settling party. Some disadvantage to the remaining defendants is bound to occur and may, in fact, be the motivation behind the settlement. But just as a court has no justification for interfering in the plaintiff's initial choice of the parties it will sue (absent considerations of necessary parties), the court should not intercede in the plaintiff's decision to settle with certain parties, unless a remaining party can demonstrate plain legal prejudice.

Quad/Graphics, Inc. v. Fass, *supra*, 724 F.2d at 1233 (emphasis supplied).

The typical interest which may confer standing on non-settling parties to be heard in opposition to (but not necessarily require rejection of) a proposed settlement is if the Court's approval of the proposed settlement will affect their rights of contribution. See Waller v. Fin. Corp. of Am., 828 F.2d 579, 583 (9th Cir. 1987) ("[A] nonsettling defendant has standing to object to a partial settlement which purports to strip it of a legal claim or cause of action, an action for indemnity or contribution for example.").

Accordingly, the Prospect Entities, CCF, and the other non-settling Defendants have standing to be heard in connection with the Court's determination whether the Proposed Settlement is a good faith settlement under the recently enacted Rhode Island statute, R.I. Gen. Laws § 23-17.14-35, which specifically addresses the effect of settlements involving the Plan on the contribution rights of non-settling defendants.

However, that standing is limited to the Court's determination whether the Proposed Settlement is a good faith settlement for purposes of R.I. Gen. Laws § 23-17.14-35. It does not extend to other objections they may have to the Proposed Settlement. For those objections, the non-settling Defendants are required to independently demonstrate injury in fact and formal legal prejudice. That is because the requirements of Article III standing obligate a non-settling defendant to "demonstrate standing for each claim that he seeks to press." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 126 S.Ct. 1854, 1867, 164 L.Ed.2d 589 (2006) (rejecting proposition that standing is "commutative" or can be "ancillary"). Although DaimlerChrysler Corp. did not involve non-settling defendants' objections to a partial settlement, it does establish that Article III standing is required for every claim a court is asked to adjudicate. See also Pagán v. Calderón, 448 F.3d 16, 27 (1st Cir. 2006) ("The standing inquiry is both plaintiff-specific and claim-specific. Thus, a reviewing court must determine whether each particular plaintiff is entitled to have a federal court adjudicate each particular claim that he asserts.").

The Supreme Court in DaimlerChrysler expressed concern over the consequences of allowing standing as to one claim to suffice for all claims arising from the same "nucleus of operative fact":

> Plaintiffs' reading of *Gibbs* to allow standing as to one claim to suffice for all claims arising from the same "nucleus of operative fact" would have remarkable implications. The doctrines of mootness, ripeness, and political question all originate in Article III's "case" or "controversy" language, no less than standing does. See, e.g., *National Park Hospitality Assn. v. Department of Interior*, 538 U.S. 803, 808, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003) (ripeness); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997) (mootness); *Reservists Comm. to Stop the War*, 418 U.S., at 215, 94 S.Ct. 2925 (political question). Yet if *Gibbs* ' "common nucleus" formulation announced a new definition of "case" or "controversy" for all Article III purposes, a federal court would be free to entertain moot or unripe claims, or claims presenting a political question, if they "derived from" the same "operative fact[s]" as another federal claim suffering from none of these defects. Plaintiffs' reading of *Gibbs*, therefore, would amount to a significant revision of our precedent interpreting Article III. With federal courts thus deciding issues they would not otherwise be authorized to decide, the " 'tripartite allocation of power' " that Article III is designed to maintain, *Valley Forge*, 454 U.S., at 474, 102 S.Ct. 752, would quickly erode; our emphasis on the standing requirement's role in maintaining this separation would be rendered hollow rhetoric. As we have explained, "[t]he actual-injury requirement would hardly serve the purpose ... of preventing courts from undertaking tasks assigned to the political branches[,] if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy all inadequacies in that administration." *Lewis v. Casey*, 518 U.S. 343, 357, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).
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> *Lewis* emphasized that "[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." Ibid. Plaintiffs' theory of ancillary standing would contravene this principle. Plaintiffs failed to establish Article III injury with respect to their state taxes, and even if they did do so with respect to their municipal taxes, that injury does not entitle them to seek a remedy as to the state taxes. As the Court summed up the point in *Lewis*, "standing is not dispensed in gross." Id., at 358, n. 6, 116 S.Ct. 2174.

DaimlerChrysler Corp. v. Cuno, *supra*, 547 U.S. at 352-53, 126 S.Ct. at 1867-68.

Those same concerns would apply if non-settling Defendants were not required to have

Article III standing for every dispute they ask the Court to adjudicate in connection with Proposed Settlement, simply because they have Article III standing to object to the Court's approval of the settlement under R.I. Gen. Laws § 23-17.14-35. In that counterfactual, the Court would be adjudicating disputes that do not constitute "cases" or "controversies."

The Prospect Entities and CCF clearly do not have independent Article III standing for any claims except in connection with the Court's determination of whether the Proposed Settlement satisfies the requirements of R.I. Gen. Laws § 23-17.14-35. There are three elements to constitutional standing:

> To satisfy the Constitution's restriction of this Court's jurisdiction to "Cases" and "Controversies," Art. III, § 2, a plaintiff must demonstrate constitutional standing. To do so, the plaintiff must show an "injury in fact" that is "fairly traceable" to the defendant's conduct and "that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. ——, ——, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

Bank of America Corp. v. City of Miami, Fla., 137 S.Ct. 1296, 1302 (2017). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo, Inc. v. Robins, *supra*, 136 S.Ct. at 1548) (quoting Lujan v. Defenders of Wildlife, supra, 504 U.S. at 560). "Of the three standing requirements, injury-in-fact is the most determinative: whatever else the 'case or controversy' requirement embodie[s], its essence is a requirement of 'injury in fact.' " Teva Pharmaceuticals USA, Inc. v. Novartis Pharmaceuticals Corp., 482 F.3d 1330,

1337 (Fed. Cir. 2007) (quoting Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 218, 94 S.Ct. 2925 (1974)).

As noted in Judge Stern's Decision, "the Prospect Entities cannot possibly point to any injury in fact, much less legal prejudice, because CCCB has not even attempted to exercise any rights in favor of the Receiver." Decision at 18. His Decision is just as categorical that CCF lacks an injury in fact:

> CCF argues that the PSA "impairs CCF's rights because it would require its purported sole member, CCCB, to discharge all CCF's directors and irrevocably assign CCF's [Foundation Interest] to the Receiver." CCF's Corrected Obj. to Pet. For Settlement Instr. 2. The weakness of CCF's argument is that CCCB's rights in CCF are heavily disputed. **Once unpacked, it appears logically impossible for CCF to suffer injury from the PSA, either now or anytime in the future.** Assuming without deciding that CCCB abandoned (or never had) a membership interest in CCF then, by definition, CCCB cannot elect a new CCF board or liquidate the Foundation Interest. *See U.S. v. Craft*, 535 U.S. 274, 278 (2002) (describing property rights as a "bundle of sticks"—an analogy used to explain a person cannot exercise rights in something he or she does not own). On the other hand, if CCCB did not abandon its membership interest, as succinctly stated by the Receiver, then "whoever is objecting to the [PSA] under the name of [CCF] clearly will suffer no legally cognizable impact of the [PSA] because they have no lawful interest in [CCF]." *See Rhode Island Joint Reinsurance Ass'n v. Rosario*, 116 A.3d 168, 171 (R.I. 2015) (affirming lower court ruling holding that because a party had no interest in insurance proceeds, he had no right to assert benefits appurtenant to the interest). Because CCF has not alleged an injury in fact or legal prejudice, it has no standing to object to the PSA.

Decision at 20-21 (emphasis supplied).

C. The Objections of the Prospect Entities, CCF, and the Attorney General Are Not Ripe

"Ripeness, another aspect of justiciability, 'has roots in both the Article III case or controversy requirement and in prudential considerations.'" Reddy v. Foster, 845 F.3d

493, 500 (1st Cir. 2017) (quoting Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 89 (1st Cir. 2013)). "Much as standing doctrine seeks to keep federal courts out of disputes involving conjectural or hypothetical injuries, the Supreme Court has reinforced that ripeness doctrine seeks to prevent the adjudication of claims relating to 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Reddy, 845 F.3d at 500 (quoting Texas v. United States, 523 U.S. 296, 300 (1998))

It will only be in subsequent proceedings that any objections of the Prospect Entities, CCF, and the Attorney General concerning the Receiver's rights in those entities will ripen into a justiciable controversy. Prospect East and Prospect Chartercare are evidently not going to allow the Receiver to claim ownership in Prospect Chartercare without litigation. Similarly, the individuals who currently control CCF are unwilling to turn over control to the Receiver without litigation. Under the conditions imposed by Judge Stern, the Attorney General is entitled to notice before the Receiver attempts to assert any rights concerning CCF, including any claim to CCF's charitable assets, and can litigate the merits of those claims at that time. Only in those contexts will there be a concrete dispute susceptible to judicial resolution.

That is because the precise contours of the Receiver's claims, the defenses of CCF and the Prospect Entities, and the objections of the Attorney General, cannot be determined until those claims are asserted by the Receiver in an adversarial proceeding in which the Receiver seeks to enforce his rights. Adjudication of those rights prior to their assertion will impermissibly (and unconstitutional) require the Court to speculate as to what those claims and defenses will be when they are actually asserted.

These opportunities for subsequent dispute resolution are so obvious, and the (unconstitutional) burden that a contrary rule would impose upon a court considering a proposed settlement are so onerous, that it is perhaps not surprising that there appears to be no case law or other precedent suggesting that the merits of claims against third parties must be addressed in the context of motions for settlement approval. Indeed, that lacuna is evidence that no such inquiry is required in connection with settlement approval.

One area of the law where the issue does arise however, and which may provide a helpful guide to how it should be resolved, is the circumstance in which parties, against whom a receiver or trustee in bankruptcy has claims, ask a court to bar the assertion of such claims. Such requests are denied, because the principle is that claims by a receiver against putative debtors of the receivership estate, or by a bankruptcy trustee against debtors of the bankruptcy estate, are determined in adversarial proceedings, when the receiver/trustee is asserting claims against and seeking a recovery from putative debtors, and not before the actual assertion of a claim by the receiver/trustee has defined the issues in a concrete dispute.

Thus, courts have denied efforts by putative debtors to preclude bankruptcy trustees in advance of the trustees actually asserting claims against them. For example, in In re Hartley, 36 B.R. 594 (Bankr. N.D. Ohio 1983), the court rejected the efforts of parties who sought to require the bankruptcy trustee to demonstrate probable cause before he would be authorized to bring claims against those parties, stating that "[t]he Court also rejects the claim that it can enjoin any threatened lawsuit resulting from

an investigation or require the Trustee to show probable cause as a precondition to initiation of any such litigation." Id. at 596. The court stated as follows:

> The merits of the Trustee's claim, if any, against a third party should be determined in whatever forum the trustee eventually initiates his claim, see, *Palmer v. Travelers Insurance Co.*, 319 F.2d 296 (5th Cir. 1963), and should not be preempted by this Court.
>
> * * *
>
> The Court should not and will not rule on the merits of the Trustee's claim, if any, other than in an appropriate adversarial proceeding initiated on the claim.

Id. at 597. Similarly, in Commodity Futures Trading Com'n v. Chilcott Portfolio Management Inc., 713 F.2d 1477 (10th Cir. 1983), the Court of Appeals affirmed the trial court's order that the equity receiver appointed by the trial court had capacity to assert certain third party claims, and both the trial court and the Court of Appeals refused to consider objections to the receiver's standing to assert those claims based on the alleged lack of injury to the Receivership Estate. The Court of Appeals stated:

> These questions require some consideration of the merits and the District Court felt the standing question should be left to Judge Carrigan in the Receiver's action and other Judges presiding in other suits brought by the Receiver. We agree and likewise do not treat the standing question.

Id., 713 F.2d at 1482-83.

Likewise, in In re SE Techs., Inc., No. 03-50895 AHWS, 2012 WL 5921198 (Bankr. D. Conn. June 20, 2012), a federal trial court approved a bankruptcy trustee assigning the debtor's legal malpractice claim to a creditor of the bankruptcy estate, to be prosecuted in state court, in return for a share of the recovery, even though the federal court expressed doubt as to whether the claim was assignable. Rather than

adjudicating that issue, the federal court simply retained jurisdiction over the claim if the state court concluded that the claim was not assignable. Id., 2012 WL 5921198, at *3.

Similarly, in Campbell Investors v. TPSS Acquisition Corp., 787 N.E.2d 78 (Ohio App. 2003), the Ohio Court of Appeals affirmed a trial court order holding that a receiver in settlement of a receivership claim could properly take an assignment of claims against a party against whom the receiver had already asserted fraudulent transfer claims, over objections by that party that that the assignment should not be allowed because the assigned claims against it had no merit. The appellate court described the issues as follows:

> Appellant next asserts that the trial court erred in approving the assignment agreement because the claims that [the Receiver] DeNune seeks to add to his federal suit are frivolous. More specifically, appellant contends that because the federal court will likely dismiss the [assigned] claims for lack of standing and/or *res judicata*, the trial court should have denied DeNune's motion. The merit of the receiver's [direct fraudulent transfer] claims against [the party] Consolidated, however, was not before the trial court and is not before this court.

Campbell Investors, 78 N.E.2d at 81. The court refused to even consider the merits of the assigned claims, but, instead, based its affirmance on the fact that the merits of the assigned claims were intertwined with the fraudulent transfer claims, stating:

> Accordingly, the subject of the assignment agreement, including the promissory note, is extensively intertwined with the allegedly fraudulent conveyances and conversion that the receiver has asserted deprived the TPSS creditor's of their property. Under these circumstances and in light of *Milo*, *supra*, we cannot say that the trial court erred in approving the assignment agreement and permitting the receivership to continue.

Campbell Investors, 78 N.E.2d at 82 (citation omitted).

The Campbell Investors case has strong parallels to the case *sub judice*, in which the merits of the claims against CCF and Prospect East that the Receiver seeks

to obtain by assignment are also extensively intertwined with the merits of the Receiver's fraudulent transfer claims against those same defendants.

IV. The Other Non-Settling Defendants Have Asserted No Objection to the Proposed Settlement

Unlike CCF and the Prospect Entities, non-settling Defendants Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, and the Angell Pension Group, Inc. asserted no objection to the Proposed Settlement in connection with the Receiver's Petition for Settlement Instructions or otherwise. There is no reason to suppose that they have any objections now, or, if they do have objections, that such objections would be justiciable.

V. Statement Identifying Agreements in Connection with Proposed Settlement.

In compliance with the express requirement of Fed. R. Civ. P. 23(e)(3), the Settling Parties by their undersigned counsel hereby state that there are no agreements made in connection with the Proposed Settlement other than the Settlement Agreement itself.

VI. The Proposed Settlement Class Should Be Preliminarily Certified to Participate in the Settlement

It should be noted at the outset that the Settling Parties seek certification of the Settlement Class solely for the purpose of permitting the Settlement Class to participate in the settlement of Plaintiffs' claims against the Settling Defendants, without prejudice

to the rights of the remaining Defendants to oppose class certification in connection with Plaintiffs' claims against them.[67]

The requirements for certification of a litigation class are set forth in the Manual on Complex Litigation:

> To obtain an order to prevail in their efforts to certify a class, proponents must satisfy two sets of requirements: those set forth in Rule 23(a) and those contained in Rule 23(b). Rule 23(a) requires that (1) the proposed class be sufficiently numerous; (2) there is at least one common question of fact or law; (3) the named plaintiff's claims are typical of the class as a whole; and (4) the named plaintiff will adequately represent the class.
>
> Rule 23(b) permits maintenance as a class action if the action satisfies Rule 23(a)'s prerequisites and meets one of three alternative criteria for maintainability. First, Rule 23(b)(1)(A) permits certification to prevent inconsistent rulings regarding defendants' required conduct. Standards for certifying a class under Rule 23(b)(1)(B) relate primarily to limited fund settlements and are discussed below in section 21.132. Second, Rule 23(b)(2) permits a class action if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Third, Rule 23(b)(3) permits a class action if "the court finds that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Manual on Complex Litigation § 21.131 (Certifying a Litigation Class) (4th Ed. 2004) (citations omitted). The standard for certifying a settlement class is similar, with one difference:

> Rule 23(a) and (b) standards apply equally to certifying a class action for settlement or for trial, with one exception. In *Amchem Products, Inc. v. Windsor*, the Supreme Court held that because a settlement class action obviates a trial, a district judge faced with a request to certify a settlement

[67] Exhibit A (Settlement Agreement) ¶ 7.

> class action "need not inquire whether the case, if tried, would present intractable management problems" under Rule 23(b)(3)(D).

Manual on Complex Litigation, *supra*, § 21.132 (Certifying a Settlement Class) (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997)).

"Just as the settlement approval unfolds through two levels of judicial review (preliminary and final), so, too, does the motion for settlement class certification." Newberg on Class Actions, *supra*, § 13:16. "If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." Manual on Complex Litigation, *supra*, § 21.632. See also Fed R. Civ. P. Rule 23 advisory committee's note (2018) ("The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement.").

A. Under Rule 23(a)

The Complaint[68] and the additional submissions in connection with this motion adequately set forth the reasons why such certification is appropriate based upon the following factors which support class certification for purposes of settlement under Rule 23(a) of the Federal Rules of Civil Procedure.

[68] See Complaint ¶¶ 35-51 (Class Action Allegations).

1. Numerosity

There are 2,729 Plan participants.[69] All of those persons are members of the Settlement Class, and, thus, the Settlement Class is so numerous that joinder of all members is impracticable.

2. Commonality

The issues raised by Plaintiffs' claims against the Settling Defendants present common issues of law and fact, with answers that are common to all members of the Settlement Class, including but not limited to (1) whether and/or when the Plan became subject to ERISA, and if so, whether violations of ERISA have occurred; (2) the determination of the Settling Defendants' obligations and the Plan participants' rights under the Plan, and whether those obligations were breached and those rights violated; (3) the determination of whether all of the Settling Defendants committed fraud; (4) the determination of whether all of the Settling Defendants engaged in a civil conspiracy; (5) whether the transfers of assets by the Settling Defendants in connection with the 2014 Asset Sale and/or 2015 *Cy Pres* Proceeding constitute fraudulent transfers; (6) whether Settling Defendants violated the Hospital Conversions Act in connection with obtaining regulatory approval of the 2014 Asset Sale; and (7) whether the Settling Defendants owe or owed fiduciary duties to participants of the Plan, either under ERISA or state law.

The issues regarding the relief Plaintiffs seek from the Settling Defendants are also common to the members of the Class, as the relief includes, but is not limited to (1)

[69] Wistow Dec., Exhibit 4 (Transcript of Hearing in Receivership Proceedings on October 11, 2017) at 6.

money damages to fund the Plan for the benefit of all Plan participants; (2) equitable relief ordering the Settling Defendants to fund the Plan; (3) a judgment avoiding the transfers in connection with the 2014 Asset Sale and 2015 *Cy Pres* Proceeding; (4) a declaration that the Plan is subject to ERISA; and (5) awarding to Plaintiffs' counsel attorneys' fees and costs as provided by the common fund doctrine, 29 U.S.C. § 1132(g), and/or other applicable doctrine.

3. Typicality

The Proposed Class Representatives' claims are typical of the claims of the other members of the Settlement Class, because their claims arise from the same events, practices and/or courses of conduct, including, but not limited to, Settling Defendants' breaches of contract with respect to the Plan, the Settling Defendants' treatment of the Plan as exempt from ERISA, Settling Defendants' transfers of assets in connection with the 2014 Asset Sale and/or 2015 *Cy Pres* Proceeding, Settling Defendants' alleged misrepresentations to Plan beneficiaries, Settling Defendants' alleged misrepresentta-tions to regulators in connection with the approval of the 2014 Asset Sale, and Settling Defendants' alleged fraudulent schemes to defraud Plaintiffs. The Proposed Class Representatives' claims are also typical, because all Class members are similarly affected by Settling Defendants' alleged wrongful conduct.

The Proposed Class Representatives' claims are also typical of the claims of the other members of the Class because, to the extent the Proposed Class Representatives seek equitable or declaratory relief, it will affect all Class members equally. Specifically, the equitable relief sought includes but is not limited to requiring the Settling Defendants to make the Plan whole for all contributions that should have been made pursuant to

ERISA funding standards, reformation of the Plan to correspond to the Settling Defendants' representations and promises in connection therewith, and for interest and investment income on such contributions. The declaratory relief requested seeks to address the Settling Defendants' obligations to all Plan participants.

4. Adequacy

The Proposed Class Representatives through the Proposed Settlement will fairly and adequately represent and protect the interests of all members of the Class. The Proposed Class Representatives do not have any interests antagonistic to or in conflict with the interests of the Class. Moreover, Plaintiffs' Counsel's Retainer Agreements with each of the Proposed Class Representatives obligates them to act fairly on behalf of the class:

> In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

Wistow Dec. ¶ 27 (Exhibits 12-18 at 3).

One possible area of conflict between and among the Proposed Class Representatives and the Settlement Class has been obviated by the terms of Plaintiffs' Counsel's Retainer Agreements with the Proposed Class Representatives, each of which contain the following provision, to prevent conflicting interests from interfering

with Plaintiffs' Counsel's representation of the class in connection with a settlement involving aggregated payments, such as the Proposed Settlement *sub judice*:

> An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.[70]

Wistow Dec. Aff. ¶ 28 (Exhibits 12-18 at 3). This provision recognizes that various groups of Plan participants are represented by separate counsel in the Receivership proceedings for purposes of negotiating with the Receiver and each other concerning the potential for and amount of any cuts in benefits to be made, as requested by SJHSRI when it petitioned the Plan into receivership.[71] These other counsel include attorneys Arlene Violet, Robert Senville, Jeffrey Kasle, and Christopher Callaci.

The Proposed Class Representatives have engaged counsel (a) experienced in complex litigation, (b) who have already subpoenaed fifteen individuals or entities, obtained many documents informally, devoted over sixteen hundred hours of attorney

[70] This provision applies to a conflict that could arise if, at some point, the funding of the Plan is such that a reduction in benefits is required, and the beneficiaries' other counsel cannot agree as to how any reduction should apply.

[71] While all Plan beneficiaries desire that no cuts be made, they disagree as to how any such cuts (if made) should be borne by the various groups of beneficiaries. For example, one group prefers that a uniform cut be made across the board, while another group prefers that certain beneficiaries be spared any cut.

time, and reviewed over 1,000,000 pages of documents,[72] to investigate and prosecute these and related claims, prior to commencing settlement negotiations, (c) who, with the approval of the Rhode Island Superior Court, represent the Receiver whose interests in the Proposed Settlement are identical to the interests of the Proposed Class Representatives, (d) who have presented the Proposed Settlement to the court in the Receivership Proceedings and obtained that court's approval of the Proposed Settlement, and, perhaps most importantly, (e) have negotiated the Proposed Settlement of the case against the Settling Defendants that is fair and reasonable.

B. Class Certification is Proper Under Rule 23(b)(1)(B)

Fed. R. Civ. P. 23(b)(1)(B) states as follows:

> (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:
>
> > (1) prosecuting separate actions by or against individual class members would create a risk of:
> >
> > * * *
> >
> > > (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. . . .

The " 'derivative nature of ERISA breach of fiduciary duty claims' makes them 'paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class.'"

[72] The activities and efforts of Plaintiffs' Counsel are detailed in their motion for an award of attorneys' fees which is filed and served herewith.

Newberg on Class Actions (5th Ed.) § 4:21 (quoting In re Schering Plough Corp. ERISA Litigation, 589 F.3d 585, 604 (3d Cir. 2009)).

> This is so because 'any decision regarding whether the defendants breached their fiduciary duties would necessarily affect the interests of other participants." Indeed, the Supreme Court noted in *Ortiz* that Rule 23(b)(1)(B) explicitly aimed to cover actions charging "a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of beneficiaries, requiring an accounting or similar procedure to restore the subject of the trust." . . .

2 Newberg on Class Actions, *supra* (quoting Thomas v. SmithKline Beecham Corp., 201 F.R.D. 386, 397 (E.D. Pa. 2001) and Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999)).

Plaintiffs also claim that the Settling Defendants violated ERISA's minimum funding requirements (29 U.S.C. § 1082). See Complaint ¶¶ 452-61. Such claims are also appropriate for certification as a Rule 23(b)(1) class, since they seek "[p]lan-wide relief" and "[n]o specific monetary damages are awarded to any individual." Jones v. Singing River Health Sys., No. 1:14CV447-LG-RHW, 2016 WL 6106521, at *10 (S.D. Miss. June 2, 2016) (certifying Rule 23(b)(1) settlement class consisting of retirement plan participants, alleging violations of ERISA's minimum funding requirements), *rev'd on other grounds*, Jones v. Singing River Health Services Found., 865 F.3d 285, 303 (5th. Cir. 2017). See also Colesberry v. Ruiz Food Prod., Inc.:

> The relief which Plaintiffs seek from Defendants would ensure that the Plan was made whole. If the primary relief is to the Plan as a whole, then adjudications with respect to individual members of the class would, as a practical matter, alter the interests of other members of the class. If one plaintiff succeeds in obtaining a judgment that requires the Defendants to pay damages to the Plan, the benefit would affect everyone who has a right to disbursements from the Plan. Thus, the proposed class clearly falls within Rule 23(b)(1)(B) because adjudications with respect to individual class members would impact the interests of the other members

> not parties to this action and/or could substantially impair or impede their ability to protect their interests.
>
> * * *
>
> The propriety of Rule 23(b)(1) certification in this action is confirmed by the vast number of cases in which courts have certified ERISA class actions pursuant either to Rule 23(b)(1)(A) or Rule 23(b)(1)(B), or both. See, e.g., *Piazza v. Ebsco Industries, Inc*., 273 F.3d 1341, 1352-53 (11th Cir. 2001); *Rogers v. Baxter Intern. Inc.*, 2006 WL 794734, *10 (N.D.Ill.,2006); *In re Williams Companies ERISA Litigation*, 231 F.R.D. 416, 425 (N.D. Okla. 2005); *In re Syncor Erisa Litigation*, 227 F.R.D. 338, 347 (C.D. Cal. 2005); *In re CMS Energy Erisa Litigation*, 225 F.R.D. 539, 546 (E.D. Mich. 2004). Thus, based on this authority and the parties' stipulation, the court will certify the class as a Rule 23(b)(1)(B) class.

Colesberry v. Ruiz Food Prod., Inc., No. CVF 04-5516 AWISMS, 2006 WL 1875444, at *4–5 (E.D. Cal. June 30, 2006). See also Newberg on Class Actions:

> The trust-like nature of ERISA cases therefore generally supports certification whether one focuses on the incompatible standards that might arise for the trustee (in which case certification under Rule 23(b)(1)(A) is typically apt) or upon the indivisible interests of the members of the plan (in which case certification under Rule 23(b)(1)(B) is typically apt). ERISA cases may also be certified under both (b)(1)(A) and (b)(1)(B) simultaneously.

Newberg on Class Actions, *supra*, at § 4:44.

Even if ERISA were inapplicable, this would still be a limited monetary fund situation for which Rule 23(b)(1)(B) is apt. "[A] limited monetary fund situation clearly qualifies as one in which an individual's litigation may either 'dispose of' or 'impair or impede' another's interests 'as a practical matter,' hence warranting certification under Rule 23(b)(1)(B). Newberg on Class Actions, *supra*, § 4:17 (quoting Rule 23(b)(1)(B)). Indeed, this is a classic limited fund case for which Rule 23(b)(1)(B) was designed. In Ortiz, *supra*, the Supreme Court set forth the "common characteristics" of the limited

fund class action, noting that not all are required for class certification under Rule 23(b)(1)(B), but all of which are present here:

> The first and most distinctive characteristic is that the totals of the aggregated liquidated claims and the fund available for satisfying them, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all the claims. The concept driving this type of suit was insufficiency, which alone justified the limit on an early feast to avoid a later famine. . . .
>
> * * *
>
> Second, the whole of the inadequate fund was to be devoted to the overwhelming claims.
>
> * * *
>
> Third, the claimants identified by a common theory of recovery were treated equitably among themselves.

Ortiz, *supra*, 527 U.S. at 838.

Here we clearly have "insufficiency" that justifies accepting the limited amount of funds that the Settling Defendants are offering, "to avoid a later famine." The total value of the Settling Defendants' assets to be paid in connection with the Proposed Settlement may be as low as $11,150,000, or may be considerably more, but will never come close to the $125,000,000 needed to purchase annuities and terminate the Plan, as Plaintiffs request. As set forth in the Settlement Agreement:

> The Settling Defendants acknowledge that SJHSRI, as the former employer of the Plan participants, is liable to the Plaintiffs for breach of contract, and, arguably, on at least some of the other claims Plaintiffs have asserted against the Settling Defendants in the Federal Court Action and the State Court Action, and that Plaintiffs' damages resulting from such liability include the sum that (in addition to the remaining assets of the Plan) would be sufficient to purchase annuities from one or more insurance companies to fund all of the benefits to which the Plan participants are entitled under the Plan, and that, according to the analysis

> obtained by the Settling Defendants in connection with the filing of the Petition for Receivership, that sum (in addition to the remaining assets of the Plan as represented to Counsel for the Settling Defendants by the Receiver within ten (10) days prior to the execution of this Settlement Agreement) would be at least $125,000,000. The Settling Defendants RWH and CCCB agree that they are liable along with SJHSRI, jointly and severally, for breach of contract to the Plaintiffs and, arguably, on at least some of the other claims Plaintiffs have asserted against the Settling Defendants in the Federal Court Action and the State Court Action, in the amount of damages of at least $125,000,000, and all of the Settling Defendants agree that such sum less the Gross Settlement Amount Prior to Distribution in the Liquidation Proceedings shall be amount of the Plaintiffs' claims as creditors of the Settling Defendants in the Liquidation Proceedings.

Exhibit A (Settlement Agreement) ¶ 28.

We also have the second common characteristic of limited fund cases, in which "the whole of the inadequate fund" is devoted to Plaintiffs' claims, in that the Receiver will receive substantially all of the Settling Defendants' net assets after payment of other creditors as the Superior Court may order in the Liquidation Proceedings and attorneys' fees.

Finally, the Plan participants are "identified by a common theory of recovery" and are "treated equitably among themselves," in that all funds will ultimately be distributed to them or their representatives in the form of retirement benefits in accordance with the terms of the Plan. It would obviously be anomalous and unjust if Participants (or their beneficiaries) could "eat their cake and have it too" by opting out of a settlement while still enjoying the benefit of the increased funding to the Plan.

VII. The Court Should Approve the Proposed Notice Plan and Class Notice

Fed. R. Civ. P. 23(e)(1) states as follows:

> (e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> > (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

"But while Rule 23(e) directs the giving of notice, it leaves the form of the notice to the court's discretion; for this reason, courts have sometimes overlooked the absence of notice where there was clearly no prejudice to class members." Navarro-Ayala v. Hernandez-Colon, 951 F.2d 1325, 1337 (1st Cir. 1991) (citations omitted). See also Wright, Miller & Kane, Federal Practice and Procedure § 1797.6:

> **The court has complete discretion in determining what constitutes a reasonable notice scheme, both in terms of how notice is given and what it contains.** As indicated in the discussion of the other notice provisions in Rule 23, subdivision (c)(2)14 and subdivision (d)(2), there is no single way in which the notice must be transmitted. **Of course, notice by mail to all of the identified class members informing them of the proposed action and indicating that they have a right to participate and voice their objections will suffice.** But other approaches including the use of television, radio, the internet, and various print publications also may be utilized. In some cases, such as in prisoner litigation, when the class members are all in one location, posting or other publication may be deemed sufficient.

Wright, Miller & Kane, Federal Practice and Procedure § 1797.6 (citations omitted) (emphasis supplied).

Plaintiffs have submitted a proposed Class Notice for the Court's approval.[73] The Receiver has already been acting as the Administrator of the Plan, and, accordingly, has compiled a database that includes the mailing addresses for all of the Plan participants. Under the Notice Plan proposed by the Settling Parties, if the Court grants preliminary settlement approval, then, within ten (10) days after an order granting preliminary approval is entered, the Receiver will mail the Class Notice to all Plan participants via first-class mail.

The proposed Class Notice is sufficiently detailed but not overly legalistic, and it is written in plain, easily understood language. The proposed Class Notice will inform the Class Members of their rights and the manner and deadline to object to the settlement and request for attorneys' fees.[74] The Class Notice also will inform them of the claims to be released.[75] The Class Notice further contains a link to a website through which Class Members will be able to access pertinent Court documents, including the Settlement Agreement, and any orders and judgment entered in this matter.[76] The proposed Class Notice also provides the contact information for all counsel in the case, whom the Settlement Class Members may contact if they have questions.[77]

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[73] Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice).

[74] Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 2-3.

[75] Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 11-12.

[76] Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 2.

[77] Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 14-16.

VIII. Plaintiffs' Counsel Should be Appointed to Represent the Settlement Class

Plaintiffs are seeking the appointment of Plaintiffs' Counsel to represent the Settlement Class, without prejudice to the issue of who should represent any other classes that may be certified in this case. Plaintiffs' Counsel are experienced in complex litigation, have already devoted over two thousand five hundred (2,500) hours to these matters, and secured and reviewed approximately one million pages of documents in investigating those claims, and, with the approval of the Rhode Island Superior Court, already represent the Receiver in this case, whose interests are identical to the interests of the Proposed Class Representatives. WSL has negotiated what is believed to be a favorable settlement of Plaintiffs' claims against the Settling Defendants.

If other counsel were appointed to represent the Settlement Class in collecting the value of the Settling Defendants' assets, rather than Plaintiffs' Counsel, they would have no helpful or positive role to play since that collection is the task of the Receiver under the supervision of the court in the Receivership Proceedings. To the contrary, to the extent other Settlement Class Counsel sought to be involved, it might raise problems of *res judicata* and collateral estoppel, utterly confuse the jury, and create the risk of inconsistent outcomes. Under these circumstances, appointment of other counsel to separately represent the Settlement Class would disadvantage the Class, disrupt the orderly processes of the Court, and would be both unnecessary and uneconomical.

CONCLUSION

The Court is respectfully requested to enter the proposed order attached to the Settlement Agreement,[78] or as the Court may otherwise direct, which essentially:

1. Grants approval of the settlement between Plaintiffs and the Settling Defendants as a good faith settlement pursuant to R.I. Gen. Laws § 23-17.14-35;

2. Preliminarily certifies all of the Plan participants as the Settlement Class;

3. Grants preliminary approval of the settlement pursuant to Fed. R. Civ. P. Rule 23(e);

4. Preliminarily appoints Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class;

5. Authorizes the Receiver to issue the Class Notice to the Settlement Class;

6. Directs the Settling Defendants to issue the notice to federal and state officials required by the federal Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*; and

7. Schedules the hearing for final approval of the settlement and approval of Wistow, Sheehan & Loveley, P.C.'s motion for an award of attorneys' fees.

Respectfully submitted,

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By their Attorney,

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[78] Exhibit A (Settlement Agreement) Exhibit 2.

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By their Attorney,

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Dated: November 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 21st day of November, 2018 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Max Wistow

Exhibit A

SETTLEMENT AGREEMENT

This settlement agreement ("Settlement Agreement") is entered into as of August 31, 2018, between and among 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, said persons acting individually and[1] on behalf of all class members as defined herein (the Receiver and said persons are collectively referred to as "Plaintiffs"), and, on the other hand, CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and the corporation Roger Williams Hospital ("RWH") (collectively the "Settling Defendants").

WHEREAS SJHSRI filed a petition to place the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan") into receivership in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Receivership Proceedings") requesting a hearing authorizing the Receiver to reduce benefits under the Plan by 40%, and the Receiver was appointed by the Court in that proceeding;

WHEREAS Plaintiffs asserted claims against the Settling Defendants and others 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

[1] Contingent upon the Court certifying the Class as provided herein.

Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the "State Court Action"), which lawsuits concern the alleged underfunded status of the Plan, in which Plaintiffs seek relief from the Settling Defendants including money damages that greatly exceed the remaining assets of the Settling Defendants;

WHEREAS Plaintiffs filed a motion to intervene in the civil action entitled *In re: CharterCARE Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island*, C.A. No: KM-2015-0035 (the "2015 *Cy Pres* Proceeding"), filed in Providence County Superior Court in the State of Rhode Island, and are seeking an order vacating the order entered in the 2015 *Cy Pres* Proceeding on April 20, 2015 and directing that all assets transferred to CharterCARE Foundation pursuant to that order be disposed of in accordance with the orders of the Court in the Federal Court Action in connection with the adjudication of the merits of Plaintiffs' claims, or, if the merits of Plaintiff's claims are adjudicated in the State Court Action, in accordance with the orders of the court in the State Court Action;

WHEREAS the recovery Plaintiffs are seeking from the Settling Defendants is primarily money to be paid into the Plan; and

WHEREAS there is only a limited fund to satisfy Plaintiffs' claims against the Settling Defendants, consisting primarily of the Settling Defendants' limited assets, which may be greatly diminished or exhausted by attorneys' fees and expenses of defending against Plaintiffs' claims.

NOW, THEREFORE, in consideration for the mutual exchange of promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, Plaintiffs and the Settling Defendants hereby agree as follows:

1. For purposes of this Settlement Agreement, and in addition to other terms that are defined elsewhere in this Settlement Agreement, the following terms shall have the meanings specified herein:

   a. "2014 Asset Sale" means the sale of assets pursuant to the Asset Purchase Agreement entered into as of September 23, 2013, which closed on or about June 20, 2014, pursuant to which the assets of certain entities, including the Settling Defendants, were sold or otherwise transferred.

   b. "CAFA Notice" means the notice of the proposed settlement in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 et seq.

   c. "CCCB's Foundation Interests" means all of the claims, rights and interests of CCCB against or in CharterCARE Foundation (f/k/a CharterCARE Health Partners Foundation (f/k/a St. Josephs Health Services Foundation")), including but not limited to the right to recover funds transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to CCCB's present or former status as a member or sole member of CharterCARE Foundation.

   d. "CCCB's Hospital Interests" means all of the claims, rights and interests against or in Prospect CharterCare, LLC that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in Prospect CharterCare

LLC, and any rights or interests that SJHSRI or RWH may have in connection therewith.

e. "Class Member" means a member of the Settlement Class.

f. "Class Notice" means the notice to be provided to Class Members of the Final Approval Hearing, in the form attached hereto as Exhibit 1, or as the Court may otherwise direct.

g. "Class Representatives" mean Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, who will first seek to be appointed as representatives of the Settlement Class for settlement purposes in connection with this Settlement Agreement, and, thereafter, will seek such appointment for the assertion along with the Receiver of the merits of the Plaintiffs' claims against the remaining defendants.

h. "Counsel for the Settling Defendants" means Attorney Robert D. Fine of the law firm of Chace Ruttenberg & Freedman, LLP, or such other counsel as the Settling Defendants may designate in writing to Plaintiff's Counsel.

i. "Court" means the United States District Court for the District of Rhode Island.

j. "Deadline for Objection to Settlement" means the date identified in the Class Notice by which a Class Member must file or serve written objections, if any, to the Settlement. The Deadline for Objection to

Settlement shall be no later than ten (10) days prior to the Final Approval Hearing or as the Court may otherwise direct.

k. "Deadline for Objection to Award of Attorneys' Fees" means the date identified in the Class Notice by which a Class Member must file or serve written objections, if any, to the proposed award of attorneys' fees. The Deadline for Objection to Award of Attorneys' Fees shall be no later than ten (10) days prior to the Final Approval Hearing or as the Court may otherwise direct.

l. "DLT Escrow" means RWH's Workers Comp Self Insurance Reserve Account which has a balance of $750,000.

m. "Effective Date" means the date upon which the Order Granting Final Settlement Approval is entered.

n. "Final Approval Hearing" means the hearing at which the Court will make a final determination as to 1) whether the terms of the Settlement are fair, reasonable, and adequate, as to the Settlement Class, such that the Settlement should be finally approved by the Court, 2) whether to approve the Settlement as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) what attorneys' fees should be awarded to Plaintiffs' Counsel, and 4) such other and further relief as the Court may direct.

o. "Gross Settlement Amount" means the total of all funds paid by or on behalf of one or more of the Settling Defendants to or at the direction of the Receiver, or otherwise in connection with the Settlement, as well as

the fair market value (if there exists a fair market for such assets, or such other value as the court in the Receivership Proceedings or the court in the Liquidation Proceedings may determine) of any property or ownership rights transferred to the Receiver in connection with or pursuant to the Settling Defendants' undertakings in this Settlement Agreement, at the direction or request of the Receiver, or pursuant to the orders of the court in the Receivership Proceedings or the Liquidation Proceedings.

p. "Gross Settlement Amount Prior to Distribution in the Liquidation Proceedings" means the Gross Settlement Amount not including any sums distributed to the Receiver in the Liquidation Proceedings.

q. "Initial Lump Sum" includes any portion of the DLT Escrow that has been released from escrow by the time that payment of the Initial Lump Sum is due, plus the greater of the sum of 1) all cash and investments in hedge funds and other securities held by the Settling Defendants as of the Effective Date, less $600,000, or 2) eleven million one hundred and fifty thousand dollars ($11,150,000).

r. "Joint Motion" means the motion, supporting memorandum, and the exhibits thereto in the form that the Settling Parties have agreed will be filed with the Court in connection with this Settlement Agreement, with such revisions as are necessary to accurately refer to the actions of the court in the Receivership Proceedings in connection with the Receiver's Petition for Settlement Instructions.

s. "Liquidation Proceedings" means the proceedings to be commenced by each of the Settling Defendants at the direction of the Receiver for judicial liquidation pursuant to R.I. Gen. Laws § 7-6-61.

t. "LLC Agreement" means the agreement entered into among CCCB, Prospect East Holdings, Inc., and Prospect CharterCare, LLC in connection with the 2014 Asset Sale, originally entitled the "AMENDED & RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF PROSPECT CHARTERCARE, LLC (a Rhode Island Limited Liability Company)" and as it thereafter may have been revised or amended.

u. "Net Settlement Amount" means the Gross Settlement Amount less the attorneys' fees paid to Class Counsel.

v. "Notice Plan" means the form, contents, and method of delivery of the Class Notice to be provided to Class Members.

w. "Order Granting Preliminary Settlement Approval" means, unless otherwise ordered by the Court, the order in the form attached hereto as Exhibit 2, 1) certifying the Settlement Class for purposes of determining whether the Settlement is fair, reasonable, and adequate; 2) appointing Plaintiffs' Counsel to represent the Settlement Class, 3) preliminarily approving the Settlement; 4) scheduling hearing on final approval of the Settlement and Plaintiffs' Counsel's application for attorneys' fees; and 5) approving the Notice Plan, or as the Court may otherwise direct.

x. "Order Granting Final Settlement Approval" means the order approving the Settlement 1) as fair, reasonable, and adequate, 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) awarding attorneys' fees to Plaintiffs' Counsel, and 4) such other and further relief as the Court may direct.

y. "Plaintiffs' Counsels' Motion for Attorneys' Fees" means the motion for attorneys' fees in connection with their representation of the Settlement Class that Plaintiffs' Counsel will submit at the same time as the Joint Motion.

z. "Plaintiffs' Counsel" means the law firm of Wistow, Sheehan & Loveley, P.C. and the attorneys of said firm.

aa. "Settlement" means the settlement described in the Settlement Agreement to be approved by the Court

bb. "Settlement Class" means all participants of the Plan, including:

i) all surviving former employees of SJHSRI who are entitled to benefits under the Plan; and

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

cc. "Settling Parties" means collectively, the Plaintiffs and the Settling Defendants.

dd. "Settling Defendants' Other Assets" shall mean all assets of the Settling Defendants other than the Initial Lump Sum, the balance of the DLT

escrow after payment of the Initial Lump Sum, any funds in the Special Reserve Account established pursuant to this Settlement Agreement, CCCB's Foundation Interests, and CCCB's Hospital Interests.

2. The Receiver agrees that, within five (5) business days of the execution of this Settlement Agreement by the Settling Parties, the Receiver will file his Petition for Settlement Instructions with the court in the Receivership Proceedings, asking for authority to proceed with this Settlement. If such authority is not obtained for any reason, this Settlement Agreement will be null and void and the Settling Parties will return to their respective positions as if this Settlement Agreement had never been negotiated, drafted, or executed.

3. The Settling Parties agree that, within five (5) business days of the court in the Receivership Proceedings authorizing the Receiver to proceed with this Settlement, Plaintiffs will file the Joint Motion in the Federal Court Action.

4. Plaintiffs agree that prior to the filing of the Joint Motion, they will provide counsel for the Settling Defendants with a list of all known Class members, including the states in which they reside. Within ten (10) business days following the filing of the Joint Motion, the Settling Defendants agree to serve the CAFA Notice in the form and with the exhibits thereto attached hereto as Exhibits 3, 4 & 5, by mailing a copy thereof through the United States Postal Service, First Class Mail, to the Rhode Island Attorney General, the Director of the Rhode Island Department of Business Regulation, the Attorney General for every other State where a Class Member resides, and to the Attorney General of the United States, and, no later than fourteen (14) days prior to the Final Approval Hearing, to provide the Court

and the Receiver with written confirmation substantially in the form attached hereto as Exhibits 6, 7 & 8 that they have done so, which shall list each recipient and the address to which the CAFA Notice was sent.

5. As set forth in the Joint Motion, the Settling Parties will request that the Court certify the Settlement Class pursuant to Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, on the grounds that the Settling Defendants' alleged conduct was uniform with respect to each Class Member and the relief sought inures to the benefit of the Plan as a whole and not directly to any of the Class Members, and the Settling Defendants have limited funds that are greatly exceeded by the claims of the Plaintiffs, such that adjudications of these claims by individual members of the Settlement Class would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the actions, and substantially impair or impede the ability of other members of the Settlement Class to protect their interests as to the Settling Defendants.

6. It is the belief of the Settling Parties that there is no right of any Class Members to opt out of the Settlement Class, because this Settlement involves a limited fund that is insufficient to satisfy all of the claims of the Class Members and the Receiver, and the relief Plaintiffs are seeking is payment into the Plan, from which all of the Class Members have rights of payment.

7. The Settling Parties agree to seek certification of the Settlement Class solely for the purpose of permitting the Settlement Class to participate in the settlement of Plaintiffs' claims against the Settling Defendants, without prejudice to the rights of

the remaining defendants in the Federal Court Action or the State Court Action to oppose class certification in connection with Plaintiffs' claims against them.

8. In the event the Court grants the Joint Motion, and unless otherwise directed by the Court, the Order Granting Preliminary Settlement Approval shall be in the form attached hereto as Exhibit 2 and shall require that within ten (10) days of the entry thereof, the Receiver will send the Class Notice to Class Members by mail, through the United States Postal Service, First Class Mail, in the form attached hereto as Exhibit 1, or as the Court may otherwise direct.

9. The Settling Defendants agree to cooperate with Plaintiffs and to take all reasonable measures requested by Plaintiffs to obtain the Order Granting Preliminary Settlement Approval and the Order Granting Final Settlement Approval.

10. Within ten (10) business days after the Effective Date, the Settling Defendants will pay to the Receiver the Initial Lump Sum to be administered by the Receiver in accordance with the orders of the Court in the Receivership Proceeding, as set forth in paragraph 33 of this Settlement Agreement.

11. Within five (5) business days after the Effective Date, Plaintiffs will execute and deliver to Counsel for the Settling Defendants the releases of the Settling Defendants in the form attached hereto as Exhibits 9, 10 &11, to be held in escrow until the Initial Lump Sum, the Irrevocable Assignment re CharterCARE Foundation, the Irrevocable Assignment re DLT Escrow, the copy of notice by the Settling Defendants to CharterCARE Foundation of the Irrevocable Assignment

re CharterCARE Foundation, and the Consent of Sole Member have all been received by Plaintiffs' Counsel on behalf of the Plaintiffs.

12. Within five (5) business days after the Effective Date, the Settling Defendants agree to deliver to Plaintiffs' Counsel a document evidencing consent by CCCB as sole member of CharterCARE Foundation (CCCB's Consent as Sole Member") pursuant to R.I. Gen. Laws § 7-6-104, in the form attached hereto as Exhibit 12.

13. Within ten (10) business days after the Effective Date, the Settling Defendants agree to deliver to Plaintiff's Counsel an irrevocable assignment (the "Irrevocable Assignment") to the Receiver of all of CCCB's Foundation Interests, effective ten (10) days thereafter, and, upon written request of the Receiver, to promptly give CharterCARE Foundation written notice of said Irrevocable Assignment by certified mail to CharterCARE Foundation c/o Paula Iacono, 7 Waterman Avenue, North Providence RI, or such other person who becomes CharterCARE Foundation's registered agent, and to counsel for CharterCARE Foundation in the Federal Court Action, with copy to Plaintiffs' Counsel. The Settling Defendants further agree to thereafter assist the Receiver's efforts to confirm and enforce the Irrevocable Assignment and CCCB's Consent as Sole Member.

14. The Settling Defendants warrant and represent that, to their knowledge, CCCB has not participated in amending the articles of incorporation or by-laws of CharterCARE Foundation to change CCCB's status as sole member of CharterCARE Foundation or otherwise eliminate or diminish CCCB's Foundation Interests, that the Settling Defendants have no knowledge of such amendment,

and that CCCB will not participate in such amendment, or assign, transfer, or otherwise limit or encumber CCCB's Foundation Interests, except as provided in paragraph 13 of this Settlement Agreement.

15. Within five (5) days of the Effective date, the Settling Parties will provide Plaintiffs' Counsel with their fully executed irrevocable assignment of all rights they or any of them may have in the portion of the DLT Escrow that was not included and paid as part of the Initial Lump Sum (the "Irrevocable Assignment re DLT Escrow"), and promptly give the Rhode Island Department of Labor and Training and Citizens Bank written notice of said irrevocable assignment by certified mail, with copy to Plaintiffs' Counsel. The Settling Parties believe that the amount of the DLT Escrow of $750,000 as presently required by the Rhode Island Department of Labor and Training is unreasonably large in light of the purposes for said escrow. The Settling Defendants further agree to thereafter reasonably assist the Receiver to facilitate the Receiver's efforts to obtain all of the funds held in the DLT Escrow to be administered by the Receiver for the benefit of the Plan in accordance with the orders of the court in the Receivership Proceeding, as set forth in paragraph 33 of this Settlement Agreement.

16. Settling Defendants warrant and represent that the balance of the DLT Escrow is seven hundred and fifty thousand dollars ($750,000), that they have not previously assigned, transferred, or otherwise limited or encumbered their rights in the DLT Escrow, and that they will not do so except as provided in paragraph 15 of this Settlement Agreement.

17. The Settling Defendants warrant and represent that, to their knowledge, CCCB's Hospital Interests stand solely in the name of CCCB, that CCCB has not participated in the amendment or revision of the LLC Agreement from its original terms, and that CCCB has not assigned, transferred, or otherwise limited or encumbered such rights or interests, and that following the execution of the Settlement Agreement, CCCB will not assign, transfer, or otherwise limit or encumber such rights or interests except with the express written consent of the Receiver. The Settling Defendants agree to hold the CCCB Hospital Interests in trust for the Receiver, and that the Receiver will have the full beneficial interests therein.

18. At the written direction of the Receiver addressed to Counsel for the Settling Defendants at any time the Receiver may choose, provided it is more than five (5) business days after the Effective Date, the Settling Defendants agree that CCCB will exercise the put option referred to in the LLC Agreement as the "CCHP Put Option," (the "Put Option") in accordance with the terms of the LLC Agreement pertaining to said exercise, or as the Receiver may otherwise direct, at such time as the Receiver may elect, and that the Receiver shall participate with CCCB in all matters concerning the exercise of the Put Option, and that the Settling Defendants shall promptly take all steps reasonably requested by the Receiver in connection therewith, and transfer to the Receiver any payment to or on behalf of CCCB for all or any part of the CCCB Hospital Interests, to be disposed of by the Receiver for the benefit of the Plan in accordance with the

orders of the court in the Receivership Proceeding, as set forth in paragraph 33 of this Settlement Agreement.

19. The Settling Defendants agree that, in the event that the Receiver decides that CCCB should not exercise the Put Option, or if CCCB attempts to exercise the Put Option but the attempt is rejected, or in the judgment of the Receiver the result of that attempted exercise is not wholly successful, the Receiver may sue in the name of CCCB to collect or otherwise obtain the value of such beneficial interests, and to cooperate in any litigation commenced by the Receiver and to comply with all of the Receiver's reasonable requests to maximize and realize the full value of CCCB's Hospital Interests, subject to any orders of the court in the Liquidation Proceedings concerning CCCB's responsibilities, to be paid to and distributed by the Receiver for the benefit of the Plan in accordance with the orders of the court in the Receivership Proceedings, as set forth in paragraph 33 of this Settlement Agreement.

20. In the event that the Settling Parties are still seeking the Order Granting Final Settlement Approval on June 20, 2019, the Settling Defendants agree to exercise the Put Option upon the request of the Receiver and at such time as the Receiver may select, provided the Settling Defendants shall have no such obligation if the Receiver makes the request after the Court has refused to grant final settlement approval.

21. In the event that the Court enters the Order Granting Final Settlement Approval, the Settling Defendants agree that upon the Receiver's written demand therefor (or, if no such demand is made within thirty (30) days of the Effective Date, then

Settling Defendants may proceed without such demand), they will file petitions (hereinafter the "the Petitions for Judicial Liquidation") to liquidate the Settling Defendants' Other Assets and affairs pursuant to R.I. Gen. Laws § 7-6-61 in the Liquidation Proceedings, provided, however, that the Receiver may demand that the Petitions for Judicial Liquidation should be filed jointly, or at different times.

22. The Settling Defendants represent that the schedules attached hereto as Exhibits 13, 14, & 15 set forth their best evaluations of the assets of Settling Defendants CCCB, SJHSRI, and RWH, respectively.

23. The Settling Defendants represent that the schedules attached hereto as Exhibits 16, 17, & 18 contain the names and addresses of all persons or entities whom the Settling Defendants know or reasonably believe may have claims against, or otherwise represent liabilities of, CCCB, SJHSRI, and/or RWH, respectively, which may make them creditors of the Settling Defendants who may be entitled to assert claims in the Liquidation Proceedings, provided that such schedules do not include ordinary operating expenses and liabilities of the Settling Defendants incurred in connection with their on-going wind-down of their operations. The Settling Defendants contest both their liability and the amount of the damages they may owe to some of their putative creditors.

24. The Settling Defendants agree to cooperate with and follow the requests of the Receiver and to take all reasonable measures in the Liquidation Proceedings to obtain court approval of the Petitions for Judicial Liquidation, including but not limited to marshalling the Settling Defendants' Other Assets and other rights of

the Settlement Defendants and opposing and seeking to limit the claims of other creditors where appropriate.

25. The relief requested in the Petitions for Judicial Liquidation will include the request for an order of the court enjoining all creditors from asserting their claims against or otherwise affecting the assets of the Settling Defendants except in the Liquidation Proceedings, and authorizing Counsel for the Settling Defendants or such other person as the court may direct to marshal any and all of the assets of the Settling Defendants for liquidation and distribution in the Liquidation Proceedings.

26. After payment of the Initial Lump Sum, the Settling Parties agree that the Settling Defendants may retain liquid assets in their operating accounts of no more than a total of $600,000 ("the Operating Fund"), to be allocated among the Settling Defendants as they see fit, and that the Settling Defendants may continue to receive for deposit into the Operating Fund income from charitable trusts or other sources, provided, however, that if the Operating Fund should ever exceed $600,000, they will immediately deposit the excess in a special reserve account (the "Special Reserve Account") to be paid to the Receiver upon the filing of the first of the Petitions for Judicial Liquidation, and that any balance remaining in the Operating Fund when the cash and other assets of the Settling Defendants are distributed in the Liquidation Proceedings shall be included in the Settling Defendants' Other Assets and distributed by the court to the Settling Defendants' creditors, including the Plaintiffs, as the court may direct in the Liquidation Proceedings.

27. Commencing with the execution of the Settlement Agreement, the Settling Defendants agree they will not purchase or otherwise obtain any illiquid assets without prior written approval of the Receiver, and will make no payments to anyone, including but not limited to creditors, except in the ordinary course of winding-down their operations, and to provide the Receiver with ten (10) days' written notice of their intention to make any such payments in an amount greater than $50,000, to negotiate in good faith if the Receiver objects to any such payments after being provided with notice thereof, and to submit to the jurisdiction of the Superior Court in the Receivership Proceeding if the Receiver continues to object, so that the Court in the Receivership Proceeding may determine whether such payments should be made.

28. The Settling Defendants acknowledge that SJHSRI, as the former employer of the Plan participants, is liable to the Plaintiffs for breach of contract, and, arguably, on at least some of the other claims Plaintiffs have asserted against the Settling Defendants in the Federal Court Action and the State Court Action, and that Plaintiffs' damages resulting from such liability include the sum that (in addition to the remaining assets of the Plan) would be sufficient to purchase annuities from one or more insurance companies to fund all of the benefits to which the Plan participants are entitled under the Plan, and that, according to the analysis obtained by the Settling Defendants in connection with the filing of the Petition for Receivership, that sum (in addition to the remaining assets of the Plan as represented to Counsel for the Settling Defendants by the Receiver within ten (10) days prior to the execution of this Settlement Agreement) would

be at least $125,000,000. The Settling Defendants RWH and CCCB agree that they are liable along with SJHSRI, jointly and severally, for breach of contract to the Plaintiffs and, arguably, on at least some of the other claims Plaintiffs have asserted against the Settling Defendants in the Federal Court Action and the State Court Action, in the amount of damages of at least $125,000,000, and all of the Settling Defendants agree that such sum less the Gross Settlement Amount Prior to Distribution in the Liquidation Proceedings shall be amount of the Plaintiffs' claims as creditors of the Settling Defendants in the Liquidation Proceedings.

29. In connection with the execution of this Settlement Agreement, the Settling Defendants and the Receiver will execute a security agreement granting to the Receiver a security interest (the "Receiver's Security Interest") in all of their accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-or-credit rights, letters of credit, money, and general intangibles (the "Security Agreement") and the UCC-1 Financing Statement attached hereto as Exhibits 19 & 20, respectively, and such other documents as the Settling Parties agree are reasonably necessary to effectuate and perfect the Receiver's Security Interest, to secure the payment of the Initial Lump Sum and the obligations of the Settling Defendants under paragraphs 12, 13, 15, 18, 19, 20, 21, and 26 of this Settlement Agreement.

30. The Settling Defendants contend that their proportionate fault in tort, if any, in causing said damages is small compared to the proportionate fault of the other defendants in the Federal Court Action and the State Court Action, but

acknowledge that, under the law governing joint and several liability, the Settling Defendants could be required to pay the full amount of Plaintiffs' damages regardless of the proportionate fault of the other defendants.

31. The Settling Defendants agree to consent to the Receiver participating in the Liquidation Proceedings on behalf of himself, the Plaintiffs, the Plan, or the Plan participants, in accordance with the orders of the court in the Receivership Proceeding, and to perform all actions reasonably necessary in order to facilitate the speedy and just resolution of such proceedings.

32. The Settling Defendants agree to consent to Plaintiffs intervening in the 2015 *Cy Pres* Proceeding, and not to object to Plaintiffs' request for an order vacating the order entered on April 20, 2015 and directing that Plaintiffs' claims, based upon this Settlement Agreement or the matters alleged in the Federal Court Action, to all assets transferred to CharterCARE Foundation pursuant to that order, together with any investment or other proceeds thereof, shall be adjudicated in the Federal Court Action or, if such claims are not adjudicated on the merits in the Federal Court Action, then they shall be adjudicated in the State Court Action.

33. The Net Settlement Amount shall be deposited into and invested with the other Plan assets by the Receiver, in accordance with the orders of the court in the Receivership Proceedings.

34. The Settling Defendants agree that if any claims of whatever nature are asserted against them by any person or entity not a party to this agreement that arise out of or relate to this Settlement Agreement, the Settling Defendants' assets that are

the subject of this Settlement Agreement, the Plan, the matters alleged in the Federal Court Action or the State Court Action, or the 2014 Asset Sale or any related agreements (the "Third Party Claims"), the Settling Defendants will promptly notify Plaintiffs' Counsel in writing with full particulars thereof. Plaintiffs' Counsel shall have the option to participate in the defense of any or all Third Party Claims by notifying Counsel for the Settling Parties in writing of the exercise of said option, in which event the Settling Parties agree to cooperate with Plaintiffs' Counsel in said defense and, solely for the benefit of Plaintiffs and Plaintiffs' Counsel, to waive any attorney client privileges and/or work product concerning the Third Party Claims, the matters out of which they arose, or to which they relate.

35. If the Order Granting Final Settlement Approval is not entered for any reason, this Settlement Agreement will be null and void and the Settling Parties will return to their respective positions as if this Settlement Agreement had never been negotiated, drafted, or executed.

36. The Settling Parties agree that, in connection with the filing of the Joint Motion, Plaintiffs' Counsel may apply to the Court for an award of attorneys' fees and expenses. The Settling Defendants agree not to object to such award or the requested amount of the award, and that, unless otherwise directed by the Court, Plaintiffs' Counsel may make their motion returnable on the same day as the Court sets for the Final Approval Hearing.

37. The drafting of this Settlement Agreement is a result of lengthy and intensive arm's-length negotiations, and the presumption that ambiguities shall be

construed against the drafter does not apply. None of the Settling Parties will be deemed the drafter of the Settlement Agreement for purposes of construing its provisions.

38. The Court shall retain continuing jurisdiction over the Settling Parties, including the Class Representatives and all Class Members, for purposes of the administration and enforcement of this Settlement Agreement.

39. This Settlement Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

40. The Plaintiffs and the Settling Defendants further agree that no promise or inducement has been offered, except as herein set forth, and that this Settlement Agreement contains the entire agreement between and among the Settling Parties and supersedes any and all prior agreements, understandings, representations, and discussions, whether written or oral, between the Settling Parties, with the exception that the Settling Parties have agreed upon the form of the Joint Motion.

41. The Plaintiffs and the Settling Defendants further agree that Rhode Island law (excluding its conflict of laws rules) shall govern this Settlement Agreement.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 4th day of September, in the year 2018.

Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 4th day of September, 2018, before me personally appeared Stephen Del Sesto, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires: 3/31/2022

Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 31st day of August, 2018, before me personally appeared Stephen Del Sesto, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Elizabeth A. Healey
NOTARY PUBLIC
My Commission Expires: 4-4-20

IN WITNESS WHEREOF, I have hereunto set my hand this 31 day of August, in the year 2018.

Gail J. Major
GAIL J. MAJOR

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

On this 30 day of August, 2018, before me personally appeared Gail J. Major, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Elizabeth A. Wheeler
NOTARY PUBLIC
My Commission Expires: 4-4-20

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of August, in the year 2018.

Nancy Zompa
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 30th day of August, 2018, before me personally appeared Nancy Zompa, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Elizabeth A. Wheeler
NOTARY PUBLIC
My Commission Expires: 4-4-20

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
RALPH BRYDEN

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, in the year 2018.

Ralph N. Bryden
RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 31st day of August, 2018, before me personally appeared Ralph Bryden, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Arlene Violet
NOTARY PUBLIC
My Commission Expires: 9/19/19

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, in the year 2018.

Dorothy Willner
DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 31st day of August, 2018, before me personally appeared Dorothy Willner, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Arlene Violet
NOTARY PUBLIC
My Commission Expires: 9/19/19

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, in the year 2018.

CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 31st day of August, 2018, before me personally appeared Caroll Short, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires: 9/5/21

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of September, in the year 2018.

Donna E Boutelle
DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 4th day of September, 2018, before me personally appeared Donna Boutelle, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, in the year 2018.

Eugenia Levesque
EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 31st day of August, 2018, before me personally appeared Eugenia Levesque, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Arlene Viveiros
NOTARY PUBLIC
My Commission Expires: 9/19/19

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 4 day of SEPT, in the year 2018.

[insert name] DAVID M. THRASCH
[insert title] PRESIDENT
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 4TH day of SEPT., 2018, before me personally appeared DAVID M. THRASCH, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

RICHARD J. LAND
NOTARY PUBLIC - RHODE ISLAND
My Commission Expires 05-16-2021

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 4 day of SEPT, in the year 2018.

[insert name] DAVID M. HIRSCH
[insert title] PRESIDENT
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 4TH day of SEPT., 2018, before me personally appeared DAVID M. HIRSCH, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

RICHARD J. LAND
NOTARY PUBLIC - RHODE ISLAND
My Commission Expires 05-16-2021

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 4 day of SEPT, in the year 2018.

[insert name] DAVID M. HARSCH
[insert title] PRESIDENT
Roger Williams Hospital

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 4TH day of SEPT., 2018, before me personally appeared DAVID M. HARSCH, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

RICHARD J. LAND
NOTARY PUBLIC - RHODE ISLAND
My Commission Expires 05-16-2021

LIST OF EXHIBITS TO SETTLEMENT AGREEMENT

1. Class Notice of Hearing for Final Settlement Approval;
2. Order Granting Preliminary Settlement Approval;
3. CCCB CAFA Notice;
4. RWH CAFA Notice;
5. SJHSRI CAFA Notice;
6. Settling Defendants' Counsel's Declaration that CAFA Notice has Been Sent on Behalf of CCCB;
7. Settling Defendants' Counsel's Declaration that CAFA Notice has Been Sent on Behalf of RWH;
8. Settling Defendants' Counsel's Declaration that CAFA Notice has Been Sent on Behalf of SJHSRI;
9. Release of CCCB;
10. Release of RWH;
11. Release of SJHSRI;
12. CCCB's Consent as Sole Member
13. Schedule of CCCB Assets;
14. Schedule of SJHSRI Assets;
15. Schedule of RWH Assets;
16. Schedule of CCCB Claims/Liabilities;
17. Schedule of SJHSRI Claims/Liabilities.
18. Schedule of RWH Claims/Liabilities;
19. Security Agreement
20. UCC1s for CCCB, RWH & SJHSRI

Exhibit 1

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

Del Sesto et al. v. Prospect Chartercare, LLC et al.

C.A. No: 1:18-CV-00328-WES-LDA

NOTICE OF CLASS ACTION PARTIAL SETTLEMENT

YOUR LEGAL RIGHTS MIGHT BE AFFECTED IF YOU ARE A MEMBER OF THE FOLLOWING CLASS (the "Class"):

> All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:
>
> i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
>
> ii) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.

Chief Judge William E. Smith of the United States District Court for the District of Rhode Island (the "Court") has preliminarily approved a proposed partial settlement (the "Partial Settlement") of a class action lawsuit brought under the Employee Retirement Income Security Act of 1974 ("ERISA") and state common law. The Partial Settlement will provide for payments to the Plan, in return for releasing certain defendants from any liability, and the lawsuit will continue as to the remaining defendants. The Partial Settlement is summarized below.

The Court has scheduled a hearing (the "Final Approval Hearing") to consider the Named Plaintiffs' motion for final approval of the Partial Settlement, including Plaintiffs' Counsel's application for attorneys' fees. The Final Approval Hearing before U.S. District Chief Judge William E. Smith has been scheduled for _____, 2018 at ____ a.m./p.m., in the United States District Court for the District of Rhode Island,

Federal Courthouse, 1 Exchange Terrace, Providence, Rhode island, 02903. Any objections to the Partial Settlement or the application for attorneys' fees must be served in writing on Plaintiffs' Counsel and on the Settling Defendants' attorneys, as identified on Page ___ of this Notice of Class Action Partial Settlement ("Mailed Notice"). The procedure for objecting is described below.

This Mailed Notice contains summary information with respect to the Partial Settlement. The terms and conditions of the Partial Settlement are set forth in a Settlement Agreement ("Settlement Agreement"). Capitalized terms used in this Mailed Notice but not defined in this Mailed Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement, and additional information with respect to this lawsuit (the "Action") and the Partial Settlement, is available at the internet site www._____.com ("the Receiver's Web Site") that was established by Attorney Stephen Del Sesto as Court-Appointed Receiver and Administrator of the Plan in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Receivership Proceedings").

PLEASE READ THIS MAILED NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS, THE PARTIAL SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE PARTIAL SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE PARTIAL SETTLEMENT BY FOLLOWING THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE PARTIAL SETTLEMENT

YOU WILL NOT RECEIVE A DIRECT PAYMENT IN CONNECTION WITH THIS SETTLEMENT

The Partial Settlement provides for payment of certain funds to increase the assets of the Plan, and to put the Plan on a better financial position than it would be without the Partial Settlement to meet payment obligations to Plan participants and their beneficiaries in accordance with their rights under the Plan and applicable law. It is not expected that the Partial Settlement will increase Plan assets sufficiently to make the Plan fully funded to meet its benefit obligations. However, the case will go on against the non-settling defendants. Plan participants or beneficiaries of Plan participants will not receive any direct payments in connection with this Partial Settlement.

If the Partial Settlement is approved by the Court and you are a member of the Class, you will not need to do anything.

THIS PARTIAL SETTLEMENT WILL NOT REDUCE YOUR RIGHTS TO COMMENCE OR CONTINUE TO RECEIVE A BENEFIT FROM THE PLAN

If the Partial Settlement is approved by the Court and you are a member of the Class, your entitlement to commence or receive a benefit at the time and in the form provided under the terms of the Plan will not be reduced or diminished as a result of your participation in the Partial Settlement. To the contrary, the effect if the Partial settlement is approved by the Court will be to increase the assets available to pay benefits under the Plan.

YOU MAY OBJECT TO THE SETTLEMENT BY

_____, 2018.

If you wish to object to any part of the Partial Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Partial Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON_____, 2018.

If you submit a written objection to the Partial Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing about the Partial Settlement and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written notice of objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear. To file a written notice of objection and Notice of Intention to Appear, you must follow the instructions set forth in answer to Question 13 in this Mailed Notice.

• These rights and options—and the deadlines to exercise them—are explained in this Mailed Notice.

• The Court still has to decide whether to approve the Partial Settlement. Payments will be made only if the Court approves the Partial Settlement and that approval is upheld in the event of any appeal.

Further information regarding this Action and this Mailed Notice may be obtained by contacting the following Plaintiffs' Counsel:

Max Wistow, Esq., Stephen P. Sheehan, Esq.,
or Benjamin Ledsham, Esq.
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

WHAT THIS NOTICE CONTAINS

SUMMARY OF PARTIAL SETTLEMENT

This Action is a class action in which the Named Plaintiffs claim that the Plan is underfunded such that it will not be able to pay all of the benefits to which plan participants are entitled, and that the defendants are liable for that underfunding, as well as related claims. Copies of the Complaint filed in the Action are available at the Receiver's Web Site, www._____.

The Settling Defendants are St. Joseph Health Services of Rhode Island Inc. ("SJHSRI"), CharterCARE Community Board ("CCCB"), and the corporation Roger Williams Hospital ("RWH"). They will pay an Initial Lump Sum of eleven million one hundred and fifty thousand dollars ($11,150,000) plus however much has been released by the Rhode Island Department of Labor and Training from a reserve account ("DLT Escrow Account") established years ago in connection with RWH's self-insured workers compensation program, up to possibly the full amount of the DLT Escrow Account which is currently seven hundred and fifty thousand dollars ($750,000), and the Settling Defendants will cooperate with Plaintiffs' Counsel and the Receiver to seek to obtain the balance of the DLT Escrow Account, the assets of another defendant in this case, CharterCARE Foundation, and to obtain the value of CCCB's membership interest in another defendant in this case, Prospect CharterCARE, Inc., all to be paid into the Plan after payment of attorneys' fees, in accordance with the orders of the Rhode Island Superior Court in the Receivership Proceedings. The Settling Defendants at the direction of the Receiver will thereafter file Petitions for Judicial Liquidation in the Rhode Island Superior Court, seeking judicial liquidation of their assets and distribution of those assets to their creditors, including to the Receiver to be paid into the Plan in accordance

with the orders of the court in the Receivership Proceedings. Accordingly, the Total Settlement Amount is presently unknown. However, it will be at least the amount of the Initial Lump Sum, and Plaintiffs' Counsel and the Receiver hope to obtain significantly more money for the Plan pursuant to the Partial Settlement.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

If this Partial Settlement had not been agreed to, or if this Partial Settlement is not approved, the Settling Defendants would dispute the claims asserted in the Action. Further, the Plaintiffs would face an uncertain outcome if the Action were to continue.

There is no assurance that Plaintiffs will secure recoveries from any of the Defendants, including the settling Defendants and the non-settling defendants. In that case, the proposed Partial Settlement may be the only opportunity to significantly increase the assets of the pension fund to pay benefits as and when they are due, and the consequence of not approving the Partial Settlement may be that the pension fund runs out of money sooner than if the Partial Settlement were approved.

The Plan documents themselves contain various provisions which arguably could be read to relieve SJHSRI of any obligation to fund the Plan, and to limit the Plaintiffs' recovery to the assets in the Plan. The Plaintiffs claim that such provisions either were not intended to have that effect, or are unenforceable. However, it is uncertain whether the Plaintiffs would prevail on these issues. Moreover, although the Plaintiffs contend that such agreements are unenforceable, at least some of the Plan participants who went on to work for Prospect Chartercare LLC in 2014 at Our Lady of Fatima Hospital signed arbitration agreements that might apply to their claims against the Settling Defendants. Those arbitration agreements purport to waive those employees' rights to participate in a class action. If those provisions were enforceable, those employees might have to retain their own attorneys and proceed individually against the Settling Defendants to assert their claims.

The Receiver and the Named Plaintiffs and the Settling Defendants disagree on liability. They also do not agree on the amount that would be recoverable even if the Receiver and the Named Plaintiffs were to prevail at trial. If this Partial Settlement had not been agreed to, or if this Partial Settlement is not approved, the Settling Defendants would strongly deny all claims and contentions by the Plaintiffs and deny any wrongdoing with respect to the Plan. The Settling Defendants would deny that they are liable to the members of the Settlement Class and that the members of the Settlement Class have suffered any damages for which the Settling Defendants could be held legally responsible.

Nevertheless, having considered the uncertainty and expense inherent in any litigation, particularly in a complex case such as this, the Receiver and the Named Plaintiffs and Settling Defendants have concluded that it is desirable that the Action be fully and finally settled as between them, on the terms and conditions set forth in the Settlement Agreement.

STATEMENT OF ATTORNEYS' FEES SOUGHT IN THE ACTION

Plaintiffs' Counsel will apply to the Court for an order awarding attorneys' fees in accordance with the Retainer Agreement previously approved by the Rhode Island Superior Court in the Receivership Proceedings concerning Plaintiffs' Counsel's representation of the Receiver in this and other cases, in the amount of 23.5% of the Gross Settlement Amount, except that, although not required to do so, Plaintiffs' Counsel have volunteered to reduce their fees by the sum of five hundred and fifty two thousand dollars and 21cents ($552,281.25), representing attorneys' fees that Plaintiffs' Counsel were paid in connection with the investigation of whether there were any possibly meritorious claims to be asserted on behalf of the Plan. The result of this reduction would be to reduce Plaintiffs' Counsel's attorneys' fees on the Initial Lump Sum to 18.5% of that amount, rather than 23.5%. Any amount awarded will be paid from the Gross Settlement Amount. The Settling Defendants will not oppose Plaintiffs' Counsel's application and otherwise have no responsibility for payment of such fees.

WHAT WILL THE CLASS REPRESENTATIVES GET?

Neither the Named Plaintiffs nor any of the Class Members will receive any direct payments in connection with the Partial Settlement. The Receiver will receive the Net Settlement Amount for deposit into the assets of the Plan in accordance with the orders of the Superior Court in the Receivership Proceeding. The benefit the Named Plaintiffs or any of the Class members will receive will be that the funds paid to the Plan in connection with the Partial Settlement will increase the amount of the assets of the Plan available to pay benefits to the Plan participants and the beneficiaries of the Plan participants.

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE PACKAGE?

You are a member of the Settlement Class, because you are a Participant in the Plan, or are the Beneficiary of someone who is a participant in the Plan.

The Court directed that this Mailed Notice be sent to you because since you were identified as a member of the Settlement Class, you have a right to know about the

Partial Settlement and the options available to you regarding the Partial Settlement before the Court decides whether to approve the Partial Settlement. This Mailed Notice describes the Action and the Partial Settlement.

The Court in charge of this Lawsuit is the United States District Court for the District of Rhode Island . The persons who sued are Stephen Del Sesto (as Receiver and Administrator of the Plan)(the "Receiver"), and seven Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque. These Plan participants are called the "Named Plaintiffs," and the people they sued are called "Defendants." The Defendants are Prospect Chartercare LLC, CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Inc., Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWH, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., the corporation Roger Williams Hospital, Chartercare Foundation, the Rhode Island Community Foundation, the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, the Diocesan Service Corporation, and the Angell Pension Group, LLC. The Lawsuit is known as Del Sesto et al. v. Prospect Chartercare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA .

2. WHAT IS THE ACTION ABOUT?

The Named Plaintiffs claim that, under the Employees Retirement Income Security Act of 1974, as amended ("ERISA"), and state law, the Defendants were obligated to fully fund the Plan, and other related claims, including allegations of fraud and misrepresentation. Defendants deny the claims in the Lawsuit, deny that they were obligated to fully fund the Plan and Plaintiffs' related claims, and deny that they have engaged in any wrongdoing.

SETTLEMENT DISCUSSIONS

The proposed Partial Settlement is the product of negotiations between Plaintiffs' Counsel and the Settling Defendants' counsel, including asset disclosure, after the filing of the complaint in this proceeding.

3. WHY IS THIS CASE A CLASS ACTION?

In a class action, one or more plaintiffs, called "class representatives" sue on behalf of people who have similar claims. All of these people who have similar claims collectively make up the "class" and are referred to individually as "class members." One case resolves the issues for all class members together. Because the purported wrongful conduct alleged in this Action affected a large group of people—participants in the Plan—in a similar way, the Named Plaintiffs filed this case as a proposed class action.

4. WHY IS THERE A SETTLEMENT?

As in any litigation, all parties face an uncertain outcome. On the one hand, continuation of the case against the Settling Defendants could result in a judgment greater than this Partial Settlement. However, the Settling Defendants are very unlikely to have sufficient assets to pay more than the Gross Settlement Amount even if the judgment exceeds that amount, and almost certainly will have less assets that that Gross Settlement Amount by the time such a judgment is obtained. Moreover, continuing the case could result in no recovery at all for the Named Plaintiffs from the Settling Defendants. Based on these factors, the Named Plaintiffs and Plaintiffs' Counsel have concluded that the proposed Partial Settlement is in the best interests of all members of the Class.

5. WHY IS THIS ONLY A PARTIAL SETTLEMENT?

This is a Partial Settlement because it only resolves the Plaintiffs' claims against the Settling Parties. Plaintiffs' claims against the remaining defendants are not being settled. If this Settlement is approved, the only expected effect of the Partial Settlement on the Plaintiff's claims against the remaining defendants is that the remaining defendants will claim to be entitled to reduce their liability to the Plaintiffs by the Gross Settlement Amount. In other words, the non-settling defendants will argue that Plaintiffs are not be entitled to recover the same damages twice, once from the Settling Defendants and again from one or more the remaining defendants.

The following hypothetical example may help explain the reduction that the non-settling defendants may seek.

> Imagine a personal injury lawsuit brought by a plaintiff against two defendants, in which the plaintiff claims the defendants were negligent, and settled his or her claims against one defendant for $100, and proceeded to trial against the remaining defendant against whom the plaintiff obtained an award of $500. The

effect of the prior settlement would be at most to reduce the $500 award by $100, so that the plaintiff's total recovery would be $100 from the settlement and an additional $400 from the defendant against whom the plaintiff went to trial.

6. WILL THIS LAWSUIT CONTINUE AFTER THE PARTIAL SETTLEMENT?

This lawsuit will continue against the defendants who are not parties to the Partial Settlement. Those defendants are Prospect Chartercare LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWH, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Chartercare Foundation, the Rhode Island Community Foundation, the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, the Diocesan Service Corporation, and the Angell Pension Group, LLC. There are no assurances that Plaintiffs' claims against the remaining defendants will be successful or result in any recovery.

7. HOW DO I KNOW WHETHER I AM PART OF THE PARTIAL SETTLEMENT?

You are a member of the Settlement Class if you fall within the criteria for the Settlement Class approved by Chief Judge William E. Smith:

> All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:
>
> i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
>
> ii) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

8. WHAT DOES THE PARTIAL SETTLEMENT PROVIDE?

The Partial Settlement provides for payment in stages. There will be an Initial Lump Sum payment of eleven million one hundred and fifty thousand dollars ($11,150,000) plus however much has been released from the DLT Escrow Account, up to possibly the full amount of the DLT Escrow Account which is currently seven hundred and fifty thousand dollars ($750,000).

The Settling Defendants will also transfer to the Receiver their interests in the remaining balance of the DLT Escrow Account and in two other entities. It is alleged that Settling Defendant CCCB has a membership interest in a foundation named CharterCARE Foundation. The Receiver will attempt to obtain those assets. However, it is expected that CharterCARE Foundation will deny that CCCB has any interest in or claim to those funds. It is impossible at this time to know whether the Receiver will obtain any funds from CharterCARE Foundation or the amount of what those funds will be if the receiver recovers any such funds.

It is also alleged that Settling Defendant CCCB has a membership interest in Prospect CharterCARE LLC, which indirectly through subsidiary corporations owns and operates two hospitals, Roger Williams Hospital, and Our Lady of Fatima Hospital. The Partial Settlement would obligate CCCB to cooperate with the Receiver to obtain that interest or the value thereof, for deposit into the Plan in accordance with the orders of the Superior Court in the Receivership Proceeding. However, Prospect CharterCARE LLC may dispute or seek to diminish the value of CCCB's membership interest. Thus, it is impossible at this time to know whether the Receiver will obtain any funds in connection with that membership interest.

The Settlement Agreement provides that the remaining assets of the Settling Defendants will be liquidated through proceedings for judicial liquidation in the Rhode Island Superior Court. Those proceedings will determine the competing claims of the Plaintiffs and other creditors to those remaining assets. It is hoped but it is impossible to guarantee that the Receiver will receive significant sums to be deposited into the Plan in accordance with the orders of the Superior Court in the Receivership Proceeding.

The Settlement Agreement provides that the Settling Defendants may retain operating funds of no more than $600,000 to enable them to complete the liquidation proceedings, and that any operating funds they receive in excess of $600,000 will be paid to the Receiver when the petitions for liquidation are filed, to be deposited into the Plan in accordance with the orders of the Superior Court in the Receivership Proceeding after attorneys' fees.

Participation in this Partial Settlement will have no impact on your right to commence or continue to receive your benefits at the time and in the form provided under the terms of the Plan other than to increase the amount of funds the Plan will have available to pay benefits to Plan participants and their Beneficiaries.

If the Partial Settlement is approved by the Court, all members of the Settlement Class shall be deemed to fully release the Settling Defendants from the Released Claims (the "Settlement Releases"). The Settlement Releases will release the Settling Defendants,

together with each of their current officers, directors, or attorneys, with the exception of one director, Monsignor Timothy Reilly, who will not be released. The Released Claims mean any and all past, present and future causes of action, claims, damages, awards, equitable, legal, and administrative relief, interest, demands or rights that are based upon, related to, or connected with, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Lawsuit, including but not limited to any and all claims seeking damages because of the underfunded status of the Plan.

However, the Settlement Releases do not release any claims for breach of the Settlement Agreement, any claims to the extent that there may be assets of the Settling Defendants available to be distributed by the court in the Liquidation Proceedings referred to in the Settlement Agreement, any claims the Plaintiffs may have concerning the assets of the Settling Defendants were transferred in connection with the 2015 Cy Pres Proceeding referred to in the Settlement Agreement, and any claims to the assets of the Settling Defendants that were transferred in connection with the 2014 Asset Sale referred to in the Settlement Agreement.

The Settling Defendants will be entitled to receive the Settlement Releases in accordance with the terms of the Settlement Agreement.

The above description of the proposed Partial Settlement is only a summary. The complete terms, including the definitions of the Released Parties and Released Claims, are set forth in the Settlement Agreement (including its exhibits), which may be obtained at the Receiver's Web Site, www. _____.

9. CAN I GET OUT OF THE PARTIAL SETTLEMENT?

It is anticipated that this Partial Settlement and the judicial liquidation proceedings will dispose of all of the assets of the Settling Defendants, such that there will be no assets left to satisfy the claims of any individual Plan participants who might otherwise wish to assert claims against the Settling Defendants. As a result, you do not have the right to exclude yourself from the Partial Settlement. The Settlement Agreement provides for certification of the Class as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1)(B), and the Court has determined that the requirements of that rule have been satisfied. As a member of the Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action or are otherwise released under the Partial Settlement.

Although you cannot opt out of the Partial Settlement, you can object to the Partial Settlement and ask the Court not to approve it. For more information on how to object to the Partial Settlement, see the answer to Question 13 below.

10. WHO ARE THE LAWYERS REPRESENTING THE CLASS

Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. have been preliminarily appointed to represent the Class.

11. DO I HAVE A LAWYER IN THE CASE?

The Court has appointed Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Class in the Action. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. HOW WILL THE LAWYERS BE PAID?

Plaintiffs' Counsel will file a motion for the award of attorneys' fees of 23.5% of the Gross Settlement Amount, reduced by the sum of $$552,281.25, which is the amount of attorneys' fees previously paid to Plaintiffs' Counsel in connection with their investigation of claims prior to commencing this lawsuit. The percentage of 23.5% is the same percentage applicable to Plaintiffs' Counsel's representation of Attorney Stephen Del Sesto as Receiver in this lawsuit, and was previously approved by Associate Justice Brian P. Stern of the Rhode Island Superior Court in connection with the case captioned *St. Joseph Health Services of Rhode Island, Inc., Petitioner, v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Receivership Proceedings"). The petition filed on behalf of St. Joseph Health Services of Rhode Island, Inc. alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. The Superior Court in the Receivership Proceedings authorized the retention of Wistow, Sheehan & Loveley, P.C. as Special Counsel to the Receiver, to investigate and assert possible claims that may benefit the Plan, pursuant to Wistow, Sheehan & Loveley, P.C.'s retainer agreement which was approved by the Superior Court.

Copies of Plaintiffs' Counsel's Motion for Award of Attorneys' Fees may be obtained at the Receiver's Web Site, www. .com. This motion will be considered at

the Final Approval Hearing described below. Defendants will not take any position on that matter before the Court.

OBJECTING TO THE ATTORNEYS' FEES

By following the procedures described in the answer to Question 13, you can tell the Court that you do not agree with the fees and expenses the attorneys intend to seek and ask the Court to deny their motion or limit the award.

13. HOW DO I TELL THE COURT IF I DO NOT LIKE THE PARTIAL SETTLEMENT?

If you are a member of the Settlement Class, you can object to the Partial Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. To object, you must send a letter or other writing saying that you object to the Partial Settlement in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA. Be sure to include your name, address, telephone number, signature, and a full explanation of all the reasons why you object to the Partial Settlement. Your written objection must be sent to the following counsel and must be postmarked by no later than _____, 2018.

PLAINTIFFS' COUNSEL

Max Wistow, Esq.
Stephen P. Sheehan, Esq.
Benjamin Ledsham, Esq.
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
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Prospect CharterCare SJHSRI, LLC
Prospect CharterCare RWMC, LLC

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Rhode Island Community Foundation

You must also file your objection with the Clerk of the Court of the United States District Court for the District of Rhode Island by mailing it to the address set forth below. The objection must refer prominently to Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA . Your objection must be postmarked no later than _____, 2018. The address is:

Clerk of the Court
United States District Court for the
District of Rhode Island
Federal Courthouse
1 Exchange Terrace
Providence, Rhode Island 02903

14. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE PARTIAL SETTLEMENT?

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Partial Settlement as fair, reasonable, and adequate (the "Final Approval Hearing"). You may attend the Final Approval Hearing, but you do not have to attend.

The Court will hold the Final Approval Hearing at __:_0 _.m. on _____, 2018, at the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island 02903, in the courtroom then occupied by United States Chief District Judge William E. Smith. The Court may adjourn the Final Approval Hearing without further notice to the members of the Settlement Class, so if you wish to attend, you should confirm the date and time of the Final Approval Hearing with Plaintiffs' Counsel before doing so. At that hearing, the Court will consider whether the Partial Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also rule on the motions for attorneys' fees. The Parties do not know how long these decisions will take or whether appeals will be taken.

15. DO I HAVE TO COME TO THE HEARING?

No, but you are welcome to come at your own expense. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Partial Settlement. You also may pay your own lawyer to attend the Final Approval Hearing, but such attendance is also not necessary.

16. MAY I SPEAK AT THE HEARING?

If you submit a written objection to the Partial Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear, as described in this paragraph. To do so, you must send a letter or other paper called a "Notice of

Intention To Appear at Final Approval Hearing in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA .” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention To Appear must be sent to the attorneys listed in the answer to Question 13 above, postmarked no later than _____, 2018, and must be filed with the Clerk of the Court by mailing it (post-marked no later than ___, 2018) to the address listed in the answer to Question 13.

17. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing and you are a member of the Settlement Class, you will participate in the Partial Settlement of the Action as described above in this Mailed Notice.

GETTING MORE INFORMATION

18. ARE THERE MORE DETAILS ABOUT THE PARTIAL SETTLEMENT?

Yes. This Mailed Notice summarizes the proposed Partial Settlement. The complete terms are set forth in the Settlement Agreement. Copies may be obtained at the Receiver’s Web Site, @www._____.com. You are encouraged to read the complete Settlement Agreement.

DATED: _____, 2018

Exhibit 2

UNITED STATE 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, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

[PROPOSED]
ORDER (1) PRELIMINARILY CERTIFYING A SETTLEMENT CLASS, (2) PRELIMINARILY APPOINTING COUNSEL FOR THE SETTLEMENT CLASS, (3) PRELIMINARILY APPROVING CLASS ACTION PARTIAL SETTLEMENT, (4) APPROVING NOTICE PLAN, AND (4) SETTING FINAL APPROVAL HEARING

WILLIAM E. SMITH, Chief Judge.

This matter having come before the Court on the Joint Motion for Class Certification, Appointment of Class Counsel, and Preliminary Partial Settlement Approval in the above captioned case (the "Action"), filed by 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 and on behalf of the settlement class (collectively "Plaintiffs"), and Defendants CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively the "Settling Defendants") (Plaintiffs

and the Settling Defendants are referred to collectively as the "Settling Parties") which attaches thereto the Settling Parties' Settlement Agreement (the "Settlement Agreement," which memorializes the "Settlement"). Having duly considered the papers,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action, the Settling Parties, and all Settlement Class Members.

2. Unless defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.

3. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this evaluation, the Court finds there is cause to believe that: (i) the Settlement Agreement is fair, reasonable, and adequate, and within the range of possible approval; (ii) the Settlement Agreement has been negotiated in good faith at arms-length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the forms of notice of the material terms of the Settlement Agreement to Settlement Class Members for their consideration and reaction, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement Class:

   All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:

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

   ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan.

5. The Court hereby preliminarily appoints Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

6. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. On [MONTH DAY], 2018, in courtroom [insert] of the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement Agreement and to determine whether (i) final approval of the Settlement embodied by the Settlement Agreement should be granted, and (ii) Plaintiffs' Counsel's application for attorneys' fees for representing the Settlement Class, should be granted, and in what amount.

8. No later than [MONTH DAY], 2018, which is fourteen (14) days prior to the Final Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and respond to any written objections.

9. The Settling Defendants may (but are not required to) file papers in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2018.

10. The non-settling Defendants may (but are not required to) file papers in opposition or in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2018.

11. The Court approves the proposed Notice Plan for giving notice to the Settlement Class (i) directly, by first class mail, per the Class Notice of Hearing for Final Settlement Approval ("Class Notice") attached to the Settlement Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement Agreement, on the web site maintained by the Receiver Attorney Stephen Del Sesto at the web address of the Receiver, www._____ , as more fully described in the Settlement Agreement. The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Settling Parties and specifically the Receiver to complete all aspects of the Notice Plan no later than [MONTH DAY], 2018, in accordance with the terms of the Settlement Agreement.

12. The Settling Defendants will file with the Court by no later than [MONTH DAY], 2018, which is fourteen (14) days prior to the Final Approval Hearing, proof that Notice was provided was provided by each of the Settling Defendants to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

14. As the settlement involves a limited fund, which is expected to be fully disposed of in connection with the Settlement, Settlement Class Members do not have the right to exclude themselves or opt-out of the settlement. Consequently, all

Settlement Class Members will be bound by all determinations and judgments concerning the Settlement Agreement.

15. Settlement Class Members who wish to object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys, Fees, must do so by the Objection Deadline of [MONTH DAY], 2018, which is sixty (60) calendar days after the Settlement Notice Date.

16. To object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, Settlement Class Members must follow the directions in the Notice and file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her full name, address, and home or cellular telephone number(s) by which the Settlement Class Member may be called. He or she must also state the reasons for his or her Objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must also be attached to the Objection. Any and all objections shall identify any lawyer that assisted or provided advice as to the case or such objection. No Objection will be valid unless all of the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants by mail utilizing the United States Postal Service First Class Mail, to the addresses listed hereinbelow, or by email to the email addresses listed hereinbelow.

17. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Notice, and the Settlement Class Member wishes to appear and be heard at the Final Approval Hearing, the Settlement Class Member must file a notice of intention to appear with the Court and serve a copy upon Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants, in the manner provided herein, no later than Objection Deadline, and comply with all other requirements of the Court for such an appearance.

18. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order, above and as detailed in the Class Notice, and at the same time provide copies to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants as provided herein, shall not be permitted to object to the Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means, shall be deemed to have waived his, her,

or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

19. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Settlement Class representatives to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.

20. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the Settlement Class.

ORDERED:

ENTERED:

_____

_____

Smith, C. J.

Dep. Clerk

Dated:

Dated:

EXHIBIT 1

PLAINTIFFS' COUNSEL

Max Wistow, Esq.
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Benjamin Ledsham, Esq.
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SETTLING DEFENDANTS' COUNSEL

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NONSETTLING DEFENDANTS' LOCAL COUNSEL

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The Angell Pension Group, Inc.

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Prospect CharterCare, LLC
Prospect CharterCare SJHSRI, LLC
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Andrew R. Dennington, Esq.
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Prospect Medical Holdings, Inc.
Prospect East Holdings, Inc.

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Paul M. Kessimian, Esq.
Christopher M. Wildenhain, Esq.
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Rhode Island Community Foundation

Exhibit 3

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect CharterCare, LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, CharterCARE Community Board ("CCCB") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode Island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4) & (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. § 1715(b)(2), a fairness hearing regarding CCCB's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for CCCB.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to CCCB's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of CCCB's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, CCCB cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

Exhibit 4

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect CharterCare, LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Roger Williams Hospital (RWH") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode Island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4) & (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. § 1715(b)(2), a fairness hearing regarding RWH's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for RWH.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to RWH's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of RWH's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, RWH cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

Exhibit 5

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect CharterCare, LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, St. Joseph Health Services of Rhode Island ("SJHSRI") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode Island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4), (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. § 1715(b)(2), a fairness hearing regarding SJHSRI's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for SJHSRI.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to SJHSRI's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of SJHSRI's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, SJHSRI cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

Exhibit 6

UNITED STATE 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, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

DECLARATION OF ROBERT D. FINE, ESQ. REGARDING NOTICE OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. S 1715 ON BEHALF OF CHARTERCARE COMMUNITY BOARD

Robert D. Fine hereby declares and states as follows:

1. I have personal knowledge of the matters stated herein, and if called to testify as a witness, I could and would testify competently to the following facts.

2. I am an attorney with the law firm of Chace Ruttenberg & Freedman, LLP, which serves as counsel for Defendant CharterCARE Community Board (“CCCB”) in the above-captioned action.

3. I submit this declaration upon personal knowledge to demonstrate CCCB’S compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1715 ("CAFA").

4. On September , 2018, Plaintiffs and Defendants CCCB, St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) (collectively the “Settling Parties”) filed their Joint Motion for Preliminary Approval of Partial Settlement.

5. On _____, 2018, this Court signed an order preliminarily approving the proposed class action settlement between the Settling Parties in the above-captioned action.

6. On _____, 2018, pursuant to 28 U.S.C. §1715 (a) & (b), Chace Ruttenberg & Freedman, LLP staff, acting under my direction and supervision, served the CAFA Notice, which consisted of a cover letter and certain accompanying documents, upon the U.S. Attorney General and the appropriate government officials for all of the states in which proposed members of the Settlement Class reside, based on information provided to me by Attorney Stephen Del Sesto as Receiver and Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan, by mail using the United States Postal Service First Class Mail.

7. Attached hereto as Exhibit A is a true and correct copy of the letter that was mailed as described in paragraph 6.

8. Attached hereto as Exhibit B is the list of names and addresses of the government officials upon whom the CAFA Notice was served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ of _____, 2018 in Rhode Island.

_____[sign]_____

EXHIBIT A

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect Chartercare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, CharterCARE Community Board ("CCCB") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4), (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. § 1715(b)(2), a fairness hearing regarding SJHSRI's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for SJHSRI.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to SJHSRI's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of CCCB's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, SJHSRI cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

EXHIBIT B

Name Title Address City State Zip Phone

[insert for RI Secretary of State, RI Attorney General, and Attorney Generals for all American states, territories, etc. where any class member resides]

Exhibit 7

UNITED STATE 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, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

DECLARATION OF ROBERT D. FINE, ESQ. REGARDING NOTICE OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. S 1715 ON BEHALF OF ROGER WILLIAMS HOSPITAL

Robert D. Fine hereby declares and states as follows:

1. I have personal knowledge of the matters stated herein, and if called to testify as a witness, I could and would testify competently to the following facts.

2. I am an attorney with the law firm of Chace Ruttenberg & Freedman, LLP, which serves as counsel for Defendant Roger Williams Hospital (“RWH”) in the above-captioned action.

3. I submit this declaration upon personal knowledge to demonstrate RWH’s compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA").

4. On September , 2018, Plaintiffs and Defendants RWH, St. Joseph Health Services of Rhode Island (“SJHSRI”), and CharterCARE Community Board (CCCB”) (collectively the “Settling Parties”) filed their Joint Motion for Preliminary Approval of Partial Settlement.

5. On _____, 2018, this Court signed an order preliminarily approving the proposed class action settlement between the Settling Parties in the above-captioned action.

6. On _____, 2018, pursuant to 28 U.S.C. §1715 (a) & (b), Chace Ruttenberg & Freedman, LLP staff, acting under my direction and supervision, served the CAFA Notice, which consisted of a cover letter and certain accompanying documents, upon the U.S. Attorney General and the appropriate government officials for all of the states in which proposed members of the Settlement Class reside, based on information provided to me by Attorney Stephen Del Sesto as Receiver and Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan, by mail using the United States Postal Service First Class Mail.

7. Attached hereto as Exhibit A is a true and correct copy of the letter that was mailed as described in paragraph 6.

8. Attached hereto as Exhibit B is the list of names and addresses of the government officials upon whom the CAFA Notice was served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ of _____, 2018 in Rhode Island.

_____[sign]_____

EXHIBIT A

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect CharterCare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, Roger Williams Hospital (RWH") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4) & (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. §1715(b)(2), a fairness hearing regarding RWH's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for RWH.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to RWH's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of RWH's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, RWH cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

EXHIBIT B

Name	Title	Address	City	State	Zip	Phone

[insert for RI Secretary of State, RI Attorney General, and Attorney Generals for all American states, territories, etc. where any class member resides]

Exhibit 8

UNITED STATE 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, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

DECLARATION OF ROBERT D. FINE, ESQ. REGARDING NOTICE OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. S 1715 ON BEHALF OF ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

Robert D. Fine hereby declares and states as follows:

1. I have personal knowledge of the matters stated herein, and if called to testify as a witness, I could and would testify competently to the following facts.

2. I am an attorney with the law firm of Chace Ruttenberg & Freedman, LLP, which serves as counsel for Defendant St. Joseph Health Services of Rhode Island ("SJHSRI") in the above-captioned action.

3. I submit this declaration upon personal knowledge to demonstrate SJHSRI'S compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA").

4. On September , 2018, Plaintiffs and Defendants SJHSRI, CharterCARE Community Board ("CCCB"), and Roger Williams Hospital ("RWH") (collectively the "Settling Parties") filed their Joint Motion for Preliminary Approval of Partial Settlement.

5. On _____, 2018, this Court signed an order preliminarily approving the proposed class action settlement between the Settling Parties in the above-captioned action.

6. On _____, 2018, pursuant to 28 U.S.C. §1715 (a) & (b), Chace Ruttenberg & Freedman, LLP staff, acting under my direction and supervision, served the CAFA Notice, which consisted of a cover letter and certain accompanying documents, upon the U.S. Attorney General and the appropriate government officials for all of the states in which proposed members of the Settlement Class reside, based on information provided to me by Attorney Stephen Del Sesto as Receiver and Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan, by mail using the United States Postal Service First Class Mail.

7. Attached hereto as Exhibit A is a true and correct copy of the letter that was mailed as described in paragraph 6.

8. Attached hereto as Exhibit B is the list of names and addresses of the government officials upon whom the CAFA Notice was served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ of _____, 2018 in Rhode Island.

_____[sign]_____

EXHIBIT A

[on letterhead of Chace Ruttenberg & Freedman, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect Chartercare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, St. Joseph Health Services of Rhode Island ("SJHSRI") hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode island.

A motion for preliminary approval of the proposed settlement was filed with the court on September , 2018 and the court granted preliminary approval on _____, 2018. In compliance with 28 U.S.C. §§ 1715(b)(1), (4), (5), please find enclosed, copies of the following documents:

1. Complaint, filed June 18, 2018 [Exhibit 1].

2. Joint Motion for Preliminary Settlement Approval filed September , 2018, with accompanying memorandum and exhibits thereto [Exhibit 2].

With regard to 28 U.S.C. §1715(b)(2), a fairness hearing regarding SJHSRI's settlement is currently scheduled for _____, 2018.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2018. [Exhibit 3]

With regard to 28 USC § 1715(b)(5), there has been no other settlement of agreement contemporaneously made between class counsel and counsel for SJHSRI.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to SJHSRI's proposed settlement.

On _____, 2018 the Court entered an Order granting preliminary approval of SJHSRI's settlement. [Exhibit 3]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling [insert number of Class members]. However, SJHSRI cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Robert D. Fine]

Enclosures

EXHIBIT B

Name Title Address City State Zip Phone

[insert for RI Secretary of State, RI Attorney General, and Attorney Generals for all American states, territories, etc. where any class member resides]

Exhibit 9

JOINT TORTFEASOR RELEASE

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 (collectively the "Releasors"), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the "Joint Tortfeasor Release") and do hereby release and forever discharge CharterCARE Community Board ("CCCB") ("Releasee") of and from any and all actions, claims and demands against CCCB of every kind and nature, both at law and in equity (hereinafter the "Released Claims"),

a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode island Retirement Plan ("the Plan");

b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect Chartercare LLC*, et al., C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Action");

c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect CharterCare LLC*, et al., C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the "Federal Court Action");

d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Receivership Action"); and

e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the "2015 Cy Pres Action") if Releasees were permitted to intervene in such action.

Notwithstanding the foregoing, any claims the Releasors may have arising out of or relating to any breach of the Settlement Agreement dated as of August __, 2018 (the "Settlement Agreement") are not released. In addition, the following claims (the "Excepted Claims") are not released:

a) any claims to the extent that there may be assets of CCCB available to be distributed by the court in the Liquidation Proceedings referred to in the Settlement Agreement;

b) any claims the Releasors may have concerning the assets of CCCB that were transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding referred to in the Settlement Agreement; and

c) the assets of CCCB transferred in connection with the 2014 Asset Sale referred to in the Settlement Agreement.

As to the Excepted Claims, the Releasors agree to limit their recourse to the assets referred to in (a) through (c).

As used herein, "CCCB" or "Releasee" refers to CharterCARE Community Board, and those of its officers, directors, attorneys, and agents who have only served in such capacities since June 20, 2014, except that this release applies solely to their roles as officers, directors, attorneys, and agents of CCCB and does not apply to, or otherwise release them from liability in connection with, their roles as officers, directors, attorneys, and agents of any other entity. The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East

Holdings, Inc., Prospect Medical Holdings, Inc., CharterCARE Foundation, Rhode Island Foundation, and The Angell Pension Group, Inc.

Releasors reduce their claims or potential future claims against any party deemed a joint tortfeasor under Rhode Island General Laws § 23-17.14-35 in the amount set forth in the Settlement Agreement only.

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
Stephen Del Sesto, as receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

Exhibit 10

JOINT TORTFEASOR RELEASE

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 (collectively the "Releasors"), on behalf of themselves and their predecessors, successors, and assigns, do hereby release and forever discharge the corporation Roger Williams Hospital ("RWH") ("Releasee") of and from any and all actions, claims and demands against RWH of every kind and nature, both at law and in equity (hereinafter the "Released Claims"), whether known or unknown,

a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode island Retirement Plan ("the Plan");

b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect Chartercare LLC*, et al., C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Action");

c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect CharterCare LLC*, et al., C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the "Federal Court Action");

d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Receivership Action"); and

e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode island, Inc.*, C.A. No. KM-2015-0035 (the "2015 Cy Pres Action") if Releasees were permitted to intervene in such action.

Notwithstanding the foregoing, any claims the Releasors may have arising out of or relating to any breach of the Settlement Agreement dated as of August __, 2018 (the "Settlement Agreement") are not released. In addition, the following claims (the "Excepted Claims") are not released:

a) any claims to the extent that there may be assets of RWH available to be distributed by the court in the Liquidation Proceedings referred to in the Settlement Agreement;

b) any claims the Releasors may have concerning the assets of RWH that were transferred in connection with the 2015 Cy Pres Proceeding referred to in the Settlement Agreement; and

c) to the assets of RWH transferred in connection with the 2014 Asset Sale referred to in the Settlement Agreement.

As to the Excepted Claims, Releasors agree to limit their recourse against Releasees to the assets referred to in (a) through (c).

As used herein, "RWH" or "Releasee" refers to the corporation Roger Williams Hospital, and its officers, directors, attorneys, and agents, that have only served in such capacities since June 20, 2014, except that this release applies solely to their roles as officers, directors, attorneys, and agents of RWH and does not apply to, or otherwise release them from liability in connection with, their roles as officers, directors, attorneys, and agents of any other entity. The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East

Holdings, Inc., Prospect Medical Holdings, Inc., CharterCARE Foundation, Rhode Island Foundation, and The Angell Pension Group, Inc.

Releasors reduce their claims or potential future claims against any party deemed a joint tortfeasor under Rhode Island General Laws § 23-17.14-35 in the amount set forth in the Settlement Agreement only.

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding conflict of laws) shall govern this Release.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
Stephen Del Sesto, as receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

Exhibit 11

JOINT TORTFEASOR RELEASE

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 (collectively the "Releasors"), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the "Joint Tortfeasor Release") and do hereby release and forever discharge St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") ("Releasee") of and from any and all actions, claims and demands against SJHSRI of every kind and nature, both at law and in equity (hereinafter the "Released Claims"),

a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode island Retirement Plan ("the Plan");

b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect Chartercare LLC*, et al., C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Action");

c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan*, et al. *v. Prospect CharterCare LLC*, et al., C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the "Federal Court Action");

d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Receivership Action"); and

e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the "2015 Cy Pres Action") if Releasees were permitted to intervene in such action.

Notwithstanding the foregoing, any claims the Releasors may have arising out of or relating to any breach of the Settlement Agreement dated as of August __, 2018 (the "Settlement Agreement") are not released. In addition, the following claims (the "Excepted Claims") are not released:

a) any claims to the extent that there may be assets of SJHSRI available to be distributed by the court in the Liquidation Proceedings referred to in the Settlement Agreement;

b) any claims the Releasors may have concerning the assets of SJHSRI that were transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding referred to in the Settlement Agreement; and

c) the assets of SJHSRI transferred in connection with the 2014 Asset Sale referred to in the Settlement Agreement.

As to the Excepted Claims, the Releasors agree to limit their recourse to the assets referred to in (a) through (c).

As used herein, "SJHSRI" or "Releasee" refers to St. Joseph Health Services of Rhode Island, Inc., and those of its officers, directors, attorneys, and agents who have only served in such capacities since June 20, 2014, except that this Release applies solely to their roles as officers, directors, attorneys, and agents of SJHSRI and does not apply to, or otherwise release them from liability in connection with, their roles as officers, directors, attorneys, and agents of any other entity. The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare

RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., CharterCARE Foundation, Rhode Island Foundation, and The Angell Pension Group, Inc.

Releasors reduce their claims or potential future claims against any party deemed a joint tortfeasor under Rhode Island General Laws § 23-17.14-35 in the amount set forth in the Settlement Agreement only.

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
Stephen Del Sesto, as receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

Exhibit 12

CONSENT OF CHARTERCARE COMMUNITY BOARD AS SOLE MEMBER OF CHARTERCARE FOUNDATION

The undersigned CharterCARE Community Board ("CCCB"), in its capacity as sole member of CharterCARE Foundation ("CCF"), approves, authorizes and consents to the following actions, pursuant to CCCB's inherent powers and R.I. Gen. Laws § 7-6-104:

1. CCCB hereby elects the following three persons as independent directors of CCF: Attorney Arlene Violet, Attorney Christopher Callaci, and Attorney Jeffrey Kasle;

2. CCCB hereby authorizes and approves amendment of the by-laws of CCF, effective immediately, by re-adopting the by-laws of CCF in the form amended as of October 8, 2013 (attached hereto as Exhibit A), with the following modifications:

   (a) deleting the last three sentences of Section 2.01 in their entirety, and substituting the following:

   > CharterCARE Community Board's membership in CharterCare Foundation may be assigned to Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan.

   (b) deleting section 3.05 in its entirety and substituting the following:

   > SECTION 3.05. Term. All directors serving on the Board prior to August 2018 are removed, and offices of directors held prior to August 2018 are declared vacant. Each independent director elected by CharterCARE Community Board shall hold office until resignation or death, and a successor shall have been duly appointed and qualified.

   (c) deleting all references to "CharterCARE Health Partners" and substituting therefor "CharterCARE Community Board"

   (d) deleting all references to "CharterCARE Health Partners Foundation" and substituting therefor "CharterCARE Foundation"

3. CCCB hereby authorizes and approves amendment of the articles of incorporation of CCF, effective immediately, to delete subsection 3 of Article 4 of the Articles of Incorporation and substitute the following:

> 3. Meetings. The sole member of the Corporation shall be Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan. Meetings of the members of the Corporation may be held anywhere in the United States.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

Exhibit A

REVISED

BY-LAWS

OF

CHARTERCARE HEALTH PARTNERS FOUNDATION

Adopted on August 22, 2011 and revised on October 8, 2013*

By: _____
Kenneth Belcher, Secretary

*This revision is to address a typographical error in Section 2.01 of the Bylaws which identified CharterCare Health Partners as "SJHSRI" rather "CCHP" and is in furtherance of the resolution approved at a Meeting of the Sole Member and the Directors of St. Joseph Health Services Foundation dated August 22, 2011, that changed the name of the Foundation to "CharterCare Health Partners Foundation" and directed that its sole member be CharterCare Health Partners..

ARTICLE I

GENERAL

SECTION 1.01. Name and Purpose. CharterCare Health Partners Foundation (the "Foundation") is a nonprofit corporation organized exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the regulations promulgated thereunder. Such purposes are set out in Article Third of the Articles of Incorporation of the Foundation, from time to time in effect (the "Articles of Incorporation").

Notwithstanding any other provision of the Articles of Incorporation or these By-Laws, the Foundation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or corresponding section of any future federal tax code. No substantial part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided by Section 501(h) of the Code), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

SECTION 1.02. Powers. The Foundation shall have the power, either directly or indirectly, either alone or in conjunction and/or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the Foundation is organized, and to aid or assist other organizations whose activities are such as to further accomplish, foster, or attain any of the Foundation's purposes. Notwithstanding anything herein to the contrary, the Foundation shall exercise only such powers as are in furtherance of the exempt purposes of organizations as set

forth in Section 501(c)(3) and the Code and the rules and regulations promulgated thereunder.

SECTION 1.03. Nonprofit Status. The Foundation is not organized for profit and no part of the net earnings of the Foundation shall inure to the benefit of any director or officer. In the event of the liquidation of the Foundation, whether voluntary or involuntary, no director or officer shall be entitled to any distribution or division of the Foundation's property or the proceeds thereof, and upon such liquidation, the balance of all money, assets and other property of the Foundation, after the payment of all its debts and obligations, shall be distributed pursuant to Section 8 of Article Fourth of the Articles of Incorporation.

SECTION 1.04. Principal Office. The principal office of the Foundation shall be located at 200 High Service Avenue, North Providence, Rhode Island. The Foundation may have such other offices or places of business, either within or outside the State of Rhode Island, as the business of the Foundation may require and as the Board of Directors may from time to time establish.

SECTION 1.05. Registered Office. The registered office of the Foundation shall be located 200 High Service Avenue, North Providence, Rhode Island. The registered office may be changed from time to time by the Board of Directors in compliance with the provisions of applicable law.

ARTICLE II

MEMBERSHIP

SECTION 2.01. Membership. The sole Member of the Foundation shall be CharterCare Health Partners ("CCHP"), a Rhode Island non-profit corporation qualifying as tax-exempt under Section 501(c)(3) of the Code. CCHP may from time to time designate a representative who shall act with the full power and authority of the Member. No membership may be assigned

or transferred or encumbered in any manner whatsoever, either voluntarily, involuntarily or by operation of law. Any proposed or attempted assignment, transfer or termination of membership shall be void. Notwithstanding the foregoing, any legally appointed successor to CCHP by way of corporate merger, acquisition or other similar event shall become the sole Member hereof.

SECTION 2.02. Enumerated Powers. The powers of the Members shall be limited to taking action on the activities enumerated below and those activities expressly requiring action of the Members pursuant to law or the Articles of Incorporation:

(a) election of the independent directors;

(b) authorization or approval of any amendment to the Articles of Incorporation of the Foundation;

(c) authorization or approval of any amendment to the By-Laws of the Foundation;

(d) authorization or approval of any change to the name of the Foundation;

(e) authorization or approval of any merger, consolidation, reorganization, or sale, transfer, disposition, pledge or hypothecation of all or substantially all of the assets of the Foundation;

(f) authorization or approval of the establishment and the organizational documents (including any amendment, revision or repeal thereof), of any equity or contractual joint venture between the Foundation and any third party in which the Foundation will have more than a twenty percent (20%) interest in the revenues or profits of the joint venture, excluding contracts in the ordinary course of business;

(g) authorization or approval of any plan of dissolution, liquidation,

assignment for the benefit of creditors, petition for voluntary bankruptcy or appointment of a receiver, or any plan for winding up the affairs of the Foundation, or any liquidating distribution by the Foundation;

(h) authorization or approval of the incurrence of any debt, loan, borrowing, debt guarantee, whether as primary obligor or co-obligor, pledge, lien, hypothecation, security interest or encumbrance on any of the property or assets of the Foundation;

(i) authorization or approval of any acquisition or lease of, or interest in, real estate, by the Foundation;

(j) authorization or approval of undertaking any expenditure outside of the annual budget whether by contract or otherwise, in excess of $25,000;

(k) authorization or approval of entering into any contract or commitment which involves aggregate payments in excess of $50,000 in any year; and

(l) authorization or approval of the settlement of any litigation or other dispute involving the Foundation.

SECTION 2.03. Annual Meeting. The annual meeting of the Members shall be held on such date and at such place and time as the Board may designate. If such meeting is for any reason not held on the date determined in accordance with this section, a special meeting, as defined below, in lieu of the annual meeting may be held with the same force and effect of the annual meeting.

SECTION 2.04. Special Meetings. A special meeting of the Member may be called at any time by the President, the Board of the Foundation, or by the Member.

SECTION 2.05. Notice. Notice of the annual meeting or any special meeting shall be

given by the Secretary to the Member at the Member's address on file with the Secretary either by mail or electronic communication, at least seven (7) days prior to the meeting and in the case of a special meeting, stating the purpose thereof.

SECTION 2.06. Voting. The Member shall have one (1) vote on all matters on which the Member is entitled to vote.

SECTION 2.07. Action Without a Meeting. Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing and if such written consent is filed with the records of the Foundation. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.01. General Powers. The Foundation's property, affairs and business shall be managed by the Board and the Board shall have, and may exercise, all of the powers of the Foundation, except those reserved to the Members by law, the Articles or these By-Laws.

SECTION 3.02. Number; Qualification and Election. The members of the Board serving at the time CharterCARE Health Partners becomes the sole Member of the Foundation shall remain in office until a new Board is elected by the sole Member at its annual meeting or at a special meeting. Commencing with such election the Board shall consist of a total of fifteen (15) directors, which shall include two (2) individuals who shall be ex officio directors and the remaining thirteen (13) directors who shall be elected as set forth herein by the Member at its annual meeting or at a special meeting. Each member of the Board shall have equal voting authority. The two (2) ex officio members of the Board shall be the individuals then serving as the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO") of CharterCARE

Health Partners and the thirteen (13) remaining members of the Board shall consist of four (4) individuals selected by the Member from among those individuals who are then serving as members of the CharterCARE Health Partners Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the Roger Williams Medical Center Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the CharterCare Health Partners Board of Trustees and five (5) individuals who shall be independent directors. An ex officio director who is no longer serving as either the CEO or the CFO of CharterCARE Health Partner shall be immediately replaced by the individual then serving in that capacity and a director who was selected by the Member as set forth herein from among the members of the Board of Trustees of CharterCARE Health Partners, Roger Williams Medical Center or CharterCare Health Partners who is no longer serving in that capacity shall be immediately replaced by the individual then serving in that capacity.

SECTION 3.03. Nomination Process. The Nominating Committee of the Member shall serve as the Nominating Committee. At least fifteen (15) days prior to the Member's annual meeting or a special meeting called for the election or replacement of directors of the Foundation, the Nominating Committee shall provide to the Board of Trustees of the Member a list of nominees for election as independent directors and a list of nominees for election as directors from the members of the Boards of Trustees of CharterCARE Health Partners, Roger Williams Medical Center and CharterCare Health Partners. The Nominating Committee shall adopt such procedures, including procedures for the solicitation of potential nominees, as are necessary to carry out its duties.

SECTION 3.04. Increase and Decrease in Number. The number and designation of

directors of the Foundation may be modified from time to time by majority vote of the Board.

SECTION 3.05. Term. Each director, other than ex officio directors and other than as set forth herein, shall hold office for a three (3) year term, up to a maximum of two (2) terms, and until a successor shall have been duly appointed and qualified or until death, resignation or removal in the manner hereinafter provided and each ex officio director shall hold office so long as he or she is serving as either the CEO or the CFO of CharterCARE Health Partners. Terms of the initial directors elected after CharterCARE Health Partners becomes the sole Member at its annual meeting or at a special meeting shall be staggered such that each year the terms of a portion of the directors shall expire.

SECTION 3.06. Quorum and Voting. A majority of the total number of directors at the time in office shall constitute a quorum for the transaction of business at any meeting. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time without further notice until a quorum be had. Each director shall have one (1) vote on all matters addressed by the Board. The directors shall act only as a Board, and the individual director shall have no power as such.

SECTION 3.07. Place of Meetings. The Board may hold its meetings at any place within or without the State of Rhode Island as it may from time to time determine and shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 3.08. Action Without a Meeting. Any action required or permitted to be taken by the directors may be taken without a meeting if all of the directors consent in writing and if the written consents are filed with the Foundation's records. Such consents shall be treated for all purposes as a vote at a meeting.

SECTION 3.09. Telephonic Participation In Meetings. Directors may participate in their

respective meetings by means of telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

SECTION 3.10. Annual Meetings. The annual meeting of the Board shall be held immediately following the Members' annual meeting. If any day in which the annual meeting is fixed shall be a legal holiday, then the meeting shall be held on the next succeeding business day that is not a legal holiday. If for any reason such annual meeting is omitted, a special meeting may be held in place thereof and any business transacted or elections held at such special meeting shall have the same effect as if transacted at the annual meeting. Purposes for which an annual meeting is to be held, in addition to those prescribed by law or these By-Laws, may be specified by the President or by a majority of the Board.

SECTION 3.11. Regular Meetings. Regular meetings of the Board shall be held as often as the Board shall determine from time to time by vote. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day that is not a legal holiday. Notice of regular meetings need not be given.

SECTION 3.12. Special Meetings; Notice. Special meetings of the Board shall be held whenever called by the President. Notice of each such meeting shall be given by the Secretary or the person calling the meeting by mailing such notice addressed to each director at his/her residence or usual place of business, or conveying such notice electronically, verbally by telephone or personally, at least twenty-four (24) hours before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting, but need not state the purpose thereof except as otherwise expressly provided in these By-Laws. A statement contained

in the minutes of any Board meeting over the signature of the Secretary to the effect that due notice of such meeting has been given shall be conclusive evidence that proper notice of such Meeting has been duly given.

SECTION 3.13. Waiver of Notice. Notice of the time, place and purpose (unless otherwise specified) of any Board meeting may be waived in writing by any director either before or after such meeting and attendance in person at a Board meeting or any meeting held in lieu thereof shall be equivalent to having waived notice thereof.

SECTION 3.14. Resignation of Directors. Any director may resign at any time by providing written notice to the Board, the President or the Secretary. Any director's resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.15. Removal of Directors. Subject to these By-Laws, any director may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 3.16. Vacancies. In the case of director vacancies caused by death, resignation, removal, disqualification or any other cause, the Board, by an affirmative vote of a majority of the directors then in office, shall use best efforts to elect a duly-qualified individual to serve the remainder of the departing director's term. Notwithstanding the foregoing, any actions taken at a meeting or as otherwise provided herein while such positions are vacant shall be valid so long as a quorum is then present.

SECTION 3.17. Compensation. No director shall receive any compensation for his/her services as a director of the Foundation.

ARTICLE IV

COMMITTEES

SECTION 4.01. Appointment. The Board may from time to time by vote create such committees of directors, officers, employees or other persons for the purpose of advising the Foundation's Board, officers and/or employees in all such matters as the Board shall deem advisable and with such functions and duties as the Board shall prescribe by vote. Each committee shall have a chairperson appointed by the President. Unless otherwise expressly required in these By-Laws, committee members shall be appointed by the President; provided, however, that any such appointment may be reversed by majority vote of the Board. Committee members may be but need not be directors. The Board shall have power to increase or decrease the number of members on any committee at any time and to discharge any such committee, either with or without cause, at any time.

SECTION 4.03. Meetings and Notice. Committee meetings may be called by the President or the committee chairperson. Each committee shall meet as often as necessary and appropriate to perform its duties. Notice of a meeting's date, time and place shall be given at such time and in such manner as to provide reasonable notice to committee members of the meeting. Each committee shall keep minutes of its proceedings.

SECTION 4.04. Removal and Vacancies. The President may remove any committee member or chairperson whose selection is not otherwise specified in the By-Laws. Vacancies in any committee's membership may be filled by appointments made in the same manner as provided for in the original appointments.

SECTION 4.05. Quorum. Unless otherwise provided in the Board's resolution designating a committee, each committee member shall have one (1) vote and a majority of the

whole committee shall constitute a quorum. The act of a majority of the members present at a committee meeting at which a quorum is present shall constitute the act of the committee.

SECTION 4.06. Rules. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with any roles adopted by the directors.

ARTICLE V

OFFICERS

SECTION 5.01. Enumeration. The officers of the Foundation shall consist of a President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time appoint. Each officer of the Foundation shall be a director.

SECTION 5.02. Election, Qualifications and Term of Office. The officers shall be elected by the Board at the annual meeting of the Foundation or special meeting held in lieu thereof. Each officer shall hold office for a one (1) year term and until a successor shall have been duly elected and qualified or until death, resignation, disqualification or removal in the manner hereinafter provided.

SECTION 5.03. Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 5.04. Resignation. Any officer may resign at any time by giving written notice to the Board or to the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified herein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Board at any regular or special meeting.

SECTION 5.06. The President. The President shall act as chair of the Board and have general charge and supervision of the affairs of the Foundation. The President shall perform such other duties assigned to him/her by the Board.

SECTION 5.08. The Secretary. The Secretary shall record or cause to be recorded all the proceedings of Board meetings and meetings of all committees to which a secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of the records and of the Foundation's seal; and have such other powers and perform such other duties as the Board may from time to time prescribe.

SECTION 5.09. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all Foundation funds, credits and property, render a statement concerning the condition of the Foundation's finances at all regular meetings and, upon the Board's request, make a full financial report to the Board. The Treasurer also shall have charge of the Foundation's books and records of account, which shall be kept at such office of the Foundation as the Board shall from time to time designate; be responsible for the keeping of correct and adequate records of the Foundation's assets, liabilities, business and transactions and at all reasonable times exhibit the books and records of account to any of the directors; review the Foundation's budget annually; be responsible for monitoring the budget; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board or the President.

SECTION 5.10. Other Officers. Each other officer chosen by the directors shall perform such duties and have such powers as may be designated from time to time by the Board.

SECTION 5.11. Other Powers and Duties. Each officer shall, subject to these By-Laws

and in addition to the duties and powers specifically set forth in these By-Laws, have such duties and powers as are customarily incident to his/her office. The exercise of any power which by law, the Articles or these By-Laws, or in accordance with any vote of the Board, may be exercised by a Foundation officer only in the event of another officer's absence or any other contingency, shall bind the Foundation in favor of anyone relying therein in good faith, whether or not such absence or contingency existed.

SECTION 5.12. Bonding. Any officer, employee, agent or factor shall give such bond with such surety or sureties for the faithful performance of his/her duties as the Board may from time to time require.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 6.01. Indemnification. Subject to the exclusions hereinafter set forth, the Foundation will indemnify an Indemnified Person against and hold the Indemnified Person harmless from any Covered Loss or Covered Expenses.

SECTION 6.02. Advance Payment of Covered Expenses. The Foundation will pay the Covered Expenses of an Indemnified Person in advance of the final disposition of any Proceeding. The advance payment of Covered Expenses will be subject to the Indemnified Person's first agreeing in writing with the Foundation to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was otherwise not entitled to indemnity under this Article VI.

SECTION 6.03. Exclusions.

(a) The Foundation will not be liable to pay any Covered Loss or Covered Expense (an "Excluded Claim"):

(i) With respect to a Proceeding, if the Foundation determines that the Indemnified Person (i) did not conduct himself or herself in good faith, (ii) engaged in intentional misconduct, and (iii) in the case of a criminal proceeding, knowingly violated the law;

(ii) With respect to a Proceeding in which a final judgment or other final adjudication determines that the Indemnified Person is liable on the basis that personal benefit was improperly received by him or her;

(iii) For which the Indemnified Person is otherwise indemnified or reimbursed; or

(iv) If a final judgment or other final adjudication determines that such payment is unlawful.

(b) With respect to a Proceeding by or on behalf of the Foundation in which the Indemnified Person is adjudged to be liable to the Foundation, the Foundation may indemnify the Indemnified Person for his or her Covered Expenses but shall not indemnify the Indemnified Person for his or her Covered Loss.

(c) Notwithstanding any other provisions herein, the Foundation shall indemnify an Indemnified Person for any Covered Expense in the event that the Indemnified Person is wholly successful, on the merits or otherwise, in the defense of any Proceeding under Section 6.03(a)(i).

SECTION 6.04. Notice to Foundation; Insurance. Promptly after receipt by the Indemnified Person of the notice of the commencement of or the threat of commencement of any Proceeding, the Indemnified Person will, if indemnification with respect thereto may be sought from the Foundation under this Article VI, notify the Foundation of the commencement thereof. If, at the time of the receipt of such notice, the Foundation has any directors' and officers'

liability insurance in effect, the Foundation will give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Foundation will thereafter take all necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, any and all Covered Loss and Covered Expense payable as a result of such Proceeding in accordance with the terms of such policies.

SECTION 6.05. Indemnification Procedures.

(a) Payments on account of the Foundation's indemnity against Covered Loss will be subject to the Foundation's first determining that the Covered Loss results from a claim which is not an Excluded Claim. Such a determination will be made by a majority vote of a quorum of Trustees not at the time parties to the Proceeding or by majority vote of the Members. The determination required by this Section 6.05 will be made within sixty (60) days of the Indemnified Person's written request for payment of a Loss, and if it is determined that the Covered Loss is not an Excluded Claim, payment will be made forthwith thereafter.

(b) Payment of an Indemnified Person's Covered Expenses in advance of the final disposition of any Proceeding will be made within twenty (20) days of the Indemnified Person's written request therefor. Any determination required as to the reasonableness of requested Covered Expenses shall be made in accordance with Section 6.05(a). From time to time prior to the payment of Covered Expenses, the Foundation may, but is not required to, determine (in accordance with Section 6.05(a) above) whether the Covered Expenses claimed may reasonably be expected, upon final disposition of the Proceeding, to constitute an Excluded Claim. If such a determination is pending, payment of the Indemnified Person's Covered Expenses may be delayed up to sixty (60) days after the Indemnified Person's written request therefor, and if it is

determined that the Covered Expenses are not an Excluded Claim, payment will be made forthwith thereafter.

SECTION 6.06. Settlement. The Foundation will have no obligation to indemnity the Indemnified Person under this Article VI for any amounts paid in settlement of any Proceeding effected without the Foundation's prior written consent. The Foundation will not unreasonably withhold or delay its consent to any proposed settlement The Foundation may consent to a settlement subject to the requirement that a determination thereafter will be made as to whether the Proceeding involved an Excluded Claim or not.

SECTION 6.07. Rights Not Exclusive. The rights provided hereunder will not be deemed exclusive of any other rights to which the Indemnified Person may be entitled under the Act, any agreement, vote of disinterested directors or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such position or office, and shall continue after the Indemnified Person ceases to serve the Foundation in an official capacity.

SECTION 6.08. Enforcement.

(a) The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 6.05 above.

(b) In the event that any action is instituted by the Indemnified Person under this Article VI to enforce or interpret any of the terms of this Article VI, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such action was not made

in good faith or was frivolous.

SECTION 6.09. Successors and Assigns. This Article VI will be (a) binding upon all successors and assigns of the Foundation (including any transferee of all or substantially all of its assets); and (b) binding on and inure to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person. If the Foundation sells or otherwise transfers all or substantially all of its assets to a third party, the Foundation will, as a condition of such sale or other transfer, require such third party to assume and perform the obligations of the Foundation under this Article VI.

SECTION 6.10. Amendment. No amendment of this Article VI will be effective as to an Indemnified Person without such Indemnified Person's written consent.

SECTION 6.11. Insurance. The Foundation shall have, to the fullest extent permitted by state and federal law, the power to purchase and maintain insurance on behalf of any Indemnified Person against any liability asserted against or incurred by an Indemnified Person arising out of his or her status as an Indemnified Person whether or not the Foundation would have the power to indemnity the Indemnified Person against such liability pursuant to this Article VI.

SECTION 12. Definitions.

"Covered Act" means any act or omission by an Indemnified Person in the Indemnified Person's official capacity as a member of the governing body, director, trustee, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other entity or enterprise, including entities and enterprises which are subsidiaries or affiliates of the Foundation, or employee benefit plan.

"Covered Expense" means any reasonable expense incurred by an Indemnified Person in connection with the defense of any claim made against the Indemnified Person for Covered Acts

including legal, accounting or investigative fees and expenses, including the expense of bonds necessary to pursue an appeal of an adverse judgment.

"Covered Loss" means any amount which an Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for a Covered Act including judgment for, and awards of, damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

"Excluded Claim" is defined in Section 6.03.

"Indemnified Person" means any individual who is or was a director or officer of the Foundation.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE VII

CONFLICT OF INTEREST

SECTION 7.01. Policy Adoption. The Foundation is committed to pursuing its mission and to conducting its affairs in accordance with high professional, religious and ethical standards which include the avoidance of detrimental conflicts of interest. The Foundation believes that avoiding such conflicts is imperative in preserving the public's trust. Persons who agree to serve the Foundation should not use their position for personal gain, or to expose the Foundation to potential harm as a result of conflict of interest.

The Foundation shall adopt and maintain a Conflict of Interest Policy which applies to Designated Persons, as defined below, and deliberations by the Board and its committees.

SECTION 7.02. General Principles. Any Designated Person has an obligation to: (i) protect decisions involving the Foundation against conflicts of interest; (ii) maintain the

confidentiality of information obtained through service to the Foundation; (iii) assure that the Foundation acts for the benefit of the community as a whole rather than for the private benefit of a Designated Person; and (iv) fully disclose any personal business opportunities that are competitive with the Foundation or in which the Foundation would have an interest. In the furtherance of these obligations all Designated Persons shall exercise the utmost good faith in all transactions touching upon their duties to the Foundation or its property. In their dealings with and on behalf of the Foundation, they shall be held to a strict standard of honest and fair dealing. Designated Persons shall scrupulously avoid any conflict between their individual interests and the interests of the Foundation in any and all actions taken by them. They shall disclose any interests or activities in which they are involved or become involved, directly or indirectly, that could conflict with the interests or activities of the Foundation and shall obtain approval prior to commencing, continuing, or consummating any activity or transaction which raises a possible conflict of interest. Designated Persons are also obliged to disclose any potential conflict of interest arising from the interests and activities of their Immediate Family, as defined in the Policy. Failure to comply with the Conflict of Interest Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, may, if the Designated Person is an employee of the Foundation, result in disciplinary action up to and including dismissal, subject to the terms of any applicable employment or collective bargaining agreement or, in the case of a Designated Person who is a Trustee, the Trustee shall be deemed to have resigned.

SECTION 7.03. Designated Persons. "Designated Persons" shall include the following:

(a) Members of the Board of Directors of the Foundation;

(b) Members of administration or senior management of the Foundation;

(c) Committee Chairpersons or members of a Committee with Board delegated powers, who have a direct or indirect ability to influence the use of Foundation resources;

(d) Persons and/or staff members with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Foundation; and

(e) Any other person(s) and/or staff members whom the Board may from time to time designate.

ARTICLE VIII

FISCAL AUTHORITY

SECTION 8.01. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the directors may select.

SECTION 8.02. Gifts. The directors may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation.

SECTION 8.03. Budget. An annual budget shall be prepared at the President's direction for approval by the directors at their annual meeting.

ARTICLE IX

EXECUTION OF DOCUMENTS

SECTION 9.01. Contracts, etc., How Executed. Unless otherwise determined by the Board, the President or the Treasurer may enter into any contract or execute and deliver any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Foundation. The Board, except as otherwise provided in these By-Laws, may authorize any other or additional officer, officers, agent or agents of the Foundation

to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Foundation and such authority may be general or confined to specific instances. Unless authorized to do so by these By-Laws or by the directors, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or render it liable pecuniarily for any purpose or in any amount.

SECTION 9.02. Checks, Drafts, etc. All of the Foundation's checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates shall be signed or endorsed by such of the Foundation's officer, officers, employee or employees as shall from time to time be determined by Board resolution.

SECTION 9.03. Shares Held by Foundation. Any shares of stock issued by any corporation and owned or controlled by the Foundation may be voted at such corporation's shareholders' meeting by the Foundation's President or the Treasurer.

ARTICLE X

SEAL

The seal of the Foundation shall be in the form of a circle and shall bear the Foundation's name and the state and year of its incorporation.

ARTICLE XI

FISCAL YEAR

Except as from time to time otherwise provided by the Board, the Foundation's fiscal year shall commence on the 1st day of October of each year.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Personal Liability. Directors and officers of the Foundation shall not be personally liable for any Foundation debt, liability or obligation. All persons, corporations or other entities extending credit to, contracting with or having any claim against the Foundation may look only to the Foundation's funds and property for the payment of any debt, damages, judgment or decree, or of any money that may otherwise become due or payable to them from the Foundation.

SECTION 12.02. Corporate Records. The original or attested copies of the Articles of Incorporation, these By-Laws, and records of all meetings of the Members and the Board and all of the Foundation's records, the names and the record addresses of all directors, Members and officers shall be kept in North Providence, Rhode Island, at the Foundation's principal office or at an office of its Secretary or Resident Agent. Said copies and records need not all be kept in the same office_ They shall be available at all reasonable times for the inspection of any director or officer for any proper purpose, but not to secure a list or other information for the purpose of selling said list or information or copies thereof or of using the same for a purpose other than in the interest of the director or officer relative to the Foundation's affairs. Except as otherwise may be required by law, the Articles or these By-Laws, the Foundation shall be entitled to treat a director's, Member's or officer's record address as shown on its books as the address of such person or entity for all purposes, including the giving of any notices and it shall be the duty of each such person or entity to notify the Foundation of his/her/its latest post office address.

SECTION 12.03. Evidence of Authority. A certificate by the Secretary as to any action taken by a director, officer or representative of the Foundation shall be conclusive evidence of

such action as to all who rely thereon in good faith.

SECTION 12.04. Ratification. Any action taken on behalf of the Foundation by a director, officer or representative of the Foundation which requires authorization by the directors shall be deemed to have been duly authorized if subsequently ratified by the directors retrospectively if action by them was necessary for authorization.

SECTION 1.01. Articles of Incorporation. All references in these By-Laws to the Articles shall be deemed to refer to the Articles, as amended, and in effect from time to time.

ARTICLE XIII

AMENDMENTS

Alterations and repeal of the By-Laws, and new By-Laws not inconsistent with the laws of the State of Rhode Island or with the Articles of Incorporation, may be adopted by the Foundation upon the authorization or approval by the Member after such alteration, repeal or new By-Law is proposed by a majority vote of the Board at any meeting at which a quorum shall be present. The proposed alteration or repeal or of the proposed new By-Laws shall be included in the notice of such Board meeting at which such alteration, repeal or adoption is acted upon.

659504.1

Exhibit 13

	EXHIBIT 13	
	(CCCB ASSETS)	
Asset Description	**Estimated Asset Value**	**Asset Value Date**
Cash	$18,387.80	8/29/2018
15% membership interest in Prospect Chartercare LLC	Unknown	N/A
100% of SJHSRI	Unknown	N/A
100% of RWH	Unknown	N/A
Ownership of CharterCare Foundation*	Unknown	N/A
*Potentially disputed		

Exhibit 14

	EXHIBIT 14	
	(SJHSRI ASSETS)	
Asset Description	**Estimated Asset Value**	**Asset Value Date**
Cash	$1,673,125.44	8/29/2018
Investments	$1,208,913.75	6/30/2018
Citizens Self Insured Retention Trust (Malpractice Claims)	$130,285.63	7/31/2018
Beneficial Interests in Charitable Trusts:		
	Trust Value*	
TUW Harold A. Sweetland	$1,001,825.58	9/30/2017
TUW Albert Steinert	$293,428.94	7/31/2018
The Combined Townsend Fund	$20,034,635.79	6/30/2018
Anthony Iavozza	$2,039,706.78	12/31/2017
*Trust Value is not the value of SJHSRI's beneficial interest. SJHSRI has certain income and/or distribution rights		
under the Trusts. Those rights have been disclosed to the Receiver and the Receiver's counsel.		

Southwest Consulting Associates Appeal Impacts
CharterCare
Documented as of 07/23/18

						pre 10/01/13		*post 10/01/13*
Hospital	Provider Number	FYE	Eligible Days (Net impact)	CCHIP Impact	HSN Impact	M+C Impact MCD Fraction	M+C Impact SSI Fraction	M+C Impact MCD Fraction
St. Joseph	41-0005	9/30/08	-	-	-	1,456,667	477,257	-
St. Joseph	41-0005	9/30/09	-	-	-	1,449,389	385,073	-
St. Joseph	41-0005	9/30/10	-	-	-	1,535,426	508,626	-
St. Joseph	41-0005	9/30/11	-	-	-	1,352,053	439,824	-
St. Joseph	41-0005	9/30/12	-	-	-	1,063,583	360,508	-
St. Joseph	41-0005	9/30/13	-	-	-	952,516	428,929	-
St. Joseph	41-0005	6/19/14	-	-	-	-	-	158,376
St. Joseph	41-0005	9/30/14	-	-	-	-	-	66,975
		Total	-	-	-	7,809,634	2,600,217	225,351

Note 1: Gross Impacts are reflected above without any reduction for SCA fees.

Note 2: Also under appeal is the Baystate SSI Matching process issue.

Exhibit 15

	EXHIBIT 15	
	(RWH ASSETS)	
Asset Description	**Estimated Asset Value**	**Asset Value Date**
Cash	$1,778,101.57	8/29/2018
Investments	$6,864,404.61	7/31/2018
Special Purpose Fund - Citizens Bank Account*	$209,433.79	8/29/2018
Citizens Workers Comp Self Insurance Reserve Acct	$750,000.00	8/29/2018
Medicare/Resident Payment Cap Litigation	$875,000.00	Estimated Maximum Value
Beneficial Interests in Charitable Trusts:		
	Trust Value**	
George Boyden fbo Barbara S Abram	$288,573.43	9/30/2017
U/W George L. Flint	$1,077,666.71	6/30/2018
Will Prescott Knight	$363,531.90	6/30/2018
Sarah S. Brown Fund	$2,070,534.30	6/30/2018
Harry M. Miriam and William C. Horton Fund	$7,551,370.61	7/31/2018
TUW Albert Steinert	$288,636.38	6/30/2018
Walter Simpson Life Annuity	$1,717,590.96	7/31/2018
*Subject to Cy Pres Order		
**Trust Value is not the value of RWH's beneficial interest. RWH has certain income and/or distribution rights		
under the Trusts. Those rights have been disclosed to the Receiver and the Receiver's counsel.		

Southwest Consulting Associates Appeal Impacts
CharterCare
Documented as of 07/23/18

						pre 10/01/13		*post 10/01/13*
Hospital	Provider Number	FYE	Eligible Days (Net impact)	CCHIP Impact	HSN Impact	M+C Impact MCD Fraction	M+C Impact SSI Fraction	M+C Impact MCD Fraction
Roger Williams	41-0004	9/30/05	-	-	-	652,848	-	-
Roger Williams	41-0004	9/30/06	-	-	-	429,029	791,117	-
Roger Williams	41-0004	9/30/07	-	15,619	-	903,823	635,413	-
Roger Williams	41-0004	9/30/08	28,223	11,289	11,289	1,181,055	662,127	-
Roger Williams	41-0004	9/30/09	-	-	-	1,128,828	391,325	-
Roger Williams	41-0004	9/30/10	35,767	-	-	788,851	518,905	-
Roger Williams	41-0004	9/30/11	-	-	11,675	634,253	621,788	-
Roger Williams	41-0004	9/30/12	17,148	13,644	-	531,575	687,970	-
Roger Williams	41-0004	9/30/13	-	-	-	617,000	277,089	-
Roger Williams	41-0004	6/19/14	-	-	-	-	-	92,294
Roger Williams	41-0004	9/30/14	-	-	-	-	-	44,822
		Total	81,138	40,552	22,964	6,867,262	4,585,734	137,116

Note 1: Gross Impacts are reflected above without any reduction for SCA fees.

Note 2: Also under appeal is the Baystate SSI Matching process issue.

Exhibit 16

		EXHIBIT 16		
		(CCCB LIABILITIES)		
Creditor	**Creditor's Counsel**	**Counsel Address**	**Nature of Claim**	**Amount of Claim**
Prospect Medical Holdings, Inc.	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect East Holdings,	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare, L	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Physicians, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare RWMC, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare SJHSRI, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Elmhurst, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Any and all other Company/Prospect Indemnified Persons, as such term is defined in that certain Asset Purchase Agreement, dated as of September 24, 2013	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Rhode Island Department of Environmental Management, et al (see attached list)	Ronald N. Gagnon, P.E.	RIDEM, 235 Promenade St., Providence, RI 02908-5767	Environmental - TrukAway Landfill, Warwick, RI	Unliquidated

Exhibit 17

		EXHIBIT 17		
		(SJHSRI LIABILITIES)		
Creditor	**Creditor's Counsel**	**Counsel Address**	**Case # (if applicable)/Claim # (if applicable/Nature of Claim**	**Amount of Claim**
Antoneta Grande	Coia & Lepore	226 S Main St #1, Providence, RI 02903	Claim #: 314581/Workers Compensation	Unliquidated
Karapet Emdjian	Karapet Emdjian	575 Wickenden Street, Apt 812, Providence, 02903	Claim #: 314593/Workers Compensation	Unliquidated
Maria Lindo	Gary Levine, Esq.	56 Pine St #250, Providence, RI 02903	Claim #: 314594/Workers Compensation	Unliquidated
Dianne McCray	Jack DeGiovanni	989 Waterman Ave, East Providence, RI 02914	Case #: 201701002/Claim #: 314597/Workers Compensation	Unliquidated
Mary Kay Hicks	John Harnett	155 S Main St, Providence, RI 02903	Case #: 201405590/Claim #: 314592/Workers Compensation	Unliquidated
Sheila Zoglio	Coia & Lepore	226 S Main St #1, Providence, RI 02903	Case #: 201205909/Claim #: 314579/Workers Compensation	Unliquidated
Jean Reynolds	John Harnett	155 S Main St, Providence, RI 02903	Claim #: 314628/Workers Compensation	Unliquidated
Jacqueline Durante	Zach Mandell, Esq.	Mandell, Schwartz & Boisclair, One Park Row, Providence, RI 02903	Case #: PC-2013-6568/Personal Injury (slip and fall)	Unliquidated
Richard Pacheco	Richard Brederson, Esq.	Brederson Law Center, 950 Smith Street, Providence, RI 02908	Case #: PC-2016-0058/Personal Injury (slip and fall)	Unliquidated
Wendy Marcello	Wendy Marcello	524 Atwood Avenue, Apt. C, Cranston, RI 02920	Case #: KC-2017-0096/120708/Medical Malpractice	Unliquidated
Rosa Brito	Richard Pacia, Esq.	Joseph A. Voccola, Esq. and Associates, 454 Broadway, Providence, RI 02909	Claim #: 75995E/Personal Injury (slip and fall)	Unliquidated
Ivan Toro	Lisa Cronin, Esq.	Orabona Law Offices, P.C., 129 Dorrance Street, Providence, RI 02903	Case #: PC-2016-4668/Claim #: 77544/Personal Injury (slip and fall)	Unliquidated
Prospect Medical Holdings, Inc.	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect East Holdings, Inc.	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated

Prospect CharterCare, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Physicians, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare RWMC, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare SJHSRI, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Elmhurst, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Any and all other Company/Prospect Indemnified Persons, as such term is defined in that certain Asset Purchase Agreement, dated as of September 24, 2013	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Rhode Island Department of Environmental Management, et al (see attached list)	Ronald N. Gagnon, P.E.	RIDEM, 235 Promenade St., Providence, RI 02908-5767	Environmental - TrukAway Landfill, Warwick, RI	Unliquidated
American Funds			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Angell Pension Group			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Fidelity Investments			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Lincoln Financial Group			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)

Metlife/Brighthouse Financial			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Voya Financial			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)

Exhibit 18

		EXHIBIT 18		
		(RWH LIABILITIES)		
Creditor	**Contact Information**	**Contact Address**	**Case #(s) (if applicable)/Claim #(s) (if applicable)/Nature of Claim**	**Amount of Claim**
Kellie Carney, et al	Amato DeLuca, Esq.	DeLuca & Weizenbaum, Ltd., 199 N. Main St, Providence, RI 02903	Case #: PC-2009-0613/Claim #s: 57767 & 58189/Medical Malpractice	Unliquidated
Dennis Giordano, et al	Doug Chabot, Esq.	Decof, Decof & Barry, One Smith Hill, Providence, RI 02903	Case #: PC-2015-0633/Claim #: 785948E/Medical Malpractice	Unliquidated
Christina Mancini	Laura Harrington, Esq.	Harrington Law Group, PC, 4 Broadway, Newport, RI 02840	Case #: PC-2017-0671/Claim #: 78533E/Medical Malpractice	Unliquidated
Judith O'Brien	Christopher E. Fay, Esq.; Andrew L. Alberino, III, Esq.	Fay Law Associates, 917 Reservoir Avenue, Cranston, RI 02910	Case #: PC-2015-3869/Claim #: 73319E/Medical Malpractice	Unliquidated
Ana Polanco, et al	Timothy P. Lynch, Esq.	Marasco & Nesselbush LLP, 685 Westminster Street, Providence, RI 02903	Case #: PC-2016-3629/Claim #: 76073E/Medical Malpractice	Unliquidated
Louis Scotti, et al	Kevin M. Daley, Esq.	Daley & Orton, 1383 Warwick Avenue, Warwick, RI 02888	Case #: PC-2011-6871 (consolidated for discovery with PC-2013-1810)/Claim #: 68994/Medical Malpractice	Unliquidated
Pamela Tonsberg	David E. Maglio, Esq.	The Owen Building, 101 Dyer Street, 2nd Floor, Providence, RI 02903	Case #: PC-2015-5258/Claim #: 76026E/Medical Malpractice	Unliquidated
Lisa Weber	Gregory Sorbello, Esq.	Peter Iascone & Associates, Ltd., 117 Bellevue Avenue, Newport, RI 02840	Case #: PC-2016-4778/Claim #: 113607/Medical Malpractice	Unliquidated
Janice Battey, et al	Kevin Daley, Esq.	Daley & Orton, 1383 Warwick Avenue, Warwick, RI 02888	Case #: PC-2015-1122/Claim #: 76466E/Medical Malpractice	Unliquidated
Stephanie Chenard, et al	Matthew Rocheleau, Esq.	Brosco & Brosco, 312 S. Main Street, No. 1, Providence, RI 02903	Case #: PC-2016-4033/Claim #: 76981E/Medical Malpractice	Unliquidated
Elaine Donahue	Kevin Daley, Esq.	Daley & Orton, 1383 Warwick Avenue, Warwick, RI 02888	Case #: PC-2016-3138/Claim #: 113786/Medical Malpractice	Unliquidated
Erin Dugas	Gil A. Bianchi Jr., Esq.	Bianchi & Brouillard PC, The Hanley Building, 55 Pine Street, Suite 250, Providence, RI 02903	Case #: PC-2013-4644/Claim #: 76342E-01/Medical Malpractice	Unliquidated

Maryann Narducci	James T. McCormick, Esq.	536 Atwells Avenue, 2nd Floor, Providence, RI 02909	Case #: PC-2015-4966/Claim #: 106990/Medical Malpractice	Unliquidated
Brian Dockray	James McCormick, Esq.	536 Atwells Avenue, 2nd Floor, Providence, RI 02909	Case #: PC-2015-4785/Claim #: 106988/Medical Malpractice	Unliquidated
Steven Axtell	Zach Mandell, Esq.	Mandell, Schwartz & Boisclair, One Park Row, Providence, RI 02903	Case #: PC-2017-4130/Claim #: 108475/Medical Malpractice	Unliquidated
Michael Nissensohn, M.D	Gregory Tumolo; Ronald J. Resmini	10 Dorrance St #400, Providence, RI 02903; 155 S Main St #400, Providence, RI 02903	Case #: PC-2012-6232/Wrongful Termination	Unliquidated
Prospect Medical Holdings, Inc.	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect East Holdings, Inc.	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Physicians, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare RWMC, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare SJHSRI, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Prospect CharterCare Elmhurst, LLC	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Any and all other Company/Prospect Indemnified Persons, as such term is defined in that certain Asset Purchase Agreement, dated as of September 24, 2013	Gary W. Herschman, Esq.	Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, NJ 07102, Attention: Gary W. Herschman, Esq.	Indemnification	Unliquidated
Rhode Island Department of Environmental Management, et al (see attached list)	Ronald N. Gagnon, P.E.	RIDEM, 235 Promenade St., Providence, RI 02908-5767	Environmental - TrukAway Landfill, Warwick, RI	Unliquidated
Roger Williams Medical Center	Moshe Berman, Esq.	825 Chalkstone Ave., Providence, RI 02908	"Special Purposes" Fund per Cy Pres Petition/Order	$ 209,433.79

American Funds			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Fidelity Investments			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Metlife/Brighthouse Financial			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Minnesota Life Insurance Company/Securian Financial			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
TIAA-CREF			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
VALIC (AIG)			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)
Voya Financial			Miscellaneous fully-funded Retirement Plan	Potential wind-down expense (amount unknown)

Exhibit 19

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "**Agreement"**), dated as of the ____ day of _____, 2018, is made by and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) ("Secured Creditor"), and St. Joseph Health Services of Rhode Island, Roger Williams Hospital and CharterCARE Community Board (collectively, the "Debtor").

Under the terms hereof, the Secured Party desires to obtain and the Debtor desires to grant the Secured Party security for the Obligations (as hereinafter defined).

NOW, THEREFORE, the Debtor and the Secured Party, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) "**Collateral**" means all accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property and investment accounts, letter-or-credit rights, letters of credit, money, and general intangibles, and any and all proceeds of any thereof, whether now or hereafter existing or arising.

(b) "**Obligations**" means those obligations of Debtor to pay the Initial Lump Sum, as such term is defined in that certain Settlement Agreement among Debtor, Secured Party and others of even date herewith ("Settlement Agreement"), together with the obligations of Debtor under paragraphs 12, 14, 17 and 18 of the Settlement Agreement.

(c) "**UCC**" means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Rhode Island. Terms used herein which are defined in the UCC and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC.

2. Grant of Security Interest. To secure the Obligations, the Debtor, as debtor, hereby assigns and grants to the Secured Party, as secured party, a continuing lien on and security interest in the Collateral.

3. Use of Collateral. The Debtor will not voluntarily transfer or grant or allow the imposition of a lien or security interest upon the Collateral or use any portion thereof in any manner inconsistent with this Agreement or with the terms and conditions of any policy of insurance thereon, except in the ordinary course of the operation of Debtor's business or if replaced by items of equal or greater value. Notwithstanding anything to the contrary contained herein, Secured Party acknowledges and agrees that Debtor may use the Collateral in connection with the wind-down of Debtor's businesses, including without limitation, payment of expenses and liabilities incurred in the ordinary course of business.

4. Further Assurances. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto to perfect and maintain the security interest granted herein. Debtor further agrees to execute and deliver such other documents and instruments as Secured Party may deem reasonably necessary or appropriate to effectuate and perfect the lien and security interest granted herein.

5. Remedies. Upon the occurrence of any breach of this Agreement by Debtor and at any time thereafter, the Secured Party shall be entitled to exercise all the remedies of a secured party under the UCC.

6. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

7. Preservation of Rights. No delay or omission on the Secured Party's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Secured Party's action or inaction impair any such right or power. The Secured Party's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Secured Party may have under other agreements, at law or in equity.

8. Illegality. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9. Entire Agreement. This Agreement (including the documents and instruments referred to herein, specifically including the Settlement Agreement) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to security interest granted to Secured Party.

10. Counterparts. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

11. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective heirs, executors, administrators, successors and assigns.

12. Interpretation. In this Agreement, unless the Secured Party and the Debtor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement unless otherwise indicated. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. If this Agreement is executed by more than one Debtor, the obligations of such persons or entities will be joint and several.

13. Termination. This Agreement shall terminate as follows:

a. Immediately upon denial by the Rhode Island Superior Court, in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Receivership Proceedings"), of the Secured Party's request for authorization to proceed with the settlement contemplated in the Settlement Agreement; or

b. Immediately upon the denial by the United States District Court for the District of Rhode Island, in that certain civil action entitled *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan, et al., v. Prospect CharterCare, LLC, et al.*, C.A. No: 1:18-CV-00328-WES-LDA (the "Federal Court Action"), of the joint request for approval of the Settlement Agreement as contemplated therein.

(EXECUTION PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first above written.

WITNESS:
Signed and delivered in the presence of:

DEBTOR:

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

_____
Print Name:

By:_____
Name:
Title:

SECURED PARTY:

_____
Print Name:

By:_____
Name:
Title:

Exhibit 20

State of Rhode Island and Providence Plantations
Department of State - Business Services Division
148 W. River Street, Providence, Rhode Island 02904-2615
Phone: (401) 222-3040 | **Email:** corporations@sos.ri.gov | **Website:** www.sos.ri.gov

Uniform Commercial Code (UCC) Filing Information

Hours for filing:	Public Counter: Monday – Friday 8:30 AM to 4:30 PM Online filing – 24/7
Information Requests:	Information on specific filings of record with this office will not be given over the Telephone; only general information will be available. UCC11 Information Requests cannot be ordered over the telephone. All filings must be communicated in writing.
Filing Fees:	Filings must be communicated in writing and will not be accepted unless accompanied by the minimum filing fee. Checks are to be made payable to the Rhode Island Department of State. We accept VISA, MasterCard, Discover, and American Express for all over-the-counter and online transactions. A small enhanced access fee is charged for all credit card transactions. See our website for more information on enhanced access fees.
Refunds:	Refunds will be issued for duplicate payments and rejected documents not corrected within 30-days from the date the filing was submitted to this office. Refunds will not be issued for valid transactions and overpayments in the amount of $10 or less. Enhanced access fees are not refundable. To request a refund or view our refund policy click here.
Paper Filing Forms:	The IACA National Filing Forms will be accepted for filing. Rhode Island does provide a state form for UCC11 Information Requests. Please carefully read all instructions prior to filing.
Acknowledgments:	Acknowledgements are no longer being mailed. If you would like to receive an Acknowledgement of your fling, you **MUST** provide a valid email address. Complete ITEM C of the filing form to include a valid email address. E-acknowledgements for all approved filings are emailed at 3pm and 8pm daily.
Filing Evidence:	If you do not receive an Acknowledgement or if you would like to obtain a copy of any recorded UCC, follow these steps: • Go to our UCC Database • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you can search by file number or debtor name • Click on the filing number to view the filing summary page • Click on the PDF link to view and print the filing
Rejected Filings:	Paper filers will receive their filing and payment via US mail addressed to the individual/entity that submitted the paperwork. Correspondence will accompany the paperwork indicating what steps need to be taken to correct the filling. You may also use our Rejected Filing Viewer to view the rejected document. • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you must search by file number

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Richard J. Land, Esq.

B. E-MAIL CONTACT AT FILER (optional)
rland@crfllp.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
CharterCare Community Board

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Park Row, Suite 300	**Providence**	**RI**	**02903**	**USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
St. Joseph Health Services of Rhode Island Retirement Plan (Stephen Del Sesto, Receiver)

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Financial Plaza, 26th Floor	**Providence**	**RI**	**02903**	**USA**

4. COLLATERAL: This financing statement covers the following collateral:

all accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property and investment accounts, letter-or-credit rights, letters of credit, money, and general intangibles of the Debtor and any and all proceeds of any thereof, whether now or hereafter existing or arising.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. Organization Debtor Name. "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. Individual Debtor Name. "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

State of Rhode Island and Providence Plantations
Department of State - Business Services Division
148 W. River Street, Providence, Rhode Island 02904-2615
Phone: (401) 222-3040 | **Email:** corporations@sos.ri.gov | **Website:** www.sos.ri.gov

Uniform Commercial Code (UCC) Filing Information

Hours for filing:	Public Counter: Monday – Friday 8:30 AM to 4:30 PM Online filing – 24/7
Information Requests:	Information on specific filings of record with this office will not be given over the Telephone; only general information will be available. UCC11 Information Requests cannot be ordered over the telephone. All filings must be communicated in writing.
Filing Fees:	Filings must be communicated in writing and will not be accepted unless accompanied by the minimum filing fee. Checks are to be made payable to the Rhode Island Department of State. We accept VISA, MasterCard, Discover, and American Express for all over-the-counter and online transactions. A small enhanced access fee is charged for all credit card transactions. See our website for more information on enhanced access fees.
Refunds:	Refunds will be issued for duplicate payments and rejected documents not corrected within 30-days from the date the filing was submitted to this office. Refunds will not be issued for valid transactions and overpayments in the amount of $10 or less. Enhanced access fees are not refundable. To request a refund or view our refund policy click here.
Paper Filing Forms:	The IACA National Filing Forms will be accepted for filing. Rhode Island does provide a state form for UCC11 Information Requests. Please carefully read all instructions prior to filing.
Acknowledgments:	Acknowledgements are no longer being mailed. If you would like to receive an Acknowledgement of your fling, you **MUST** provide a valid email address. Complete ITEM C of the filing form to include a valid email address. E-acknowledgements for all approved filings are emailed at 3pm and 8pm daily.
Filing Evidence:	If you do not receive an Acknowledgement or if you would like to obtain a copy of any recorded UCC, follow these steps: • Go to our UCC Database • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you can search by file number or debtor name • Click on the filing number to view the filing summary page • Click on the PDF link to view and print the filing
Rejected Filings:	Paper filers will receive their filing and payment via US mail addressed to the individual/entity that submitted the paperwork. Correspondence will accompany the paperwork indicating what steps need to be taken to correct the filling. You may also use our Rejected Filing Viewer to view the rejected document. • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you must search by file number

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Richard J. Land, Esq.

B. E-MAIL CONTACT AT FILER (optional)
rland@crfllp.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Roger Williams Hospital

OR

1b. INDIVIDUAL'S SURNAME	F RST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Park Row, Suite 300	**Providence**	**RI**	**02903**	**USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
St. Joseph Health Services of Rhode Island Retirement Plan (Stephen Del Sesto, Receiver)

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Financial Plaza, 26th Floor	**Providence**	**RI**	**02903**	**USA**

4. COLLATERAL: This financing statement covers the following collateral:

all accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property and investment accounts, letter-or-credit rights, letters of credit, money, and general intangibles of the Debtor and any and all proceeds of any thereof, whether now or hereafter existing or arising.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. Organization Debtor Name. "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. Individual Debtor Name. "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

State of Rhode Island and Providence Plantations
Department of State - Business Services Division
148 W. River Street, Providence, Rhode Island 02904-2615
Phone: (401) 222-3040 | **Email:** corporations@sos.ri.gov | **Website:** www.sos.ri.gov

Uniform Commercial Code (UCC) Filing Information

Hours for filing:	Public Counter: Monday – Friday 8:30 AM to 4:30 PM Online filing – 24/7
Information Requests:	Information on specific filings of record with this office will not be given over the Telephone; only general information will be available. UCC11 Information Requests cannot be ordered over the telephone. All filings must be communicated in writing.
Filing Fees:	Filings must be communicated in writing and will not be accepted unless accompanied by the minimum filing fee. Checks are to be made payable to the Rhode Island Department of State. We accept VISA, MasterCard, Discover, and American Express for all over-the-counter and online transactions. A small enhanced access fee is charged for all credit card transactions. See our website for more information on enhanced access fees.
Refunds:	Refunds will be issued for duplicate payments and rejected documents not corrected within 30-days from the date the filing was submitted to this office. Refunds will not be issued for valid transactions and overpayments in the amount of $10 or less. Enhanced access fees are not refundable. To request a refund or view our refund policy click here.
Paper Filing Forms:	The IACA National Filing Forms will be accepted for filing. Rhode Island does provide a state form for UCC11 Information Requests. Please carefully read all instructions prior to filing.
Acknowledgments:	Acknowledgements are no longer being mailed. If you would like to receive an Acknowledgement of your fling, you **MUST** provide a valid email address. Complete ITEM C of the filing form to include a valid email address. E-acknowledgements for all approved filings are emailed at 3pm and 8pm daily.
Filing Evidence:	If you do not receive an Acknowledgement or if you would like to obtain a copy of any recorded UCC, follow these steps: • Go to our UCC Database • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you can search by file number or debtor name • Click on the filing number to view the filing summary page • Click on the PDF link to view and print the filing
Rejected Filings:	Paper filers will receive their filing and payment via US mail addressed to the individual/entity that submitted the paperwork. Correspondence will accompany the paperwork indicating what steps need to be taken to correct the filling. You may also use our Rejected Filing Viewer to view the rejected document. • To search for a UCC1 – you must search by debtor name • To search for a UCC3 – you must search by file number

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Richard J. Land, Esq.

B. E-MAIL CONTACT AT FILER (optional)
rland@crfllp.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
St. Joseph Health Services of Rhode Island

OR

1b. INDIVIDUAL'S SURNAME	F RST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Park Row, Suite 300	**Providence**	**RI**	**02903**	**USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
St. Joseph Health Services of Rhode Island Retirement Plan (Stephen Del Sesto, Receiver)

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/ NITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o One Financial Plaza, 26th Floor	**Providence**	**RI**	**02903**	**USA**

4. COLLATERAL: This financing statement covers the following collateral:

all accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property and investment accounts, letter-or-credit rights, letters of credit, money, and general intangibles of the Debtor and any and all proceeds of any thereof, whether now or hereafter existing or arising.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. Organization Debtor Name. "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. Individual Debtor Name. "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

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Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

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8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

Exhibit B

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 INSTRUCTIONS

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 has asserted against CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and the corporation Roger Williams Hospital ("RWH") (collectively the "Settling Defendants"), 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"), and in which Plaintiffs seek relief from the Settling Defendants including money damages that greatly exceed the remaining assets of the Settling Defendants.

The Settling Defendants are the three entities that formerly owned and operated Our Lady of Fatima Hospital and Roger Williams Hospital. They no

longer own those hospitals. 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 Receiver has 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, 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.

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

1. This case was commenced on August 17, 2017, upon the Petition of Settling Defendant St. Joseph Health Services of Rhode Island. A copy of the Petition for the Appointment of a Receiver (the "Petition") is annexed hereto as Exhibit B.

2. The Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, the Petition sought the following relief:

> (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

Exhibit B at 7.

3. On October 11, 2017, the Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage the firm of Wistow, Sheehan & Loveley, P.C. ("WSL"), as Special Counsel. The Emergency Petition with the WSL Retainer Agreement is attached hereto as Exhibit C. That Emergency Petition informed the Court that "following his appointment, the Receiver determined that his fiduciary obligations to the Plan and its beneficiaries include the need to conduct an investigation into the circumstances which resulted in the Plan's significant, and likely irreversible, financial distress," and that "the Receiver believes that assistance of special litigation counsel is warranted and necessary." Exhibit C ¶¶ 4 & 5.

4. On October 17, 2017 this Court granted the Emergency Petition. The Order granting the Emergency Petition is attached hereto as Exhibit D. It states in pertinent part:

> That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement . . . .

Exhibit D at 1. The executed WSL Retainer Agreement is attached as Exhibit E.

5. In their role as Special Counsel to the Receiver, WSL issued *subpoenas duces tecum* to the following entities:

- Adler Pollock & Sheehan, P.C.

- Bank of America, N.A.
- Defendant CharterCARE Community Board
- Defendant CharterCARE Foundation
- Rhode Island Department of Health
- Ferrucci Russo, P.C.
- Office of the Rhode Island Attorney General
- Defendant Prospect CharterCare, LLC
- Defendant Prospect Medical Holdings, Inc.
- Defendant Rhode Island Community Foundation
- Defendant Roman Catholic Bishop of Providence
- Defendant SJHSRI (two subpoenas)

6. By agreement, or in acknowledgment of their legal obligation, several of the subpoenaed entities produced documents in the possession and control of other entities. For example, Prospect Medical Holdings also produced documents on behalf of Prospect East Holdings, Inc.; Prospect CharterCare, LLC also produced documents on behalf of Prospect CharterCare SJHSRI, LLC and Prospect CharterCare RWMC, LLC; and Roman Catholic Bishop of Providence also produced documents on behalf of Diocesan Administration Corporation and Diocesan Service Corporation. The Angell Pension Group, Inc. ("Angell") produced copies of their files in compliance with the order appointing the Receiver, for which no subpoena was required.

7. This investigation entailed the production and review of over 1,000,000 pages of documents over an eight-month period, and the commitment of at least 1,472 hours of time by Special Counsel.

8. With the approval of the Receiver, Special Counsel were also retained by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque ("Named Plaintiffs") to investigate and assert claims on their behalf. The Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in a class action (the "Class Action").

9. The Complaints in both the Federal Court Action and the State Court Action were filed on June 18, 2018. Copies of those Complaints are attached hereto as Exhibits F and G, respectively. These Complaints were filed by Special Counsel on behalf of the Receiver, the Named Plaintiffs, and the proposed class consisting of the Plan participants.

10. At the same time, the Receiver moved for leave to intervene in a civil action that SJHSRI, RWH, and another entity, CharterCARE Foundation, had commenced in the Rhode Island Superior Court in 2015 (the "2015 *Cy Pres* Proceeding"), pursuant to which certain assets of SJHSRI and RWH were transferred to CharterCARE Foundation, which Plaintiffs seek to recover for deposit into the Plan.

11. Over the last several weeks, Counsel for the Settling Defendants and Special Counsel in consultation with the Receiver have conducted settlement negotiations, which involved extensive disclosure of the Settling Defendants' assets, including an initial disclosure and several additional or supplementary disclosures based upon the requests of Special Counsel for additional information and clarification.

12. The negotiations also involved communications by Counsel for the Settling Defendants and Special Counsel with the Rhode Island Department of Labor and Training ("DLT") and a joint meeting with DLT concerning an escrow account (the "DLT

Escrow"), which was then in the amount of approximately $2,500,000, that Settling Defendant RWH had funded, securing RWH's self-insured workers' compensation liabilities. As a result of these communications, DLT agreed to only $750,000 being retained in the DLT Escrow account, and released the balance, which is included in the Initial Lump Sum being paid by the Settling Defendants in connection with the Proposed Settlement.

13. Thereafter, Plaintiffs and the Settling Defendants agreed on the terms set forth in the 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

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 & 10.

14. The Settlement Agreement establishes the terms of the Proposed Settlement. In summary, it provides for the following benefits to Plaintiffs:

a) Immediate payment of the Initial Lump Sum of a minimum of $11,150,000, which is 95% of the Settling Defendants' combined liquid operating assets of $11,525,000, up to a maximum of approximately $11,900,000 if the Rhode Island Department of Labor and Training releases the entire DLT Escrow in the amount of approximately $750,000 prior to the due date for payment of the Initial Lump Sum;

b) Assignment of the Settling Defendants' rights to whatever is left in the DLT Escrow;

c) Transfer to the Receiver of the Settling Defendants' rights in CharterCARE Foundation;

d) The Proposed Settlement also obligates the Settling Defendants not to object to Plaintiffs intervening in the 2015 *Cy Pres* Proceeding, and

Plaintiffs' request for an order directing that Plaintiffs' rights in CharterCARE Foundation be adjudicated in the Federal Court Action;

e) The Proposed Settlement gives the Receiver the beneficial interest in Defendant CCCB's interest in Defendant Prospect CharterCare, LLC;

f) The Settling Defendants admit liability on some of the claims asserted against them in the Complaint, including breach of contract, and that Plaintiffs' damages are at least $125,000,000; and

g) The Settlement Agreement obligates the Settling Defendants upon the Receiver's request to petition the Rhode Island Superior Court for judicial liquidations, pursuant to R.I. Gen. Laws § 7-6-63, whereby all of their remaining assets will be liquidated and distributed to their creditors, including Plaintiffs, in accordance with the orders of the court in the Liquidation Proceedings.

15. Thus, the potential total gross recovery for the Plan from the Settling Defendants, or otherwise as a result of the Settlement Agreement, could be as low as the minimum Initial Lump Sum of $11,150,000, or considerably more than that, but, except for the minimum Initial Lump Sum, the amount of the final recovery cannot be determined at this time. All that can be done at this time, and what Special Counsel in consultation with the Receiver has attempted to do, is to put the Receiver in the position to pursue and hopefully maximize the value of those assets.

16. The Settlement Agreement obligates the Plaintiffs to provide the Settling Defendants with releases in the form attached thereto, which preserve any claims concerning breach of the Settlement Agreement by the Settling Defendants, and the following "Excepted Claims":

i. any claims to the extent that there may be assets of CCCB available to be distributed by the court in the Liquidation Proceedings,

ii. any claims concerning the assets of CCCB that were transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and

iii. any claims to the assets of the Settling Defendants that were transferred in connection with the 2014 Asset Sale.

Exhibit A (Settlement Agreement) Exhibits 9-11 (Releases to the Settling Defendants). The releases provide that, with respect to the Excepted Claims, the Plaintiffs agree to limit their recourse to the assets referred to in (i) through (iii).

17. The risks to the Plan if the settlement is not approved concern both the significant risk that the Plaintiffs may not prevail on their claims against the Settling Defendants, and the absolute certainty that, if the Proposed Settlement is not approved, the Settling Defendants' assets will be further dissipated by litigation expenses and claims of other creditors, such that it is indisputable that the sum that the Plaintiffs may collect from the Settling Defendants if they prevail will be substantially less than what is being offered in settlement.

18. The Federal Court Action is very complex, involves many Defendants, and the complications of proceeding as a class action, and, therefore, could take years to litigate, at the level of the U.S. District Court and possibly on appeal, during which time the assets of the Settling Defendants could be significantly diminished if not fully expended, if only by the attorneys' fees and expenses of defending this case, the companion State Court Action, and the 2015 *Cy Pres* Proceeding, to say nothing of the Settling Defendants' various ongoing operating expenses.

18. In connection with the negotiations for the Proposed Settlement, the Settling Defendants provided Special Counsel with certain asset disclosure.

19. The Settling Defendants have listed their estimated assets and liabilities in schedules that are attached to the Settlement Agreement, and which the Settling Defendants have certified constitute their best estimates thereof.[1]

20. After the 2014 Asset Sale, the Settling Defendants were left with essentially three forms of assets: a) retained cash maintained in operating accounts, b) accounts receivable and reserve accounts that may or may not become available for collection and deposit in operating accounts in the future, and c) membership interests in other entities, consisting of Settling Defendant CCCB's membership interest in Prospect CharterCare, LLC and Settling Defendant CCCB's alleged membership interest in CharterCARE Foundation.[2]

21. The precision by which their assets can be valued for purposes of evaluating the Proposed Settlement differs among these three asset classes.

Liquid Operating Assets

22. According to the schedule prepared by the Settling Defendants, the current value of the unrestricted cash and cash equivalents of the Settling Defendants is approximately $11,525,000.[3]

Reserve Accounts and Accounts Receivable

23. According to the same schedule, their restricted cash and cash equivalents, and their accounts receivable, total approximately $2,327,186, but those assets are tied up in various reserve accounts or may not be collectible in full or even in

[1] See Ex. A (Settlement Agreement ¶¶ 20-21, Exhibits 12-17).

[2] See Ex. A (Settlement Agreement ¶ 20, Exhibits 12-14).

[3] See Ex. A (Settlement Agreement) ¶ 22, Exhibits 13-15).

part.[4] Under the terms of the Proposed Settlement, the interests of the settling defendants in the DLT Escrow is assigned to the Receiver, and the value of the remaining assets will be determined and realized in judicial liquidations proceedings in the Rhode Island Superior Court.

Interests in Other Entities

The Settling Defendants' Interests in Prospect CharterCare, LLC

24. In connection with the 2014 Asset Sale, Settling Defendant CCCB received a 15% membership interest in Prospect CharterCare, LLC, which indirectly owns and operates Roger Williams Hospital and Our Lady of Fatima Hospital. The current value of those interests is unknown to Plaintiffs. Moreover, the Prospect CharterCare Limited Liability Agreement ("LLC Agreement") provides that such interest may be diluted under certain circumstances, and purport to restrict and even prohibit CCCB from transferring that interest for five years, i.e. until on or about June 20, 2019. Finally, it cannot be assumed that Prospect East, and the other Prospect entities that are Defendants in the Federal Court Action and the State Court Action,[5] will pay the fair value of this interest without compulsion. Accordingly, it is impossible to value CCCB's interest in Prospect CharterCare, LLC at this time.

Settling Defendants' Rights in CharterCARE Foundation

25. The Proposed Settlement gives the Receiver the beneficial interest in Settling Defendant CCCB's interest in CharterCARE Foundation. However, the nature

[4] See Ex. A (Settlement Agreement) ¶ 20, Exhibits 13-15).

[5] Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, and Prospect CharterCare RWMC, LLC are the "Prospect Entities."

and value of that interest is disputed. Accordingly, the settlement value of that interest cannot be estimated at this time.

Notice to Plan Participants

26. 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 Instructions, and directing them to the Receiver's web site to obtain the Petition.

Attorneys' Fees

27. Pursuant to the WSL Retainer Agreement, the attorneys' fees to which Special Counsel is entitled in connection with the proposed settlement is 23 1/3% of the gross settlement amount.[6]

30. Notwithstanding that the WSL Retainer Agreement does not require or provide for any reduction of Special Counsels' contingent fee for hourly fees received in connection with Special Counsel's investigation prior to the assertion of a claim, Special Counsel on their own volition have agreed to such a reduction, to be applied to the first recoveries on the Proposed Settlement. The hourly fees for Special Counsel's investigation total $552,281.25, for 1,472 hours of attorney time. That credit would reduce Plaintiffs' Counsel's fee on the minimum Initial Lump Sum of $11,150,000 from 23 1/3% to approximately 18.38%.[7]

[6] See Exhibit D (WSL Retainer Agreement at 2).

[7] 23.5% of $11,150,000 = $2,601,630, minus $552,281.25 = $2,049,349, which is 18.38% of $11,150,000.

31. 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, less the aforementioned credit.

32. Accordingly, Plaintiffs' Counsel will be seeking an award of attorneys' fees in the Federal Court Action in the amount of 23 1/3% of the Gross Settlement Amount, less $552,281.25.

Conclusion

33. The First Circuit has held that "[a] settlement agreement should be approved as long as it does not 'fall below the lowest point in the range of reasonableness." In re Heathco Int'l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)). See also In re Mailman Steam Carpet Cleaning Corp., 212 F.3d 632 (1st Cir. 2000) (stating that the test is whether the trustee's actions fall within the universe of reasonable actions, as opposed to whether pressing forward might yield more funds). According to the First Circuit, in determining whether to approve a settlement, the Court should consider 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 pursing the litigation; and

d) The paramount interest of the creditors and a proper deference to their reasonable views.

Cf. Jeffrey v. Desmond, 70 F.2d 183, 185 (1st Cir. 1995) (bankruptcy context).

34. The federal standards enumerated in Paragraph 21 herein have been applied by the Rhode Island Superior Court in receivership proceedings. See, e.g.,

Brook v. The Education Partnership, Inc., No. PB 08-4185, 2010 WL 1456787, at *3 (R.I. Super. Ct. Apr. 8, 2010) (Silverstein, J.). In Brook v. The Education Partnership, Inc., the Superior Court held:

> As discussed supra, in determining whether to approve the Receiver's proposed settlement the Court must consider certain factors and "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Among the factors to be considered are: (1) the probability of success in the litigation; (2) the likelihood of difficulties in collection of any judgment; (3) the complexity, expense, inconvenience, and delay of the litigation involved; and (4) the paramount interests of the creditors. The Court will also give deference to the Receiver's business judgment.

Id. at *5 (internal citations omitted).

35. 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.

36. 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.

WHEREFORE the Receiver prays for 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 this Court may determine to be reasonable and necessary under the circumstances.

Dated: September 4, 2018

Respondent,
Stephen F. Del Sesto, Esq., Solely in His Capacity as Permanent Receiver of the Receivership Estate,
By his Attorneys,

/s/ Max Wistow

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

Exhibit C

HEARING DATE: OCT. 10, 2018 9:30 AM

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC.

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

OBJECTION OF CHARTERCARE FOUNDATION TO RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

INTRODUCTION AND SUMMARY OF ARGUMENT

CharterCARE Foundation ("CCF") now files this objection to the Receiver's Petition for Settlement Instructions (the "Settlement Petition"), which requests that this Court approve a Settlement Agreement executed by the Receiver and several individually named participants in the St. Joseph's Health Services of Rhode Island ("SJHSRI") Retirement Plan (the "Plan") (collectively, "Plaintiffs"), on the one hand, and SJHSRI, Roger Williams Hospital ("RWH"), and CharterCARE Community Board ("CCCB") (collectively, the "Settling Defendants"), on the other hand.

In this objection, CCF further develops the arguments that it previewed to this Court in the four-page *Objection to Receiver's Petition and Emergency Cross-Motion to Postpone September 13, 2018 Hearing* that it filed on September 5, 2018. CCF also responds herein to the arguments that the Receiver asserted in its September 6, 2018 *Memorandum in Support of Objection to CharterCARE Foundation's Emergency Motion to Postpone September 13, 2018 Hearing*, and then presented in Court on September 7, 2018.

At that September 7, 2018 hearing, the Receiver challenged whether CCF has standing. As set forth below, CCF does indeed have standing to object to those portions of the Settlement Agreement pertaining to CCF. Because there is no Rhode Island Supreme Court decision addressing standing in the receivership context, this Court should consult the Bankruptcy Code and federal case law for guidance. That case law provides that standing turns upon whether one qualifies as a "party in interest." In re Torres Martinez, 397 B.R. 158, 164 (B.A.P. 1st Cir. 2008). CCF qualifies as a "party in interest" because the Settlement Agreement has a direct impact on CCF's pecuniary and legal rights. The Settlement Agreement impairs CCF's rights because it would require its purported sole member, CCCB, to discharge all CCF's directors and irrevocably assign CCF's charitable trust assets to the Receiver.[1] That would put CCF out of business. Without question, CCF has a compelling interest in opposing a Settlement Agreement that would do so. If that type of legal and pecuniary interest is not sufficient to confer standing, then it is difficult to conceive of what would be sufficient.

Turning next to the substantive standard governing whether this Court should approve the Settlement Agreement, the Receiver asks this Court to put on blinders and consider *only* whether the settlement is a "good deal" for the debtor (the Plan) and the creditors of the debtor (the Plan participants). Again, this Court should turn to federal bankruptcy case law for guidance on this question. That case law makes clear that "the Court may not approve a settlement that would

[1] CCF herein refers to CCCB as its "purported sole member" because, in the four-plus years since the closing of the 2014 Asset Purchase Agreement involving Prospect, CCCB has not taken any action whatsoever to supervise, monitor, or control CCF in any way. CCCB never participated in any of CCF's Board of Directors meetings, or took any action to control who would appointed to that Board. If CCCB indeed believed that it owned and controlled CCF, its inaction was a very odd way of expressing such a belief. Moreover, since 2014, CCCB has made certain affirmative representations to governmental agencies that are inconsistent with any claim to a membership interest in CCF. CCF maintains that CCCB has no rights to act as CCF's "sole member" because CCCB long ago waived or abandoned its former membership interest in CCCB. See 18 C.J.S. Corporations § 390 (Sept. 2018 update). CCF acknowledges, however, that this receivership action is not the proper forum in which the parties should be litigating the merits of the abandonment issue. CCF intends to litigate that issue in a separate forum.

violate applicable law, regardless of whether it is a 'good deal' for a debtor." In re Capmark Financial Group Inc., 438 B.R. 471, 476 (Bkrtcy. D. Del. 2010). A Rhode Island court should neither endorse, nor enforce, any settlement agreement that violates Rhode Island law. See Power v. City of Providence, 582 A.2d 895, 900 (R.I. 1990).

Here, the Settlement Agreement provisions respecting CCF would violate Rhode Island law for several reasons. *First and foremost*, the Settlement Agreement would violate Rhode Island common law and the Charitable Trust Act by effectuating a diversion of charitable trust assets from CCF, which administers those assets consistent with the original donors' charitable intent, to the Receiver, who would use those assets to benefit only the Plan participants. Restricted charitable trust assets instead must be administered in accordance with the terms of their trust, i.e. the donors' original intent. See R.I. Gen. Laws § 18-9-1 et seq.; see generally Congregation Jeshuat Israel v. Congregation Shearith Israel, 186 F. Supp. 3d 158, 188 (D.R.I. 2016) rev'd on other grounds by 866 F.3d 53 (1st Cir. 2017).

Second, and relatedly, the Settlement Agreement's contemplated transfer of charitable trusts assets to the Receiver would violate conditions of a final and binding administrative order, namely, the Attorney General's 2014 Hospital Conversions Act ("HCA") approval (hereinafter, the "AG HCA Approval") (attached at **Tab A**). CCCB is one of the "Transacting Parties" directly subject to the conditions of the AG HCA Approval. Condition No. 8 required a *cy pres* transfer of restricted charitable assets to CCF, an independent foundation, so that those assets would be disbursed "in accordance with donor intent." The Settlement Agreement, however, would require CCCB to unwind the *cy pres* transfer, and place those assets in the hands of the Receiver, who would not disburse them "in accordance with donor intent." That would violate

Condition No. 8. CCCB may not lawfully enter into a Settlement Agreement in which it promises to violate a condition of a final, binding administrative order in this manner.

Third, the Settlement Agreement requires parties to violate the express terms of two prior Orders that this Court entered in the so-called 2015 *Cy Pres* Action. The first is the April 20, 2015 *Cy Pres* Order that authorized the transfer of charitable trust assets to CCF. (**Tab B**). The second is the June 29, 2018 "stand-still" Order that requires CCF to preserve its charitable trust assets unless and until the Receiver's claim to such assets is "finally adjudicate[d]" in a court of competent jurisdiction. (**Tab C**). Both Orders remain valid and binding unless and until they are vacated through some proper judicial process. That has not happened.

Fourth, the Settlement Agreement is unlawful for the additional reason that it would require CCCB to violate Condition No. 1 of the AG HCA Approval. Condition No. 1 prohibits board or officer overlap between CCF and CCCB. The clear intent of Condition No. 1 was to ensure that CCCB was an "independent foundation," i.e. one that could not be controlled by parties acquiring a stake in the new for-profit joint venture with Prospect Medical Holdings, Inc. ("Prospect"), such as CCCB. In violation of Condition No. 1, the Settlement Agreement would require CCCB to exercise purported rights to replace CCF's current Board of Directors with three new directors selected by CCF. Any such action would violate both the letter and spirit of the AG HCA Approval.

For all the foregoing reasons, this Court should expressly disapprove of those portions of the Settlement Agreement concerning CCF because they violate Rhode Island law.

FACTUAL AND PROCEDURAL BACKGROUND

CCF will not repeat the full history of this dispute because this Court already is immersed in those details, having reviewed voluminous briefing in connection with the recently-decided

intervention motion in the 2015 *Cy Pres* Action. CCF now focuses on two aspects of the factual and procedural background that bear directly on this Court's consideration of the Settlement Petition. Those are the 2014 AG HCA Approval, and the Settlement Petition filed in this receivership proceeding on September 4, 2018.

I. THE 2014 ATTORNEY GENERAL HCA APPROVAL.

On May 16, 2014, the Attorney General issued a 55-page decision approving, with conditions, the sale of certain SJHSRI and RWH health care assets to Prospect, a for-profit acquirer, pursuant to the HCA. (Tab A).

Section I, titled "Background," identified the "Transacting Parties" that had submitted the application for HCA approval to the Attorney General. (Id., p. 1). All three of the current Settling Defendants – SJHSRI, RWH, and CCCB (f/k/a CharterCARE Health Partners) – were "Transacting Parties" directly subject to the terms of the AG HCA Approval. (Id. at pp. 1-2).

Section II recited the applicable HCA review criteria enumerated at R.I. Gen. Laws § 23-17.14-7(c). Those review criteria required the Attorney General to consider the following.

> (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
>
> . . .
>
> (25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:
>
> . . .
>
> (vi) Whether the board of any new or continuing entity will be independent from the new hospital;
>
> . . .
>
> (26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;
>
> . . .

(Tab A, pp. 3-6).

Section IV.D was titled "Charitable Assets." (Id. at p. 22). Therein, the Attorney General recited that the Transacting Parties had submitted "[v]oluminous detail" documenting all their charitable assets, which the Attorney General then "thoroughly reviewed." (Id. at p. 23). In Section IV.D(1), titled "Disposition of Charitable Assets," the Attorney General accurately stated as follows.

> **With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.** In furtherance of that requirement, CCHP [n/k/a CCCB] indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation [n/k/a CCF], which will use the funds in accordance with the designated purposes.

(Id. at p. 23) (emphasis added). That discussion went to the issue of "[w]hether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes . . . ." R.I. Gen. Laws § 23-17.14-7(c).

Section IV.D(3), titled "Foundation for Proceeds," went on to address CCF specifically. (Id. at p. 31). It contained the following language making clear that CCF was to be "independent."

> In addition to addressing charitable assets, the Hospital Conversions Act requires an **independent foundation** to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose. With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds.[2]

[2] That sentence disposes of the Receiver's newly threatened claim that CCF's Board of Directors is comprised of "usurpers" because the presiding justice of the Superior Court did not appoint those directors pursuant

> Nonetheless, CCHP Foundation [n/k/a CCF] is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for the operation of an **independent community health care foundation**.

(Id. at pp. 31-32) (emphasis added). That discussion went to the issue of "[w]hether the board of any new or continuing entity will be **independent** from the new hospital." R.I. Gen. Laws § 23-17.14-7(c)(25)(vi) (emphasis added).[3]

Section VI set forth the "Conditions" of the Attorney General's HCA Approval. For present purposes, Conditions Nos. 1 and 8 are the most significant. Condition No. 1 mandated that: "There shall be no board or officer overlap between or among the CCHP Foundation [n/k/a CCF], CCHP [n/k/a CCCB], and Heritage Hospitals [i.e. SJHSRI and RWH]." (Tab A, p. 51). That condition continued indefinitely, unlike other approval conditions that expired after three years (e.g. condition nos. 4-7, 12-13, 23-26, 30). Condition No. 8 mandated that:

> . . . (b) a proposed Cy Pres petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation [n/k/a CCF] and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved Cy Pres petition be filed with the Rhode Island Superior Court.

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to R.I. Gen. Laws § 23-17.14-22(b)(1). That issue (or more accurately, non-issue) came up during the September 7, 2018 hearing to consider whether CCF, the Attorney General, and Prospect should have additional time to brief their objections to the Settlement Petition. During that hearing, CCF's counsel handed this Court a copy of R.I. Gen. Laws § 23-17.14-22 to illustrate how the HCA required CCF to be an independent entity, free of CCCB's control. Upon further review of the AG's HCA Approval and the statute itself, it is now clear to CCF's counsel that the Attorney General correctly determined that R.I. Gen. Laws § 23-17.14-22 did not apply to CCF. For the sake of clarity, CCF now withdraws any prior argument or suggestion that R.I. Gen. Laws § 23-17.14-22 applies to CCF, although CCF certainly continues to maintain that the AG's HCA Approval (as distinct from R.I. Gen. Laws § 23-17.14-22) did indeed require CCF to be an "independent" foundation.

[3] The AG HCA Approval required CCF to be an "independent foundation." CCCB was among the "Transacting Parties" subject to that requirement. To fulfill that requirement, CCCB should have taken a formal vote in 2014 to relinquish its membership interest in CCF going forward because any continued claim that it owned or controlled CCF would clearly subvert the intent that CCF be an "independent foundation." For reasons that remain unclear to CCF, CCCB did not take that formal action back in 2014.

(Id. at p. 52).

In a concluding section titled "Notice of Appellate Rights," the Attorney General gave the "Transacting Parties" notice that "this decision constitutes a final order of the Department of Attorney General." (Id. at p. 55). None of the Transacting Parties appealed from that final administrative order.

II. THE SETTLEMENT PETITION.

The Settlement Petition recites that the Settling Defendants have agreed to pay the Receiver a lump sum payment of $11,150,000. (Settlement Petition, ¶ 14(a)). That provides the most significant and immediate benefit to Plan participants, and CCF has no objection to that settlement term.

The Receiver, however, chose to greatly complicate matters by also insisting that the Settlement Agreement include problematic terms calling for a "[t]ransfer to the Receiver of the Settling Defendants' rights in CharterCARE Foundation." (Id. ¶ 14(c)). The Settlement Agreement would effectuate that transfer through a two-step process.

First, within five business days of the "Effective Date" of the Settlement Agreement, the Settling Defendants agree to deliver to Plaintiffs' Counsel the document titled "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation" (hereinafter the "Consent") which is attached at Exhibit 12 to the Settlement Agreement. For ease of reference, that Consent is attached hereto at **Tab D**.[4] As stated therein, the Consent calls for CCCB to: (1) elect Attorney Arlene Violet, Attorney Christopher Callaci, and Attorney Jeffrey Kasle as

[4] "'Effective Date' means the date upon which the Order Granting Final Settlement Approval is entered." (Settlement Agreement, ¶ 1(m)). "'Order Granting Final Settlement Approval' means the order approving the Settlement 1) as fair, reasonable. and adequate. 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) awarding attorneys' fees to Plaintiffs' Counsel, and 4) such other and further relief as *the Court* may direct." (Id. ¶ 1(x)) (emphasis added). The Settlement Agreement defines the term "Court" as the United States District Court for the District of Rhode Island. (Id. ¶ 1(i)).

"independent directors of CCF"; (2) amend CCF's by-laws to permit assignment of CCCB's purported interest in CCF and discharge all CCF's current directors; and (3) amend CCF's Articles of Incorporation to make the Receiver CCF's new sole member. (Tab D).

Second, within ten business days of the "Effective Date" of the Settlement Agreement, the Settling Defendants then agree to deliver to Plaintiff's Counsel "an irrevocable assignment . . . to the Receiver of all of CCCB's Foundation Interests. . . ." (Settlement Agreement, ¶ 13).

> "CCCB's Foundation Interests" means all of the claims, rights and interests of CCCB against or in CharterCARE Foundation . . . , including but not limited to the right to recover funds transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to CCCB's present or former status as a member or sole member of CharterCARE Foundation.

(Id. ¶ 1(c)).

To summarize, the Settlement Agreement would require the Settling Defendants to set in motion a series of events that would irrevocably assign all CCF's charitable trust assets to the Receiver, and terminate CCF's current mission of honoring donor intent by using those assets to extend grants and scholarships to promote better health care in Rhode Island.

The Settlement Petition requests 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 this Court may determine to be reasonable and necessary under the circumstances.

(Id., p. 13). For the reasons set forth below, this Court should neither approve the Settlement Agreement, nor authorize the Receiver to proceed with it. Instead, this Court should expressly disapprove the Settlement Agreement on the grounds that it violates Rhode Island law.

ARGUMENT

III. CCF HAS STANDING TO OBJECT TO THE RECEIVER'S REQUEST FOR JUDICAL APPROVAL OF THOSE PORTIONS OF THE SETTLEMENT AGREEMENT RELATING TO CCF.

CCF first addresses the Receiver's threshold argument that CCF does not have standing to object to the Settlement Agreement in this receivership proceeding. The Receiver does not cite to any Rhode Island Supreme Court decision that defines standing in the context of a receivership proceeding. CCF has not located any such Rhode Island appellate authority either.

"[W]here state receivership law provides minimal guidance, this Court instead 'looks to the Bankruptcy Act and to decisions by the federal courts for guidance.'" Patel v Shivai Nehal Realty LLC, No. KB-2012-0301, 2012 WL 5380060, at *2 (R.I. Super. Oct. 26, 2012) (Stern, J.) (quoting Reynolds v. E & C Associates, 693 A.2d 278, 281 (R.I. 1997)); see also Brook v The Educ. Partnership, Inc., No. PB08-4185, 2010 WL 1456787, at *3 (R.I. Super. Apr. 08, 2010) (Silverstein, J.).

In the bankruptcy context, standing turns upon whether the objecting party qualifies as a "party in interest." In re Torres Martinez, 397 B.R. at 164. "A party in interest is defined as one 'whose pecuniary interests are directly affected by the bankruptcy proceedings.'" Id. (quoting In re Davis, 239 B.R. 573, 579 (B.A.P. 10th Cir. 1999)). "A party's pecuniary interests are affected if the [bankruptcy court] order diminishes the appealing party's property, increases its burdens, or detrimentally affects its rights." In re Murphy, 288 B.R. 1, 4 (D. Me. 2002) (citing Kehoe v. Schindler (In re Kehoe), 221 B.R. 285, 287 (B.A.P. 1st Cir. 1998)).

Courts "must determine on a case by case basis whether the prospective party in interest has a sufficient stake in the proceeding so as to require representation." In re High Voltage Engineering Corp., 403 B.R. 163, 166 (D. Mass. 2009). "Parties in interest include not only the

debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding." In re Kazis, 257 B.R. 112, 114 (Bkrtcy. D. Mass. 2001).

The Receiver, however, argues that only the debtor estate (the Plan) and its creditors (the Plan participants) have standing to support or oppose a proposed settlement.[5] The bankruptcy courts, however, do not recognize such an inflexible rule. For example, in In re High Voltage Engineering Corp., a bankruptcy judge in the United States District Court for the District of Massachusetts held that a non-creditor had standing to object to a settlement proposed by the liquidating supervisor. 397 B.R. 579, 597-98 (Bkrtcy. D. Mass. 2008) aff'd by 403 B.R. 163 (D. Mass. 2009). That non-creditor indeed had standing because it was, among other things, the current owner of environmentally contaminated land formerly owned by the Chapter 11 debtor in question. Id. The non-creditor's present ownership interest in the subject property was sufficient to confer standing. Id.

Likewise here, CCF has standing because it has a pecuniary interest in the property that is the subject of the objectionable settlement terms, i.e. the restricted charitable trust assets. As stated above, "[a] party's pecuniary interests are affected if the [bankruptcy court] order diminishes the appealing party's property, increases its burdens, or detrimentally affects its rights." In re Murphy, 288 B.R. at 4. The Settlement Agreement certainly would diminish CCF's property. In fact, it would call for an irrevocable assignment of all CCF's charitable trust assets to the Receiver. The Settlement Agreement also would discharge all of CCF's directors. Without question, that would "detrimentally affect[] [CCF's] rights." See id.

The Receiver nonetheless protests that it is "premature" for CCF to object to the loss of all its property, because the federal court, rather than this Court, has the final say regarding

[5] That, of course, would mean that only the parties that signed this Settlement Agreement have standing to object to its approval, which they obviously will not be doing here.

whether or not the Settlement Agreement should be approved. That argument highlights why the Receiver's request for an Order from this Court "approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants" is, at best, unnecessary. (Settlement Petition, p. 13). The Receiver's argument also rings hollow because he is asking this Court to stamp the Settlement Agreement with an imprimatur of state court approval – rather than simply asking for authorization to later present it to the federal court – in an apparent attempt to increase the chances that the federal court grants ultimate approval. These procedural steps are all designed to increase CCF's burdens and detrimentally affect its rights. See In re Murphy, 288 B.R. at 4. Those interests are sufficient to confer standing upon CCF here.

IV. THE COURT SHOULD NOT APPROVE THE SETTLEMENT TERMS RELATING TO CCF BECACUSE THEY VIOLATE RHODE ISLAND LAW.

Just as federal bankruptcy courts "will not approve settlement agreements that are 'illegal, a product of collusion, or against the public interest,'" this Court should not do so either. In re Health Diagnostic Laboratory, Inc., 588 B.R. 154, 162 (Bkrtcy. E.D. Va. 2018) (quoting United States v. North Carolina, 180 F.3d 574, 581 (4th Cir. 1999)). "To the extent a proposed settlement includes provisions, the enforcement of which would be illegal or against public policy, it matters not whether the settlement is in the best interests of the estate." In re Telcar Group, Inc., 363 B.R. 345, 357 (Bkrtcy. E.D.N.Y. 2007).

Settlement agreements are governed by general principles of contract law. See Furtado v. Goncalves, 63 A.3d 533, 538 (R.I. 2013). "Contracts entered into in contravention to a state statute . . are illegal, and no contract rights are created thereby." Power, 582 A.2d at 900 (holding that settlement agreement in which police department agreed not to force any officer to

retire before age 70 was void because it violated the Providence Retirement Act, which mandated retirement of police officers at age 60).

Here, this Court should disapprove the Settlement Agreement terms concerning CCF because they violate Rhode Island law for the following four reasons.

a. The Settlement Agreement Would Violate Common Law And The Charitable Trust Act By Diverting Charitable Trust Assets To Non-Charitable Purposes.

Pursuant to the AG HCA Approval and this Court's April 20, 2015 *Cy Pres* Order, the Heritage Hospitals transferred restricted charitable assets to CCF. Those restricted charitable assets qualify as "charitable trust" assets. The term "charitable trusts" refers to "any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational, or religious purposes." R.I. Gen. Laws §§ 18-9-4.

"Unlike private trusts, which must have specified beneficiaries, charitable trusts must have a public purpose. . . ." Congregation Jeshuat Israel, 186 F. Supp. 3d at 188.

> A fundamental distinction between private and charitable trusts lies in the character of the benefits to flow from their administration. In private trusts money or money's worth is to be distributed by way of gift to the beneficiaries or in satisfaction of an obligation of the settlor. In charitable trusts the benefits to be provided through the trust are to be intangible advantages to the public or to some significant class thereof which improve its condition mentally, morally, physically or in some similar manner. The trustees pay out money and other property not for the personal benefit of the donees, but rather to secure for society certain advantages.

Id. (quoting A. Hess, G. Bogert, & G. Bogert, The Law of Trusts and Trustees § 362 at 19-20 (3d ed. 2007)). Rhode Island courts are called upon to ensure that "a charitable gift for certain designated used [sic] will not be diverted or applied otherwise." Pennsylvania Co. for Banking and Trusts v. Board of Governors of London Hospital, 83 A.2d 881, 885 (R.I. 1951). The

Charitable Trust Act also invests the Attorney General with authority to supervise and prevent "breaches of trust," and to investigate whether charitable trusts "are being administered in accordance with law and the terms and purposes of the trust." R.I. Gen. Laws §§ 18-9-1, 18-9-9.

Because of these legal requirements, CCF is not at liberty to disburse charitable trust assets to any random organization that it choses. If CCF unilaterally disbursed assets to a unrelated cause in a manner that was inconsistent with donor intent, that would breach the terms of the charitable trusts in question and violate the Charitable Trust Act. Just as CCF cannot unilaterally decide to violate the law, it cannot sign a contract (either directly or through its purported parent corporation) in which it promises to violate the law in the future. Settlement agreements are contracts, and contracts that require a party to violate the law are void. See Power, 582 A.2d at 900.

Here, the settlement term requiring CCCB to irrevocably assign "all of CCCB's Foundation Interests" to the Receiver would call upon CCCB and CCF to violate the Charitable Trust Act and the Rhode Island common law principles discussed above. The Receiver, of course, has no interest in administering a "charitable trust" in accordance with the intent of the donors. Rather, the Receiver is looking to gain possession of those charitable trust assets in order to use them for the private benefit of Plan participants. That diversion would be unlawful because it plainly violates the terms of the charitable trusts in question. This Court should not approve a Settlement Agreement that requires parties to so clearly violate the Charitable Trust Act and Rhode Island common law.

b. The Settlement Agreement Is Unlawful Because It Requires CCCB to Violate Condition No. 8 of the AG HCA Approval, Which Required a *Cy Pres* Transfer of Restricted Charitable Assets to CCF.

As set forth above, the HCA expressly required the Attorney General to consider "[w]hether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state." Supra at 5 (citing R.I. Gen. Laws § 23-17.14-7(c)(1)). In applying that review criterion here, the AG HCA Approval expressly held that:

> With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.

(Tab A at p. 23). To that end, Condition No. 8 of the AG HCA Approval required a *cy pres* transfer of restricted charitable assets from the Heritage Hospitals to CCF to ensure that funds were disbursed "in accordance with donor intent. . . ." (Id. at p. 52). CCCB was one of the "Transacting Parties" bound by Condition No. 8. Supra at 5. Because no appeal was taken, CCCB remains bound by Condition No. 8. See Pina v. Dos Anjos, 755 A.2d 838, 839 (R.I. 2000) (mem.). The Settlement Agreement would require CCCB to act in violation of Condition No. 8 by undoing the *cy pres* transfer and transferring assets to a Receiver who will not disburse those assets "in accordance with donor intent. . . " (Id. at p. 52). This Court should not approve a Settlement Agreement that requires CCCB to violate conditions of a final administrative order to which it is bound.

c. The Settlement Agreement Would Violate the Terms of This Court's Prior Orders In the 2015 *Cy Pres* Action.

Paragraphs 2 and 5 of this Court's April 20, 2015 *Cy Pres* Order granted *cy pres* approval for the transfer of $8,392,820.95 in SJHSRI and RWH restricted funds to CCF. (Tab B, ¶¶ 2, 5).

Both paragraphs required such funds "to be used *as close to original donors' intent as possible* . . ." (Id.) (emphasis added). In contrast, the Settlement Agreement calls for CCCB to cause CCF to transfer such funds to the Receiver, who will not use them "as close to original donors' intent as possible." CCF cannot transfer funds to the Receiver without violating this Court's April 20, 2015 *Cy Pres* Order. While CCF fully appreciates that the Receiver has been permitted to intervene in the 2015 *Cy Pres* Action for the purpose of *seeking* to vacate that Order, it still remains a valid, binding Order.

For many of the same reasons, the Settlement Agreement also would call upon CCF to violate this Court's June 29, 2018 "Order Preserving Assets Pending Litigation And Setting Schedule For Hearing On Motion to Intervene." Paragraph 1 of that Order provides as follows.

> All funds presently held by the Rhode Island Foundation ("RIF") pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, "Fund Corpus") shall continue to be held by RIF pursuant to such Instrument of Transfer until such time as this Court, or another Court of competent jurisdiction, finally adjudicates on the merits Proposed Intervenors' claims to entitlement to the Fund Corpus and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.

(Tab C). CCF cannot directly or indirectly cause any transfer of funds from RIF to the Receiver without acting in violation of that June 29, 2018 Order.

In sum, unless and until the Court's April 20, 2015 *Cy Pres* Order is vacated (CCF maintains that there is no basis to vacate that Order), and there has been a final adjudication on the merits of Plaintiffs' claims to the *cy pres* funds, CCF cannot transfer any such funds to the Receiver without violating this Court's Orders. (As this Court is aware, a party's willful violation of a valid, binding Court Order may be contemptuous.) Plaintiffs and the Settling

Defendants cannot circumvent these Orders by signing a Settlement Agreement that requires CCCB take control of CCF and command CCF to violate those Orders.

This Court should not approve a Settlement Agreement that requires parties to engage in knowing violations of this Court's previously issued, valid and binding Orders.

d. The Settlement Agreement Is Unlawful Because It Requires CCCB to Violate Condition No. 1 of the AG HCA Approval, Which Prohibits Board Overlap Between CCF and CCCB.

As set forth above, the HCA expressly required the Attorney General to consider [w]hether the board of any new or continuing entity will be independent from the new hospital." Supra at 5 (citing R.I. Gen. Laws § 23-17.14-7(c)(25)(vi)). Here, the "new hospital" referred to the newly created joint venture between CCCB and Prospect. The AG HCA Approval required CCF to be independent from CCCB and Prospect. To ensure CCF's independence, Condition No. 1 mandated that: "There shall be no board or officer overlap between or among the CCHP Foundation [n/k/a CCF], CCHP [n/k/a CCF], and Heritage Hospitals." (Tab A, p. 51).

The Settlement Agreement, however, requires CCCB to exercise purported rights to unilaterally discharge CCF's entire Board of Directors and replace them with a new slate of directors loyal to the Receiver. If CCCB indeed has the right to unilaterally select CCF's Board of Directors whenever it wishes, then Condition No. 1's prohibition against board overlap between CCF and CCCB is hollow and meaningless. If CCCB controls CCF's Board of Directors in this manner, then CCF ceases to be an "independent foundation" in compliance with the AG HCA Approval.

Again, this Court should not approve a Settlement Agreement that requires CCCB to violate conditions of a final administrative order to which it is bound.

CONCLUSION

CCF appreciates that the Receiver is seeking to move ahead expeditiously in order to realize a monetary recovery for Plan participants. CCF respectfully suggests, however, that this Court should distinguish between the Settling Defendants' fairly straightforward agreement to make a lump sum settlement payment to the Receiver of $11,150,000, and the far more complicated settlement terms concerning CCF.

For all the reasons discussed above, the settlement terms concerning CCF deserve careful scrutiny. Even if this Court believes that the Settlement Agreement is, on balance, a "good deal" for the Plan, its participants, and the Settling Defendants, this Court cannot approve a Settlement Agreement that violates Rhode Island law in the manner discussed above.

CCF respectfully suggests that the Court has two options here. First, this Court can expressly rule that it disapproves of the Settlement Agreement terms concerning CCF because those terms violate Rhode Island charitable trust principles, the Charitable Trust Act, the Hospital Conversions Act, the terms of a final and binding administrative order from the Attorney General, and also the terms of this Court's prior Orders in the 2015 *Cy Pres* Action. On that basis, CCF submits that the Court should **DENY** Plaintiffs the right to proceed any further with seeking approval from the federal court.

Second, and in the alternative, if this Court is not inclined at this juncture to address CCF's objections to the legality of the Settlement Agreement terms regarding CCF, then this Court should make clear in its ruling that CCF's right to raise these objections is expressly reserved for subsequent determination by the federal court.

CHARTERCARE FOUNDATION,

By its attorneys,

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Dated: September 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2018, I filed and served this document through the electronic filing system and via e-mail on the following parties:

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I also hereby certify that on the 27th day of September, 2018, I served this document on the following parties via First Class U.S. Mail:

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Andrew R. Dennington
Andrew R. Dennington (#7528)

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TAB A

STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL

May 16, 2014

DECISION

Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

I. BACKGROUND

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General (the "Attorney General") and Rhode Island Department of Health ("DOH"). The parties filed their initial application ("Initial Application") on October 18, 2013. The parties (collectively, "Transacting Parties") to the Initial Application are identified below:

- **Roger Williams Medical Center** ("RWMC"), a 220-bed acute care, community hospital located in Providence, Rhode Island. RWMC is a wholly-owned subsidiary of CharterCARE Health Partners ("CCHP").[1]

- **St. Joseph Health Services of Rhode Island** ("SJHSRI")[2], a 278-bed acute care, community hospital located in North Providence, Rhode Island. SJHSRI's ownership structure is such that CCHP is the sole Class A Member and the Bishop of Providence is the sole Class B Member.

[1] RWMC and SJHSRI will at times be referred to as the "Existing Hospitals" or "Heritage Hospitals."
[2] Commonly known as Our Lady of Fatima Hospital

- **CharterCARE Health Partners,** The Existing Hospitals were converted to the current CCHP structure pursuant to a decision issued by DOH and the Attorney General in July 2009.

- **Prospect Medical Holdings, Inc.** ("PMH") The Acquiror, pre-conversion, is an organizational structure existing under a parent entity, Prospect Medical Holdings, Inc. PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a health care services company that owns and operates hospitals and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.

- **Prospect East Holdings, Inc.** ("Prospect East") a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East will hold PMH's interest in Prospect CharterCARE, LLC and the Newco Hospitals post-conversion.

- **Prospect East Hospital Advisory Services, LLC** ("Prospect Advisory"), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory will oversee and assist in the management of the day-to-day operations of Prospect CharterCARE, LLC post-conversion.

- **Prospect CharterCARE, LLC**, a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, post-conversion, the Newco RWMC and Newco Fatima[3] (defined below). Prospect CharterCARE, LLC will be owned 85% by Prospect East and 15% by CCHP. However, the governing board of Prospect CharterCARE, LLC will be a 50/50 board as explained herein.

- **Prospect CharterCARE RWMC, LLC** ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC.

- **Prospect CharterCARE SJHSRI, LLC** ("Newco Fatima") is a Rhode Island limited liability company, which will own and hold the licensure for Our Lady of Fatima Hospital post-conversion. Newco Fatima will be wholly-owned by Prospect CharterCARE, LLC.

See Response to Initial Application Question 1 and Exhibits C10A-1 through A-6; C10A-12 through 14; 10A-7 through 11 and 10 B, C and D[4].

[3] Newco RWMC together with Newco Fatima shall collectively hereinafter be referred to as "Newco Hospitals".
[4] For the purposes of this Decision, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, and its "Subsidiaries", Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC, will be called collectively "Prospect"; Roger Williams Medical Center, St. Joseph

In its simplest form, the structure of the transaction outlined in the Initial Application (the "Proposed Transaction") is a sale of the assets of CCHP to PMH.

PMH is proposing to form Prospect CharterCARE, LLC. PMH will retain an 85% ownership interest in Prospect CharterCARE, LLC. CCHP will be provided a 15% ownership Interest in Prospect CharterCARE, LLC. The governing structure, however, will be such that PMH's ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board, and CCHP's ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board. The Transacting Parties refer to this concept as a "50/50 board."

II. REVIEW CRITERIA

The review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital[5] is as follows:

> (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
>
> (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
>
> (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
>
> (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
>
> (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
>
> (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants

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Health Service of Rhode Island and CharterCARE Health Partners will be called collectively "CharterCARE" or "CCHP".

[5] R.I. Gen. Laws § 23-17.14-7(c). The Attorney General's responsibility under the Hospital Conversions Act is to review the transaction selected by the Board(s) of Directors.

engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

(10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

(19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH (the "Departments") jointly interviewed the following individuals:

CharterCARE

1. Kenneth H. Belcher, President/CEO of CharterCARE Health Partners
2. Michael E. Conklin, Jr., Chief Financial Officer, CharterCARE Health Partners
3. Joan M. Dooley, R.N., Chief Nursing Officer, CharterCARE Health Partners, RWMC
4. Patricia A. Nadle, R.N., Chief Nursing Officer, CharterCARE Health Partners, SJHSRI
5. Edwin J. Santos, Chairman of the CharterCARE Health Partners Board
6. Kathy Moore, Director of Finance, CharterCARE Health Partners
7. Addy Kane, Chief Financial Officer, Roger Williams Medical Center

Prospect

8. Thomas Reardon, President of Prospect Medical Holdings, Inc.
9. Samuel S. Lee, CEO, Prospect Medical Holdings, Inc.
10. Steve Aleman, Chief Financial Officer, Prospect Medical Holdings, Inc.
11. Barbara Giroux, Senior Vice President of Finance and Operations

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Providence at Gaige Hall Auditorium on the

campus of Rhode Island College.[6] It was held on April 28, 2014, from 4 p.m. to 7 p.m. At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, twenty-eight (28) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with one in opposition and another raising concern as to whether Fatima Hospital would retain its Catholic identity. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

III. PROCEDURAL HISTORY

In 2008 and 2009, the RWMC and SJHSRI systems were losing in excess of $8 million dollars a year from operations alone.[7] In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CCHP. The purpose of the affiliation was to realize approximately $15 million dollars in savings over 5 years, utilizing efficiencies created by the combined hospital systems as well as to preserve and expand health care services to the Existing Hospitals' communities.[8] In 2009, the affiliation was approved by DOH and the

[6] The Attorney General would like to thank the staff of Rhode Island College for their hospitality and for assisting us with use of the auditorium.
[7] Initial Application, Response to Question 1
[8] Id.

Attorney General.[9] If the CCHP affiliation had not been approved, the RWMC and SJHSRI systems would have had difficulty in continuing to operate independently.[10]

CCHP operates a health care system in the City of Providence and the Town of North Providence which includes Roger Williams Medical Center and St. Joseph's Health System of Rhode Island.[11]

Roger Williams Medical Center, defined above as RWMC, is a 220-bed acute care, community hospital located in Providence, Rhode Island. St. Joseph Health Services of Rhode Island, defined above as SJHSRI, operates Our Lady of Fatima Hospital, which is a 278-bed acute care, community hospital located in North Providence, Rhode Island.[12]

CCHP also operates a number of non-hospital facilities that will be included in the Proposed Transaction: Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician's Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, Rosebank Corporation and CharterCARE Health Partners Foundation ("CCHP Foundation").[13]

Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation.[14] Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately $3 million dollars per year.[15] Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although

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[9] Id.
[10] Id.
[11] Initial Application, Response to Question 1
[12] Id.
[13] Id.
[14] Id.
[15] Id.

capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.[16]

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million dollars which are increasing without additional contributions.[17] Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

In an effort to ensure the continued viability of the Existing Hospitals, in December of 2011, CCHP issued 22 Requests for Proposals (the "RFP") seeking a partner.[18] In response to its RFP, CCHP received six (6) responses, which it reviewed and considered carefully.[19] Among the responses it received was one from PMH in August of 2012.[20] CCHP conducted a vigorous and detailed review of all of the proposals it received.[21] However, after receiving the response of PMH, CCHP then undertook extensive review of PMH's proposal and engaged in negotiations with PMH. In March of 2013, after a joint meeting of the boards of CCHP and the Existing Hospitals, and an analysis of a number of the different options before CCHP, CCHP chose PMH's proposal.[22] In March of 2013, a Letter of Intent was executed by and between PMH and CCHP.[23] During the interval between March 2013 and the execution of the Asset Purchase Agreement on September 24, 2013, the Transacting Parties conducted extensive due diligence of each other. The Transacting Parties subsequently executed a First Amendment to the Asset

[16] Id.
[17] Id; Report of James P. Carris, CPA.
[18] 4/28/14 Testimony of Kenneth Belcher
[19] Id. Response to Question 55
[20] Id.
[21] Id.
[22] Initial Application response to Question 14
[23] Id.

Purchase Agreement on February 27, 2014, to add Prospect CharterCARE Ancillary Services, LLC ("Ancillary") to hold the licenses for the Prospect CharterCARE laboratories, among other things.[24]

An Initial Application was submitted by the Transacting Parties on October 18, 2013. On November 18, 2013, the Departments informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On January 2, 2014 the Departments received a letter addressing the deficiencies within the Initial Application. On January 16, 2014, the Departments issued the Transacting Parties a notice of completeness letter.

On January 17, 2014, the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed, incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public.

During the review, six (6) sets of Supplemental Questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the Transacting Parties.

IV. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consist of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

A. BOARD OF DIRECTORS

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.[25] In the instant review, the Attorney General provided a review of the action of the board of directors leading to the Proposed Transaction.

[24] Response to Supplemental Question 3-15

1. Duties of the Board of Directors

The Hospital Conversion Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was "appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital's] mission and purposes." With regard to this particular provision, the Board of Directors of CCHP (the "CCHP Board") faced a situation where it was sustaining continued losses, despite its efforts to find and implement efficiencies throughout CCHP and its affiliates.[26] CCHP was also faced with aging infrastructure issues that needed to be addressed.[27] The need for capital to sustain its continued viability was a driving impetus in locating a partner as CCHP realized it could not address these issues on its own going forward.[28] The Attorney General finds that this condition of the Hospital Conversions Act has been satisfied.

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of "[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion." In order to pursue an appropriate partner, CCHP issued twenty-two (22)[29] Requests for Proposals to a number of entities, listing a number of criteria.[30] These criteria included:

(a) A commitment to the continued provision of quality health care services for the residents of Greater Providence, Rhode Island and the surrounding communities;

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[25] *See e.g.*, Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).
[26] Initial Application, Response to Question 1
[27] Id.
[28] Initial Application, Responses to Questions 1, 13 and 14.
[29] 4/28/14 Public Hearing Testimony of Kenneth Belcher
[30] Initial Application Response to Question 14 and Exhibit 14A

(b) A long-term commitment to CCHP, its medical staff and employees;

(c) A demonstrated cultural fit with CCHP's mission and a shared strategic vision for the future of CCHP;

(d) An established record of success in the use of various strategies for physician recruiting and assistance developing other ways to expand and enhance CCHP's range of services;

(e) Access to sufficient capital to allow CCHP to maintain high quality care for its patients and improve its physical facilities;

(f) Continued commitment to community benefit programs;

(g) A structure of governance that allows for continued participation of the CCHP Board in the governance of CCHP, preferably a joint venture structure;

(h) Commitment to maintaining existing services for a period of at least three years;

(i) Quality and safety expertise to assure that CCHP exceeds quality and safety standards;

(j) Proven ability to improve clinical outcomes/services as well as provide clinical and administrative support to assure a standard of excellence; and

(k) Preservation and enhancement of academics.

The condition in the RFP reflecting the CCHP Board's desire for a long-term commitment to CCHP, its medical staff and employees, referenced at (b) above, fit with the Board's desire to engage in a joint venture model of governance that would permit continued CCHP input into the decision making and operations of the Existing Hospitals rather than to be simply acquired.[31] This intended model of governance was shared by Prospect, as evidenced by the provisions of the Amended and Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "Prospect CharterCARE Operating Agreement"), which contains specific conditions for a 50/50 board representation by CCHP and Prospect, as well as

[31] *See* Initial Application Response to Question 55.

establishment of local boards for the Existing Hospitals to provide continued local input into the operations of these facilities.[32]

In its RFP, CCHP sought a substantial amount of information from its potential partners,[33] including:

(a) Mission, Vision, Values;
(b) Financial Strength;
(c) Corporate Structure;
(d) Ability to Pay or Finance Proposal;
(e) Ability to Fund Capital Needs;
(f) Desire to Sustain CCHP as a Full Service Acute Care System;
(g) Commitment to Build CCHP Care Capabilities;
(h) Desire to Support, Improve and Grow Medical Staff and Physician Alignment;
(i) Approach to Physician Recruitment and Retention;
(j) Community Benefit;
(k) Future Governance Proposal for CCHP;
(l) Continuing Roles for CCHP Management Team;
(m) Growth Strategies;
(n) Existing Affiliations;
(o) Quality and Safety; and
(p) Regulatory Impediments to Successful Venture.

The Attorney General finds that the CCHP Board's actions in connection with its issuance of the RFP and criteria employed satisfy the requirements of the Hospital Conversion Act. *See* R.I. Gen. Laws § 23-17.14-7(c)(3)(4).

An additional section requires review of "whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion." *See* R.I. Gen. Laws § 23-17.14-7(c)(10).

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[32] *See* Initial Application Response to Question 7, Exhibit 18, Prospect CharterCARE Operating Agreement.
[33] Id.

2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board's use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

> (8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and
>
> (9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the CCHP Board engaged a number of consultants, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.[34] It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFP proposals submitted and negotiation of the Proposed Transaction.[35] *See* R.I. Gen. Laws § 23-17.14-7(c)(8)(15).

Prospect also retained a number of consultants, including BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC. [36]

With regard to the care given "in accepting assumptions and conclusions provided by consultants," the Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application process. It is unclear if more than advice regarding the regulatory process was provided by consultants in this portion of the transaction process. Accordingly, the Attorney General has found nothing to refute that the

[34] Initial Application, Response to Question 14.
[35] Initial Application, Response to Question 60, Exhibit 60B.
[36] Initial Application, Response to Question 60, Exhibit 60A.

CCHP Board's decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care and that criteria (6), (8), (9) and (15) of the Hospital Conversions Act have been satisfied. *See* R.I. Gen. Laws §23-17.14-7(c).

3. Remaining Board Criteria

Regarding the remaining criteria of this type, the Transacting Parties have disclosed management and operating agreements pertaining to the operations of Prospect CharterCARE, LLC, which entity shall own the Newco Hospitals post transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The Transacting Parties have provided the Prospect CharterCARE Operating Agreement, which includes provisions for the formation of local boards for each Newco Hospital thereafter.[37] This operating agreement also provides for the local boards to consist of at least six individuals, with 50% being physicians and the other 50% being community representatives and the Hospital's CEO, with no board member serving more than a three-year term.[38]

In addition, the Transacting Parties provided a Management Services Agreement, which will operate between Prospect CharterCARE, LLC and Prospect Advisory.[39] Prospect East, as the managing member of Prospect CharterCARE, LLC, has delegated its day-to-day management of the Newco Hospitals to Prospect Advisory under the Management Services Agreement (the "Management Agreement"), which provides for a number of services, including assistance with operational activities, once the Proposed Transaction has closed.[40] Prospect Advisory will work with senior leadership team members (the "Executive Team") of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the

[37] Initial Application, Response to Questions 1, 18 and Exhibit 18 Article XII.
[38] Initial Application Exhibit 18, Article XII, Response to Question 7.
[39] Initial Application Exhibit 18.
[40] Id. Response to Question S3-20.

Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's board (the "Board") and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions. Since the filing of the Initial Application, the Management Agreement has been subsequently revised to clarify that should any conflicts arise between the Prospect CharterCARE Operating Agreement and the Management Agreement, such conflicts will be resolved in favor of the Prospect CharterCARE Operating Agreement. The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(14) of the Hospital Conversions Act has been satisfied.

As part of the Initial Application process, the applicants also indicated that the only agreements they have made regarding future employment or compensated relationships relating to any officer, director, board member or senior manager of CCHP is the assumption by Prospect of the existing employment relationships of the current CCHP CEO, Kenneth Belcher and the other senior leadership team members.[41] In addition, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.[42] As to any agreements between affiliates, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing this aspect of review. *See* R.I. Gen. Laws § 23-17.14-28.

The Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the Newco Hospitals. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). In fact, Prospect has confirmed that if the Newco Hospitals do not meet financial expectations, it will provide additional funding to them.[43] The terms of the Management Agreement were determined jointly by Prospect and CCHP, both of which were represented by,

[41] Initial Application, Responses to Questions 35 and 36; Asset Purchase Agreement, Article VIII.
[42] Response to Supplemental Question 3-38.
[43] Response to Supplemental Question S4-25.

and consulted with, legal counsel relating to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14),(15). The Attorney General finds that the statutory requirement of R.I. Gen. Laws § 23-17.14-7(c)(23) has been met.

Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

B. CONFLICTS OF INTEREST

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.[44] The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

1. Conflict of Interest Forms

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Prospect and CCHP. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. The Proposed Transaction also provides that the employment contracts of the Executive Team will be assumed by Prospect, without any additional compensation or benefit.[45] The Attorney General finds no conflict of interest occurred with respect to these agreements that are to be assumed by Prospect.[46] Further, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.[47] After reviewing the conflict of interest forms, the Attorney

[44] *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).
[45] *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22).
[46] *See* Initial Application, Responses to Questions 1, 15, 35, 36, Exhibit 18 Asset Purchase Agreement Article VIII.
[47] Response to Supplemental Question 3-38.

General determines that none of the submitted information revealed any conflict of interest.[48] *See* R.I. Gen. Laws §23-17.14-7(c)(6).

2. Consultants

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Attorney General notes that CCHP engaged several entities in its pursuit of a potential suitor, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.[49] It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFPs submitted and negotiation of the Proposed Transaction.[50] The Attorney General has determined that the criteria contained in R.I. Gen. Laws §23-17.14-7(c)(6) and (7) of the Hospital Conversions Act have been satisfied as to some, but not all of the consultants engaged because conflict of interest forms were not provided for Cambridge Research Institute, The Camden Group, Dr. Vincent Falanga (who is no longer affiliated with RWMC) and Schulte Roth Zubel, LLC, despite CCHP's efforts to obtain them. One should not be able to avoid providing a conflict form because of change in employment or affiliation. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided, the Attorney General has made an inference that a conflict of interest exists with regard to these individuals,

[48] *See* Initial Application, Response to Question 15
[49] Initial Application, Response to Question 14
[50] Initial Application, Response to Question 60, Exhibit 60B.

that any future dealings between Prospect and these individuals will be considered suspect, and in the event the Attorney General obtains additional information, further action may be taken.

3. Negotiations And Conflicts

After review of relevant documents obtained during the Attorney General's review, it has been determined that the individuals who represented the Existing Hospitals in negotiations of the Proposed Transaction had no impermissible conflicts of interest.[51]

4. Sale Proceeds And Conflicts

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion after the disposition of the liabilities of the Existing Hospitals not assumed by Prospect CharterCARE, LLC. Therefore, there is no need to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.[52]

5. Prospect Conflicts Of Interest

On behalf of Prospect, several consultants were also engaged including: BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.[53] After reviewing the conflict of interest forms submitted by Prospect, the Attorney General finds none of the forms submitted by Prospect revealed any conflict of interest.

In response to various questions, Prospect has indicated that it has identified certain leadership positions within its organization, post transaction.[54] Under the terms of the Asset Purchase Agreement, Management Agreement and Prospect CharterCARE Operating

[51] R.I. Gen. Laws § 23-17.14-7(c)(22).
[52] *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).
[53] Initial Application, Response to Question 60, Exhibit 60A.
[54] *See* Initial Application, Response to Question 35.

Agreement, Prospect will hold an 85% ownership interest and thus will appoint certain individuals as its representatives, all of whom have provided Conflict of Interest Statements. A review of these documents and the interviews conducted with representatives of Prospect does not indicate that any conflict of interest exists with respect to the Proposed Transaction.[55] *See* R.I. Gen. Laws §§ 23-17.14-7 (c)(6),(7).

C. VALUE OF TRANSACTION

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. *See* R.I Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, James P. Carris, CPA, ("Carris"), in making a determination regarding valuation. According to the analysis of Carris:

Is the Purchase Commitment from Prospect Medical Holdings, Inc. Fair and Reasonable?

As described in the Asset Purchase Agreement (APA), Prospect Medical Holdings (Prospect), through a series of subsidiaries, is acquiring substantially all the assets of CharterCARE Health Partners, Inc. (CCHP). The acquisition includes Roger Williams Medical Center (RWMC), a 220-bed acute care teaching hospital and Saint Joseph's Health System of Rhode Island (SJHSRI), which operates Fatima Hospital, a 278-bed acute care community hospital located in North Providence, RI.

[55] Id., and Exhibit 18 (Asset Purchase Agreement, Prospect CharterCARE Operating Agreement and Management Agreement).

Additionally, there are a number of non-hospital health entities in CCHP, which are also included in the transaction.

At closing, CCHP will receive $45 million in cash plus a 15% interest in the joint venture (Prospect CharterCARE) that will hold the acquired assets.

The APA requires that the $45 million in cash proceeds be dispersed at closing as follows:

-$16,550,000 to be used to fully redeem SJHSRI revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

-$11,062,500 to be used to redeem RWMC revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation.

-$3,387,500 to be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

-$14,000,000 to be applied to the St. Joseph Pension Plan.

A detailed sources and uses schedule for the transaction has been provided by the parties.

Prospect has also committed $50 million over a four year period (in addition to CCHP's routine capital commitment of at least $10 million per year) to fund expansion and physical plant improvements to the existing entities. During the process, Prospect has agreed to guarantee the $50 million long-term capital commitment of its subsidiary, Prospect East. This $50 million may be subject to certain limitations and offsets but for the purposes of this analysis, is included at the full $50 million.

CCHP's 15% interest in the joint venture is also subject to potential limitations, including a possible capital call. All parties to the transaction have given assurances that no capital call is anticipated in the foreseeable future.

Representatives of management and the Board of CCHP stipulated that if this transaction does not close, they would immediately begin the strategic partnering process again. The system does not have the ability to survive long-term with a "go it alone" strategy. This is borne out by the internal March 2014 consolidated financial statements, which shows a six-month, consolidated operating loss of approximately $9 million.

A third party valuation analysis or fairness opinion was not completed with regard to the entire transaction. CCHP stated that its board did not undertake an appraisal since any potential valuation would have to be measured against the board's requirement for a joint venture model that included the retention of local ownership and local governance. Prospect stated that it looked at two methods of determining potential value. The first method was a multiple of twelve months trailing EBITDA and the second method was a multiple of enterprise value. Neither of these methods were deemed by the parties to be applicable in this situation. Accordingly, the parties

looked at the existing long-term debt, other outstanding obligations and future capital needs. CCHP in pursuing its joint venture model, as directed by its Board, was looking to resolve approximately $31 million in long-term debt, to bring the St. Joseph's Pension Plan to a ninety (90%) percent funding level and fund future capital needs of approximately $50 million. The parties therefore estimate the total consideration to be approximately $95 million.

The purchase commitment from Prospect is fair and reasonable for the acquisition of CCHP and its affiliates. This is based on the criteria established by the CCHP Board, a review of available documentation, analysis of CCHP's current and historical operating performance as well as interviews and discussions with numerous individuals who participated in the processes and discussions which culminated in this transaction.

Moreover, given the considered and extensive review process employed by the CCHP Board and its finding that the terms of its deal with Prospect "were the best available from the remaining, interested parties," the information provided by Carris, as well as the offers of other bidders, the criteria under the Hospital Conversions Act regarding valuation of the Proposed Transaction has been met.

D. CHARITABLE ASSETS

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.[56] In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.[57] With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.[58]

[56] *See e.g.*, R.I. Gen. Laws § 18-9-1, *et seq.*
[57] *See*, R.I. Gen. Laws § 23-17.14-7(c).
[58] Initial Application, Response to Questions 28 and 29.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.[59] Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.[60]

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.[61] With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.[62] In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,[63] which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

[59] Id.
[60] Response to Supplemental Question S-42
[61] Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).
[62] R.I. Gen. Laws § 23-17.14-22(a).
[63] *See* Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system. [64] The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately $19.6 million dollars in restricted assets would be held by the Foundation ($7.2 million dollars) and the Heritage Hospitals ($12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

[64] Initial Application Response to Question 28.

sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately $7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately $6.9 million dollars from RWMC and $318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately $4.2 million dollars. The Cy Pres petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately $210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately $12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately $15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately $2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately $118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period. [65]

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately $285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately $108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately $209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

Heritage Hospitals

CCHP proposes to retain approximately $24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately $12.4 million dollars in restricted

[65] Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately $1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately $10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately $421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.[66]

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. *See* R.I. Gen. Laws §23-17.14-7(c)(26).

2. <u>Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals</u>

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

[66] R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, "as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves."[67] CCHP "is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc….."[68] CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 "to hold and administer charitable donations on behalf of SHHSRI."[69] In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822,* was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI."[70] "Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member."[71] "On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC."[72]

While implied in Prospect's for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC "will adopt, maintain and adhere to

[67] Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.
[68] Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.
[69] Initial Application, Response to Question 29.
[70] Initial Application, Response to Question 28.
[71] Id.
[72] Id.

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."[73] It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.[74] The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals[75], and has stated that it has never closed or sold any of its hospitals.[76] Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.[77] Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so. [78]

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

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[73] Initial Application Response to Question 59(c).
[74] Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.
[75] Interview of Thomas Reardon.
[76] Response to Supplemental Question 4-25.
[77] R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).
[78] *See* Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date."[79] In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.[80] These include health care and non-healthcare community benefits.[81] As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.[82] Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.[83] Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

3. Foundation for Proceeds

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.[84] With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

[79] *See* Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.
[80] Response to Supplemental Question S3-53.
[81] *See e.g.* Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.
[82] Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.
[83] Initial Application, Response to Question 1.
[84] R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.[85] Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.[86] This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.[87] Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

[85] *See* R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).
[86] The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.
[87] See Initial Application, Response to Request 55.

North Providence.[88] The Transacting Parties have indicated that these negotiations are ongoing with the communities to be affected and are anticipated to be resolved with a potential need for further procedural hearings to occur after May 16, 2014.[89] The Attorney General is advised by Prospect that they are progressing steadily toward a resolution of this issue. The determination as to whether tax stabilization or exemption will be granted to Prospect for the Existing Hospitals is beyond the Attorney General's jurisdiction and is therefore left to the affected communities to determine.

In addition to real estate taxes, typically Prospect would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.,* and 44-19-1, *et. seq.*

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding "whether the conversion is proper under applicable state tax code provisions," the Transacting Parties are required to obtain a certificate from the State of Rhode Island prior to closing that the Proposed Transaction is proper under applicable state tax code provisions. Accordingly, the Attorney General finds that once the required certificate has been obtained from the State of Rhode Island, which is a requirement of closing of the Proposed Transaction, that this particular criterion under the Hospital Conversions Act will be met.

CCHP also sought legal counsel regarding federal tax implications with respect to CCHP serving as the 15% member of for–profit Prospect CharterCARE, LLC. CCHP has stated that the structure of the Proposed Transaction permits it to act exclusively in furtherance of its exempt purposes and only incidentally for the benefit of PMH. However, because this area of tax law may continue to evolve in the future, should CCHP's tax-exempt status ever be jeopardized due to its participation in the Prospect CharterCARE, LLC, CCHP may cause PMH

[88] See Initial Application, Response to Question 45.
[89] Response to Supplemental Question S4-12.

to buy out its interest if there is no other satisfactory resolution. This process and the distribution of the additional proceeds would be subject to Attorney General oversight consistent with this decision.[90] Finally, CCHP has stated that it will take any reasonable steps to ensure that both it and the CCHP Foundation will preserve their current exempt status following the close of the Proposed Transaction[91].

Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

F. NEW ENTITY

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.[92] Below is an outline of the review of such requirements.

1. Bylaws and Articles of Incorporation

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of CCHP is Prospect Medical Holdings, Inc. ("PMH"). PMH is a Delaware corporation incorporated on May 14, 1999 with its principal place of business in Los Angeles, California. *See* Initial Application Exhibit 10(a). The current bylaws for PMH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for PMH.[93]

PMH is a health care services company that owns and operates hospitals and manages the provision of health care services for managed care enrollees through its network of specialists and primary care physicians. PMH is the parent entity with regard to the eight (8) acute care and

[90] Response to Question S10
[91] Final Supplemental Responses Miscellaneous p. 6.
[92] *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).
[93] Initial Application Exhibit 10A-1.

behavioral hospitals located in California and Texas. In total, PMH owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.[94]

PMH is owned by Ivy Intermediate Holdings, Inc. ("IIH"), a Delaware corporation, incorporated on July 23, 2010, with its registered place of business in Wilmington, Delaware.[95] The current bylaws for IIH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for IIH.[96]

Ivy Holdings, Inc. ("IH"), a Delaware corporation, incorporated on December 14, 2010, with its registered place of business in Wilmington, Delaware, owns 100% of the stock of IIH.[97] IH is a holding company for this stock ownership, having no other assets, liabilities or operations.[98] Bylaws were provided by the Transacting Parties for IH.[99]

Pursuant to the Asset Purchase Agreement,[100] the ownership interest of PMH will be held by a newly formed LLC, Prospect East Holdings, Inc., ("Prospect East") a Delaware LLC, formed on August 20, 2013, with its principal place of business located in Wilmington, Delaware.[101] Prospect East is structured to be the PMH entity that will hold ownership interest in any health care facilities acquired by PMH on the East Coast. The current bylaws for Prospect East were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for Prospect East.[102]

Prospect CharterCARE, LLC, a Rhode Island limited liability company, is a joint venture between Prospect East and CCHP and will hold 100% of the ownership interests in the entities

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[94] Initial Application p. 1.
[95] Initial Application, Exhibit 10A-12.
[96] Id.
[97] Initial Application, Exhibit 10A-11.
[98] Initial Application, p. 2.
[99] Initial Application, Exhibit 10A-11.
[100] Asset Purchase Agreement, p. 2.
[101] Initial Application, p. 2, Ex. 10A-6.
[102] Id.

that will hold the licensure for the Existing Hospitals, post conversion.[103] Prospect CharterCARE, LLC was formed on August 20, 2013, with its principal place of business in Los Angeles, California and will be owned 85% by Prospect East and 15% by CCHP. Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of the Prospect CharterCARE Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory Services, LLC ("Prospect Advisory"), an affiliate of PMH. The governing board of Prospect CharterCARE, LLC will be a 50/50 board[104] (the "Board") with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership. The Board shall be the organized, governing body responsible for the management and control of the operations of the licensed hospitals, their conformity with all federal, state and local laws and regulations regarding fire, safety, sanitation, communicable and reportable diseases and other relevant health and safety requirements.[105] The Board shall define the population and communities to be served and the scope of services to be provided.[106] The Board shall also determine policy with regard to the qualifications of personnel, corporate governance, and the policy for selection and appointment of medical staff and granting of clinical privileges.[107] Bylaws were not provided for Prospect CharterCARE, LLC as typically

[103] Newco Hospitals.
[104] Initial Application, Revised 7(c).
[105] Id.
[106] Id.
[107] Id.

such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.[108]

Prospect Advisory, a Delaware Limited Liability Company was formed on August 20, 2013, with its principal place of business in Los Angeles, California and is solely owned and controlled by PMH.[109] As described above, Prospect East has delegated the day-to-day management of the Newco Hospitals to Prospect Advisory through the Management Agreement and Prospect Advisory will receive a monthly management fee equal to two percent (2%) of the Net Revenues[110] of Prospect CharterCARE, LLC. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will continue to have ultimate power and authority over certain decisions pursuant to Section 8.3 of Prospect CharterCARE Operating Agreement. The Bylaws were not provided for Prospect Advisory, as typically such organizations do not have Bylaws. It does not have a board of directors. [111] However, an operating agreement was provided by the Transacting Parties.[112]

Prospect CharterCARE RWMC, LLC ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center

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[108] Initial Application, Ex. 18.
[109] Initial Application, p. 35, Ex. 10A-7.
[110] Net Revenues means total operating revenues derived, directly or indirectly, by Prospect CharterCARE, LLC with respect to the Newco Hospitals, whether received on a cash or on a credit basis, paid or unpaid, collected or uncollected, as determined in accordance with generally accepted accounting principles net of (A) allowance for third party contractual adjustments and (B) discounts and charity care amounts (not including any bad debt amounts), in each case as determined in accordance with GAAP. Management Agreement, Section 5.2(b).
[111] Id.
[112] Initial Application, Ex. 10A-7.

post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC[113] and its principal business office will be located in Los Angeles, California. Bylaws were not provided for Newco RWMC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.[114] It will be solely operated by Prospect CharterCARE, LLC.[115]

Prospect CharterCARE SJHSRI, LLC ("Newco Fatima") is a Rhode Island limited liability company, with its principal business office located in Los Angeles, California.[116] It will own[117] and hold the licensure for Our Lady of Fatima Hospital post-conversion. Bylaws were not provided for Prospect CharterCARE SJHSRI, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.[118] It will be solely operated by Prospect CharterCARE, LLC.[119]

Prospect CharterCARE Ancillary Services, LLC ("Ancillary Services") is a Rhode Island limited liability company, with its principal place of business located in Los Angeles, California. It will hold the licensure for Prospect CharterCARE labs.[120] Bylaws were not provided for Prospect CharterCARE Ancillary Services, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties. It will be solely operated by Prospect CharterCARE, LLC.

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[113] Initial Application Response to Question 5.
[114] Initial Application, Ex. 10A-9.
[115] Id.
[116] Initial Application Ex. 10-10.
[117] Initial Application response to Question 5.
[118] Initial Application, Ex. 10A-9.
[119] Id.
[120] First Amendment to Asset Purchase Agreement, Response to Supplemental Question S3-15; Miscellaneous Exhibit 1.

Prospect CharterCARE, LLC, which will hold the ownership of the entities that hold the licensure for the Existing Hospitals, post conversion,[121] will be managed by Prospect East Holdings, Inc, a Delaware corporation, whose registered place of business is Wilmington, Delaware and is wholly-owned by PMH.[122] Bylaws were provided by the Transacting Parties for Prospect East Holdings.[123]

Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

2. Board Composition

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards. Specifically, the Hospital Conversions Act requires review of:

> (vi) whether the board of any new or continuing entity will be independent from the new hospital;
>
> (vii) whether the method for selecting board members, staff, and consultants is appropriate;
>
> (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
>
> (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

First, it is important to state that in the Asset Purchase Agreement, PMH and CCHP have proposed a post-conversion structure in which those two entities will form a joint venture, Prospect CharterCARE, LLC, to own and operate all of the health care entities associated with CCHP including, without limitation, the two acute-care, community hospitals that currently operate as Roger Williams Medical Center and Our Lady of Fatima Hospital, as well as an

[121] Newco Hospitals.
[122] Initial Application p. 2, Exhibit 12A-2, 10A-6.
[123] Initial Application, Ex. 10A-6.

extended care facility in Providence known as Elmhurst Extended Care. Prospect CharterCARE, LLC would operate under a 50/50 board composition, which will permit CCHP to retain a significant degree of control in the ongoing ownership and governance of Prospect CharterCARE, LLC to ensure the continuance of its local mission, as well as to provide it with access to the capital and other resources held by PMH to address the challenges of today's health care industry and continue to serve the citizens of Rhode Island.[124] Given the unique structure of the Proposed Transaction, it is necessary to also discuss the powers that will continue to be held by CCHP to advance these objectives.

Pursuant to the Prospect CharterCARE Operating Agreement, the Transacting Parties have agreed to form a board of directors that has the overall oversight and ultimate authority over the affairs of Prospect CharterCARE, LLC and its Subsidiaries.[125] As stated above, the Prospect CharterCARE Board will be a 50/50 board with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership.[126]

The Board would be comprised of eight (8) members: four (4) directors appointed by CCHP (including at least one (1) physician) and four directors appointed by Prospect East.[127] Board members would serve for a term of one to three years, at the discretion of the owner that elected or appointed the individual.[128] Board members could be removed with or without cause by the owner that elected or appointed the director.[129] However, if CCHP's ownership interest in Prospect CharterCARE, LLC is reduced to 5%, at any time, because it elects not to or is unable

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[124] Initial Application p. 7, Exhibit 18, Prospect CharterCARE Operating Agreement, Section 8.3.
[125] The Newco Hospitals, Prospect CharterCARE Elmhurst, LLC, and Prospect CharterCARE Physicians, LLC, p. 1 of Prospect CharterCARE Operating Agreement.
[126] Exhibit 18, Prospect CharterCARE Operating Agreement, Section 12.1.
[127] Id.
[128] Id.
[129] Id.

to contribute to a capital call then one of the CCHP appointed directors would resign and CCHP would only appoint three (3) directors.[130] In this case, the Board would be comprised of seven (7) instead of eight (8) directors.[131] Note that Prospect has stated that it does not expect to make any such capital calls within the first three (3) years post-closing.[132]

As previously described, Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of Prospect CharterCARE's Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions.

Section 8.3 of Prospect CharterCARE's Operating Agreement sets forth the Board's reserved powers including but not limited to: changing the mission or the and purpose of Prospect CharterCARE, LLC or any of its Subsidiaries, decisions involving development and approval of strategic planning, decisions regarding annual operating and capital budgets, changes to the charity policy of Prospect CharterCARE, LLC and its Subsidiaries, approving reduction of essential services at either Newco Hospital, engaging in any merger, consolidation, share exchange or reorganization of Prospect CharterCARE, LLC and its Subsidiaries, and approving a

[130] Id.
[131] Id.
[132] Response to Supplemental Question S4-3.

decision to dissolve or liquidate the Prospect CharterCARE, LLC or any of its Subsidiaries.[133] Board approval would be exercised by the Board as a body with each owner's directors having a majority vote.[134] Thus, through this agreement, the leadership of CCHP retains significant decision making input into the continued operations of Prospect CharterCARE, LLC and its Subsidiaries. Meetings of the Board are required to occur at least on a quarterly basis with at least one meeting held in person (face-to-face).[135] Special meetings of the Board may be called by Prospect Advisory as the manager, the chairman or any three (3) members of the Board.[136]

In addition to the Board, Prospect CharterCARE, LLC will also form a local board for each of the Newco Hospitals.[137] These local boards would be comprised of at least six (6) individuals.[138] One half the of the local board members would be physicians from the Newco Hospitals' medical staff, and the other half of the local board members would be the Newco Hospitals' local CEOs and community representatives.[139] Local board members would be limited to three (3) year terms.[140] The local boards would be responsible for matters such as medical staff credentialing, recommendations regarding strategic and capital plans, providing guidance to the Prospect CharterCARE, LLC board on local market and community concerns, considerations, strategies, issues and politics as well as responding to other requests made by Prospect CharterCARE, LLC's board of directors.[141]

In Response to Question 7 of the Initial Application, the Transacting Parties state that PMH has yet to determine the identities of the four (4) board members comprising its 50% share

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[133] Section 8.3 of Prospect CharterCARE's Operating Agreement.
[134] Id. at Sections 1.6, 11.12, 12.2.
[135] Id. at Section 12.3.
[136] Id.
[137] Id. at Section 12.4.
[138] Id.
[139] Id.
[140] Id.
[141] Id.

of the Prospect CharterCARE, LLC Board. Meanwhile, CCHP has designated its four (4) board members comprising its share 50% of the Board. The Transacting Parties further state that the members of the Board of Directors of Newco RWMC and Newco Fatima have been determined since the filing of the Initial Application.

Accordingly, the composition of the boards of Prospect CharterCARE, LLC and those of the Newco Hospitals are sufficiently clear to ensure the independence from the hospitals and the diversity of experience required by the Hospital Conversions Act. There is no overlap between and among the boards of the CCHP Foundation, CCHP, the Heritage Hospitals, Prospect CharterCARE, LLC and the Newco Hospitals' boards. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(v)(vi) and (viii).[142] As discussed above, the initial boards have been set and there is a methodology in place for their selection as well as the number and terms of directors. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). Therefore, the Hospital Conversions Act criteria regarding the boards of the new entities has been fully met.

G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of "[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory" *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, although PMH is the owner/operator of eight (8) other hospitals[143] through its established chain of command through the various associated limited liability company entities discussed above, PMH will exercise its primary control over CCHP and the Existing Hospitals through its subsidiary Prospect CharterCARE, LLC. As

[142] Response to Supplemental Questions S3-8, S3-12.
[143] Initial Application, p. 1, Response to Question 4.

described above, Prospect CharterCARE, LLC will be comprised of a 50/50 board, each appointed by PMH and CCHP.[144]

1. Character

As stated above, PMH was incorporated on May 14, 1999. *See* Initial Application Exhibit 10A-1. PMH is a health care services company that owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.[145] The central function of operating hospitals is patient care. DOH's review focuses more directly on the topic of character of the acquiring entity and has identical review criteria regarding this topic;[146] therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's character in the communities in which it operates. Nonetheless, the Attorney General did not find any types of complaints against the current owners of Prospect, such as from the Department of Justice or the Office of Inspector General.

2. Commitment

Pursuant to the Asset Purchase Agreement, PMH has agreed to a number of financial commitments, including an up to $50 million dollar capital commitment to CCHP within four (4) years of the closing of the Proposed Transaction, in addition to normal and routine capital expenditures of at least $10 million dollars per year.[147] These improvements include investing in technology, equipment, quality improvements, expanded services and physician recruitment.[148] Other than financial commitments, Prospect has promised that the Newco Hospitals will continue to provide a full complement of essential clinical services for the term of

[144] Initial Application, Response to Question 1, Exhibit 18, Asset Purchase Agreement, Section 12.1.
[145] Initial Application, Response to Question 1.
[146] *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).
[147] *See* Asset Purchase Agreement, Section 2.5 and Initial Application Response to Question 1. PMH has since agreed to guarantee Prospect's obligations under the Asset Purchase Agreement regarding this $50 million dollar commitment.
[148] *See* Responses to Initial Application Questions 1, 57, Asset Purchase Agreement Section 13.17.

five (5) after the closing date.[149] Prospect agrees to maintain the Catholic identity of all legacy SJHSRI locations and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives.[150] Prospect has also made a commitment that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.[151] A commitment has also been made with respect to limitations on a sale of the interests held by PMH and Prospect East for a period of five (5) years. *See* Asset Purchase Agreement Section 13.18(b).[152] In addition, Prospect has asserted that it is committed to preservation of jobs at the Existing Hospitals, post conversion, which will assist in providing continuity in care and leadership under the 50/50 board of Prospect CharterCARE, LLC post conversion.[153]

3. Competence

As stated above, PMH has a track record of operating eight (8) hospitals in other states over the course of 15 years, some of which were financially distressed when acquired.[154] Moreover, Prospect indicates that it has never abandoned or closed a hospital that it has purchased.[155] In addition, Prospect has indicated that, should the Newco Hospitals fail to meet financial expectations that have been projected, Prospect would provide further funding to support them.[156]

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[149] Initial Application, Response to Question 57; *See* Asset Purchase Agreement Section 13.15.
[150] Ethical and Religious Directives ("ERDs") promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, RI.; *See* Asset Purchase Agreement Section 13.16.
[151] Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.
[152] Additional options exist to the Transacting Parties, which commence on the fifth anniversary of the closing date. *See* Asset Purchase Agreement, Sections 13.18 (b)(c) and (d) and in the Prospect CharterCARE Operating Agreement.
[153] *See* Initial Application, response to Question 1, Exhibit 18 Asset Purchase Agreement, Article VIII.
[154] Interview of Thomas Reardon.
[155] Response to Supplemental Question S4-25.
[156] Id.

The term competence can have multiple meanings and connotations. The Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the Newco hospitals after the Proposed Transaction. The central function of operating hospitals is patient care. DOH's review focuses more directly on health services and has identical review criteria regarding this topic;[157] therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's track record for quality services in its other hospitals. Prospect has made several representations about patient care and health services. Specifically, it represents that its hospitals are currently accredited by the Joint Commission and in good standing.[158] The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its fifteen (15) year history, Prospect has acquired eight (8) hospitals, many of which were financially-distressed. During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prospect's management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General's expert has found that the finances of Prospect are in line with companies acquiring distressed community hospitals which appears to be a signal of some level of success.

4. <u>Standing in the Community</u>

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prospect's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

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[157] *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).
[158] *See* Initial Application Response to Question 64.

H. MISCELLANEOUS

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

1. Rhode Island Nonprofit Corporations Act

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").[159] The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. First, the Attorney General makes no finding regarding whether the Prospect entities, as they are all for profit entities and the Nonprofit Act does not apply to them. With respect to CCHP, the Proposed Transaction is permissible under the Non-Profit Corporation Act and the Proposed Transaction was approved by the CCHP Board who has been represented by legal counsel throughout these proceedings and during negotiations.[160] Based upon the above, the Attorney General finds that this condition has been satisfied.

2. Right of First Refusal

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no such right of first refusal to CCHP to repurchase the assets being acquired by Prospect.

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[159] *See* R.I. Gen Laws § 23-17.14-7 (c)(19).
[160] *See* R.I. Gen Laws §§ 7-6-5 and 7-6-49; Initial Application Response to Question 1; Response to Supplemental Question S3-17.

3. Control Premium

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

4. Additional Issues

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

a. Prospect's Ability to Fund Transaction

The Attorney General's expert, Carris has reviewed the financial information provided by Prospect and has concluded as follows:

Does Prospect have the Resources to Finance this Transaction as Well as Ongoing Commitments to CCHP?

As reported in Prospect's 2013 audited financial statements, Prospect generated approximately $80 million in operating income for the year ended September 30, 2013. Operating revenues totaled $713.6 million and operating expenses totaled $633.6 million. Earnings before interest, taxes, depreciation and amortization (EBITDA) for 2013 totaled $98.7 million. Prospect's audited financial statements show consistent growth and profitability from 2010 through 2013.

Prospect's September 2013 balance sheet shows cash & equivalents of $86.3 million, total current assets of $241.7 million and total assets of $578.9 million. For liabilities, the financial statements report current liabilities of $148.2 million, total liabilities of $610 million and net equity of ($32.0) million. The current ratio for 2013 was 1.63.

In 2013, Prospect distributed $88 million to its primary investor. Prospect's management and representatives have given assurances that this was a one-time event and that there are no plans to make a similar distribution in the foreseeable future.

Prospect will fund this transaction out of existing cash and an available line of credit. Based on the APA, Prospect will fund $45 million at closing and an additional $12.5 million in year one (one-fourth of $50 million), for a total of $57.5 million in the first 12 months.

During various meetings, representatives of Prospect's senior leadership team made further representations that the financial status of Prospect permits it to fund the closing of the transaction and also meet the ongoing capital commitments. The parties also gave assurances that the $50 million capital commitment has been disclosed and agreed to by Prospect's board of

directors and lenders. Assurances were also given that the $50 million is being funded out of available liquidity and will not violate any of Prospect's existing loan covenants.

Based on the financial documentation submitted by Prospect and the representations of its management and other representatives, the company has the financial resources to fund this transaction, including the $50 million in long-term capital commitments. Prospect capacity to meet future capital commitments could be constrained if the company enters into other transactions that (in total) exceed its available financial resources and/or its ability to access capital. Future commitments could also be constrained by a deterioration of financial performance or a material change in market conditions.

Given the opinion of Carris, absent any exigent circumstances or, as aptly pointed out by Carris, any acquisition plan or other commitments that would over-extend Prospect, it currently appears to have the financial ability to fund the Proposed Transaction.

b. Mandatory Conditions

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: "the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them "not appropriate or desirable in a particular conversion," such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

c. Use of Monitor

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH "monitor, assess and evaluate the acquiror's compliance with all of the conditions of approval." *See* R.I. Gen. Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of "the impact of the conversion on health care costs and services within the communities served." *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, January 24, 2014. The Attorney General's conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prospect. An agreement with such monitor and Prospect will be drafted and executed prior to the Closing on the Proposed Transaction.

d. Health Planning

As during the course of any HCA review, there has been some discussion in the health care community about the continuing role of CCHP in the Rhode Island health care system, post-acquisition, particularly since the Existing Hospitals will become for profit entities. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not yet been reached. Therefore, it is not the position of the Attorney General to

use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for CCHP. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

V. CONCLUSION

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prospect CharterCARE, LLC becomes everything it has promised to be for the citizens of Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS.** These conditions are outlined below.

VI. CONDITIONS

1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.

2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.

3. Complete appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and provide final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members.

4. For the next three (3) years following the close of the transaction, provide the Attorney General the names, addresses and affiliations of all members appointed to any board of

Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.

5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals shall provide corporate documents to the Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, the aforementioned entities shall provide to the Attorney General any proposed amendments to their corporate documents 30 days prior to amendment.

6. For the next three (3) years following the close of the transaction, upon any change in what was represented by the Transacting Parties in the Initial Application and supplemental responses in connection with the approval of this transaction, reasonable prior notice shall be provided to the Attorney General.

7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.

8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed *Cy Pres* petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.

9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.

10. That all unexecuted agreements provided in support of the Initial Application and Supplemental Responses be executed by the Transacting Parties in the form and substance presented.

11. Promptly after the 180th day following the close of the transaction, brief in an interview with the Attorney General the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. In the event the Attorney General requires a copy of such plan, Prospect CharterCARE, LLC may seek a court order protecting the confidentiality thereof.

12. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notices provided to or received by a party under the Asset

Purchase Agreement.

13. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.

14. That the Transacting Parties comply with applicable state tax laws.

15. All CCHP entities being acquired (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) shall be wound down and dissolved and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.

16. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, January 24, 2014, be paid in full prior to close of the transaction.

17. That PMH guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.

18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.

19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.

20. The Transacting Parties shall enter into an amendment to the Reimbursement Agreement dated January 24, 2014 for retention by the Attorney General of expert(s) to assist the Attorney General until all matters relating to the approval of the Initial Application are fully and finally resolved.

21. That Prospect complies with the Reimbursement Agreement dated, January 24, 2014, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prospect shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.

22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.

23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.

24. For the next three (3) years following the close of the transaction, provide the Attorney General notice of a proposed change of ownership of Prospect East or PMH.

25. For the next three (3) years following the close of the transaction, provide CCHP Foundation, CCHP and the Heritage Hospitals with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.

26. For the next three (3) years following the close of the transaction to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds shall remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.

27. The Transacting Parties shall provide a Tax Certificate from the State of Rhode Island that the transaction is proper under state tax laws prior to closing.

28. In connection with a sale of assets as defined in paragraph 26 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then fifteen (15%) of the net sales proceeds from the transaction shall go to CCHP to restore its membership interest up to fifteen (15%) percent. Said monies shall be credited against any future member distributions made to CCHP by Prospect CharterCARE, LLC.

29. Anyone subject to the Ethics Commission shall not be eligible to be a board member.

30. Within three (3) years of the closing of this Transaction, provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 10, 14, 16, 17, 20, 21 and 27 have been satisfied. The Attorney General shall enforce compliance with these

Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.

Peter F. Kilmartin
Attorney General
State of Rhode Island

Genevieve M. Martin
Assistant Attorney General

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.

CERTIFICATION

I hereby certify that on this 16th day of May, 2014, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Patricia K. Rocha, Esq.
Adler Pollack & Sheehan
One Citizens Plaza -8th Floor
Providence, RI 02903

W. Mark Russo, Esq.
Ferrucci Russo, P.C.
55 Pine Street- 4th Floor
Providence, RI 02903

TAB B

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS FOUNDATION, ROGER WILLIAMS HOSPITAL and ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND	: : : : :	C.A. No. KM – 2015-0035

ORDER ON PETITION FOR APPROVAL OF DISPOSITION OF CHARITABLE ASSETS

This matter came before the Court on April 6, 2015 on CharterCARE Health Partners Foundation ("CCHP Foundation"), Roger Williams Hospital ("RWH") and St. Joseph Health Services of Rhode Island's ("SJHSRI") Petition for Approval of Disposition of Charitable Assets Including Application Of The Doctrine Of *Cy Pres* (the "Petition"), and after review of the Petition, and Responses by the Attorney General for the State of Rhode Island (the "Attorney General"), and Trustee Bank of America, N.A. (the "Trustee"), as well as argument by counsel for the Petitioners, the Attorney General, and the Trustee, it is hereby ORDERED:

The Petition is granted as set forth herein, referencing fund amounts as of July 31, 2014:

1. As set forth in paragraph 20 of the Petition, *cy pres* approval is granted for CCHP Foundation to use the funds in the amount of $17,465.79, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission.

2. As set forth in paragraphs 21, 22 and 23 of the Petition, *cy pres* approval is granted for the transfer of the following RWH funds to CCHP Foundation, to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission:

- Temporarily restricted funds in the amount of $284,710.34

- Permanently restricted funds in the amount of $4,209,522.00

- Temporarily restricted earnings in the amount of $2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24 of the Petition, approval is granted for RWH to use the following funds:

- $12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25 of the Petition, *cy pres* approval is granted for RWH to use the following funds:

- Continuing medical education funds in the amount of $26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

- Dedicated funds in the aggregate amount of $300,349.75 as more fully identified in paragraph 25B of the Petition to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26 of the Petition, *cy pres* approval is granted for the transfer of the following SJHSRI funds to CCHP Foundation, to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission:

- $258,961.61 in restricted cash

- $196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of $76,254.00 and temporarily restricted endowment interest in the amount of $120,241.00)

- $1,200,765.00 in permanently restricted scholarships and endowments ($1,066,281.00 in endowments and $134,484.00 in scholarships)

6. As set forth in paragraph 28 of the Petition, (a) approval is granted for RWH to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to SJHSRI after such RWH liabilities have been satisfied and to transfer such annual income or principal distributions to CCHP Foundation after the Outstanding Pre and Post Closing Liabilities of SJHSRI have been satisfied.

7. As set forth in paragraph 29 of the Petition, approval is granted for RWH to use the trust funds that it will receive, if any, upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer the trust funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraphs 28 through 30 of the Petition, (a) approval is granted for SJHSRI to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for SJHSRI and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31 of the Petition, *cy pres* approval is granted to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation, to be used as close to the donors' intent as

possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission.

10. At least sixty (60) days prior to the completion of the wind-down period for RWH and SJHSRI, respectively, RWH and SJHSRI shall give written notice to the Trustee of such status.

11. CCHP Foundation shall comply with the following reporting requirements:

1. CCHP Foundation shall submit a report to the Health Care Advocate at the Rhode Island Department of Attorney General of the expenditures of the funds transferred to the CCHP Foundation (the "Report").
2. The Report shall include the amount of funds expended, the purpose of the expenditure, the beneficiary of the funds, and the name and contact information for such beneficiary.
3. The Report shall be submitted annually, with a copy of CCHP Foundation's IRS Form 990 ("990"), five business days after the date the 990 is filed with the IRS, commencing with the 990 filing for the fiscal year ending September 30, 2015. A report shall also be submitted if an expenditure of over $200,000 occurs more than ninety (90) days after the reporting date, or more than ninety (90) days prior to the reporting date, whichever occurs first.
4. If, at any time, CCHP Foundation decides to relinquish custody and control and transfer the funds to another charitable institution for administration of such funds, regardless of the amount, notice of said transfer shall be provided to the Health Care Advocate at the Rhode Island Department of Attorney General, at least thirty (30) days prior to the transfer. Notice shall precede the

transfer and contain the amount of funds transferred and the name of the institution receiving the funds, and the contact information for the person(s) managing the funds.

5. If and when any assets of the charitable trusts are transferred to CCHP Foundation, it shall provide to the Trustee (or any successor Trustee) copies of all reports and notices under this paragraph when submitted to the Health Care Advocate at the Rhode Island Department of Attorney General.

ENTER:

/s/ Brian P. Stern
Stern, J. 4/20/15

PER ORDER:

/s/ Carin Miley
Clerk (Deputy)

Presented by:

CharterCARE Health Partners Foundation
Roger Williams Hospital
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha
PATRICIA K. ROCHA (#2793)
JOSEPH AVANZATO (#4774)
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Providence, RI 02903
Tel: 401-274-7200
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procha@apslaw.com
Dated: April 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 2015

☒ I electronically filed and served this document through the electronic filing system on the following parties:

Genevieve Martin, Esq.
Kathryn D. Enright, Esq.
Chrisianne Wyrzykowski, Esq.
Office of the Rhode Island Attorney General
150 South Main Street
Providence, RI 02903

Paul A. Silver, Esq.
James Nagelberg, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, #1500
Providence, RI 02903

And emailed a copy to the above listed counsel.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I served this document through the electronic filing system on the following parties:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I mailed or hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

/s/ Patricia K. Rocha

TAB C

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS FOUNDATION, ROGER WILLIAMS HOSPITAL and ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.

C.A. No: KM-2015-0035

ORDER PRESERVING ASSETS PENDING LITIGATION AND SETTING SCHEDULE FOR HEARING ON MOTION TO INTERVENE

In accordance with the agreement of Proposed Intervenors and CharterCare Foundation ("CCF"), and for the reasons discussed at the hearing on June 28, 2018, the Court hereby orders as follows:

1. All funds presently held by the Rhode Island Foundation ("RIF") pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, "Fund Corpus") shall continue to be held, managed and administered by RIF pursuant to the terms of such Instrument of Transfer (including the annual administrative support fee) until such time as this Court, or another Court of competent jurisdiction,[1] finally adjudicates on the merits Proposed Intervenors' claims to entitlement to the Fund Corpus[2] and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.

2. RIF may continue to make distributions to CCF, on an annual basis each December, on the Fund Corpus consisting of not more than 4.5% of the Fund Corpus ("Fund Corpus Income") pursuant to the terms of the Instrument of Transfer. From the Fund Corpus Income, CCF may continue to pay the following: (1) expenses incurred in the ordinary course of business, including rent, salaries, utilities, insurance, usual accounting and legal fees, and the same types of expenses CCF has typically paid as part its operations; (2) its legal fees in this action and the Related Actions; and (3) its usual charitable grants as awarded by CCF each year. The forgoing payments and all other expenditures in total shall not exceed the Fund Corpus Income received each

[1] Besides proposing to intervene in the present action, the Proposed Intervenors have initiated suits in the United States District Court for the District of Rhode Island, Civil Action No. 18-cv-00328-WES-LDA, and in the Rhode Island Superior Court, Civil Action No. PC-2018-4386. The three actions together are called "the Related Actions."

[2] As of April 30, 2018, CCF's balance at RIF was $8,783,572.83.

Filed PSC 6/29/18

year by CCF from RIF, except as set forth in the second sentence of paragraph 3 below.

3. Payments received by CCF from the Malmstead Foundation will be paid by CCF to RIF and become part of the Fund Corpus. Miscellaneous charitable gifts, grants, or bequests received by CCF each year up to a grand total of $25,000 annually may be retained and paid by CCF, and shall be excluded from the cap set forth in paragraph 2, and any excess shall be paid by CCF to RIF.

4. CCF will file its objection to the Motion to Intervene and its supporting memorandum by July 24, 2018. The Proposed Intervenors will file any reply by July 31, 2018. The Court will hear the motion soon thereafter.

5. This Order is entered (a) without prejudice to Proposed Intervenors' claim to a right to intervene herein; (b) without prejudice to Proposed Intervenors' claims herein or in another action (including the Related Actions) to the Fund Corpus; (c) without prejudice to CCF's denial that the Proposed Intervenors have a right to intervene herein; and (d) without prejudice to CCF's denial herein or in another action (including the Related Actions) that the Proposed Intervenors are entitled to the Fund Corpus.

ORDERED:

Stern, J.
Dated: 6/29/18

ENTERED:

Dep. Clerk
Dated: 6/29/18

Presented by:

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Exhibit A

RHODE ISLAND FOUNDATION

Lead, Transform, Inspire

RHODE ISLAND FOUNDATION INSTRUMENT OF TRANSFER CharterCARE Foundation Fund

I. Subject to the Option to Recover in Part II below, as of this 14th day of April, 2015, **CharterCARE Health Partners Foundation** ("Donor") hereby irrevocably transfers, conveys, assigns and pays over to the Rhode Island Foundation, a Rhode Island non-profit corporation (the "Foundation"), and the Foundation accepts, the property described in Exhibit A hereto, to create the **CharterCARE Foundation Fund**, (the "Fund"). The Fund shall be treated as an anonymous fund by the Foundation until further notice by the Donor. Additional contributions to the Fund may be made by us or others provided the contributed property is acceptable to the Foundation.

The Fund, together with any additions thereto, shall be held, managed and administered by the Foundation, either directly or through the use of an agency account, employing a corporate fiduciary or investment advisor, as the Foundation may deem appropriate, from time to time.

The assets hereby contributed shall be held by the Foundation, and the income and principal of the Fund shall be commingled with other Foundation assets held by the Foundation. The Fund assets shall be accounted for separately and any earnings from the common fund accruing to the Fund shall be credited to the account of the Fund.

Annual distributions from the Fund, as determined by the Foundation's spending rule in effect at that time, which at this time is 4.5% of the Fund's 16 trailing quarter average market balance, shall be paid to or for the support of Donor, a tax-exempt charitable organization under Internal Revenue Code §501(c)(3).

Notwithstanding the foregoing, Donor understands that the Articles of Association of the Foundation and applicable tax laws require that the Board of Directors of the Foundation have variance power over the assets donated to the Fund should "circumstances have so changed since the execution of this instrument as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of this instrument." It is also understood that no restrictions or conditions may be imposed upon the administration of the Fund which will prevent the Foundation from employing the transferred assets or income therefrom in furtherance of its exempt status. The Foundation also retains the power in the Foundation's sole discretion to modify or withhold any distribution of income or principal if such distribution would otherwise fail to qualify for a charitable purpose as defined in Section 170(c) of the Internal Revenue Code. It is the policy of the Foundation that with respect to the Fund, the Foundation will seek the approval of the Rhode Island Attorney General prior to exercising the foregoing variance power. In all respects the use of the Fund, together with any additions thereto contributed by the Donor or by any third-party, shall be in

accordance with the terms of this instrument, the charitable purposes of the Foundation, and subject to the approval of the Foundation's Board of Directors.

The provisions of this instrument directing distributions from the Fund to be made as determined by the Foundation's spending rule shall apply, irrespective of the provisions of any state's Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act, as currently in force or as hereinafter enacted, amended or superseded. The Foundation assumes no responsibility as to the ability of the Donor to access principal, either under the Uniform Prudent Management of Institutional Funds Act or any law. Donor shall indemnify the Foundation against any claims or damages relating to any violations of donor restrictions on any portion of the Fund.

Donor attests that this transfer has been duly approved by all appropriate corporate action, including without limitation Donor's Board of Directors as described in the attached Certificate of Secretary.

II. Option to Recover: Donor hereby acknowledges that the property transferred and contributed to the Foundation shall belong to the Foundation in perpetuity, subject to changes in circumstances under which the Donor in its discretion may terminate part or all of the Fund and to have part or all of the Fund paid as a distribution to Donor.

Donor acknowledges and accepts that, to encourage permanence, while still allowing flexibility, the following provisions shall apply with respect to any distribution of the principal of the Fund made to Donor at the direction of Donor.

(A) Directed distributions are allowed with ninety (90) days advance notice.

(B) In addition to the annual Foundation administrative support fee, a withdrawal fee shall apply as follows:

(i) Year one: 5% of amount distributed.

(ii) Year two: 4% of amount distributed.

(iii) Year three: 3% of amount distributed.

(iv) Year four: 2% of amount distributed.

(v) Year five and thereafter: 1% of amount distributed.

III. All funds are subject to the Foundation's annual administrative support fee. Provided that the initial funding amount of the Fund from Donor shall be a minimum of eight-million dollars ($8,000,000.00), the Foundation's annual administrative support fee on the Fund shall be .65% of the Fund's 16 trailing quarter average market balance. The initial funding amount as described in this paragraph shall be defined as all funds received by Donor for the Fund by September 30, 2015.

The following attachments are incorporated herein and made a part of this instrument:

(A) The Foundation Investment Policy Statement, as currently in effect; and

(B) The most recent quarterly report of Prime Buchholz, the Foundation's current investment consultant.

This instrument shall be construed and enforced in accordance with the laws of the State of Rhode Island and all provisions of the Articles of Incorporation and Bylaws of the Foundation as they may be amended from time to time.

Donor:

CharterCARE Health Partners Foundation

Board Chair — Date: 4/14/15

Board Treasurer — Date: 4/14/15

Executive Director — Date: 4/14/15

Accepted:
Rhode Island Foundation

Neil D. Steinberg
President and CEO — Date: 4/17/15

TAB D

CONSENT OF CHARTERCARE COMMUNITY BOARD AS SOLE MEMBER OF CHARTERCARE FOUNDATION

The undersigned CharterCARE Community Board ("CCCB"), in its capacity as sole member of CharterCARE Foundation ("CCF"), approves, authorizes and consents to the following actions, pursuant to CCCB's inherent powers and R.I. Gen. Laws § 7-6-104:

1. CCCB hereby elects the following three persons as independent directors of CCF: Attorney Arlene Violet, Attorney Christopher Callaci, and Attorney Jeffrey Kasle;

2. CCCB hereby authorizes and approves amendment of the by-laws of CCF, effective immediately, by re-adopting the by-laws of CCF in the form amended as of October 8, 2013 (attached hereto as Exhibit A), with the following modifications:

   (a) deleting the last three sentences of Section 2.01 in their entirety, and substituting the following:

   > CharterCARE Community Board's membership in CharterCare Foundation may be assigned to Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan.

   (b) deleting section 3.05 in its entirety and substituting the following:

   > SECTION 3.05. Term. All directors serving on the Board prior to August 2018 are removed, and offices of directors held prior to August 2018 are declared vacant. Each independent director elected by CharterCARE Community Board shall hold office until resignation or death, and a successor shall have been duly appointed and qualified.

   (c) deleting all references to "CharterCARE Health Partners" and substituting therefor "CharterCARE Community Board"

   (d) deleting all references to "CharterCARE Health Partners Foundation" and substituting therefor "CharterCARE Foundation"

3. CCCB hereby authorizes and approves amendment of the articles of incorporation of CCF, effective immediately, to delete subsection 3 of Article 4 of the Articles of Incorporation and substitute the following:

> 3. Meetings. The sole member of the Corporation shall be Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan. Meetings of the members of the Corporation may be held anywhere in the United States.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

_____
[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC
My Commission Expires:

Exhibit A

REVISED

BY-LAWS

OF

CHARTERCARE HEALTH PARTNERS FOUNDATION

Adopted on August 22, 2011 and revised on October 8, 2013*

By: _____
Kenneth Belcher, Secretary

*This revision is to address a typographical error in Section 2.01 of the Bylaws which identified CharterCare Health Partners as "SJHSRI" rather "CCHP" and is in furtherance of the resolution approved at a Meeting of the Sole Member and the Directors of St. Joseph Health Services Foundation dated August 22, 2011, that changed the name of the Foundation to "CharterCare Health Partners Foundation" and directed that its sole member be CharterCare Health Partners..

ARTICLE I

GENERAL

SECTION 1.01. Name and Purpose. CharterCare Health Partners Foundation (the "Foundation") is a nonprofit corporation organized exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the regulations promulgated thereunder. Such purposes are set out in Article Third of the Articles of Incorporation of the Foundation, from time to time in effect (the "Articles of Incorporation").

Notwithstanding any other provision of the Articles of Incorporation or these By-Laws, the Foundation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or corresponding section of any future federal tax code. No substantial part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided by Section 501(h) of the Code), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

SECTION 1.02. Powers. The Foundation shall have the power, either directly or indirectly, either alone or in conjunction and/or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the Foundation is organized, and to aid or assist other organizations whose activities are such as to further accomplish, foster, or attain any of the Foundation's purposes. Notwithstanding anything herein to the contrary, the Foundation shall exercise only such powers as are in furtherance of the exempt purposes of organizations as set

forth in Section 501(c)(3) and the Code and the rules and regulations promulgated thereunder.

SECTION 1.03. Nonprofit Status. The Foundation is not organized for profit and no part of the net earnings of the Foundation shall inure to the benefit of any director or officer. In the event of the liquidation of the Foundation, whether voluntary or involuntary, no director or officer shall be entitled to any distribution or division of the Foundation's property or the proceeds thereof, and upon such liquidation, the balance of all money, assets and other property of the Foundation, after the payment of all its debts and obligations, shall be distributed pursuant to Section 8 of Article Fourth of the Articles of Incorporation.

SECTION 1.04. Principal Office. The principal office of the Foundation shall be located at 200 High Service Avenue, North Providence, Rhode Island. The Foundation may have such other offices or places of business, either within or outside the State of Rhode Island, as the business of the Foundation may require and as the Board of Directors may from time to time establish.

SECTION 1.05. Registered Office. The registered office of the Foundation shall be located 200 High Service Avenue, North Providence, Rhode Island. The registered office may be changed from time to time by the Board of Directors in compliance with the provisions of applicable law.

ARTICLE II

MEMBERSHIP

SECTION 2.01. Membership. The sole Member of the Foundation shall be CharterCare Health Partners ("CCHP"), a Rhode Island non-profit corporation qualifying as tax-exempt under Section 501(c)(3) of the Code. CCHP may from time to time designate a representative who shall act with the full power and authority of the Member. No membership may be assigned

or transferred or encumbered in any manner whatsoever, either voluntarily, involuntarily or by operation of law. Any proposed or attempted assignment, transfer or termination of membership shall be void. Notwithstanding the foregoing, any legally appointed successor to CCHP by way of corporate merger, acquisition or other similar event shall become the sole Member hereof.

SECTION 2.02. Enumerated Powers. The powers of the Members shall be limited to taking action on the activities enumerated below and those activities expressly requiring action of the Members pursuant to law or the Articles of Incorporation:

(a) election of the independent directors;

(b) authorization or approval of any amendment to the Articles of Incorporation of the Foundation;

(c) authorization or approval of any amendment to the By-Laws of the Foundation;

(d) authorization or approval of any change to the name of the Foundation;

(e) authorization or approval of any merger, consolidation, reorganization, or sale, transfer, disposition, pledge or hypothecation of all or substantially all of the assets of the Foundation;

(f) authorization or approval of the establishment and the organizational documents (including any amendment, revision or repeal thereof), of any equity or contractual joint venture between the Foundation and any third party in which the Foundation will have more than a twenty percent (20%) interest in the revenues or profits of the joint venture, excluding contracts in the ordinary course of business;

(g) authorization or approval of any plan of dissolution, liquidation,

assignment for the benefit of creditors, petition for voluntary bankruptcy or appointment of a receiver, or any plan for winding up the affairs of the Foundation, or any liquidating distribution by the Foundation;

(h) authorization or approval of the incurrence of any debt, loan, borrowing, debt guarantee, whether as primary obligor or co-obligor, pledge, lien, hypothecation, security interest or encumbrance on any of the property or assets of the Foundation;

(i) authorization or approval of any acquisition or lease of, or interest in, real estate, by the Foundation;

(j) authorization or approval of undertaking any expenditure outside of the annual budget whether by contract or otherwise, in excess of $25,000;

(k) authorization or approval of entering into any contract or commitment which involves aggregate payments in excess of $50,000 in any year; and

(l) authorization or approval of the settlement of any litigation or other dispute involving the Foundation.

SECTION 2.03. Annual Meeting. The annual meeting of the Members shall be held on such date and at such place and time as the Board may designate. If such meeting is for any reason not held on the date determined in accordance with this section, a special meeting, as defined below, in lieu of the annual meeting may be held with the same force and effect of the annual meeting.

SECTION 2.04. Special Meetings. A special meeting of the Member may be called at any time by the President, the Board of the Foundation, or by the Member.

SECTION 2.05. Notice. Notice of the annual meeting or any special meeting shall be

given by the Secretary to the Member at the Member's address on file with the Secretary either by mail or electronic communication, at least seven (7) days prior to the meeting and in the case of a special meeting, stating the purpose thereof.

SECTION 2.06. Voting. The Member shall have one (1) vote on all matters on which the Member is entitled to vote.

SECTION 2.07. Action Without a Meeting. Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing and if such written consent is filed with the records of the Foundation. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.01. General Powers. The Foundation's property, affairs and business shall be managed by the Board and the Board shall have, and may exercise, all of the powers of the Foundation, except those reserved to the Members by law, the Articles or these By-Laws.

SECTION 3.02. Number; Qualification and Election. The members of the Board serving at the time CharterCARE Health Partners becomes the sole Member of the Foundation shall remain in office until a new Board is elected by the sole Member at its annual meeting or at a special meeting. Commencing with such election the Board shall consist of a total of fifteen (15) directors, which shall include two (2) individuals who shall be ex officio directors and the remaining thirteen (13) directors who shall be elected as set forth herein by the Member at its annual meeting or at a special meeting. Each member of the Board shall have equal voting authority. The two (2) ex officio members of the Board shall be the individuals then serving as the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO") of CharterCARE

Health Partners and the thirteen (13) remaining members of the Board shall consist of four (4) individuals selected by the Member from among those individuals who are then serving as members of the CharterCARE Health Partners Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the Roger Williams Medical Center Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the CharterCare Health Partners Board of Trustees and five (5) individuals who shall be independent directors. An ex officio director who is no longer serving as either the CEO or the CFO of CharterCARE Health Partner shall be immediately replaced by the individual then serving in that capacity and a director who was selected by the Member as set forth herein from among the members of the Board of Trustees of CharterCARE Health Partners, Roger Williams Medical Center or CharterCare Health Partners who is no longer serving in that capacity shall be immediately replaced by the individual then serving in that capacity.

SECTION 3.03. Nomination Process. The Nominating Committee of the Member shall serve as the Nominating Committee. At least fifteen (15) days prior to the Member's annual meeting or a special meeting called for the election or replacement of directors of the Foundation, the Nominating Committee shall provide to the Board of Trustees of the Member a list of nominees for election as independent directors and a list of nominees for election as directors from the members of the Boards of Trustees of CharterCARE Health Partners, Roger Williams Medical Center and CharterCare Health Partners. The Nominating Committee shall adopt such procedures, including procedures for the solicitation of potential nominees, as are necessary to carry out its duties.

SECTION 3.04. Increase and Decrease in Number. The number and designation of

directors of the Foundation may be modified from time to time by majority vote of the Board.

SECTION 3.05. Term. Each director, other than ex officio directors and other than as set forth herein, shall hold office for a three (3) year term, up to a maximum of two (2) terms, and until a successor shall have been duly appointed and qualified or until death, resignation or removal in the manner hereinafter provided and each ex officio director shall hold office so long as he or she is serving as either the CEO or the CFO of CharterCARE Health Partners. Terms of the initial directors elected after CharterCARE Health Partners becomes the sole Member at its annual meeting or at a special meeting shall be staggered such that each year the terms of a portion of the directors shall expire.

SECTION 3.06. Quorum and Voting. A majority of the total number of directors at the time in office shall constitute a quorum for the transaction of business at any meeting. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time without further notice until a quorum be had. Each director shall have one (1) vote on all matters addressed by the Board. The directors shall act only as a Board, and the individual director shall have no power as such.

SECTION 3.07. Place of Meetings. The Board may hold its meetings at any place within or without the State of Rhode Island as it may from time to time determine and shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 3.08. Action Without a Meeting. Any action required or permitted to be taken by the directors may be taken without a meeting if all of the directors consent in writing and if the written consents are filed with the Foundation's records. Such consents shall be treated for all purposes as a vote at a meeting.

SECTION 3.09. Telephonic Participation In Meetings. Directors may participate in their

respective meetings by means of telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

SECTION 3.10. Annual Meetings. The annual meeting of the Board shall be held immediately following the Members' annual meeting. If any day in which the annual meeting is fixed shall be a legal holiday, then the meeting shall be held on the next succeeding business day that is not a legal holiday. If for any reason such annual meeting is omitted, a special meeting may be held in place thereof and any business transacted or elections held at such special meeting shall have the same effect as if transacted at the annual meeting. Purposes for which an annual meeting is to be held, in addition to those prescribed by law or these By-Laws, may be specified by the President or by a majority of the Board.

SECTION 3.11. Regular Meetings. Regular meetings of the Board shall be held as often as the Board shall determine from time to time by vote. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day that is not a legal holiday. Notice of regular meetings need not be given.

SECTION 3.12. Special Meetings; Notice. Special meetings of the Board shall be held whenever called by the President. Notice of each such meeting shall be given by the Secretary or the person calling the meeting by mailing such notice addressed to each director at his/her residence or usual place of business, or conveying such notice electronically, verbally by telephone or personally, at least twenty-four (24) hours before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting, but need not state the purpose thereof except as otherwise expressly provided in these By-Laws. A statement contained

in the minutes of any Board meeting over the signature of the Secretary to the effect that due notice of such meeting has been given shall be conclusive evidence that proper notice of such Meeting has been duly given.

SECTION 3.13. Waiver of Notice. Notice of the time, place and purpose (unless otherwise specified) of any Board meeting may be waived in writing by any director either before or after such meeting and attendance in person at a Board meeting or any meeting held in lieu thereof shall be equivalent to having waived notice thereof.

SECTION 3.14. Resignation of Directors. Any director may resign at any time by providing written notice to the Board, the President or the Secretary. Any director's resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.15. Removal of Directors. Subject to these By-Laws, any director may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 3.16. Vacancies. In the case of director vacancies caused by death, resignation, removal, disqualification or any other cause, the Board, by an affirmative vote of a majority of the directors then in office, shall use best efforts to elect a duly-qualified individual to serve the remainder of the departing director's term. Notwithstanding the foregoing, any actions taken at a meeting or as otherwise provided herein while such positions are vacant shall be valid so long as a quorum is then present.

SECTION 3.17. Compensation. No director shall receive any compensation for his/her services as a director of the Foundation.

ARTICLE IV

COMMITTEES

SECTION 4.01. Appointment. The Board may from time to time by vote create such committees of directors, officers, employees or other persons for the purpose of advising the Foundation's Board, officers and/or employees in all such matters as the Board shall deem advisable and with such functions and duties as the Board shall prescribe by vote. Each committee shall have a chairperson appointed by the President. Unless otherwise expressly required in these By-Laws, committee members shall be appointed by the President; provided, however, that any such appointment may be reversed by majority vote of the Board. Committee members may be but need not be directors. The Board shall have power to increase or decrease the number of members on any committee at any time and to discharge any such committee, either with or without cause, at any time.

SECTION 4.03. Meetings and Notice. Committee meetings may be called by the President or the committee chairperson. Each committee shall meet as often as necessary and appropriate to perform its duties. Notice of a meeting's date, time and place shall be given at such time and in such manner as to provide reasonable notice to committee members of the meeting. Each committee shall keep minutes of its proceedings.

SECTION 4.04. Removal and Vacancies. The President may remove any committee member or chairperson whose selection is not otherwise specified in the By-Laws. Vacancies in any committee's membership may be filled by appointments made in the same manner as provided for in the original appointments.

SECTION 4.05. Quorum. Unless otherwise provided in the Board's resolution designating a committee, each committee member shall have one (1) vote and a majority of the

whole committee shall constitute a quorum. The act of a majority of the members present at a committee meeting at which a quorum is present shall constitute the act of the committee.

SECTION 4.06. Rules. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with any roles adopted by the directors.

ARTICLE V

OFFICERS

SECTION 5.01. Enumeration. The officers of the Foundation shall consist of a President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time appoint. Each officer of the Foundation shall be a director.

SECTION 5.02. Election, Qualifications and Term of Office. The officers shall be elected by the Board at the annual meeting of the Foundation or special meeting held in lieu thereof. Each officer shall hold office for a one (1) year term and until a successor shall have been duly elected and qualified or until death, resignation, disqualification or removal in the manner hereinafter provided.

SECTION 5.03. Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 5.04. Resignation. Any officer may resign at any time by giving written notice to the Board or to the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified herein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Board at any regular or special meeting.

SECTION 5.06. The President. The President shall act as chair of the Board and have general charge and supervision of the affairs of the Foundation. The President shall perform such other duties assigned to him/her by the Board.

SECTION 5.08. The Secretary. The Secretary shall record or cause to be recorded all the proceedings of Board meetings and meetings of all committees to which a secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of the records and of the Foundation's seal; and have such other powers and perform such other duties as the Board may from time to time prescribe.

SECTION 5.09. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all Foundation funds, credits and property, render a statement concerning the condition of the Foundation's finances at all regular meetings and, upon the Board's request, make a full financial report to the Board. The Treasurer also shall have charge of the Foundation's books and records of account, which shall be kept at such office of the Foundation as the Board shall from time to time designate; be responsible for the keeping of correct and adequate records of the Foundation's assets, liabilities, business and transactions and at all reasonable times exhibit the books and records of account to any of the directors; review the Foundation's budget annually; be responsible for monitoring the budget; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board or the President.

SECTION 5.10. Other Officers. Each other officer chosen by the directors shall perform such duties and have such powers as may be designated from time to time by the Board.

SECTION 5.11. Other Powers and Duties. Each officer shall, subject to these By-Laws

and in addition to the duties and powers specifically set forth in these By-Laws, have such duties and powers as are customarily incident to his/her office. The exercise of any power which by law, the Articles or these By-Laws, or in accordance with any vote of the Board, may be exercised by a Foundation officer only in the event of another officer's absence or any other contingency, shall bind the Foundation in favor of anyone relying therein in good faith, whether or not such absence or contingency existed.

SECTION 5.12. Bonding. Any officer, employee, agent or factor shall give such bond with such surety or sureties for the faithful performance of his/her duties as the Board may from time to time require.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 6.01. Indemnification. Subject to the exclusions hereinafter set forth, the Foundation will indemnify an Indemnified Person against and hold the Indemnified Person harmless from any Covered Loss or Covered Expenses.

SECTION 6.02. Advance Payment of Covered Expenses. The Foundation will pay the Covered Expenses of an Indemnified Person in advance of the final disposition of any Proceeding. The advance payment of Covered Expenses will be subject to the Indemnified Person's first agreeing in writing with the Foundation to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was otherwise not entitled to indemnity under this Article VI.

SECTION 6.03. Exclusions.

(a) The Foundation will not be liable to pay any Covered Loss or Covered Expense (an "Excluded Claim"):

(i) With respect to a Proceeding, if the Foundation determines that the Indemnified Person (i) did not conduct himself or herself in good faith, (ii) engaged in intentional misconduct, and (iii) in the case of a criminal proceeding, knowingly violated the law;

(ii) With respect to a Proceeding in which a final judgment or other final adjudication determines that the Indemnified Person is liable on the basis that personal benefit was improperly received by him or her;

(iii) For which the Indemnified Person is otherwise indemnified or reimbursed; or

(iv) If a final judgment or other final adjudication determines that such payment is unlawful.

(b) With respect to a Proceeding by or on behalf of the Foundation in which the Indemnified Person is adjudged to be liable to the Foundation, the Foundation may indemnify the Indemnified Person for his or her Covered Expenses but shall not indemnify the Indemnified Person for his or her Covered Loss.

(c) Notwithstanding any other provisions herein, the Foundation shall indemnify an Indemnified Person for any Covered Expense in the event that the Indemnified Person is wholly successful, on the merits or otherwise, in the defense of any Proceeding under Section 6.03(a)(i).

SECTION 6.04. Notice to Foundation; Insurance. Promptly after receipt by the Indemnified Person of the notice of the commencement of or the threat of commencement of any Proceeding, the Indemnified Person will, if indemnification with respect thereto may be sought from the Foundation under this Article VI, notify the Foundation of the commencement thereof. If, at the time of the receipt of such notice, the Foundation has any directors' and officers'

liability insurance in effect, the Foundation will give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Foundation will thereafter take all necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, any and all Covered Loss and Covered Expense payable as a result of such Proceeding in accordance with the terms of such policies.

SECTION 6.05. Indemnification Procedures.

(a) Payments on account of the Foundation's indemnity against Covered Loss will be subject to the Foundation's first determining that the Covered Loss results from a claim which is not an Excluded Claim. Such a determination will be made by a majority vote of a quorum of Trustees not at the time parties to the Proceeding or by majority vote of the Members. The determination required by this Section 6.05 will be made within sixty (60) days of the Indemnified Person's written request for payment of a Loss, and if it is determined that the Covered Loss is not an Excluded Claim, payment will be made forthwith thereafter.

(b) Payment of an Indemnified Person's Covered Expenses in advance of the final disposition of any Proceeding will be made within twenty (20) days of the Indemnified Person's written request therefor. Any determination required as to the reasonableness of requested Covered Expenses shall be made in accordance with Section 6.05(a). From time to time prior to the payment of Covered Expenses, the Foundation may, but is not required to, determine (in accordance with Section 6.05(a) above) whether the Covered Expenses claimed may reasonably be expected, upon final disposition of the Proceeding, to constitute an Excluded Claim. If such a determination is pending, payment of the Indemnified Person's Covered Expenses may be delayed up to sixty (60) days after the Indemnified Person's written request therefor, and if it is

determined that the Covered Expenses are not an Excluded Claim, payment will be made forthwith thereafter.

SECTION 6.06. Settlement. The Foundation will have no obligation to indemnity the Indemnified Person under this Article VI for any amounts paid in settlement of any Proceeding effected without the Foundation's prior written consent. The Foundation will not unreasonably withhold or delay its consent to any proposed settlement The Foundation may consent to a settlement subject to the requirement that a determination thereafter will be made as to whether the Proceeding involved an Excluded Claim or not.

SECTION 6.07. Rights Not Exclusive. The rights provided hereunder will not be deemed exclusive of any other rights to which the Indemnified Person may be entitled under the Act, any agreement, vote of disinterested directors or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such position or office, and shall continue after the Indemnified Person ceases to serve the Foundation in an official capacity.

SECTION 6.08. Enforcement.

(a) The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 6.05 above.

(b) In the event that any action is instituted by the Indemnified Person under this Article VI to enforce or interpret any of the terms of this Article VI, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such action was not made

in good faith or was frivolous.

SECTION 6.09. Successors and Assigns. This Article VI will be (a) binding upon all successors and assigns of the Foundation (including any transferee of all or substantially all of its assets); and (b) binding on and inure to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person. If the Foundation sells or otherwise transfers all or substantially all of its assets to a third party, the Foundation will, as a condition of such sale or other transfer, require such third party to assume and perform the obligations of the Foundation under this Article VI.

SECTION 6.10. Amendment. No amendment of this Article VI will be effective as to an Indemnified Person without such Indemnified Person's written consent.

SECTION 6.11. Insurance. The Foundation shall have, to the fullest extent permitted by state and federal law, the power to purchase and maintain insurance on behalf of any Indemnified Person against any liability asserted against or incurred by an Indemnified Person arising out of his or her status as an Indemnified Person whether or not the Foundation would have the power to indemnity the Indemnified Person against such liability pursuant to this Article VI.

SECTION 12. Definitions.

"Covered Act" means any act or omission by an Indemnified Person in the Indemnified Person's official capacity as a member of the governing body, director, trustee, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other entity or enterprise, including entities and enterprises which are subsidiaries or affiliates of the Foundation, or employee benefit plan.

"Covered Expense" means any reasonable expense incurred by an Indemnified Person in connection with the defense of any claim made against the Indemnified Person for Covered Acts

including legal, accounting or investigative fees and expenses, including the expense of bonds necessary to pursue an appeal of an adverse judgment.

"Covered Loss" means any amount which an Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for a Covered Act including judgment for, and awards of, damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

"Excluded Claim" is defined in Section 6.03.

"Indemnified Person" means any individual who is or was a director or officer of the Foundation.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE VII

CONFLICT OF INTEREST

SECTION 7.01. Policy Adoption. The Foundation is committed to pursuing its mission and to conducting its affairs in accordance with high professional, religious and ethical standards which include the avoidance of detrimental conflicts of interest. The Foundation believes that avoiding such conflicts is imperative in preserving the public's trust. Persons who agree to serve the Foundation should not use their position for personal gain, or to expose the Foundation to potential harm as a result of conflict of interest.

The Foundation shall adopt and maintain a Conflict of Interest Policy which applies to Designated Persons, as defined below, and deliberations by the Board and its committees.

SECTION 7.02. General Principles. Any Designated Person has an obligation to: (i) protect decisions involving the Foundation against conflicts of interest; (ii) maintain the

confidentiality of information obtained through service to the Foundation; (iii) assure that the Foundation acts for the benefit of the community as a whole rather than for the private benefit of a Designated Person; and (iv) fully disclose any personal business opportunities that are competitive with the Foundation or in which the Foundation would have an interest. In the furtherance of these obligations all Designated Persons shall exercise the utmost good faith in all transactions touching upon their duties to the Foundation or its property. In their dealings with and on behalf of the Foundation, they shall be held to a strict standard of honest and fair dealing. Designated Persons shall scrupulously avoid any conflict between their individual interests and the interests of the Foundation in any and all actions taken by them. They shall disclose any interests or activities in which they are involved or become involved, directly or indirectly, that could conflict with the interests or activities of the Foundation and shall obtain approval prior to commencing, continuing, or consummating any activity or transaction which raises a possible conflict of interest. Designated Persons are also obliged to disclose any potential conflict of interest arising from the interests and activities of their Immediate Family, as defined in the Policy. Failure to comply with the Conflict of Interest Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, may, if the Designated Person is an employee of the Foundation, result in disciplinary action up to and including dismissal, subject to the terms of any applicable employment or collective bargaining agreement or, in the case of a Designated Person who is a Trustee, the Trustee shall be deemed to have resigned.

SECTION 7.03. Designated Persons. "Designated Persons" shall include the following:

(a) Members of the Board of Directors of the Foundation;

(b) Members of administration or senior management of the Foundation;

(c) Committee Chairpersons or members of a Committee with Board delegated powers, who have a direct or indirect ability to influence the use of Foundation resources;

(d) Persons and/or staff members with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Foundation; and

(e) Any other person(s) and/or staff members whom the Board may from time to time designate.

ARTICLE VIII

FISCAL AUTHORITY

SECTION 8.01. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the directors may select.

SECTION 8.02. Gifts. The directors may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation.

SECTION 8.03. Budget. An annual budget shall be prepared at the President's direction for approval by the directors at their annual meeting.

ARTICLE IX

EXECUTION OF DOCUMENTS

SECTION 9.01. Contracts, etc., How Executed. Unless otherwise determined by the Board, the President or the Treasurer may enter into any contract or execute and deliver any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Foundation. The Board, except as otherwise provided in these By-Laws, may authorize any other or additional officer, officers, agent or agents of the Foundation

to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Foundation and such authority may be general or confined to specific instances. Unless authorized to do so by these By-Laws or by the directors, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or render it liable pecuniarily for any purpose or in any amount.

SECTION 9.02. Checks, Drafts, etc. All of the Foundation's checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates shall be signed or endorsed by such of the Foundation's officer, officers, employee or employees as shall from time to time be determined by Board resolution.

SECTION 9.03. Shares Held by Foundation. Any shares of stock issued by any corporation and owned or controlled by the Foundation may be voted at such corporation's shareholders' meeting by the Foundation's President or the Treasurer.

ARTICLE X

SEAL

The seal of the Foundation shall be in the form of a circle and shall bear the Foundation's name and the state and year of its incorporation.

ARTICLE XI

FISCAL YEAR

Except as from time to time otherwise provided by the Board, the Foundation's fiscal year shall commence on the 1st day of October of each year.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Personal Liability. Directors and officers of the Foundation shall not be personally liable for any Foundation debt, liability or obligation. All persons, corporations or other entities extending credit to, contracting with or having any claim against the Foundation may look only to the Foundation's funds and property for the payment of any debt, damages, judgment or decree, or of any money that may otherwise become due or payable to them from the Foundation.

SECTION 12.02. Corporate Records. The original or attested copies of the Articles of Incorporation, these By-Laws, and records of all meetings of the Members and the Board and all of the Foundation's records, the names and the record addresses of all directors, Members and officers shall be kept in North Providence, Rhode Island, at the Foundation's principal office or at an office of its Secretary or Resident Agent. Said copies and records need not all be kept in the same office_ They shall be available at all reasonable times for the inspection of any director or officer for any proper purpose, but not to secure a list or other information for the purpose of selling said list or information or copies thereof or of using the same for a purpose other than in the interest of the director or officer relative to the Foundation's affairs. Except as otherwise may be required by law, the Articles or these By-Laws, the Foundation shall be entitled to treat a director's, Member's or officer's record address as shown on its books as the address of such person or entity for all purposes, including the giving of any notices and it shall be the duty of each such person or entity to notify the Foundation of his/her/its latest post office address.

SECTION 12.03. Evidence of Authority. A certificate by the Secretary as to any action taken by a director, officer or representative of the Foundation shall be conclusive evidence of

such action as to all who rely thereon in good faith.

SECTION 12.04. Ratification. Any action taken on behalf of the Foundation by a director, officer or representative of the Foundation which requires authorization by the directors shall be deemed to have been duly authorized if subsequently ratified by the directors retrospectively if action by them was necessary for authorization.

SECTION 1.01. Articles of Incorporation. All references in these By-Laws to the Articles shall be deemed to refer to the Articles, as amended, and in effect from time to time.

ARTICLE XIII

AMENDMENTS

Alterations and repeal of the By-Laws, and new By-Laws not inconsistent with the laws of the State of Rhode Island or with the Articles of Incorporation, may be adopted by the Foundation upon the authorization or approval by the Member after such alteration, repeal or new By-Law is proposed by a majority vote of the Board at any meeting at which a quorum shall be present. The proposed alteration or repeal or of the proposed new By-Laws shall be included in the notice of such Board meeting at which such alteration, repeal or adoption is acted upon.

659504.1

Exhibit D

HEARING DATE: OCTOBER 10, 2018
BUSINESS CALENDAR

STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT

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

JOINT OBJECTION OF PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST MEDICAL HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC AND PROSPECT CHARTERCARE RWMC, LLC TO RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

NOW COME Prospect Medical Holdings, Inc., Prospect East Medical Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC (collectively, the "Prospect Entities"), by and through their attorneys, and hereby object to the Receiver's Petition for Settlement Instructions ("Petition for Instructions"). In support hereof, the Prospect Entities submit a memorandum of law filed contemporaneously herewith.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

PROSPECT MEDICAL HOLDINGS, INC.
AND PROSPECT EAST HOLDINGS, INC.
By their Attorneys,

/s/ *Preston W. Halperin*
/s/ *Dean J. Wagner*
/s/ *Christopher J. Fragomeni*
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Prospect CharterCare, LLC,
PROSPECT CHARTERCARE SJHSRI,
AND PROSPECT CHARTERCARE RWMC,
By their attorneys,

/s/ *Joseph V. Cavanagh*, III, Esq.
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September 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 27th day of September 2018:

X I filed and served this document through the electronic filing system on the following parties:

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_____ _____.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I served this document through the electronic filing system on the following parties:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

□ I mailed or □ hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is: _____

At the following address _____.

(Please note that you will not receive notifications through the Rhode Island Judiciary's Electronic Filing System unless you are linked as a "Service Contact" to each individual matter)

/s/ Allison Y. Charette

HEARING DATE: OCTOBER 10, 2018
BUSINESS CALENDAR

STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT

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

MEMORANDUM IN SUPPORT OF JOINT OBJECTION OF PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST MEDICAL HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC AND PROSPECT CHARTERCARE RWMC, LLC TO RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

NOW COME Prospect Medical Holdings, Inc. ("Prospect"), Prospect East Medical Holdings, Inc. ("Prospect East"), Prospect Chartercare, LLC ("Prospect Chartercare"), Prospect Chartercare SJHSRI, LLC ("Prospect SJHSRI"), and Prospect Chartercare RWMC ("Prospect RWMC," or collectively with Prospect, Prospect East, Prospect Chartercare, and Prospect SJHSRI, the "Prospect Entities"), by and through their attorneys, and hereby file this memorandum of law in support of their joint objection to the Receiver's Petition for Settlement Instructions ("Petition for Instructions"). For the reasons set forth below, the Court should reject the Receiver's Petition for Instructions because the proposed settlement will negatively impact the continued operation of the hospitals in question, violates Rhode Island law and disregards the contractual obligations spelled out in the limited liability agreement that governs the relationship between Chartercare Community Board ("CCCB") and Prospect East.

INTRODUCTION

The Court should deny the Receiver's petition because the Settlement Agreement the Receiver purportedly has entered into – and for which he has already filed a UCC-1 to effectuate (apparently under the belief that it is appropriate to consummate and implement a settlement before interested parties have had an opportunity to object and before it is approved by the Court) – exceeds the scope of his authority as a fiduciary of this Court, violates the regulatory approvals that were required in order to permit the transfer of the hospitals in 2014, and violates the LLC Agreement under which CCCB participates as a 15% shareholder of Prospect Chartercare. The statement in the Settlement Agreement that the culpability of CCCB is "small compared to the proportionate fault of the other defendants" (Settlement Agreement at ¶ 30)–a statement made by the entity that was responsible for funding that same pension plan for decades, up until the time it put it into receivership for being grossly underfunded–is an absurd, collusive falsehood that ignores the reality that brought us to this moment.

As detailed below, the Settlement Agreement that the Receiver entered into–and has already begun to implement, even before receiving this Court's approval, has numerous problems. CCCB is a shareholder in Prospect Chartercare, which operates two hospitals (acquired in 2014 from CCCB) through subsidiaries. The Settlement Agreement effectively liquidates CCCB and places the Receiver in its shoes in connection with, among other things, the operation of the hospitals. Not only does this exceed the proper function of a court receiver, but it violates the approvals that Prospect Chartercare obtained from the Rhode Island Attorney General and the Rhode Island Department of Health in order to acquire the hospitals from CCCB. The Settlement Agreement's transfer of authority to the Receiver implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required

from the RIDOH to alter the voting authority of Prospect Chartercare; as a result, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8. The change in voting authority also violates the LLC Agreement – CCCB cannot simply give away its interest or its voting authority to someone else, which is exactly what the Settlement Agreement purports to do.

The Receiver's task is to preserve and enlarge the pension plan's assets. But this Settlement Agreement reflects an overreach that will only create additional litigation and administrative proceedings at great expense to the parties involved as well as the receivership estate. For these and the additional reasons set out below, the Court should reject the Settlement Agreement, because it exceeds the scope of a receiver's function and the terms of the agreement violate the law.

FACTS

Prior to 2014, St. Joseph Health Services, Inc. ("SJHSRI") owned and operated Our Lady of Fatima Hospital ("Fatima Hospital") and, as a benefit to its employees, SJHSRI sponsored the St. Josephs Health Services of Rhode Island Retirement Plan ("the Plan"). However, over many years, SJHSRI sustained significant financial losses and, as a result, entered into an affiliation agreement ("Affiliation Agreement") to share operational expenses with Roger Williams Hospital, a corporation that owned and operated Roger Williams Hospital ("RWH," or collectively with Fatima Hospital, "the Hospitals"). As part of the Affiliation Agreement, RWH and SJHSRI organized into Chartercare Health Partners ("CCHP," which later changed its name to Chartercare Community Board ("CCCB")).

Despite the Affiliation Agreement, the Hospitals continued to incur significant financial losses and ultimately solicited offers for outside capital from entities that invested in or operated

hospitals. Prospect responded to such solicitation and in 2014, Prospect purchased the Hospitals from SJHSRI and RWH ("2014 Sale") for (1) a cash payment of $45 million, (2) a commitment to capital project and network development, and (3) a grant to CCCB of a fifteen percent (15%) ownership interest in a newly-formed limited liability company, Prospect Chartercare, which wholly owned Prospect SJHSRI and Prospect RWMC (the entities to own the Hospitals post-sale).[1] The 2014 Sale was expressly conditioned upon any liability for the Plan remaining with SJHSRI. The 2014 Sale was reviewed, evaluated, and approved by the Rhode Island Department of Health ("RIDOH") and the Rhode Island Attorney General ("RIAG") pursuant to the Hospital Conversion Act ("HCA") and the Health Care Facility Licensing Act of Rhode Island ("HLA").

Over three years later, SJHSRI filed a petition with this Court, requesting that the Court place the Plan into receivership ("Receivership Action"). The Court appointed a receiver ("Receiver"), and also, at the Receiver's request, approved the engagement of a special counsel ("Special Counsel") to investigate and assert any claims that the Plan had or may have. The Special Counsel issued numerous subpoenas to a plethora of individuals and entities, and filed an action against the Prospect Entities and others, including SJHSRI, RWH, and CCCB ("OldCo Entities,"[2] or "Settling Parties") in the Rhode Island Superior Court ("the "State Action") and in the District Court for the District of Rhode Island ("Federal Action").

On September 4, 2018, the Receiver filed a Petition for Settlement Instructions ("Settlement Petition") in the Receivership Action, requesting that the Court approve a settlement agreement ("Settlement Agreement") that had already been negotiated and executed

[1] CCCB's fifteen percent interest in Prospect Chartercare is subject to the Amended and Restated Limited Liability Company Agreement of Prospect Chartercare, LLC ("LLC Agreement").

[2] The name OldCo Entities arises by virtue of SJHSRI, CCCB, and RWH's status as the selling entities in the 2014 Sale.

among the Receiver, SJHSRI, RWH, and CCCB. Specifically, the Settlement Petition requests that the Court, among other things, "approv[e] the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants" and "authoriz[e] and direct[] the Receiver to proceed with the Proposed Settlement . . . ." Notably, the Receiver is not requesting that the Court authorize him to *enter into* the settlement agreement, but rather to *approve* the Settlement Agreement, which has already been executed by him and the Settling Parties, and which the Receiver and the Settling Parties are treating as though the Court has already instructed the Receiver to proceed with the settlement. On September 7, 2018, pursuant to the terms of the "proposed" settlement–and over a month before the hearing before this Court–CCCB granted the Receiver a security interest in all assets of CCCB. A copy of the UCC-1 filed on September 7, 2018 is annexed hereto as **Exhibit A**.

ARGUMENT

The Court should reject the Settlement Agreement because the Settlement Agreement includes terms that are inconsistent with the role of the Receiver in administering the Plan. If approved by this Court, the Settlement Agreement will (1) subject the Plan, through the Receiver, to a plethora of additional litigation flowing directly from the terms of the settlement; (2) violate R.I. Gen. Laws § 23-17.14-35 ("Settlement Statute") inasmuch as many of the provisions set forth in the Settlement Agreement evidence collusion and other wrongful or tortious conduct between, or contemplated by, the Receiver and the Settling Parties; and (3) violate the HCA and HLA by disregarding the prior administrative and regulatory decisions of the RIAG and RIDOH by authorizing the transfer of CCCB's interest in Prospect Chartercare and CCF's assets.

A. The Receiver Has Acted in a Manner Inconsistent with his Role as a Fiduciary of the Court, and the Court Should Refrain from Approving, Ratifying, or Adopting Such Actions as its Own.

When the Court orders that an entity be placed into receivership, the Court, not the receiver, has ultimate control and supervision over the receivership and has the power to make discretionary decisions. "A trial court abuses its discretion when it acts without reference to any guiding rules or principles," and while the appointment of a receiver is generally within the discretion of the trial judge, there are 'certain well-established rules' to guide that discretion." *Peck v. Jonathan Michael Builders, Inc.*, 2006 R.I. Super. LEXIS 145, at *20 (R.I. Super. Oct. 27, 2006) (citing 16 William Meade Fletcher et. al., *Cyclopedia of the Law of Private Corporations* §§ 7697, 7708).

The Rhode Island Supreme Court has explained the following:

> Where the possession of a receiver is merely derivative, that is, acquired pursuant to a judicial act of the court establishing the receivership, its possession is ordinarily held to be that of the court. In other words, when a receiver acquires possession of property, whether it is as an incident of the performance of a judicial act by the court or as part of the receivership estate, *the receiver is a mere instrument of the court* and with respect to such property *he may act only as the court orders or directs*.

Manchester v. Manchester, 181 A.2d 235, 238 (R.I. 1962) (citing *Allen v. Gerard*, 44 A. 592, 593 (R.I. 1899). Furthermore, the Supreme Court stated that "[a]s officers of the court, the receivers are obliged to assist the court in protecting the estate during the litigation and in disposing of the property pursuant to the court's decision. By acting as receivers, *these attorneys serve the court and do not represent any particular party*." *Cavanagh v. Cavanagh*, 375 A.2d 911 (R.I. 1977) (emphasis added). Accordingly, litigation in the context of a receivership is not the same as litigation between private parties. In the context of a receivership, the Receiver, as an instrument of the Court, does not represent any party, but rather is one of the parties.

Therefore, the Court, acting through the Receiver, has the ultimate power to make decisions relating to the litigation filed by the Receiver as an instrument of the Court. The responsibility and duty of the Court in authorizing a settlement by its Receiver is unique in that the Court is in effect one of the parties with ultimate decision making authority over the terms of the settlement.

Here, the Receiver has entered into a Settlement Agreement without first having sought instructions from the Court. Having already negotiated, executed and partially implemented the Settlement Agreement, the Receiver is asking the Court to approve a settlement that is being presented as a *fait accompli*. Had the Receiver sought instructions on whether or not to enter into the Settlement Agreement, all interested parties would have had the opportunity to object before the parties finalized their agreement. That the Settlement Agreement was fully negotiated and executed by the Receiver and the Settling Parties should carry no weight in the Court's decision on whether to grant judicial approval.

The Receiver urges the Court simply to approve the Settlement Agreement and fails to address the many questions and implications that this Settlement Agreement raises, such as: whether its terms violate clear contractual agreements; whether or not it will result in the illegal transfer of funds from a non-profit foundation; whether or not it will violate the approvals granted by the RIAG and RIDOH in the HCA proceeding that approved the 2014 Sale; and whether or not it will spawn multiple new lawsuits and administrative proceedings that will have to be adjudicated by the Courts and administrative bodies. For instance, the Settlement Agreement contains a provision for the transfer of CCCB's membership interest in Prospect Chartercare that violates the LLC Agreement, as discussed *infra*. In this respect, the Receiver has acted beyond the scope of his role and has recommended that the Court approve a Settlement Agreement that disregards private contracts, subjects the Receiver and settling parties to

additional suits, violates law, and ignores prior judicial and regulatory decisions. While the Receiver has an interest and obligation to maximize and protect the estate (here, the Plan), such interest and obligation is not unrestricted, and the Receiver must carry out his duties within the bounds of the law, within the confines of third-party contracts not subject to the receivership, and consistent with judicial and regulatory decisions. As such, because the Receiver is the Court's instrumentality, the Court should refuse to adopt and ratify the actions of the Receiver and reject the Settlement Agreement in its entirety.

B. The Settlement Agreement Violates the Settlement Statute As its Provisions Plainly Evidence Collusion Among the Settling Parties, the Receiver, and Special Counsel to Prejudice the Rights of Non-Settling Parties in the Federal Action and in the State Court *Cy Pres* Action.

The Court should deny the Settlement Petition and reject the Settlement Agreement because it violates the Settlement Statute as it plainly evidences collusion among the Receiver, Special Counsel, and the Settling Parties. The Settlement Statute, in relevant part, provides the following:

> The following provisions apply solely and exclusively to judicially approved good-faith settlements of claims relating to the St. Joseph Health Services of Rhode Island retirement plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:
>
> [. . .]
>
> (3) For purposes of this section, a good-faith settlement is one that *does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s)*, irrespective of the settling or non-settling tortfeasors' proportionate share of liability.

(Emphasis added). Unambiguously, the Settlement Agreement plainly evidences the Settling Parties' complicit capitulation to its provisions. Such collusion is evident in the Settling Parties' admission of liability, their admission of causing "at least" $125,000,000 in damages, and

allowing the Receiver to oversee and conduct the Settling Parties' dissolution and liquidation. The Settling Parties' yielding to the Receiver and Special Counsel's demands can be nothing more than the Receiver, Special Counsel, and Settling Parties acting in cohort to the detriment of other litigants in the Federal Action, the exact actions that the Settlement Statute was enacted to prevent. The collusion among the Settling Parties, the Receiver, and Special Counsel is plainly evident in several paragraphs of the Settlement Agreement.

First, despite the Receiver *not* being appointed to administer the affairs of the Settling Parties, the Settlement Agreement authorizes the Receiver to direct the judicial liquidation of the Settling Parties and requires the Settling Parties to cooperate with the Receiver in opposing or limiting claims of their creditors. *See* Settlement Agreement at ¶¶ 21-25. Specifically, the Settlement Agreement provides (1) that the Settling Parties, upon demand of the Receiver, will file petitions to liquidate their assets; and (2) that the Settling Parties will "cooperate with and follow the requests of the Receiver and [] take all reasonable measures" to obtain court approval for the petitions for liquidation, including opposing and seeking to limit the claims of other creditors. *See id.* The Settling Parties' apparent uncontested acquiescence to their relinquishment of control over *all* their assets evidences their collaboration with the Receiver and Special Counsel in negotiating the Settlement Agreement. Furthermore, the Receiver, in negotiating these provisions has grossly overstepped the limits of his authority by compelling the Settling Parties to allow him to direct a subsequent judicial liquidation proceeding. The forced judicial liquidation of a third-party entity not subject to the Receivership Action is not a proper role for the Receiver and should not be approved by the Court.

Second, the Settlement Agreement requires the Settling Parties to request that the district court, in the Federal Action, certify a class of plaintiff-litigants pursuant to Rule 23(b)(1)(B) of

the Federal Rules of Civil Procedure. *See id.* at ¶ 5. This Court should not authorize and direct the Receiver to strong-arm the Settling Parties into "requesting" certification of a class asserting claims against them and their co-defendants in the Federal Action. As the Settling Parties will ultimately be dismissed from the Federal Action if the Settlement Agreement is approved, such requested certification of the plaintiff class is *solely* to benefit the plaintiffs and prejudice the remaining defendants in the Federal Action. While a Receiver settling claims against defendants may be appropriate, it is clearly inappropriate for a court-appointed Receiver to then use those defendants as pawns in pending litigation against third-parties.

Third, the Settlement Agreement includes an astonishing admission of liability by the Settling Parties that the Receiver's claims in the Federal Action are "at least $125,000,000." *See id.* at ¶ 28. Very few, if any, settlement agreements include an admission of liability and a statement of unproven damages. Once again, such concession, as to the Federal Action in which the Settling Parties will be dismissed as a result of the settlement, would solely be "intended to prejudice the non-settling tortfeasors, *irrespective of the settling or non-settling tortfeasors' proportionate share of liability*." R.I. Gen. Laws § 23-17.14-35 (emphasis added).

Fourth, the Settlement Agreement includes an admission of the Settling Parties that their proportionate fault in causing the $125,000,000 in damages "is small compared to the proportionate fault of the other defendants in the Federal [] Action and the State Court Action . . . ." *See* Settlement Agreement at ¶ 30. This extraordinary statement that the Settling Parties percentage share of damages is "small" is ludicrous and prejudicial on its face. It is undisputed that the Settling Parties, prior to the 2014 Sale were the actual employers under the Plan, and after the 2014 Sale were directly responsible for funding the Plan. A statement by the Settling Parties that their proportionate fault is "small compared to the proportionate fault of the

other defendants" borders on the absurd, is factually incorrect, and is further evidence of collusion.

Lastly, the Settlement Agreement includes an agreement by the Settling Parties to allow the Receiver to direct and control the Settling Parties in the pending *Cy Pres* Proceeding. *See id.* at ¶ 32. In essence, the Settling Parties are agreeing to collude with the Receiver to influence the outcome of the pending *Cy Pres* Proceeding.

As a result of the plain evidence of collusion among the Receiver, Special Counsel, and Settling Parties, the Court should deny the Settlement Petition and reject the Settlement Agreement as it violates the Settlement Statute and represents an extraordinary overreach by a court-appointed fiduciary.

C. The Settlement Petition Should be Denied and the Court Should Reject the Settlement Agreement Because it Disregards Administrative and Regulatory Decisions and Violates the HCA, HLA, and LLC Agreement.

The Settlement Petition should be denied and the Court should reject the Settlement Agreement because it (1) disregards prior administrative and regulatory decisions relative to the Hospitals; (2) violates the HCA and HLA; and (3) violates the LLC Agreement.

a. *The Proposed Settlement Seeks To Transfer Interests that are the Subject of Final Administrative Orders Resulting From Agency Proceedings Under R.I. Gen. Laws §§ 23-17.14-1 et seq. and §§ 23-17-1 et seq.*

The 2014 Sale was subject to RIAG and RIDOH approval under the HCA, which is codified at §§ 23-17.14-1 et seq., and subject to the HLA, which is codified at §§ 23-17-1 et seq. The proposed transfer under the Settlement Agreement by the Settling Parties, namely CCCB, of its fifteen percent membership interest in Prospect Chartercare violates the hospital conversion decision relative to Fatima Hospital and RWH, which is incorporated into the Hospitals' current licensure. Furthermore, the transfer contemplated by the Settlement Agreement of CCCB's

fifteen percent interest in Prospect Chartercare implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required from the RIDOH to alter the voting authority of Prospect Chartercare. In relation to the transfer of CCCB's fifteen percent interest in Prospect Chartercare, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8 ("Petition for Declaratory Order"), which is attached hereto as **Exhibit B**. The Prospect Entities reference and incorporate herein the arguments set forth in the Petition for Declaratory Order.

b. *The Proposed Settlement Includes an Agreement by the Settling Parties to Execute an Irrevocable Assignment to the Receiver of all CCCB Foundation's Rights and Assets and To Turn Over More than $11 Million Dollars that Is Currently Available To Fund the Non-Profit Programs and Grants Offered By CCCB to the State.*

The Settlement Agreement provides that CCCB Foundation, the sole member of Chartercare Foundation ("CCF"), will provide the Receiver with an irrevocable assignment of CCCB Foundation's rights in CCF. *See* Settlement Agreement at ¶¶ 13-14. However, as set forth in CCF's Objection to the Receiver's Petition for Settlement Instructions and Emergency Cross-Motion to Postpone September 13, 2018 Hearing as it Relates to Proposed Settlement Terms Regarding Chartercare Community Board's Alleged Membership Interest in Chartercare Foundation and its subsequently filed memorandum ("CCF Motion"), the Court should deny the Settlement Petition and reject the Settlement Agreement because (1) CCCB Foundation has no authority to transfer any of CCF's assets as it had abandoned its rights as CCF's sole member; (2) CCCB was precluded from controlling CCF as a condition to the RIAG's HCA decision regarding the 2014 Sale; and (3) controlling a charitable organization is an inappropriate role for a Receiver. The Prospect Entities reference and incorporate herein the arguments set forth in the CCF Motion.

c. *The Transfer of CCCB's Membership Interest in Prospect Chartercare Violates the LLC Agreement.*

The Court should deny the Settlement Petition and reject the Settlement Agreement because the Settlement Agreement proposes the transfer of CCCB's membership interest in Prospect Chartercare to the Receiver, which violates the LLC Agreement. Specifically, the LLC Agreement provides that

> . . . [A] member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly) through the transfer of the power to control, or to direct or cause the direction of the management and policies, of such Member.

However, despite such provision, the Settlement Agreement provides that CCCB will hold its membership interest in Prospect Chartercare in trust for the Receiver and that the Receiver will have the full beneficial interests of that interest. *See* Settlement Agreement at ¶ 17. It further provides that the Receiver shall have the right and power to (1) direct and control CCCB's Put Option[3] under the LLC Agreement, *see id.* at ¶ 18; and (2) sue in the name of CCCB to collect or otherwise obtain the value of the beneficial interest in Prospect Chartercare, *see id.* at ¶ 19. Additionally, the Settlement Agreement provides that (1) upon the Receiver's demand, CCCB will file a petition for judicial liquidation; and (2) the Receiver may take a security interest in CCCB's assets, investment property, and general intangibles, all of which would include its membership interest in Prospect Chartercare.[4] *See id.* at ¶¶ 24, 29. Such provisions of the

[3] The LLC Agreement provides that after certain conditions are met, CCCB "shall have the option to sell to [Prospect East], and [Prospect East] shall have the obligation to purchase, all of the [membership interest] held by [CCCB] in exchange for a payment in cash of a purchase price equal to the Appraised Value of the [membership interest]."

[4] Notably, even though the Court has yet to approve the Settlement Agreement, the Receiver has filed a UCC-1 filing, asserting a security interest in practically all assets of CCCB. The Receiver sought Court approval for such filing, but nevertheless acted without the Court's authorization.

Settlement Agreement plainly include a hypothecation of CCCB's interest in Prospect Chartercare, by the granting of a security interest, by the transfer of CCCB's beneficial interest, and by the transfer to the Receiver of the power to control and direct CCCB.[5] As such, the purported transfers contemplated by the Settlement Agreement violate the LLC Agreement and constitute invalid transfers under the LLC Agreement; therefore, the Court should deny the Settlement Petition and reject the Settlement Agreement.

D. To the Extent that the Court is Inclined to Approve a Settlement, the Receiver Should be Required to Obtain all Necessary Regulatory Approvals to Exercise the Put Option in the LLC Agreement.

If despite the forgoing objections, the Court is inclined to approve a settlement that implicates CCCB's interest in Prospect Chartercare, the Receiver should be instructed to do so in a manner that respects the contractual obligations of CCCB under the LLC Agreement and that complies with all regulatory requirements. In an amended version of the settlement agreement, the Receiver can contract with CCCB to require CCCB to pay money to the Receiver and to exercise the Put Option set forth in the LLC Agreement. However, in doing so, the Receiver should be required to obtain any and all necessary regulatory approvals implicated by the transfer of control of CCCB. The Receiver can and should be instructed to accomplish his goal of bringing value to the receivership estate without trampling the rights of Prospect East and without disregarding the regulatory requirements that govern the effective control of the hospitals.

[5] Any suggestion by the Receiver that CCCB has not hypothecated its interest in Chartercare should be rejected out of hand. The plain meaning and definition of hypothecate is "to enter into a contract whereby certain specified real or personal property is designated as security for the performance of an act, without any transfer of the possession of the property." *Ballantine's Law Dictionary*, 2010 LexisNexis. CCCB's granting of a security interest to the Receiver, without more, is a clear hypothecation of its interest.

CONCLUSION

The Court should reject the Settlement Agreement because the terms of the Settlement Agreement are not in the best interest of the receivership estate as they (1) violate R.I. Gen. Laws § 23-17.14-35 ("Settlement Statute") by including terms that evidence collusion between the Receiver and the Settling Parties; (2) violate the HCA and HLA by disregarding the prior administrative and regulatory decisions of the RIAG and RIDOH by authorizing the transfer of CCCB's interest in Prospect Chartercare and CCF's assets; (3) will subject the Plan, through the Receiver, to a plethora of additional litigation flowing directly from the terms of the settlement; and (4) will result in the Receiver directing CCCB to breach its contractual obligations under its LLC Agreement.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

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September 27, 2018

CERTIFICATE OF SERVICE

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL

In the Matter of: Prospect CharterCARE, LLC

PETITION FOR DECLARATORY ORDER
R.I. Gen. Laws §42-35-8

Introduction

1. Petitioner, Prospect CharterCARE, LLC holds all membership in those entities that operate and hold the licensure for two, acute care community hospitals, Our Lady of Fatima Hospital and Roger Williams Medical Center.[1]

2. Petitioner, Prospect CharterCARE, LLC holds all membership interest in Prospect SJHSRI, LLC and Prospect RWH, LLC, which own and operate the Hospitals, as pursuant to final Rhode Island Hospital Conversion Act ("HCA"), R.I. Gen. Laws §27-17.14-1 *et seq.*, decisions rendered by the Rhode Island Department of Health and Rhode Island Department of Attorney General dated May 19, 2014 and May 16, 2014, respectively (the HCA decisions are referred to herein as the "Final Conversion Decisions" and the HCA proceedings that resulted in the Final Conversion Decisions are referred to herein as the "HCA Proceedings" or the "Conversion").

3. In addition, as pursuant to Rhode Island law, the HCA Proceedings were consolidated with Change in Effective Control or "CEC Proceedings" under the Rhode Island Hospital Licensure Act ("HLA"), R.I. Gen. Laws §23-17-1 *et seq.*, resulting in a "Final CEC Decision" being issued by the Department of Health on or about May 19, 2014, after full hearings before and recommendations issued by the Rhode Island Health Services Council (the

[1] Our Lady of Fatima Hospital and Roger Williams Medical Center were part of the CharterCARE Health Partners network and referenced herein as the "Hospitals". The Hospitals were converted to the CharterCARE Health Partners system in 2009, to try and stem severe operating losses.

"Health Services Council") in accord with §4 of the HLA Regulations. Such licensure proceedings are a legal pre-requisite to the Final Conversion Decisions and are defined by the Rhode Island Administrative Procedures Act, R.I. Gen. Laws §42-35-1 *et seq.*, as "contested cases" with full rights of judicial review.

4. Prospect CharterCARE, LLC was a Transacting Party in the HCA and CEC Proceedings and thus, hereinafter, Prospect CharterCARE, LLC is referred to as the "Acquiror" for the purposes of this Petition.

5. Prior to the Conversion, the entity that owned and operated Our Lady of Fatima Hospital was St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI"), a non-profit corporation organized under the laws of the State of Rhode Island with its Class A Member being CharterCARE Health Partners and its Class B Member being The Roman Catholic Bishop of Rhode Island.

6. SJHSRI and its Class A Member, CharterCARE Health Partners were Transacting Parties in the HCA and CEC Proceedings and thus, SJHSRI is hereinafter referred to as "SJHSRI" or the "Acquiree" for the purposes of this Petition. After the Conversion, CharterCare Health Partners became known as the CharterCare Community Board or ("CCCB"). CCCB holds fifteen (15%) percent of the limited liability company membership and fifty (50%) percent of the voting authority in Petitioner, Prospect CharterCARE, LLC.

7. Prior to and after the Conversion, SJHSRI was and remained the Plan Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan'). It is critical to emphasize that as pursuant to Section 8.1 of the Plan, the Plan Administrator is defined as the "Employer" and the "Employer" is defined as SJHSRI.

8. Upon information and belief, the Plan is a retirement vehicle or "pension plan" which pays out to a beneficiary (presumably, a former employee of SJHSRI), a structured payment over time based, in part, upon the employee's compensation level while employed, length of service, and the funding of the Plan.

9. The Rhode Island General Assembly in enacting the HCA, in 1997, made a specific finding that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of not-for-profit hospitals to for-profit status. *See* HCA at §2(6). The General Assembly has been proven to be correct.

10. In turn, the General Assembly provided the Department of Health and the Department of Attorney General with jurisdiction to review and approve such agreements that provide for the investment of private capital and the resulting conversion of not-for-profit hospitals assets, including voting rights, to for-profit status. *Id.* §3(4).

11. In short, there cannot be such a conversion, as defined by the HCA, without application to and the prior approval of the Department of Health and the Department of Attorney General. In order to gain said approval, the Transacting Parties have to submit their transactional agreements and an application which, in part, details how the transactional structure relates to, amongst other assets and liabilities, the acquiree's pension plans. *Id.* at §6(13).

12. In the underlying Conversion, the issue of pension plan liability was critical as SJHSRI just prior to conversion was sustaining considerable operating losses and when combined with what was disclosed as a $79M Plan liability, SJHSRI could not survive without private investment, conversion to for-profit status, and approval of a structure to de-couple Plan liability from Hospital ownership and operation, post-Conversion.

13. Thus, as set forth below, it was submitted from the outset of the relevant transaction that the Hospital system, at issue (the former CharterCARE Health Partners' system), would not survive if it remained coupled to Plan liability. As such, it was determined that the ownership and operation of the Hospitals, post-Conversion, would be separated from the Plan and any liability therefore. In turn, the Plan and any liability therefore, would remain with the Acquiree, including its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

14. If that critical aspect of the Conversion were not approved, the Conversion would not have taken place and in all likelihood, as determined by independent experts engaged by the Department of Health and the Department of Attorney General, the Hospitals would not have been able to continue to provide essential healthcare services to the community.

15. From a hypothetical standpoint, the Department of Health and the Department of Attorney General could have determined that the Acquiror be liable for the Plan. If the Final Conversion and CEC Decisions had resulted in the Acquiror being liable for the Plan, then the Department of Attorney General would have exercised its authority under §28(c) of the HCA, to require the Acquiror to make certain minimum investments, post-Conversion, into the Plan. However, it was decided that the Acquiror would not have any liability for the Plan. Thus, the Department of Attorney General acted in accordance with the HCA and did not require any minimum investments into the Plan by the Acquiror, post-Conversion, because it was determined that the Acquiror would have no liability for the Plan and that liability would remain with the Acquiree.

16. The Attorney General under §28(c) of the HCA, can establish minimum investment requirements specifically for community benefit. It was properly decided, that the

balance of community interests was best served if the Hospitals continued to provide essential healthcare services for five (5) years, post-Conversion and any Plan liability remained with SJHSRI, what is now CCCB, and the Roman Catholic Bishop of Rhode Island.

17. In summary, if the final administrative agency decision was that the Plan and the liability therefor remained coupled to the Hospitals, post-Conversion, then the Acquiror would not have implemented the Conversion and the Hospitals would have failed to survive. Such an outcome would have been at variance with the General Assembly's findings in the HCA, dating back to 1997, that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of those not-for-profit hospitals to for-profit status. It is critical that private capital, most often from outside of the State of Rhode Island, be able to rely on those final agency decisions which approve hospital conversions and pave the way for the investment of considerable, capital into the State of Rhode Island's healthcare system to ensure that the system continues to serve various communities.

18. Thus, as a result of the Conversion, the Acquiror did not assume any liability for the Plan and/or the continuing risk for the Plan, including what the Health Services Council during hearings in May of 2016, referred to as "investment risk" or the obligation to continue funding the Plan.

19. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership in the matter entitled *St. Joseph's Health Services of Rhode Island, Inc. v. St. Joseph's Health Services of Rhode Island Retirement Plan, as amended*, Rhode Island Superior Court, PC-2017-3856 (J. Stern, presiding) (hereinafter, the "Receivership").

20. In the Receivership Petition, the Acquiror was defined as the "Hospital Purchaser". Of great significance, SJHSRI, in the Receivership Petition, judicially admitted that the Acquiror "**had no role in the evaluation of the Plan or its funding level**" during the Conversion or thereafter and, the Acquiror did not "**assume [ ] the Plan or any liability with respect thereto as clearly stated forth in the asset purchase agreement among the parties**."

21. The asset purchase agreement (hereinafter, the "Asset Purchase Agreement") identified by SJHSRI in the Petition for Receivership was reviewed, approved, and incorporated by specific reference into the Final Conversion and CEC Decisions.

22. On or about June 18, 2018, the Receiver, by and through the Receiver's Special Counsel, Wistow Sheehan & Lovely P.C. (hereinafter, "Special Counsel"), filed a Complaint in the United States District Court for the District of Rhode Island entitled *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan et al. v. Prospect CharterCARE, LLC et al.,* C.A. No. A-18-cv-00328-WES-LDA (the "Federal Court Litigation") alleging, in part, that the Acquiror has some liability for the Plan.

23. It is beyond dispute that the Receivership Estate is SJHSRI in its role as Plan Administrator. Therefore, the Plan Administrator is by Plan definition, SJHSRI. Under Rhode Island law, the Receivership Estate stands in the shoes of SJHSRI. *See Francis v. Buttonwood Realty Co.*, 765 A.2d 437, 443 (R.I. 2001). SJHSRI participated as a Transacting Party in the Conversion in which administrative agencies with jurisdiction acting in a quasi-judicial manner determined that the Acquiror would have no liability for the Plan. In fact, SJHSRI advocated for that result. This uncontested conclusion was judicially admitted by SJHSRI in the Receivership Petition.

24. Nevertheless, the Receiver now seeks to circumvent the jurisdiction of the Department of Health and the Department of Attorney General by alleging that the Acquiror has liability for the Plan.

25. Furthermore, on September 4, 2018, the Receiver filed a Petition for Instructions with the Receivership Court asking the Receivership Court to authorize the Receiver to enter into a settlement agreement (the "Settlement") which would result in CCCB transferring its fifteen (15%) percent membership interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver.

26. The Final Conversion and CEC Decisions de-coupled the Plan and Plan liability from Hospital ownership and operation to ensure the Hospitals' viability and ongoing ability to provide essential healthcare services to the community. The Receiver's proposed Settlement seeks to re-attach Plan liability to Hospital ownership and operation.

27. Thus, the transfer of ownership and voting interests proposed by the Receiver to advance the Settlement is in violation of the Conversion, at variance with the HCA and the HLA, and at variance the determinations embodied within final agency decisions that the Acquiror has no liability for the Plan.

28. Accordingly, as pursuant to R.I. Gen. Laws §42-35-8, if the HCA and HLA are properly interpreted and applied, and the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver in furtherance of the Settlement would not be allowed without review and approval by the Department of Health and the Department of Attorney General. In turn, if an application for administrative review and approval were property submitted by the Receiver, the administrative agencies would be required to reject the application based upon the doctrine of administrative finality.

29. Finally and of critical importance, the transfer proposed by the Receiver to advance the Settlement seeks to re-attach the Plan and Plan liability to the ownership and operation of the Hospitals and it is based, in large part, upon the allegations in the Federal Court Litigation that the Acquiror has liability for the Plan. However, said cause of action in the Federal Court Litigation as against the Acquiror is barred by the doctrine of *res judicata* and said bar should be enforced by the agencies with jurisdiction over the Conversion and CEC Proceedings.

General Allegations

30. In or about March of 2013, the Transacting Parties to the Conversion entered into a Letter of Intent which is incorporated into the Final Conversion and CEC Decisions. The Letter of Intent specifically provided that the new company or "Newco" to be formed to own and operate the Hospitals would not purchase the Plan. In turn, the Letter of Intent made it clear that the Seller, as defined in the Letter of Intent, would remain liable for the Plan and the Plan would specifically be an "Excluded Asset" and an "Excluded Liability".

31. Simply stated, the Acquiror from the outset of the transaction that was ultimately reviewed and approved pursuant to the Final Conversion and CEC Decisions, made it clear that the Hospitals would not survive if they remained linked to Plan liability. Thus, the Transaction, as structured, proposed that Plan liability be de-coupled from Hospital ownership and operation and remain with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

32. In or about September of 2013, the Transacting Parties to the Conversion entered into the Asset Purchase Agreement which is also incorporated into the Final Conversion and

CEC Decisions. The Asset Purchase Agreement specifically listed the Plan as an "Excluded Liability".

33. In turn, in or about October of 2013, the Transacting Parties filed HCA and CEC applications (collectively, the "Application"). The Application specifically stated that the Transacting Parties on the Acquiror side would not acquire the Plan or assume any Plan liability.

34. The Department of Health and the Department of Attorney General, as is allowed under the HCA, both engaged financial experts to review the Application and the Transaction as structured in the Asset Purchase Agreement. Both experts were very candid in their review of the Transaction, making it clear that the Acquiror was not assuming any liability for the Plan. The expert for the Department of Health specifically stated that the $14M of the purchase price to be deposited by the Acquiree into the Plan would simply reduce what was then disclosed by the expert to be at least a $79M Plan deficiency. Moreover, the Department of Health's expert specifically testified before Health Services Council as pursuant to the CEC Proceedings, that there was no actuarial support as to the Acquiree's representations regarding Plan funding requirements going forward, post-Conversion. In turn, it was made clear and confirmed by the Health Services Council that the Acquiree would carry the risk for Plan funding and Plan liability, post-Conversion.

35. The Department of Attorney General's expert also made it clear that the Hospital system could not survive if it remained linked to Plan liability.

36. As above stated, the General Assembly in enacting the HCA looked to review and approve private investment in not-for-profit hospitals, in large part, to ensure their survival. In accord with the reports of the financial experts, the Final Conversion and CEC Decisions undertook a balancing analysis and determined that the Hospitals would not survive, if Plan

liability remained coupled to the Hospitals. This is especially evident in the Final Conversion Decision by the Department of Attorney General which provided in part as follows:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
>
> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

37. In short, the Department of Attorney General recognized that Plan liability had remained attached to Hospital ownership and operations as a result of the 2009 CharterCARE Healthcare Partners' hospital conversion, and as of 2016, the Hospitals were failing, in large part, due to that fact. Therefore, the relevant Conversion had to be approved in a manner that separated Plan liability from Hospital ownership and operation. If not, there may still exist issues with Plan funding and the Hospitals would have failed.

38. Thus, the Final Conversion and CEC Decisions incorporated the Asset Purchase Agreement and the Applications and made it an absolute requirement that the Conversion be implemented in accord with those documents. In turn, the Asset Purchase Agreement and the Application made it clear that Acquiror was not acquiring or assuming any liability for the Plan.

Quite simply, to propose otherwise was a recipe for failure of the entire Hospital system. The Receiver is not in position, as a matter of law, to change that administrative determination.

39. The decision to de-couple the Plan from Hospital ownership and operation resulted from a balancing that placed significant weight on the Hospitals' viability and ability to continue to provide essential healthcare services to the community, and a recognition that the Acquiree and its membership would remain liable for the Plan. In other words, the Conversion did not change the equation with regard to the Plan. The Acquiree and its membership would remain liable for the Plan just as they were, pre-Conversion. However, the Decisions that separated Plan liability from Hospital ownership and operation were deemed necessary to ensure that the Hospitals would continue, post-Conversion, to serve the community.

40. As part of that balancing, the administrative agencies with jurisdiction thought it more in line with the HCA, to require a commitment by the Acquiror to continue essential healthcare services at the Hospitals. Accordingly, one of the conditions incorporated into the Final Conversion and CEC Decisions, was that the Acquiror had to maintain all essential services at the Hospitals for a period of five (5) years after the Conversion. If the Receiver were to circumvent the Final Conversion and CEC Decisions and re-attach Plan liability to the Hospitals, such a commitment would be in jeopardy.

41. Moreover, under §28(c) of the HCA, the Department of Attorney General can establish conditions requiring minimum investments to protect Hospital assets, post-Conversion. This is critical as the Department of Attorney General placed no requirement on the Acquiror to make minimum investments, post-Conversion, into the Plan, because it was the final decision of the administrative agencies that the Acquiror would have no responsibility for the Plan. Rather, it was decided that the Plan liability would be de-coupled from the Hospital assets and liabilities

acquired and assumed by the Acquiror. Thus, the actions of the Department of Health and the Department of Attorney General were wholly appropriate in that liability for the Plan would remain with SJHSRI and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

42. As such, the Acquiror was not required to report any ongoing contributions to the Plan or report as to the condition of the Plan under §28 of the HCA, post-Conversion, because it was a final agency decision that the Acquiror assumed no liability for the Plan.

43. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership, above-defined as the "Receivership", in an effort to restructure the Plan.

44. In so doing, SJHSRI judicially admitted that the Acquiror had no role in the evaluation of the Plan or its funding levels during the Conversion or CEC Proceedings and that the Acquiror assumed no liability for the Plan in accord with the Asset Purchase Agreement by the Final Conversion and CEC Decisions. Under Rhode Island law, a judicial admission is a deliberate, clear and unequivocal statement of a party about a concrete fact with that party's knowledge which is considered conclusive and binding as to the party making the admission. The judicial admission relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing same. In other words, under Rhode Island law, a judicially admitted fact is conclusively established.

45. In or about June of 2018, the Receiver, despite the Final Conversion and CEC Decisions, and the judicial admissions in the Petition for the Appointment of a Receiver, filed the Federal Court Litigation alleging, in part, that the Transacting Parties on the Acquiror side, including the Petitioner herein, may have liability for the Plan.

46. On or about September 4, 2018, the Receiver petitioned the Receivership Court to grant the Receiver authority to enter into what is defined above as the Settlement with SJHSRI and the other Transacting Parties on the Acquiree's side of the Conversion, by having the Acquiree transfer its fifteen (15%) percent interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver. The Settlement, if hypothetically approved, would transfer the Acquiree's interest and voting authority in the Prospect CharterCARE, LLC to the Receiver as a vehicle to address Plan liability. Thus, the Receiver, through the proposed Settlement, seeks to re-attach the Plan to the Hospitals, post-Conversion, which violates the Final Conversion and CEC Decision.

47. Accordingly, the Petitioner seeks a declaratory order as follows:

a. If the HCA and HLA are properly interpreted and applied and/or the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA, as it is at variance with the Final Conversion and CEC Decisions. Thus, the Receiver would have to apply to the administrative agencies with jurisdiction for relief;

b. If the HCA and HLA are properly interpreted and applied, the transfer proposed by the Receiver to advance the Settlement is a "conversion" as defined by §4(6) of the HCA, as it would result in the transfer of more than 20% of the voting control of the Acquiror. Thus, the Receiver could not effectuate such a conversion without application to, review, and approval by the Departments of Health and/or the Department of Attorney General;

c. If the Receiver applied to modify the Final Conversion and/or CEC Decisions, or applied for the review and approval of the proposed conversion embodied within the Settlement, the Receiver's application would be barred by the doctrine of administrative finality; and

d. The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of *res judicata* and the bar should be enforced in the first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

First Request for Declaratory Order

48. Acquiror submits that a proper interpretation and application of the HCA and HLA, and a proper application of the Final Conversion and CEC Decisions issued by the respective administrative agencies in May of 2014, must result in a determination that the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA and is at variance with the Final Conversion and CEC Decisions.

49. The Final Conversion and CEC Decisions issued by the Department of Health and Department of Attorney General expressly incorporated the Asset Purchase Agreement and the Amended and Restated Operating Agreement ("Operating Agreement") of the Petitioner.

50. The Final Conversion and CEC Decisions recognized and determined that the Hospitals, including Our Lady of Fatima Hospital, could not survive if the Plan and the liability therefore, remained attached to the Hospitals. Accordingly, the Final Conversion and CEC Decisions determined that the Plan and the liability therefore, would be separated from the Hospitals and remain with Acquiree, including the Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

51. Furthermore, the Final Conversion and CEC Decisions incorporating the Operating Agreement, provided for a "joint venture" approach to ownership and operation of the Hospitals, post-Conversion, with 15% of the joint venture being owned by a community-based, healthcare entity which would continue to advance the original not-for-profit healthcare mission of the so-called "Heritage Hospitals" for a minimum of five (5) years after the Conversion, which took place on June 14, 2014.

52. In addition, the healthcare policy was to have a not-for-profit, community-based facet to the ongoing voting and governance structure of the Hospitals. Thus, the Final Conversion and CEC Decisions incorporated the concept of a "50/50 board" as set forth in the Operating Agreement.

53. The transfer proposed by the Receiver to advance the Settlement is at absolute variance with those concepts and policy adopted by the Final Conversion and CEC Decisions and cannot be allowed absent regulatory relief.

54. In short, the hospital conversion policies and determinations embodied within the Final Conversion and CEC Decisions should not be abandoned simply to create a vehicle to fund liabilities for the Plan. To do so, would be the absolute opposite of the decision made to separate Plan liability from Hospital ownership and operation, post-Conversion, so that that those Hospitals could survive and continue to serve the healthcare needs of the community with Plan liability remaining with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

Second Request for Declaratory Order

55. Acquiror seeks a declaratory order and submits that a proper interpretation and application of the HCA would result in a determination that the transfer proposed by the

Receiver to advance the Settlement is a "conversion" as that term is defined in §4(6) of the HCA and thus, the Conversion would not be allowed absent application to review and approval by the Department of Health and/or Department of Attorney General under the HCA and/or the HLA.

56. As set for above, the Final Conversion and CEC Decisions acknowledged and required that the Conversion be implemented and operated with the concept of a 50/50 Board.

57. The HCA defines a Conversion to include the conversion of more than 20% of the voting authority of a Hospital. *See* HCA at §4(6).

58. The transfer proposed by the Receiver in order to advance the Settlement clearly seeks to transfer more than 20% of voting authority. Accordingly, the proposed transfer would require review and approval as a Hospital Conversion.

59. Moreover, in order to approve a Conversion of this nature, §8 of the HCA and §4.2(h) of the HCA Regulations would require the Receiver to demonstrate compliance with the Final Conversion and CEC Decisions. In this instance, for the reasons set forth herein, the Receiver would not be able to demonstrate compliance with those Decisions and thus, the proposed Conversion could not be approved.

Third Request for Declaratory Order

60. Acquiror seeks a declaratory order and submits that a proper application of the Final Conversion and CEC Decisions to the Acquiror would render any application by the Receiver for the review and approval of the proposed transfer to advance the Settlement as barred by the doctrine of administrative finality.

61. Acquiror submits that the Receiver would have to file some form of application with the Department of Health and Department of Attorney General to grant relief and/or to

approve a conversion that would allow for the Receiver's proposed transfer of Acquiree's ownership and voting authority in the Hospitals.

62. Said application would be seeking same relief as the prior Conversion and CEC applications and there has been no change in material circumstances.

63. The material circumstances surrounding Plan liability remain exactly the same with regard to the prior conversion and licensure proceedings that resulted in the Final Conversion and CEC Decisions in that the Hospitals could not survive if their ownership and operation continued to be attached to Plan liability.

64. A subsequent application by the Receiver would be seeking to approve a transfer, so that the Acquiree's Hospital ownership and voting authority would be used as a vehicle to address Plan liability that was previously separated from Hospital ownership and operations, post-Conversion, per final agency decision.

65. The doctrine of administrative finality has been adopted by the Rhode Island Supreme Court and applied to administrative agencies addressing healthcare issues, so that administrative healthcare policy decisions remain consistent unless there is a material change in circumstances. In this instance, it was determined that in order for the Hospitals to survive and continue to serve the healthcare needs of the community, Plan liability had to be separated from the Hospital ownership and operations, post-Conversion. This decision was critical in attracting the investment of private capital to allow for the survival of the Hospitals and the continued service of the healthcare needs of the community. Potential investors, often times from outside of the State of Rhode Island, must be able to rely on those policy decisions and the doctrine of administrative finality was designed for that very purpose.

Fourth Request for Declaratory Order

66. Acquiror requests a declaratory order and submits a proper application of the Final Conversion and CEC Decisions bar any claim that Acquiror is liable for the Plan, including such claims in the Federal Court Litigation based upon the doctrine of *res judicata*.

67. Under Rhode Island law, the doctrine of *res judicata* makes a prior decision in a quasi-judicial agency action between the same parties conclusive regarding the issues that were litigated in the prior action or, that could have been presented and litigated therein.

68. Under Rhode Island law there are three prerequisites for the doctrine of *res judicata* to be invoked: (1) whether the first and second actions involve in the same parties, or their privies; (2) whether the first and second actions compromise the same cause of action; and (3) whether a administrative agency in a quasi-judicial proceeding entered a final decision.

69. The proceedings that resulted in a Final Conversion and CEC Decisions were quasi-judicial, including but not limited to the fact that §34 of the HCA, §9 of the HLA and, §§9.2 and 16.1 of the HCA Regulations and §4 of the HLA Regulations all set forth that the prior proceedings are contested agency proceedings, which have full rights of appeal.

70. In addition, the CEC licensure proceedings are a legal pre-requisite to the Conversion and the procedures set forth in §4 of the HLA Regulations are clearly quasi-judicial, including the burden of proof and review criteria before the Health Services Council. In addition, the Rhode Island Administrative Procedures Act clearly defines such proceedings as contested agency proceedings with an absolute right of judicial review.

71. It is beyond dispute that there is an identity of parties between the Conversion and CEC Proceedings and the Federal Court Litigation in that the Acquiror and the Receivership Estate were both Transacting Parties in the Conversion and CEC Proceedings.

72. Furthermore, there is no dispute that there was an identity of issues as the Conversion and CEC Proceedings and the Federal Court Litigation both address the very same transaction considered in the Conversion and CEC Proceedings. Moreover, the following is beyond dispute:

a. The HCA requires that an HCA application address pension plan liability;

b. The transactional documents and HCA/CEC Applications submitted by the Transacting Parties all stated that the Acquiror would have no liability for the Plan;

c. The experts engaged by the Department of Health and the Department of Attorney General all reviewed that aspect of the transaction and advised that the $14M of the Purchase Price that would be put in to the Plan by the Acquiree would merely reduce what was then identified as $79M funding deficiency and that any testimony by the Acquiree of how to fund the Plan going forward had no actuarial support;

d. The Conversion and CEC Proceedings, incorporating the relevant transactional documents and the independent expert analysis specifically established that the risk of funding the Plan, post-Conversion, remained with the Acquiree;

e. The experts concluded that the Hospitals would not survive if their ownership and operation remained connected to Plan liability;

f. The expert testimony was specifically adopted by the Department of Attorney General in its decision that provided:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately

> $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
>
> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

g. The Department of Attorney General and the Department of Health, thus, realized that a prior conversion was attempted that left Plan liability attached to Hospital ownership and operation and that did not work;

h. Accordingly, the Final Conversion and CEC Decisions required that the Conversion be implemented pursuant to the Application and the transactional documents which specifically provided that Plan liability would be separated from Hospital ownership and operation, post-Conversion, and remain with the Acquiree; and

i. This is further reflected by the fact that the Department of Attorney General did not exercise its authority under §28(c) of the HCA and require the Acquiror to make ongoing investments in the Plan, post-Conversion, because it was determined by the Final Conversion and CEC Decisions that liability for the Plan would remain with the Acquiree and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

73. The Final Conversion and CEC Decisions were final agency decisions that were never appealed and thus, the claims in the Federal Court Litigation that the Acquiror and/or its affiliates are somehow liable for the Plan are barred by the doctrine of *res judicata* and that bar should be enforced by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

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Dated: 9/27/18

Exhibit E

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	:	

THE RECEIVER'S REPLY TO OBJECTIONS TO THE
RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

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October 5, 2018

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The Receiver Stephen F. Del Sesto, Esq. (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") submits this memorandum to reply to objections filed by CharterCARE Foundation (""CC Foundation") and various Prospect entities[1] ("Prospect East"), and the "Response" filed by the Rhode Island Attorney General ("Attorney General") (referred to collectively as the "Objectors") to the Receiver's Petition for Settlement Instructions. The Receivership Estate is the Plan on which 2,729 individuals depend for benefits to support themselves and their families in retirement. The Receiver apologizes for the length of this submission, which is the result of responding to three sets of objections, totaling over 309 pages including documents the Objectors ask the Court to read as exhibits. The Receiver submits a single memorandum, instead of separate replies to each Objector's memorandum, to avoid burdening the Court with the repetition of arguments on the many overlapping issues and arguments.

BACKGROUND

The Receiver has requested authority to proceed with the proposed settlement ("Proposed Settlement") of claims the Receiver has asserted against CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (collectively the "Settling Defendants"), in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No:

[1] The Prospect entities that have filed a "joint objection" are Prospect Medical Holdings, Inc. ("Prospect Medical"), Prospect East Holdings, Inc. ("Prospect East") (misnomered by Prospect as "Prospect East Medical Holdings, LLC"), Prospect CharterCare, LLC ("Prospect Chartercare"), Prospect CharterCare SJHSRI, LLC ("Prospect Chartercare St. Joseph"), and Prospect Chartercare RWMC, LLC ("Prospect Chartercare Roger Williams"). However, as discussed herein, their objections are based primarily on alleged breaches of a limited liability company agreement to which CCCB and Prospect East are parties, and the Prospect entities do not differentiate amongst themselves for purposes of any of their objections to the Proposed Settlement. Accordingly, these entities are referred to collectively as "Prospect East."

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").

If this Court accepts the Receiver's recommendation, the next step will be that the Receiver's Special Counsel and counsel for the Settling Defendants will file a motion in the Federal Court Action asking that the Proposed Settlement be approved by that court, because the Federal Court Action includes a class action, and judicial approval of settlements of class actions is required 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 Receivership Estate to obtain the benefits of the recently enacted Rhode Island statute specifically addressed to settlements involving the Plan, R.I. Gen. Laws § 23-17.14-35.

ARGUMENT

I. Standard for Settlement Approval Contingent on Approval of Another Court

As set forth below, there are recognized standards applicable to the situation in which a receiver requests settlement authority from a receivership court and that court's approval is all that is required for the receiver to conclude the settlement. However, that is not our situation. Here the Receiver is asking this Court for authority to seek settlement approval from another court. There does not appear to be (and the Objectors have failed to cite) any established standard directly applicable to this scenario.

The two levels of judicial approval should be acknowledged and addressed, however, since they raise issues of possible overlap and duplication of rulings between the two proceedings. Unfortunately, and notwithstanding that this was the principal issue discussed in the nearly two-hour joint scheduling telephone conference called by

the Honorable Brian Stern of this Court and Chief Judge William Smith of the Federal Court on the morning of September 26, 2018, none of the Objectors suggest how it should be addressed. Indeed, they do not even acknowledge the issue, with the exception of the final sentence in CC Foundation's memorandum.[2]

It is respectfully submitted that there are logical divisions between the two proceedings, which reasonably and properly would support an allocation of issues between the two courts. This Court appointed the Receiver, and is administering and overseeing the Receivership Proceeding, such that this Court needs to determine whether the Proposed Settlement is in the best interests of the Receivership Estate. It is not necessary, however, for this Court to consider the impact of the Proposed Settlement on the rights of the Defendants (including the Objectors). Those Defendants and the Attorney General are not parties to the Receivership Proceedings.[3] Moreover, as discussed below, the Objectors' claims that the Proposed Settlement improperly affects their legal rights are intertwined with the merits of the Receiver's claims against CC Foundation, Prospect East, and the other Defendants in the Federal Court Action. Finally, the Proposed Settlement cannot be implemented unless and until the Federal Court approves it, such that the impact on the Objectors' rights if this Court approves the Proposed Settlement at this time is at best speculative.

[2] CC Foundation asserts all of its substantive arguments, asks the Court to reject the Proposed Settlement, and then states that "if this Court is not inclined at this juncture to address CCF's objections to the legality of the Settlement Agreement terms regarding CCF, then this Court should make clear in its ruling that CCF's right to raise these objections is expressly reserved for subsequent determination by the federal court." CC Foundation Objection at 18.

[3] They have appeared in the Receivership Proceedings solely because Special Counsel subpoenaed their documents and the Court issued orders applicable to their document production.

In these circumstances, one solution may be to limit the issue before this Court in connection with the Petition for Settlement Instructions to whether it is in the best interests of the Receivership Estate for the Receiver to proceed with the Proposed Settlement, reserving all other possible objections to be heard in the Federal Court Action, including the Objectors' claims that the Proposed Settlement somehow unfairly prejudices their interests or the interests they purport to represent. If this Court concludes that it is in the best interests of the Receivership Estate for the Receiver to proceed with the Proposed Settlement, the Receiver will file his motion for settlement approval in the Federal Court. CC Foundation and Prospect East certainly will have standing in the Federal Court Action, where at least they are parties, and, if he meets the requirements, the Attorney General can intervene to interpose any objections he may have. The Objectors will be entitled to be fully heard in the Federal Court Action on all of their objections to the Proposed Settlement, subject, of course, to the right of the Federal Court to conclude that those objections are premature until the Receiver actually asserts claims against in an adversary proceeding, in which event those adversary proceedings will be the opportunity for the Objectors to make their arguments in defense of the Receiver's claims.

If any of the parties disrespect this allocation of issues between the two courts, and seek to raise in the Federal Court Action the issue of whether the Proposed Settlement is in the best interests of the Receivership Estate, the Federal Court will presumably abstain from reconsidering that issue based on comity, and in deference to the fact that the Receivership Proceedings preceded the Federal Court Action and the Court in the Receivership Proceedings has exercised jurisdiction over the entirety of the

Receivership Estate. Foremost, the determination of what is in the best interests of a state court receivership is for the receivership court.

Although we have not found any precedent dealing with this issue in the exact context of two levels of judicial approval for a proposed settlement, this is not the first case involving a possible conflict between a state court receivership proceeding and a federal court action. Here the Court is considering the settlement of claims of the Receivership Estate, and a Settlement Agreement that has been fully executed and constitutes an asset of the Receivership Estate subject to court approvals. The general rule in such circumstances is that the state court receivership proceeding is entitled to deference if it preceded the federal court action. See Safeway Trails, Inc. v. Stuyvesant Ins. Co., 211 F. Supp. 227 (M.D.N.C. 1962), in which the federal court abstained from adjudicating rights to property in the receivership estate, stating as follows:

> State courts are as equally free as federal courts from interference with property in their possession. The Supreme Court has consistently upheld state court receiverships first assuming jurisdiction. . . . We think the fact that the proceeds have not yet been paid into the Florida Court by the defendants is immaterial on the question of whether those proceeds are an asset of the insolvent estate under the jurisdiction of the Florida Court so that a cause of action involving them cannot be maintained elsewhere. "The principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals."

Id., 211 F. Supp. at 237 (quoting Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456 (1939)) (other citations omitted).

Alternatively, if this Court hears and decides *all* possible objections to the Proposed Settlement, and not merely objections pertaining to whether the Proposed

Settlement is in the best interests of the Receivership Estate, and if the Court ultimately authorizes the Receiver to proceed with the Proposed Settlement by taking the next step of seeking approval in the Federal Court Action, then it is clear that the Objectors should not be permitted to re-litigate their objections in connection with the request for settlement approval in the Federal Court Action.

However, such preclusion will not necessarily be easy to apply. For example, it will require the Federal Court to determine what objections were made to and resolved by the Court, and whether any objections not made to the Court are waived because they should have been made. Both of those questions not only will further complicate the proceedings in Federal Court, but also may raise possible issues concerning issue preclusion that may be seized upon as grounds for appeal to the First Circuit.

Those complications for the Federal Court could be avoided (or, at the very least, greatly mitigated) if this Court, instead of adjudicating all possible objections to the Proposed Settlement, limits the issue before the Court to whether it is in the best interests of the Receivership Estate for the Receiver to proceed with the Proposed Settlement, leaving any other possible objections to be dealt with in the first instance by the Federal Court. The Objectors do not claim this would be prejudicial, and, indeed, it is difficult to conceive how parties objecting to the Proposed Settlement would be prejudiced by such a division of issues and responsibilities between this Court and the Federal Court.

II. Standard for Settlement Approval in Receivership Proceedings

A. The Applicable Standard

The first point to consider is that the Receiver's goal and duty is to attempt to maximize the Receivership Estate. "A receiver . . . must 'endeavor to realize the largest

possible amount for assets of the estate.' " Golden Pacific Bancorp. v. F.D.I.C., 375 F.3d 196, 201 (2d Cir. 2004) (quoting Phelan v. Middle States Oil Corp., 154 F.2d 978, 991 (2d Cir. 1946). That duty includes seeking to achieve the best possible settlement for the receivership estate. In re Bell & Beckwith, 77 B.R. 606, 616 (Bankr. N.D. Ohio 1987) ("The Trustee would, of course, be remiss in his fiduciary duties if he did not use the full extent of his powers to bring about the best possible settlement for the estate of Bell & Beckwith.").

The First Circuit has held that, in bankruptcy proceedings in which the trustee seeks court approval to enter into a proposed settlement, the court "is expected to 'assess [ ] and balance the value of the claim[s] ... being compromised against the value ... of the compromise proposal.' " " In re Heathco Int'l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995)) (citation omitted). "A settlement agreement should be approved as long as it does not 'fall below the lowest point in the range of reasonableness.' " In re Heathco Int'l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)). See also In re Mailman Steam Carpet Cleaning Corp., 212 F.3d 632 (1st Cir. 2000) (stating that the test is whether the trustee's actions fall within the universe of reasonable actions, as opposed to whether pressing forward might yield more funds).

According to the First Circuit, in determining whether to approve a settlement, the Court should consider 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 pursing the litigation; and

d) The paramount interest of the creditors and a proper deference to their reasonable views.

Cf. Jeffrey v. Desmond, 70 F.2d 183, 185 (1st Cir. 1995) (bankruptcy context). The "paramount interests of the creditors" in this case are the interests of 2,729 Plan participants in their retirement benefits, who may face severe *pro rata* reductions of their benefits if the Receiver is unable to recover sufficient sums in litigation to fund the Plan. Moreover, the Plan participants include different groups and many different individuals who assert that, if benefits are going to be cut, their own needs are entitled to preference over the needs of other Plan participants. However, these issues of a cut in benefits and the conflicts between Plan participants need never be addressed by the Court if the Receiver is successful.

The federal standards enumerated in the First Circuit have been applied by the Rhode Island Superior Court in receivership proceedings. See, e.g., Brook v. The Education Partnership, Inc., No. PB 08-4185, 2010 WL 1456787, at *3 (R.I. Super. Apr. 8, 2010) (Silverstein, J.). In Brook v. The Education Partnership, Inc., the Superior Court held:

> As discussed supra, in determining whether to approve the Receiver's proposed settlement the Court must consider certain factors and "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Among the factors to be considered are: (1) the probability of success in the litigation; (2) the likelihood of difficulties in collection of any judgment; (3) the complexity, expense, inconvenience, and delay of the litigation involved; and (4) the paramount interests of the creditors. The Court will also give deference to the Receiver's business judgment.

Id. at *5 (internal citations omitted).

Considerable weight is to be given to the Receiver's recommendation:

> When analyzing a proposed sale of property by a receiver, courts apply the highly deferential "business judgment" standard. See, e.g., *Golden Pacific Bancorp v. Fed. Deposit Ins. Corp.*, No. 95 Civ. 9281(NRB), 2002

> WL 31875395, at *9 (S.D.N.Y. Dec. 26, 2002) aff'd by 375 F.3d 196 (2d Cir. 2004). This standard is identical to the test courts use to analyze whether other fiduciaries, such as bankruptcy trustees, acted in accordance with their fiduciary duties. See, e.g., *In re Bakalis*, 220 B.R. 525, 531–32 (Bankr. E.D.N.Y. 1998) (challenges to a bankruptcy trustee's discretion when selling estate property are judged under the highly deferential business judgment test). Here, the task of this Court is not to decide whether it agrees with the Receiver's decision but, rather, whether the Receiver exercised his discretion in a reasonable manner, in good faith, and for sound business reasons. See *Bank of N.Y. Mellon v. Ret. Bd. of the Policemen's Annuity & Benefit Fund of the City of Chi. (In re Bank of N.Y. Mellon)*, 127 A.D.3d 120, 125–26 (1st Dept. 2015) (a fiduciary comports with his fiduciary duty if he exercises his discretionary power "reasonably and in good faith"); Corbin v. Fed. Reserve Bank of N.Y., 475 F. Supp. 1060, 1071 (S.D.N.Y. 1979) (receiver does not breach fiduciary duty if he exercises "reasonable business judgment").

Lawsky v. Condor Capital Corp., 2015 WL 4470332 *6 (S.D.N.Y. 2015).

"A nonsettling defendant does not ordinarily have standing to object to a court order approving a partial settlement since the nonsettling defendant is generally not affected by the settlement." In re Viatron Computer Systems Corp. Litigation, 614 F.2d 1, 6 (1st Cir. 1980). "This rule advances the policy of encouraging the voluntary settlement of lawsuits." Waller v. Fin. Corp., 828 F.2d 579, 583 (9th Cir. 1987). "Thus, '[w]hen the partial settlement reflects settlement by some defendants, appeals by nonsettling defendants have been dismissed, on grounds that mingle concerns of standing with finality concerns.' " In re Integra Realty Resources, Inc., 262 F.3d 1089, 1102 (10th Cir. 2001) (quoting 15B Wright, Miller & Cooper, Federal Practice & Procedure § 3914.19 (2d ed. 1991 & 2001 Supp.) (footnote omitted).

B. The Receiver Has Not Overstepped the Authority Granted Him by the Court

Prospect East lodges the irresponsible accusation that the Receiver has overstepped his authority, by "enter[ing] into a Settlement Agreement without first having sought instructions from the Court." Prospect East Memo. at 7. Not content to

aggrandize to themselves a right to object after-the-fact to a settlement to which they are not parties, Prospect East essentially demands a seat at the negotiating table "before the parties finalized their agreement." Id. Of course, if Prospect East were informed of the Proposed Settlement before the Settlement Agreement was signed and became an asset of the Receivership Estate, then Prospect East or its affiliates would have attempted to prevent the settlement outside of the Receivership Proceedings, which they are now forbidden to do since any interference with the Settlement Agreement would interfere with property of the Receivership Estate, and violate the injunction against such proceedings set forth in the Order Appointing Permanent Receiver.[4]

In short, Prospect East's objection to the fact that the Receiver entered into the Settlement Agreement without notice to the non-settling Defendants is just sour grapes over having missed that opportunity to block the settlement. It also ignores that the Court has already granted the Receiver the authority—indeed ordered him—to take all the actions he has taken. In the Order Appointing Permanent Receiver (entered October 27, 2017), the Court ordered the Receiver to "pursue and preserve all of its [the Plan's] claims." Id. ¶ 4. The Court authorized the Receiver "to take any and all actions or expressly delegate the same which, prior to the entry of this Order, could have been taken by the officers, directors, administrators, managers, and agents of the

[4] See Order Appointing Permanent Receiver (entered October 27, 2017) ¶ 15. The Receiver has filed his motion to adjudge Prospect Chartercare in contempt for filing on September 27, 2018 a Petition for Declaratory Order with the Attorney General, which seeks to invalidate the Settlement Agreement and bar the Receiver from exercising his rights to CCCB's 15% interest in Prospect Chartercare. That Petition constitutes a clear interference with the property and assets of the Receivership Estate in violation of this Court's Order Appointing Permanent Receiver. Prospect Chartercare's willingness to violate the Court's order suggests that, given the opportunity, Prospect Chartercare would have gone to great lengths to attempt to block the Settling Defendants from even entering into a binding settlement with the Receiver.

Respondent." Id. ¶ 4. The Court authorized the Receiver "to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust **and compromise** all claims and suits of, by, against, or on behalf of said Respondent". Id. ¶ 5 (emphasis supplied).

Far from requiring further instructions from the Court before taking any of the foregoing actions, the Receiver is not only authorized but expressly directed by the Court to perform them, unless and until the Court provides further instructions:

> 12. That the Receiver shall continue to discharge said Receiver's duties and trusts hereunder until further order of this Court; that the right is reserved to the Receiver and to the parties hereto to apply to this Court for any other or further instructions to said Receiver and that this Court reserves the right, upon such Notice, if any, as it shall deem proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

Order Appointing Permanent Receiver ¶ 12.

Prospect East cites Manchester v. Manchester, 181 A.2d 235 (R.I. 1962) and Cavanagh v. Cavanagh, 375 A.2d 911, 920 (R.I. 1977) for the propositions that a receiver is an instrumentality of the Court and serves the Court rather than representing any particular party. See Prospect East Memo. at 6. Those banal propositions do not advance Prospect East's position that the Receiver cannot enter into a settlement agreement that is subject to multiple rounds of judicial approval before first seeking permission to enter into that settlement agreement (*i.e.* the settlement agreement that is subject to multiple rounds of judicial approval). Such a requirement would both be unduly cumbersome and disadvantage the Receivership Estate by requiring the Receiver to publish his reasons for recommending a settlement before the terms of the settlement are agreed, to the possible prejudice of the Receivership Estate if settlement terms are not finally agreed upon. It would also require the Court to approve a

hypothetical settlement with no binding assurance it can be achieved. The much better course, and the approach the Receiver has taken, is to negotiate and execute a binding settlement subject to court approval.

III. The Objections of the Non-Settling Defendants and the Attorney General Are Irrelevant to this Proceeding, Premature and Non-Justiciable

The Objectors fail to even address the factors outlined above, governing settlement approval in receivership proceedings, or the fundamental issue of whether the Proposed Settlement represents a favorable outcome for the Receivership Estate and the Plan participants. Notably, no creditor and no one with a beneficial interest in the Receivership Estate is objecting. To the contrary, hundreds of Plan participants support the Proposed Settlement through the submissions of Attorneys Violet, Kasle, and Callaci on their behalf.

Instead, the Objectors seek to prevent the Proposed Settlement because they allege it is unfair to Prospect East and CC Foundation as putative *debtors*[5] of the Receivership Estate, and to the Attorney General who is purportedly proceeding on behalf of the donors of the alleged charitable assets of CC Foundation, and pursuant to his alleged rights and powers under the Hospital Conversions Act.

Those objections are not even relevant to whether the Proposed Settlement represents a favorable outcome for the Receivership Estate. Instead, they seek to change the focus from the core issue of whether the Proposed Settlement is in the best interests of the Receivership Estate and Plan participants, to whether it should be

[5] Based on the claims the Receiver has asserted against them in the Federal Court Action, the State Court Action, and the 2015 *Cy Pres* Proceeding in which the Receiver has just been permitted to intervene.

rejected because it impacts the Objectors' interests, even if rejecting the Proposed Settlement irretrievably damages the interests of the Receivership Estate and the Plan participants.

The requirement for standing on that basis, however, places on the objecting parties "the burden of demonstrating that [he or] she will suffer 'plain legal prejudice' through effectuation of the settlement," and is "narrowly construed and occurs only when a partial settlement deprives a non-settling party of a substantive right." 4 Newberg on Class Actions § 13:24 (5th ed.) (citations omitted). "[A] showing of injury in fact, such as the prospect of a second lawsuit or the creation of a tactical advantage, is insufficient. . . ." Quad/Graphics, Inc. v. Fass, 724 F.2d 1230, 1233 (7th Cir. 1983). As the court stated in Quad/Graphics:

> [W]e do not believe that a court should inquire into the propriety of a partial settlement merely upon a showing of factual injury to a non-settling party. **Some disadvantage to the remaining defendants is bound to occur and may, in fact, be the motivation behind the settlement.** But just as a court has no justification for interfering in the plaintiff's initial choice of the parties it will sue (absent considerations of necessary parties), the court should not intercede in the plaintiff's decision to settle with certain parties, unless a remaining party can demonstrate plain legal prejudice.

Quad/Graphics, Inc. v. Fass, *supra*, 724 F.2d at 1233 (emphasis supplied).

This is, after all, litigation, and it must be assumed that the non-settling Defendants will exercise all of their rights to the fullest, to hinder the Receiver's pursuit of claims against them. Why cannot the Receiver exercise his rights, and negotiate a settlement with one party that includes the transfer of rights to improve the Receiver's position against non-settling Defendants? See Quad/Graphics v. Fass, *supra* ("Some disadvantage to the remaining defendants is bound to occur and may, in fact, be the motivation behind the settlement.").

The typical interest which may confer standing on non-settling parties to be heard in opposition to (but not necessarily require rejection of) a proposed settlement is if the Court's approval of the proposed settlement will affect their rights of contribution. See Waller v. Fin. Corp. of Am., 828 F.2d 579, 583 (9th Cir. 1987) ("[A] nonsettling defendant has standing to object to a partial settlement which purports to strip it of a legal claim or cause of action, an action for indemnity or contribution for example."). The Court's approval of the Proposed Settlement will not affect the non-settling Defendants' rights of contribution, however, since that issue will be addressed when the Receiver applies to the Federal Court for judicial approval of this as a good faith settlement under the recently enacted Rhode Island statute, R.I. Gen. Laws § 23-17.14-35, which specifically addresses the effect of settlements involving the Plan on the contribution rights of non-settling defendants.

Indeed, it is indisputable that *this Court's* allowance for the Receiver to proceed with the Proposed Settlement *will not* legally prejudice any of the Objectors' legal rights, because the only consequence of that allowance should[6] be the Receiver's application to the Federal Court for settlement approval. The Federal Court must approve the Proposed Settlement for its substantive terms to go into effect. Thus, the determination of whether the Proposed Settlement deprives the Objectors of substantive legal rights is premature, and cannot be made unless and until the Federal Court approves the Proposed Settlement, and the terms on which the approval is based are known.

[6] That assumes, however, that the Objectors do not cause the Court to have to address the merits of the claim that the Settlement Agreement prejudices their interests. In that case, the Receiver reserves the right to argue in the Federal Court that this Court's determination of those claims should be given preclusive effect, under issue preclusion, abstention, or any other potentially applicable law.

In other words, the issue of whether the Proposed Settlement deprives the Objectors of substantive legal rights is not presently justiciable, because the possible effect of another court's future decision does not meet the basic requirements to make a dispute a justiciable controversy.

> For a justiciable controversy to exist, "two elemental components must be present: (1) a plaintiff with the requisite standing and (2) 'some legal hypothesis which will entitle the plaintiff to real and articulable relief' " *N & M Properties, LLC*, 964 A.2d at 1145 (quoting *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008)). "The standing inquiry is satisfied when a plaintiff has suffered '[some] injury in fact, economic or otherwise.' " Id. (quoting *Bowen*, 945 A.2d at 317). An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized * * * and (b) actual or imminent, not 'conjectural' or 'hypothetical.' " Id. (quoting *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997)).

Warwick Sewer Authority v. Carlone, 45 A.3d 493, 499 (R.I. 2012). The Objectors can suffer no injury-in-fact from the Proposed Settlement unless and until (at the earliest) the Federal Court approves it, and, until then, their injuries are purely "conjectural" and "hypothetical," rather than "concrete and particularized."

Moreover, even the proceedings for settlement approval in the Federal Court may not implicate the substantive rights of the Objectors, and, therefore, may not even possibly cause them an injury-in-fact. The Federal Court may well approve the Proposed Settlement without prejudice to the Objectors' claims, and leave those issues until the Receiver actually asserts the rights which the Objectors claim are unenforceable. If the Federal Court takes that approach, it will only be in subsequent proceedings that there may be a justiciable controversy over whether enforcement of the rights the Receiver obtains in the Proposed Settlement will inflict a legally cognizable injury on the Objectors, or the interests they claim to represent.

That ruling would be consistent with the general rule that claims by a receiver against putative debtors of the receivership estate, or by a bankruptcy trustee against

debtors of the bankruptcy estate, are determined in adversarial proceedings, when the receiver/trustee is asserting claims against and seeking a recovery from putative debtors, not before the actual assertion of a claim by the receiver/trustee has defined the issues in a concrete dispute.

Thus, courts have denied efforts by putative debtors to preclude bankruptcy trustees in advance of the trustees actually asserting claims against them. For example, in In re Hartley, 36 B.R. 594 (Bankr. N.D. Ohio 1983), the court rejected the efforts of parties who sought to require the bankruptcy trustee to demonstrate probable cause before he would be authorized to bring claims against those parties, stating that "[t]he Court also rejects the claim that it can enjoin any threatened lawsuit resulting from an investigation or require the Trustee to show probable cause as a precondition to initiation of any such litigation." Id. at 596. The court stated as follows:

> The merits of the Trustee's claim, if any, against a third party should be determined in whatever forum the trustee eventually initiates his claim, see, *Palmer v. Travelers Insurance Co.*, 319 F.2d 296 (5th Cir. 1963), and should not be preempted by this Court.
>
> * * *
>
> The Court should not and will not rule on the merits of the Trustee's claim, if any, other than in an appropriate adversarial proceeding initiated on the claim.

Id. at 597. Similarly, in Commodity Futures Trading Com'n v. Chilcott Portfolio Management Inc., 713 F.2d 1477 (10th Cir. 1983), the Court of Appeals affirmed the trial court's order that the equity receiver appointed by the trial court had capacity to assert certain third party claims, and both the trial court and the Court of Appeals refused to consider objections to the receiver's standing to assert those claims based on the alleged lack of injury to the Receivership Estate. The Court of Appeals stated:

> These questions require some consideration of the merits and the District Court felt the standing question should be left to Judge Carrigan in the Receiver's action and other Judges presiding in other suits brought by the Receiver. We agree and likewise do not treat the standing question.

Id., 713 F.2d at 1482-83.

Similarly, in Campbell Investors v. TPSS Acquisition Corp., 787 N.E.2d 78 (Ohio App. 2003), the Ohio Court of Appeals affirmed a trial court order holding that a receiver in settlement of a receivership claim could properly take an assignment of claims against a party against whom the receiver had already asserted fraudulent transfer claims, over objections by that party that that the assignment should not be allowed because the assigned claims against it had no merit. The appellate court described the issues as follows:

> Appellant next asserts that the trial court erred in approving the assignment agreement because the claims that [the Receiver] DeNune seeks to add to his federal suit are frivolous. More specifically, appellant contends that because the federal court will likely dismiss the [assigned] claims for lack of standing and/or *res judicata*, the trial court should have denied DeNune's motion. The merit of the receiver's [direct fraudulent transfer] claims against [the party] Consolidated, however, was not before the trial court and is not before this court.

Id., 78 N.E.2d at 81. The court refused to even consider the merits of the assigned claims, but, instead, based its affirmance on the fact that the merits of the assigned claims were intertwined with the fraudulent transfer claims, stating:

> Accordingly, the subject of the assignment agreement, including the promissory note, is extensively intertwined with the allegedly fraudulent conveyances and conversion that the receiver has asserted deprived the TPSS creditor's of their property. Under these circumstances and in light of *Milo*, *supra*, we cannot say that the trial court erred in approving the assignment agreement and permitting the receivership to continue.

Id., 78 N.E.2d at 82 (citation omitted). This case has strong parallels to the case *sub judice*, in which the merits of the claims against CC Foundation and Prospect East that

the Receiver seeks to obtain by assignment are also extensively intertwined with the merits of the Receiver's fraudulent transfer claims against those same defendants.

Similarly, in In re SE Techs., Inc., No. 03-50895 AHWS, 2012 WL 5921198 (Bankr. D. Conn. June 20, 2012), a federal trial court approved a bankruptcy trustee assigning the debtor's legal malpractice claim to a creditor of the bankruptcy estate, to be prosecuted in state court, in return for a share of the recovery, even though the federal court expressed doubt as to whether the claim was assignable. The federal court simply retained jurisdiction over the claim if the state court concluded that the claim was not assignable. Id., 2012 WL 5921198, at *3.

Thus, even Federal Court approval of the Proposed Settlement may not constitute an injury-in-fact. *A fortiori*, this Court's authorization for the Receiver to apply to the Federal Court for approval of the Proposed Settlement does not constitute an injury-in-fact, and, therefore, the Objectors' arguments against the Proposed Settlement are not justiciable at this time.

IV. The Objectors Can Suffer No Injury from the Settlement Agreement

A. CC Foundation Can Suffer No Injury from the Settlement Agreement

As discussed below, the rights concerning CC Foundation that the Receiver will obtain under the Settlement Agreement will be enforceable. However, the Court need not even consider that issue, because CC Foundation will suffer no injury whether or not they are enforceable.

Under CC Foundation's by-laws,[7] only a member can elect directors. See Tab 1 at 3. It is undisputed that CCCB, the sole member, did not elect CC Foundation's

[7] Attached hereto at Tab 1.

current acting "directors".[8] Accordingly, if CCCB is in fact CC Foundation's sole member, then those acting directors or whoever else is authorizing this litigation and expending assets under the name of CC Foundation are usurpers, with no legal authority and no right or claim to the assets of CC Foundation. See, e.g., Beraksa v. Stardust Records, Inc., 30 Cal.Rptr. 504, 508 (Cal. App. 2d Dist. 1963) ("A mere usurper, not acting under any color of office, is not a *de facto* officer.") (holding purported directors personally liable to creditors of corporation where directors had been "elected" by pledgee of shares which had no voting rights).

Accordingly, If CCCB is its sole member, then whoever is objecting to the Proposed Settlement under the name of CC Foundation clearly will suffer no legally cognizable injury from the impact of the Proposed Settlement on CC Foundation, because they have no lawful interest in CC Foundation, any more than a thief has a legally cognizable injury when the true owner asserts his property rights.

On the other hand, if CCCB is not CC Foundation's member, then CCCB has no rights to exert over CC Foundation. All CCCB can assign, and all the Receiver seeks, or could seek from CCCB, is whatever rights CCCB has with respect to CC Foundation. In that sense, the assignments the Receiver will obtain from CCCB are akin to quit-claim deeds which receivers commonly take in settlement from settling debtors who are unwilling to warrant their title. If CCCB has no rights, then CCCB has assigned nothing, the Receiver has obtained nothing, and CC Foundation's legal rights have not been prejudiced. The fact that in such circumstances CC Foundation could successfully defend against the claim of the Receiver does not constitute deprivation of a substantive

[8] Indeed, CC Foundation relies on that fact to help support its argument that CCCB abandoned or waived its membership interest in CC Foundation.

right sufficient to confer standing to object to the Proposed Settlement. "[A] showing of injury in fact, such as the prospect of a second lawsuit or the creation of a tactical advantage, is insufficient…" Quad/Graphics, Inc. v. Fass, *supra*, 724 F.2d at 1233.

It should be noted that if the Proposed Settlement becomes effective, and if the Receiver is able to use CCCB's membership interest to secure CC Foundation's "charitable trust assets in order to use them for the private benefit of Plan participants," it will only be because it is finally determined that CCCB itself had that right and power. In other words, CC Foundation will suffer no prejudice to its legal rights or be in any legally worse position if the Receiver does what CCCB already has the right and power to accomplish. Whatever legal tools that CC Foundation could use to defeat CCCB's efforts will be available to defeat the Receiver.

B. The Attorney General Also Can Suffer No Injury From the Settlement Agreement

The Attorney General objects to the effect the Proposed Settlement will have on the corporate structure, governance, and charitable assets of CC Foundation. As discussed below, those objections are meritless. But the Court need not even analyze the merits of those claims. Just as with CC Foundation and Prospect East, and whether he is acting on behalf of for the donors of CC Foundation's charitable assets, or in his role under the Hospital Conversions Act, the Attorney General also will suffer no injury from the Settlement Agreement, regardless of the merits of his objections.

If CCCB is not CC Foundation's member, or if CCCB's interests are not assignable, then the Receiver will have no rights to exert over the corporate structure, governance, or charitable assets of CC Foundation. Accordingly, none of the interests that the Attorney General is purporting to protect would be affected. On the other hand,

if CCCB is CC Foundation's sole member, and if CCCB's interests are legally assignable to the Receiver, the Attorney General is not injured by the Receiver's lawful exercise of those rights.

It is also equally true for the Attorney General, as for CC Foundation, that whatever rights the Attorney General would have to prevent CCCB from ultimately securing CC Foundation's "charitable trust assets in order to use them for the private benefit of Plan participants," the Attorney General will also have against the Receiver's efforts. Thus, the Proposed Settlement does not put the Attorney General in any worse position than the position he currently occupies.

C. Prospect East Can Suffer No Injury From the Settlement Agreement

Prospect East objects to the provisions of the Settlement Agreement wherein CCCB agrees to allow the Receiver to exercise of control CCCB's exercise of certain rights that CCCB has arising out of its 15% interest in Prospect Chartercare. As discussed below, those provisions are legally enforceable and, therefore, cause Prospect East no legally cognizable injury.

On the other hand, if these Settlement Agreement provisions are unenforceable as Prospect East contends, then, by definition, they will cause Prospect East no legally cognizable injury. Certainly the possibility that Prospect East may have to defend against unenforceable claims does not constitute plain legal prejudice which entitles it to object to the Proposed Settlement. As noted, the likelihood that a settlement will generate a second lawsuit against a non-settling defendant does not confer standing for the non-settling defendant to object to the settlement. Quad/Graphics, Inc. v. Fass, *supra*, 724 F.2d at 1233.

V. The Receiver May "Lawfully" Accept the Assignment of CCCB's Rights in CC Foundation, and of CCCB's Interests in Prospect Chartercare, Regardless of Whether or Not They Are Ultimately Determined to Be Enforceable

In addition to (incorrectly) claiming that the Proposed Settlement injures them, the Objectors contend it is illegal, and, therefore, the Receiver should not be permitted to pursue it. Thus, CC Foundation asserts the principle that "[a] Rhode Island court should neither endorse, nor enforce, any settlement agreement that violates Rhode Island law." CC Foundation Objection at 3.

The Receiver and his attorneys, as officers of the Court, could not agree more with that principle. However, it does not prohibit the Receiver from asserting uncertain or disputed claims that may ultimately be determined to be unmeritorious, or from taking an assignment from a debtor in connection with a settlement of the claims of the Receivership Estate that is later determined to be unenforceable. Calling such action "illegal" and prohibiting the Receiver from engaging in it would cripple the Receiver's ability to maximize the interests of the Receivership Estate, and impose restrictions that exist for no other litigant. In other words, there is a great deal of difference between an "illegal" settlement, and a settlement in which the Receiver obtains assignments of claims which may or may not be meritorious, or where there is a dispute as to whether the claims are assignable.

As already noted, the Receiver has the right and duty to attempt to maximize the assets of the Receivership Estate. That entitles the Receiver, under appropriate instruction from the Court, to assert disputed or uncertain claims. Indeed, this is precisely what the Court has permitted the Receiver to do in commencing and prosecuting the Federal Court Action and the State Court Action, and in intervening in

the 2015 *Cy Pres* Proceeding. The Defendants in those actions are vigorously defending themselves and seeking outright dismissal of those claims, but that does not make the Receiver's assertion of those claims "unlawful," even if Defendants were to prevail. Of course, the Receiver must proceed in good faith and in compliance with the dictates of Rule 11, just as any other litigant, but the Receiver also has the same rights as any other litigant to assert uncertain or disputed claims, and is not required to attempt to maximize the assets of the Receivership Estate with one hand tied behind his back.

Those same standards apply to disputed or uncertain claims that the Receiver obtains in settlement of the claims of the Receivership Estate. The "legality" of the Receiver's assertion of disputed or uncertain claims should not and does not turn on whether those claims were originally the property of the Receivership Estate (such as the claims the Receiver is asserting in the Federal Court Action), or were obtained by the Receiver as consideration for the settlement of the Receivership Estate's claims against debtors of the Receivership Estate. In other words, just as the Receiver is entitled to assert uncertain or disputed claims that are the original property of the Receivership Estate, so too he is entitled to assert uncertain or disputed claims assigned in settlement of claims of the Receivership Estate.

Similarly, there is nothing unlawful in the Receiver's taking an assignment of an interest that ultimately may be determined to be non-assignable, such that the assignment cannot be enforced. It surely would be ludicrous, and severely cripple and undermine his ability to maximize the assets of the Receivership Estate, to prohibit the Receiver from taking assignments of claims against third parties unless the rights of assignment were ironclad, and the assigned claims were determined to be 100%

meritorious, all in advance of the assignment (and, of course, the assertion of the assigned claim)! As a practical matter, that would prohibit a receiver from taking assignments in connection with settlements, because there is no sure thing in litigation. Even if it did not constitute an absolute prohibition, such a rule would greatly interfere with receivership proceedings. For example, such a limitation would cause parties against whom a receiver may assert assigned claims to flood the receivership proceedings for rulings heading off the receiver, seeking a free bite at the apple in that context, and then a second bite by opposing the claim when it is asserted by the Receiver.

Thus, the possibility (which the Receiver does not concede) that CCCB's interests as sole member in CC Foundation, or CCCB's 15% interest in Prospect Chartercare, may ultimately be determined to be non-assignable, does not preclude the Receiver from taking those assignments and litigating their enforceability. That is not what is intended by the principle that "[a] Rhode Island court should neither endorse, nor enforce, any settlement agreement that violates Rhode Island law."

The cases that CC Foundation cites to the effect that a court will not approve an "unlawful settlement" are not to the contrary. Indeed, the only Rhode Island case cited did not even involve a court approval of a settlement, but, rather, a post-settlement attempt to enforce the agreement, in which the Court (not surprisingly) held that settlements entered into in contravention to a statute are void and, therefore, unenforceable. Power v. City of Providence, 582 A.2d 895, 900 (R.I. 1990) ("We rule today that to the extent that Power claims any rights under the settlement agreement, the settlement agreement is void because it directly conflicts with the act."). If CCCB's assignment is unenforceable, as CC Foundation contends, CC Foundation may assert

that defense when the Receiver seeks to enforce the assignment. However, CC Foundation is not entitled to have that issued determined in advance, in connection with the Receiver's Petition for Settlement Instructions.

The second case CC Foundation cites[9] merely includes the statement that "courts will not approve settlement agreements that are 'illegal, a product of collusion, or against the public interest.'" In order for the Settling Parties to obtain the benefits of R.I. Gen. Laws § 23-17.14-35, the Federal Court will have to be satisfied that this is a "good faith settlement," which the statute defines as "one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors' proportionate share of liability."

The third case CC Foundation cites, In re Capmark Fin. Grp. Inc., 438 B.R. 471 (Bankr. D. Del. 2010), dealt with a proposed settlement of the claims of secured creditors *against the bankruptcy estate*, to which the unsecured creditors objected on the grounds that the trustee lacked authority under Bankruptcy Code to enter into a settlement in which the trustee paid a pre-petition secured claim. After stating that "the Court may not approve a settlement that would violate applicable law," the court found that the trustee had such authority and therefore the settlement was lawful. In re Capmark Fin. Grp. Inc., *supra*, 438 B.R. at 476 ("The Court disagrees with the Official Committee's assertion that there is no basis in the law to allow for the payment through a settlement and outside of a plan of reorganization of a secured creditor's pre-petition claim. There is ample authority under the Bankruptcy Code for such payment."). No

[9] In re Health Diagnostic Laboratory, Inc., 588 B.R. 154, 162 (Bankr. E.D. Va. 2018)

such issues are presented here concerning whether the Receiver has power to settle the claims involved in the Proposed Settlement.

The fourth (and final) case cited by CC Foundation, In re Telcar Grp., Inc., 363 B.R. 345 (Bankr. E.D.N.Y. 2007), involved a settlement in which the bankruptcy trustee agreed to share the bankruptcy estate's recovery on a contingent claim with a fact witness whose testimony would be necessary to prove the claim. The court rejected the settlement on the grounds that it was an agreement to pay for favorable testimony, which would be a crime. In re Telcar Grp, Inc., *supra*, 363 B.R. at 357 ("Here, by reason of the reimbursement and release provisions of the Amended Settlement, Mignone has been offered something of value which, on its face, appears to be in violation of 18 U.S.C. § 201, *et. seq.* since that statute criminalizes the giving of something of value for or because of past or potential testimony before a Court."). There is no even colorable argument that the Proposed Settlement is criminal.

Although Prospect East also makes the argument that the Proposed Settlement "violates Rhode Island law," Prospect East cites no authority for that claim, other than "[t]he Court should deny the Settlement Petition and reject the Settlement Agreement because it violates the Settlement Statute as it plainly evidences collusion among the Receiver, Special Counsel, and the Settling Parties." Prospect East Memo. at 8 (quoting a portion of R.I. Gen. Laws § 23-17.14-35).

Prospect East apparently does not understand R.I. Gen. Laws § 23-17.14-35. That statute provides a benefit to the Receivership Estate if a "good-faith settlement" is proven, by eliminating the non-settling Defendants' rights to a settlement credit based on the Settling Defendants' proportionate fault, and provides a benefit to the Settling Defendants by eliminating their liability for contribution. See Gray v. Derderian, No. 03-

483L, 2009 WL 1575189 (D.R.I. June 4, 2009) (Lagueux, J.) ("Such a finding is necessary to extinguish all potential contribution claims by joint tortfeasors against the Movants once the requisite releases have been executed.") (referring to R.I. Gen. Laws § 42-116-40 (the DEPCO statute), upon which R.I. Gen. Laws § 23-17.14-35 is patterned).

The consequence if a settlement does not comply with the requirements of R.I. Gen. Laws § 23-17.14-35 is that these benefits are unavailable, not that settlements which fail to comply with those requirements are prohibited or unenforceable. Insofar as Prospect East is truly asking the Court to determine whether the Proposed Settlement meets those standards, that inquiry is premature. The Receiver is merely asking the Court for authority to seek settlement approval from the Federal Court, which will be asked to approve the Proposed Settlement as a good-faith settlement under R.I. Gen. Laws § 23-17.14-35. The Receiver is *not* asking the Court to determine whether the Proposed Settlement is entitled to the benefits afforded by R.I. Gen. Laws § 23-17.14-35.

If, however, Prospect East is asserting "collusion" as a basis to deny the Petition for Settlement Instructions, independent of R.I. Gen. Laws § 23-17.14-35, that would be a perfectly appropriate argument except it has absolutely no basis in fact. Prospect East makes the following claim:

> Unambiguously, the Settlement Agreement plainly evidences the Settling Parties' complicit capitulation to its provisions. Such collusion is evident in the Settling Parties' admission of liability, their admission of causing "at least" $125,000,000 in damages, and allowing the Receiver to oversee and conduct the Settling Parties' dissolution and liquidation. The Settling Parties' yielding to the Receiver and Special Counsel's demands can be nothing more than the Receiver, Special Counsel, and Settling Parties acting in cohort to the detriment of other litigants in the Federal Action, the exact actions that the Settlement Statute was enacted to prevent. The

> collusion among the Settling Parties, the Receiver, and Special Counsel is plainly evident in several paragraphs of the Settlement Agreement.

Prospect East Memo. at 8-9. The "Settling Parties" to the Settlement Agreement are the Receiver and the Settling Defendants. Presumably, when Prospect East refers to the Settling Parties, it is referring to the Settling Defendants, since all of the Settlement Agreement provisions to which it refers ("the Settling Parties' admission of liability, their admission of causing 'at least' $125,000,000 in damages, and allowing the Receiver to oversee and conduct the Settling Parties' dissolution and liquidation") are concessions that the Receiver extracted from the Settling Defendants.

That correction only leads to the real problem with this argument, which is that all of the provisions to which Prospect East objects as evidence of "collusion" are benefits to the Receivership Estate. "Collusion" in the context of the Petition for Settlement Instructions can only mean that the Receiver and the Settling Parties have secretly agreed to a result which disadvantages the Plan participants, which, for example, can occur when named class representatives or class counsel agree with a defendant to a settlement that disadvantages all or some of the absent members of the class:

> In class actions, for example, "[a]lthough the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement. The court must therefore scrutinize the proposed settlement agreement to the extent necessary to 'reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' "

Robbins v. Alibrandi, 25 Cal.Rptr.3d 387, 394 (Cal. App. 2005) (citations omitted). Here, Prospect East is objecting that the Proposed Settlement is too beneficial to the Receiver, and the product of "capitulation" by the Settling Defendants. None of the Plan participants would object, however, that the settlement which the Receiver negotiated is

too favorable to them. Moreover, by definition, all settlements constitute "capitulation" by at least one of the settling parties.

What Prospect East's "collusion" argument boils down to is that the Receiver was too aggressive, and should have left potentially obtainable assets on the settlement table, or the Settling Defendants were too submissive, and should have refused to settle if the Receiver required these assignments as a condition for settling. That is not the law. To the contrary, not only does the Receiver have the right to drive the hardest bargain he can, he "must 'endeavor to realize the largest possible amount for assets of the estate.'" Golden Pacific Bancorp. v. F.D.I.C., 375 F.3d 196, 201 (2d Cir. 2004) (quoting Phelan v. Middle States Oil Corp., 154 F.2d 978, 991 (2d Cir. 1946)).

VI. Prospect East's Objections are Meritless

A. The Receiver Is Entitled to Obtain CCCB's Interest in Prospect Chartercare

1. The Proposed Settlement Does Not Transfer Rights in Violation of the LLC Agreement

Prospect East has objected to the Proposed Settlement on the grounds that it violates the anti-transfer provisions in the Prospect CharterCare Limited Liability Agreement ("LLC Agreement") between and among CCCB, Prospect East, and Prospect Chartercare.

Of course, the Receiver is not a party to the LLC Agreement. It certainly could be argued that it is irrelevant in the Receivership Proceedings whether the Proposed Settlement constitutes a breach of contract between the Settling Defendants and third parties. The Court need not reach that conclusion, however, because it is clear as a

matter of law that the provisions of the Settlement Agreement to which Prospect East objects do not violate the LLC Agreement.

The relevant provisions of the Settlement Agreement and the language of the LLC Agreement must both be addressed for the merits of that argument to be considered by the Court.

Prospect East objects to the provisions of the Settlement Agreement that give the Receiver any rights with respect to CCCB's interests in Prospect Chartercare, including especially CCCB's 15% membership interest. Those provisions consist of a definition and certain substantive terms. The definition is as follows:

> d. "CCCB's Hospital Interests" means all of the claims, rights and interests against or in Prospect CharterCare, LLC that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in Prospect CharterCare LLC, and any rights or interests that SJHSRI or RWH may have in connection therewith.

Settlement Agreement ¶ 1(d).

The substantive terms to which Prospect East objects state as follows:

> 17. The Settling Defendants warrant and represent that, to their knowledge, CCCB's Hospital Interests stand solely in the name of CCCB, that CCCB has not participated in the amendment or revision of the LLC Agreement from its original terms, and that CCCB has not assigned, transferred, or otherwise limited or encumbered such rights or interests, and that following the execution of the Settlement Agreement, CCCB will not assign, transfer, or otherwise limit or encumber such rights or interests except with the express written consent of the Receiver. The Settling Defendants agree to hold the CCCB Hospital Interests in trust for the Receiver, and that the Receiver will have the full beneficial interests therein.
>
> 18. At the written direction of the Receiver addressed to Counsel for the Settling Defendants at any time the Receiver may choose, provided it is more than five (5) business days after the Effective Date, the Settling Defendants agree that CCCB will exercise the put option referred to in the LLC Agreement as the "CCHP Put Option," (the "Put Option") in accordance with the terms of the LLC Agreement

pertaining to said exercise, or as the Receiver may otherwise direct, at such time as the Receiver may elect, and that the Receiver shall participate with CCCB in all matters concerning the exercise of the Put Option, and that the Settling Defendants shall promptly take all steps reasonably requested by the Receiver in connection therewith, and transfer to the Receiver any payment to or on behalf of CCCB for all or any part of the CCCB Hospital Interests, to be disposed of by the Receiver for the benefit of the Plan in accordance with the orders of the court in the Receivership Proceeding, as set forth in paragraph 33 of this Settlement Agreement.

19. The Settling Defendants agree that, in the event that the Receiver decides that CCCB should not exercise the Put Option, or if CCCB attempts to exercise the Put Option but the attempt is rejected, or in the judgment of the Receiver the result of that attempted exercise is not wholly successful, the Receiver may sue in the name of CCCB to collect or otherwise obtain the value of such beneficial interests, and to cooperate in any litigation commenced by the Receiver and to comply with all of the Receiver's reasonable requests to maximize and realize the full value of CCCB's Hospital Interests, subject to any orders of the court in the Liquidation Proceedings concerning CCCB's responsibilities, to be paid to and distributed by the Receiver for the benefit of the Plan in accordance with the orders of the court in the Receivership Proceedings, as set forth in paragraph 33 of this Settlement Agreement.

20. In the event that the Settling Parties are still seeking the Order Granting Final Settlement Approval on June 20, 2019, the Settling Defendants agree to exercise the Put Option upon the request of the Receiver and at such time as the Receiver may select, provided the Settling Defendants shall have no such obligation if the Receiver makes the request after the Court has refused to grant final settlement approval.

* * *

29. In connection with the execution of this Settlement Agreement, the Settling Defendants and the Receiver will execute a security agreement granting to the Receiver a security interest (the "Receiver's Security Interest") in all of their accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-or-credit rights, letters of credit, money, and general intangibles (the "Security Agreement") and the UCC-1 Financing Statement attached hereto as Exhibits 19 & 20, respectively, and such other documents as the Settling Parties agree are reasonably necessary to effectuate and perfect the Receiver's Security Interest, to secure the payment of the Initial

> Lump Sum and the obligations of the Settling Defendants under paragraphs 12, 13, 15, 18, 19, 20, 21, and 26 of this Settlement Agreement.

Settlement Agreement ¶¶ 17-20, 29. Moreover, Prospect East objects to the fact that the UCC-1 Financing Statement referred to in paragraph 29 has actually been filed with the Rhode Island Secretary of State.

Prospect East asserts that the above-quoted provisions of the Settlement Agreement violate Section 13.1 of the LLC Agreement, which states in pertinent part as follows:

> 13.1 Transfers by Members. **Except as otherwise set forth in this Article XIII**, a Member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly through the transfer of the power to control, or to direct or cause the direction of the management and policies of; such Member).

LLC Agreement Article XIII, Section 13.1 (emphasis supplied).

The Receiver concedes, for purposes only of the Petition for Settlement Instructions, that the paragraphs of the Settlement Agreement to which Prospect East objects, taken collectively, might be argued to violate this provision of the LLC Agreement *unless* they were allowed "as otherwise set forth in Article XIII." However, the Receiver makes that concession because it is clear as a matter of law that the paragraphs of the Settlement Agreement to which Prospect East objects are expressly permitted in Article XIII of the LLC Agreement, which permit transfers to "affiliates" or "successors" of CCCB, because the Receiver and the Plan come within the definitions set forth in the LLC Agreement for "affiliates" and "successors" of CCCB.

Section 13.2(a)(ii) of Article XIII of the LLC Agreement permits transfers to affiliates:

> 13.2 Permitted Transfers.
>
> (a) Notwithstanding the restriction in Section 13.1, the following Transfers are permitted and shall not be deemed to violate the restrictions contained in Section 13.1:
>
> * * *
>
> (ii) Transfers by a Member to one or more of its Affiliates, or a Transfer by CCHP to CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation), any such transferee automatically becoming a Substituted Member;

LLC Agreement Article XIII, Section 13.2(a)(ii). The capitalized word "Affiliate" is a defined term, as follows:

> 1.4 "Affiliate" means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and successors or assigns of such Person; and the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, by appointment of trustees, directors, and/or officers, by contract or otherwise.

LLC Agreement Article I, Section 1.4.

The determination whether the Receiver and/or the Plan are an "Affiliate" also depends on the definition of the capitalized word "Person", which the LLC Agreement defines as follows:

> 1.30 "Person" means any individual, partnership, corporation, trust, limited liability company or other entity.

LLC Agreement Article I, Section 1.30.

Applying these defined terms, the Plan is an "Affiliate" of CCCB because CCCB indirectly controlled SJHSRI, which, in turn, directly controlled the Plan, and because the Plan is a "Person" under the contractual definition that an "entity" is a "Person."

Hence, the Plan is a "Person," who "is [indirectly] controlled by" CCCB, and, therefore, the Plan is an "affiliate" of CCCB under the LLC Agreement's definition of "Affiliate."[10]

The transfers from CCCB to the Receiver to which Prospect East objects are transfers to the Plan. Accordingly, the transfers in the Settlement Agreement of certain of CCCB's rights with respect to its 15% interest in Prospect Chartercare are transfers to an "Affiliate" and, therefore, are "Permitted Transfers' under Article XIII of the LLC Agreement.

This analysis not only is indisputable based on the contract language, it also makes perfect sense and is consistent with the overall intent of the parties to the LLC Agreement that CCCB, if it wished, would be able to transfer its 15% interest to any entity which it indirectly or directly controlled. Moreover, the LLC Agreement was reviewed and approved by both the Attorney General and the Department of Health in connection with their approval of the Conversion, who thereby approved CCCB having the right to transfer its interests to an "Affiliate" as defined in the LLC Agreement.

We need not go further, having already demonstrated that the transfers in the Settlement Agreement to which Prospect East objects are "Permitted Transfers" under Article XIII of the LLC Agreement. However, the fact that the Plan is an "Affiliate" of

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[10] In addition, the Order Appointing Permanent Receiver (entered October 27, 2017) expressly provides:

> 3. **The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the Respondent's plan administrator, officers, directors and managers under** applicable state and federal law, the Plan, as amended, the Trust Agreement, as may have been amended **and/or other agreements** in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of RI Rules of Civil Procedure, Rule 66.
>
> [Emphasis supplied]

Thus the rights to receive any transfers under Article XIII of the LLC Agreement were not severed by virtue of SJHSRI's petitioning the Plan into receivership in August 2017.

CCCB is not the only reason the Settlement Agreement does not violate the LLC Agreement. The Receiver is also an "affiliate" of CCCB, to whom CCCB's interests in Prospect Chartercare may be transferred pursuant to Article XIII of the LLC Agreement.

The Receiver is an "affiliate" of CCCB for three reasons. The first reason is that the Receiver is the legal representative of the Plan. See Chitex Communication, Inc. v. Kramer, 168 B.R. 587, 590 (S.D. Tex. 1994) (receiver for insolvent corporation has full rights of corporation); Haas v. Sinaloa Explor. & Dev. Co., 152 A. 216, 219 (Del.Ch. 1930) ("receiver stands in the shoes of the debtor"); AG Route Seven Partnership v. U.S., 57 Fed.Cl. 521, 534 (Ct Cl. 2003) ("Here, the FDIC is present as such legal representative of the corporate entity, to wit, as receiver, and has alleged all claims that it perceives the entity can successfully pursue."). Insofar as the Plan is entitled to receive CCCB's 15% interest in Prospect Chartercare as an "affiliate" of CCCB, then the Receiver in his capacity as legal representative of the Plan is entitled to receive CCCB's 15% interest in Prospect Chartercare on behalf of the Plan.

The second reason the Receiver is an "Affiliate' to whom CCCB may transfer its 15% interest is because, under the terms of the LLC Agreement, the "successor" of an "Affiliate" is thereby also an "Affiliate." Under the LLC Agreement, the term "Affiliate" includes the "successors or assigns of" an "Affiliate." LLC Agreement Article I, Section 1.4. As court-appointed Receiver, and as the current Administrator of the Plan, the Receiver is the "successor" Administrator of the Plan, and specifically the "successor" to SJHSRI, who, until the Receivership Proceedings, completely controlled and was the Administrator of the Plan.

Indeed, the Order appointing the Receiver expressly states that "[t]he Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the

Respondent's plan administrator"[11] (emphasis supplied). Accordingly, the Receiver is an "Affiliate" of CCCB under the definition set forth in the LLC Agreement. That also makes complete sense, even though CCCB does not directly or indirectly control the Receiver, because "successors" typically are not controlled by their predecessors.

Because the term "successor" is not defined in the LLC Agreement, it should be given its plain and ordinary meaning. See Terrien v. Zwit, 648 N.W.2d 602, 613 (Mich. 2002) ("As this Court has repeatedly stated, the fact that a contract does not define a relevant term does not render the contract ambiguous. Rather, if a term is not defined in a contract, we will interpret such term in accordance with its 'commonly used meaning.'") (quoting Henderson v. State Farm Fire & Casualty Co., 460 Mich. 348, 354, 596 N.W.2d 190 (1999)) (additional citation omitted); American Family Life Assur. Co. of Columbus v. Intervoice, Inc., 659 F. Supp. 2d 1271, 1276 (M.D. Ga. 2009) ("Undefined terms in a contract 'are to be given their ordinary and generally accepted meaning unless the [contract] shows that the words were meant in a technical or different sense.'"); Jack v. Paul Revere Life Ins. Co., 982 P.2d 1228, 1234 (Wash. App. 1999) ("Washington law requires us to enforce unambiguous terms in an insurance policy. In so doing, we view the contract in its entirety and read the policy's terms as an average insured would, giving undefined terms their 'ordinary and common meaning.'").

The common meaning of "successor" would include the Receiver.

> Generally, a successor is "[a] person who succeeds to the office, rights, responsibilities, or place of another." Black's Law Dictionary (9th ed. 2009). The word successor can mean one who is entitled to succeed, or it can mean one who has in fact succeeded.

[11] See n.10, *supra*.

Holly Woods Ass'n of Residence Owners v. Hiller, 708 S.E.2d 787, 796 (S.C. App. 2011). A receiver by definition is a "legal successor" of the entity in receivership. See U.S. Fire Ins. Co. v. Moseley, 551 S.W.2d 429, 431 (Tex. App. 1976) ("[The] Receiver is a successor of the Debtor for many purposes."); Husers v. Papania, 22 So.2d 755 (La. App. 1942) ("The expression in defining a person in the above section [as] including the successor or representative of an individual, corporation, partnership, association or other organized group, evidently means the **legal successor or representative of these, such as a receiver**, liquidator, executor, administrator, guardian or tutor.") (emphasis supplied).

The third reason the Receiver is an "Affiliate" to whom CCCB could transfer its rights in the 15% interest is, as noted *supra* at n.10, the Order Appointing Permanent Receiver expressly provided: "The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the Respondent's plan administrator, officers, directors and managers under . . . **other agreements** . . . ." Order Appointing Permanent Receiver ¶ 3 (emphasis added). Thus the Receiver possesses all the contract rights SJHSRI (*i.e.* the Plan's administrator) had under the LLC Agreement, including the right to receive transfer of CCCB's 15% interest in Prospect Chartercare as an "Affiliate" of CCCB.

Accordingly, the terms of the Settlement Agreement to which Prospect East objects do not in fact violate the LLC Agreement, for at least four reasons: 1) because the Plan is an "Affiliate" of CCCB, 2) because the Receiver is also an "Affiliate" of CCCB since the Receiver is the legal representative of the Plan, 3) because the Receiver himself as successor administrator to the Plan is the successor to SJHSRI and therefore also an "Affiliate" of CCCB, and 4) because the order appointing the Receiver

gave him SJHSRI's rights under the LLC Agreement to be transferred CCCB's interests (including its 15% membership interest) as an "Affiliate" of CCCB.

Prospect East complains especially that the UCC-1s filed to perfect the Receiver's security interests in the Proposed Settlement violate the anti-transfer provisions of the Plan because they constitute a prohibited "hypothecation." However, the Receiver and the Plan are "Affiliates" for the reasons previously discussed. The LLC Agreement expressly defines "Transfer" to include hypothecations,[12] and permits transfers between affiliates. Hypothecations between affiliates are permitted because hypothecations are a form of transfer, and transfers between affiliates are permitted. Accordingly, the UCC-1s filed by CCCB with the Rhode Island Secretary of State did not violate the LLC Agreement.

2. The Restrictions on Transfer in the LLC Agreement are Void

"It is well established that '[f]raud vitiates all contracts.' " West Davisville Realty Co., LLC v. Alpha Nutrition, Inc., 182 A.3d 46, 51 (R.I. 2018) (quoting Guzman v. Jan–Pro Cleaning Systems, Inc., 839 A.2d 504, 507 (R.I. 2003)). The Receiver's Complaint in the Federal Court Action[13] alleges as follows:

> d. Beginning in 2011, SJHSRI and other Defendants put into operation a scheme to transfer SJHSRI's operating assets, cash, and most of its expected future charitable income to entities controlled by SJHSRI's parent company, intending that such assets thereby would be out of reach of a suit by the Plan participants, and then terminate the Plan. This scheme had four key stages:

[12] See LLC Agreement Article XIII, Section 13.1 ("Transfers by Members. Except as otherwise set forth in this Article XIII, a Member may not sell, assign (by operation of Law or otherwise), transfer, pledge or **hypothecate** ("Transfer")…") (emphasis supplied).

[13] And in the stayed State Court Action.

> i. First, in connection with the 2014 Asset Sale, SJHSRI and related entities engaged in the fraudulent transfer of SJHSRI's operating assets to the control of a for-profit limited liability company, leaving SJHSRI with the insolvent pension plan and no operating assets, in return for SJHSRI's parent company getting a 15% stake in the for-profit company that they thought would be safe from the claims of Plan participants, and made fraudulent misstatements and material omissions concerning the Plan to the state regulatory agencies whose approval was required for the transfer to go forward.

Complaint ¶ 57(d)(i). The Complaint then extensively describes the fraud, as follows:

> 419. The consideration that Prospect East provided at the closing on or about June 20, 2014 included 15% of the shares of Prospect Chartercare.
>
> 420. The fair market value of that 15% at the time of the asset sale was at least $6,640,000 according to Prospect Chartercare's own audited financials.
>
> 421. The Asset Purchase Agreement had provided that CCCB would receive those shares, as follows:
>
> > Sellers have designated CCHP (the "Seller Member") to be the holder of the units representing the Company's limited liability company memberships on behalf of all Sellers to be issued as partial consideration in respect of the sale by Sellers of the Purchased Assets.
>
> 422. The consideration that the Prospect Entities provided in return for the assets included the undertaking to provide long term working capital of $50,000,000, which conferred a benefit on CCCB as 15% shareholder in the additional amount of $9,479,000, according to Prospect Chartercare's own audited financials.
>
> 423. Thus, notwithstanding that CCCB provided virtually none of the consideration for the transaction, the parties consummated the transaction so that CCCB obtained all of the 15% interest in Prospect Chartercare, totaling a fair market value of at least $15,919,000. SJHSRI and RWH received none of that interest, and, therefore, that valuable asset was not available to satisfy claims of Plan participants, the Plan, or any other creditors of SJHSRI.

Complaint ¶¶ 418-423. Insofar as the Receiver prevails on these claims, any restrictions on transfer of CCCB's 15% interest that are set forth in the LLC Agreement

would be void and unenforceable, both as the product of fraud, and because they themselves are part of the fraud of keeping this 15% interest from the creditors of SJHSRI, including the Plan participants. Indeed, Prospect East's current efforts to use the LLC Agreement to prevent CCCB from transferring its interests to the Receiver are an effort to use contract terms to protect fraud.

We do not expect the Court to adjudicate these issues in connection with the Receiver's Petition for Settlement Instructions. Instead, we offer them as further justification for the Court *not* inquiring into the merits concerning the validity of the provisions in the Settlement Agreement which Prospect East claims are either illegal or impair contract rights. See Campbell Investors v. TPSS Acquisition Corp., supra, 787 N.E.2d at 82 (refusing to prohibit the receiver from taking an assignment of claims, because "the subject of the assignment agreement, including the promissory note, is extensively intertwined with the allegedly fraudulent conveyances and conversion that the receiver has asserted" against the target of the assigned claims). To do so would turn these proceedings into a full-blown trial on the merits, and discourage settlements that in general are favored by the courts. Prospect East and the other objectors will suffer no prejudice if those issues are left for another day, such as when, for example, the Receiver attempts to enforce these provisions, because until then they have not been injured, and at such time their arguments can be fully heard.

B. Prospect East's Other Objections Are Also Meritless

1. There Is Nothing Objectionable about the Settling Defendants' Agreeing to Undergo a Judicially Supervised Liquidation

Prospect East contends—without any authority whatsoever—that it is inappropriate for the Settling Defendants to agree to undergo a judicially supervised

liquidation in the event the Proposed Settlement is approved. See Prospect East's Memo. at 9. The Receiver hopes to obtain additional recoveries in those judicial liquidations, in which the Receiver will assert the Receivership Estate's claims against the remaining assets of the Settling Defendants which are not presently available to be paid in settlement. Far from evincing bad faith or an overstepping of his authority, however, the fact that the Receiver has been able to require that they submit to judicial liquidation is actually evidence of the strength of the legal claims the Receiver has brought against the Settling Defendants and the vigor with which he is pursuing the Court's mandate to maximize the value of the Receivership Estate.

2. There Is Nothing Objectionable about the Settling Defendants' Agreeing to Join the Receiver in Seeking Settlement Approval from the Federal Court

Again without citing any authority, Prospect East contends it is inappropriate for the Settling Defendants to have agreed to seek approval of the Proposed Settlement from the Federal Court. Prospect East's Memo. at 10. Of course, inasmuch as the settlement is a settlement of claims brought as a class action, such claims can only be settled with the approval of the Federal Court where that class action is pending. See Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval."). That is clearly in the Settling Defendants' interests, since federal court approval is the only way that the Settling Defendants can bind the over 2,700 Plan participants who are not named Plaintiffs to the settlement.

3. There Is Nothing Objectionable about the Settling Defendants' Acknowledgment That the Plaintiffs' Damages Are Large and That Their Proportionate Fault Is Small

Again without any citing any authority, Prospect East contends that the Settling Defendants' acknowledgment in the Settlement Agreement that the Plaintiffs' damages are "at least $125,000,000" is unfairly prejudicial to the non-settling Defendants. Prospect East's Memo. at 10. This contention proceeds on three false premises. First, the acknowledged fact happens to be true, and Prospect East does not even suggest otherwise. Second, the Settling Defendants are entitled to make whatever judicial or evidentiary admissions they wish to make. Prospect East has no more right to object to admissions made in the Settlement Agreement than it would to strike such admissions from the Settling Defendants' Answer to the Complaint. Third, the Receiver is entitled to extract settlement terms from the Settling Defendants that will make it more difficult for the non-settling Defendants to escape liability. The non-settling Defendants are entitled, of course, to deny the amount of damages or, indeed, argue that there are no damages.

Again without citing any authority, Prospect East contends that the Settling Defendants' contention that their proportionate fault is small, as recited in the Settlement Agreement, is itself collusive. See Prospect's Memo. at 10-11. Prospect East again misunderstands the meaning of "collusion" in connection with the Petition for Settlement Instructions. The Receiver is entitled to obtain a strategic advantage from the Settling Defendants to be used against the non-settling Defendants. Similarly, the Settling Defendants are entitled to go on record that they believe their proportionate fault is small, but that they are nevertheless settling because the law of joint and several liability could result in their incurring disproportionate liability to the Receiver. See, e.g.,

Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1281 (R.I. 1981 (*per curium*) ("It is a well-settled doctrine that a plaintiff may recover 100 percent of his or her damages from a joint tortfeasor who has contributed to the injury in any degree.").

4. There Is Nothing Objectionable about the Settling Defendants' Agreeing Not to Object to the Receiver's Claims in the *Cy Pres* Proceeding

Finally, Prospect East contends—without any legal support and through an incorrect misreading of the settlement documents—that the Settling Defendants' agreement *not to object* to the Receiver's claims in the *Cy Pres* proceeding is an agreement "to allow the Receiver to direct and control the Settling Parties [*sic recte* Defendants] in the pending Cy Pres Proceeding." Prospect East's Memo. at 11. Their agreement not to object does not confer on the Receiver the right to direct and control the Settling Defendants. Of course the Settling Defendants should and will drop their objections to the Receiver's claims in the 2015 Cy Pres proceeding as part of a complete settlement with the Receiver. The purpose of the Proposed Settlement is to end all litigation between the Receiver and the Settling Defendants.

5. **The Transfer of CCCB's 15% Interest in Prospect Chartercare to the Receiver Would Not Be a "Conversion" Under the HCA**

In its memorandum, Prospect East states that "[t]he Prospect Entities reference and incorporate herein the arguments set forth in the Petition for Declaratory Order." Prospect East Memo. at 12 (referring to Prospect Chartercare's filing with the Attorney General). These arguments include the contention that CCCB's transfer to the Receiver of its 15% membership interest in Prospect Chartercare constitutes a "hospital conversion" under the HCA, which requires prior regulatory approvals. As argued in the Receiver's motion to hold Prospect Chartercare in contempt, filed with this reply

memorandum, Prospect Chartercare's filing of the Petition for Declaratory Order violated the Court's orders and should put Prospect Chartercare in civil contempt. Accordingly, any arguments set forth in the Petition should be completely ignored in connection with the Receiver's Petition for Settlement Instructions. If, however, the Court considers any arguments set forth in the Petition, then the Receiver requests that the Court also consider the Receiver's memorandum in support of his motion to hold Prospect Chartercare in contempt, and the discussion why the proposed transfer does not constitute a "hospital conversion" under the HCA.

VII. The Receiver Has a Good Faith Basis for Believing That CCCB's Assignment of Its Rights in CC Foundation Will Be Enforceable

A. CCCB's Claim to Be CC Foundation's Sole Member

It is undisputed that CC Foundation's Articles of Incorporation list CCCB as its sole member. Indeed, CC Foundation's corporate disclosure filed in the Federal Court Action, attached hereto at Tab 2, makes that admission:

> On August 25, 2011, CCF [CC Foundation] filed with the Rhode Island Secretary of State's Office Articles of Amendment to CCF's Articles of Incorporation stating, in relevant part, that CCCB was CCF's sole member. No amendment to that portion of the Articles of Incorporation has been filed.

It is also indisputable as a matter of law that the articles control in the event of any conflict with the by-laws.[14] Nevertheless, at various times in this litigation, CC Foundation has disputed the Receiver's contention that CCCB is the sole member

[14] See R.I. Gen. Laws § 7-6-34(c) ("(c) Unless the articles of incorporation provide that a change in the number of directors be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws is controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation is controlling.").

of CC Foundation, on the grounds that CCCB allegedly waived or abandoned its membership in CC Foundation.[15]

However, CC Foundation concedes that dispute is not before the Court in connection with the Petition for Settlement Instructions:

> CCF acknowledges, however, that this receivership action is not the proper forum in which the parties should be litigating the merits of the abandonment issue. CCF intends to litigate that issue in a separate forum.

CC Foundation Objection at 2 n.1. The Attorney General also does not dispute in his memorandum that CCCB is CC Foundation's sole member. Indeed, the Attorney General has already accepted as fact that CCCB is CC Foundation's sole member, as discussed *infra* at 53-54.

Thus, the Receiver clearly has a good faith basis for asserting that CCCB is CC Foundation's sole member.

B. CCCB's Rights in CC Foundation Are Assignable to the Receiver

1. The Settlement Agreement Provisions

The provisions in the Settlement Agreement concerning CCCB's assignment of its interest in CC Foundation to the Receiver consist of 1) a definition of those interests, 2) the "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation," which is Exhibit 12 to the Settlement Agreement and which CCCB is required to execute and deliver to the Receiver prior to the assignment, and 3) the provisions in the Settlement Agreement obligating CCCB to assign its interests after that Consent has become effective.

[15] See Tab 2 ("CCF contends, however, that it has functioned independently of CCCB for the last three-to-four years. CCF further contends that, well before this action was filed, CCCB's legal rights as CCF's sole member effectively terminated due to waiver and/or abandonment.).

The definition is as follows:

> c. "CCCB's Foundation Interests" means all of the claims, rights and interests of CCCB against or in CharterCARE Foundation (f/k/a CharterCARE Health Partners Foundation (f/k/a St. Josephs Health Services Foundation")), including but not limited to the right to recover funds transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to CCCB's present or former status as a member or sole member of CharterCARE Foundation.

Settlement Agreement ¶ 1(c).

The substantive provisions to which CC Foundation objects are as follows:

> 12. Within five (5) business days after the Effective Date, the Settling Defendants agree to deliver to Plaintiffs' Counsel a document evidencing consent by CCCB as sole member of CharterCARE Foundation (CCCB's Consent as Sole Member") pursuant to R.I. Gen. Laws § 7-6-104, in the form attached hereto as Exhibit 12.
>
> 13. Within ten (10) business days after the Effective Date, the Settling Defendants agree to deliver to Plaintiff's Counsel an irrevocable assignment (the "Irrevocable Assignment") to the Receiver of all of CCCB's Foundation Interests, effective ten (10) days thereafter, and, upon written request of the Receiver, to promptly give CharterCARE Foundation written notice of said Irrevocable Assignment by certified mail to CharterCARE Foundation c/o Paula Iacono, 7 Waterman Avenue, North Providence RI, or such other person who becomes CharterCARE Foundation's registered agent, and to counsel for CharterCARE Foundation in the Federal Court Action, with copy to Plaintiffs' Counsel. The Settling Defendants further agree to thereafter assist the Receiver's efforts to confirm and enforce the Irrevocable Assignment and CCCB's Consent as Sole Member.
>
> 14. The Settling Defendants warrant and represent that, to their knowledge, CCCB has not participated in amending the articles of incorporation or by-laws of CharterCARE Foundation to change CCCB's status as sole member of CharterCARE Foundation or otherwise eliminate or diminish CCCB's Foundation Interests, that the Settling Defendants have no knowledge of such amendment, and that CCCB will not participate in such amendment, or assign, transfer, or otherwise limit or encumber CCCB's Foundation Interests, except as provided in paragraph 13 of this Settlement Agreement.

Settlement Agreement ¶¶ 12-14.

The "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation" states in pertinent part[16] as follows:

> The undersigned CharterCARE Community Board ("CCCB"), in its capacity as sole member of CharterCARE Foundation ("CCF"), approves, authorizes and consents to the following actions, pursuant to CCCB's inherent powers and R.I. Gen. Laws § 7-6-104:
>
> * * * *
>
> 2. CCCB hereby authorizes and approves amendment of the by-laws of CCF, effective immediately, by re-adopting[17] the by-laws of CCF in the form amended as of October 8, 2013 (attached hereto as Exhibit A), with the following modifications:
>
> (a) deleting the last three sentences of Section 2.01 in their entirety, and substituting the following:
>
> > CharterCARE Community Board's membership in CharterCare Foundation may be assigned to Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan.
>
> * * * *

Settlement Agreement Exhibit 12.

2. The Enforceability of Those Provisions

CC Foundation contends that the assignment is "unenforceable," not under the law of contracts or corporations, but because CC Foundation predicts that the Receiver

[16] The Receiver here quotes only those sections dealing with CCCB's right to assign to the Receiver its interest in CC Foundation.

[17] These by-laws were "re-adopted" in an excess of caution to avoid even having to address the patently meritless argument that the by-laws that were later adopted without authority of CCCB somehow had any validity.

will use the power he obtains from the assignment to secure CC Foundation's "charitable trust assets in order to use them for the private benefit of Plan participants." CC Foundation Objection at 14. CC Foundation has no right to even be heard if, in fact, its current alleged board of directors are usurpers. Moreover, although that is indeed the Receiver's ultimate goal, the Receiver most assuredly will act within the law in attempting to achieve that goal, including commencement of proceedings for judicial liquidation and possibly the filing of a usurpation action against the current purported board of directors of CC Foundation. See, e.g., Dillon v. Scotten, Dillon Co., 335 F. Supp. 566 (D. Del. 1971) (declaratory judgment action to declare that current board members were unlawfully elected and must be replaced by lawfully elected directors).

However, the Receiver is a long way from taking any action whatsoever with respect to the charitable assets of CC Foundation. As discussed below, that will likely occur through judicial liquidation proceedings, at which the objections of the Attorney General and the current individuals purporting to act on behalf of CC Foundation will be heard. This is neither the time nor the occasion to finally determine whether the Receiver has the right to control those assets, or how that control may be lawfully exercised. In any event, the argument that an assignment is unenforceable cannot be predicated on the presumption that a beneficiary of the settlement will use it to violate the law, especially when that person is an officer of the Court.

As the sole member of CC Foundation, the Receiver will be entitled to exercise those rights and powers given the member under the by-laws, including the following:

> SECTION 2.02. Enumerated Powers. The powers of the Members shall be limited to taking action on the activities enumerated below and those activities expressly requiring action of the Members pursuant to law or the Articles of Incorporation:
>
> * * * *

> (g) authorization or approval of any plan of dissolution, liquidation, assignment for the benefit of creditors, petition for voluntary bankruptcy or appointment, of a receiver, or any plan for winding up the affairs of the Foundation, or any liquidating distribution by the Foundation;
>
> * * * *

Tab 2 at 2-3.

These powers will give the Receiver lawful rights over the charitable assets of CC Foundation. The Receiver may invoke his power under Section 2.02(g) of the by-laws, and seek a judicial dissolution of CC Foundation, pursuant to R.I. Gen. Laws § 7-6-61(c)(1):

> (c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:
>
> > (1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made for that;

In that liquidation proceeding, the Receiver can assert his claims as a creditor of CC Foundation, and ask the Court to order that all of CC Foundation's assets be paid to the Plan as "liabilities and obligations of the corporation." If the individuals currently purporting to act on behalf of CC Foundation dispute the Receiver's status as sole member of CC Foundation, that issue will be determined in the liquidation proceeding. The Attorney General also will be given notice of the liquidation proceeding, and, if the Attorney General objects to the relief the Receiver seeks, the liquidation court will have to rule on the Attorney General's objections. Of course, the Receiver anticipates that these efforts may be met with opposition which will require litigation. However, the Receiver should have the same right as any other member of a nonprofit corporation to the full exercise of his rights and powers, even if it results in litigation.

Most of the Attorney General's objections are addressed *infra* at 60-66. However, this discussion of the enforceability of CCCB's assignment of its interests in CC Foundation is the place to consider the Attorney General claims that the assignment is not enforceable because CC Foundation's by-laws prohibit the assignment, referring to Section 2.1. Attorney General Response at 4.

The by-laws[18] are attached hereto at Tab 1. The Attorney General is correct that Section 2.1 of those by-laws, as currently in force, appears to prohibit CCCB from assigning its membership interest. However, that issue was anticipated and eliminated in the Settlement Agreement. The Settlement Agreement obligates CCCB, within five (5) days of the Effective Date of the Settlement, to execute its "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation," which amends the by-laws of CC Foundation to permit the assignment to the Receiver. Then, after[19] that Consent has been executed, and the by-laws of CC Foundation have thereby been amended to permit CCCB to assign its membership interests, the Settlement Agreement obligates CCCB to actually assign to the Receiver its membership interest in CCCB. Accordingly, the proposed assignment at the time it is due will not violate CC Foundation's by-laws.

None of the Objectors even contend that the Settlement Agreement violates the Rhode Island Nonprofit Corporation Act ("RINCA"), or that the Receiver is not eligible

[18] There is no dispute that these are the effective by-laws if CCCB is the sole member, because although CC Foundation's directors subsequently adopted new by-laws, the power to amend by-laws was exclusively reserved to CC Foundation's sole member, and CCCB never approved those subsequent by-laws.

[19] See Settlement Agreement ¶ 13 ("Within ten (10) business days after the Effective Date, the Settling Defendants agree to deliver to Plaintiff's Counsel an irrevocable assignment (the 'Irrevocable Assignment') to the Receiver of all of CCCB's Foundation Interests, effective ten (10) days thereafter. . . ."

under RINCA to assume the role of sole member of a nonprofit corporation such as CC Foundation. It certainly would be remarkable if any individual or corporation could be a "member" of a nonprofit corporation while a court-appointed receiver could not. In fact, RINCA places no restriction whatsoever on who can be a member of a nonprofit corporation.[20] Thus, the Receiver is just as entitled as anyone else to be the member of a nonprofit corporation. RINCA also does not place any restrictions on the right or power of a member to transfer its membership interests.

VIII. The Attorney General's "Response" Raises No Legitimate Objections

A. The Attorney General Is Not Objecting to CCCB's Transfer to the Receiver of Its 15% Interest in Prospect Chartercare

The first task in addressing the Attorney General's "Response" to the Petition for Settlement Instructions is to determine what exactly are the Attorney General's objections to the Proposed Settlement that he asks the Court to address in connection with the Petition for Settlement Instructions. The Attorney General's Response commences with the following summary of the Attorney General's position:

> Now comes Attorney General Peter F. Kilmartin ("Attorney General") and hereby files this Response to the Receiver's Petition for Settlement Instructions ("Petition").
>
> As set forth more fully below, after reviewing relevant documents and applicable law, the Attorney General has concluded that while the Proposed Settlement Agreement terms may conflict with the conditions the Attorney General imposed as part of his 2014 approval of the Prospect/CharterCARE transaction, the more immediate issue—**and the one the Attorney General believes requires the Court's attention at this juncture**—is the status of approximately $8.2 million in charitable assets that were the subject of this Court's 2015 Cy Pres order.

[20] Indeed, if receivers could not be members of a nonprofit corporation, then it would be impossible to perform a court-supervised liquidation of a nonprofit corporation that has nonprofit subsidiaries under R.I. Gen. Laws § 7-6-60 *et seq.*

Attorney General Response at 1 (emphasis supplied). From the above-quoted statement it can only be concluded that in connection with the Petition for Settlement Instructions, the Attorney General is *not* raising any objection to any provisions of the Proposed Settlement, except the provisions dealing with the assets CC Foundation received in connection with the 2015 *Cy Pres* Proceeding.

This limited focus is consistent with the balance of the Attorney General's Response, which makes no mention whatsoever of any other provisions of the Proposed Settlement, including those provisions dealing with CCCB's transfer to the Receiver of CCCB's 15% interest in Prospect Chartercare. The Attorney General's Response was the Attorney General's opportunity to raise objections to the Receiver's Petition for Settlement Instructions, and should include all objections.

We carefully delineate the Attorney General's objection, because, although Prospect East argues that the provisions concerning CCCB's transfer of its 15% interest are barred by the Attorney General's decision approving the Hospital Conversion Act application that transferred the hospitals' assets to various Prospect for-profit entities, it is important to note that the Attorney General is *not* making that argument on his own behalf, notwithstanding the Attorney General's assertion of continuing authority to police compliance with his Decision.[21] As discussed above, Prospect East's arguments should be rejected on the merits. They also should be rejected because even the Attorney General does not join in Prospect East's contentions.

[21] See Attorney General's Response at 2 ("The General Assembly has authorized the Attorney General to take corrective action both civilly and criminally, should information come to light suggesting that the parties which engaged in the original hospital conversion transaction have failed to adhere in whole or in part to the Department's conditions.").

B. The Attorney General Is Not Disputing that CCCB Is the Sole Member of CC Foundation

As discussed above, CC Foundation accepts for purposes of the Court's adjudication of the Receiver's Petition for Settlement Instructions that CCCB is CC Foundation's sole member.

The Attorney General also does not dispute in his memorandum that CCCB is CC Foundation's sole member. However, that is not a concession solely for purposes of the Court's adjudication of the Receiver's Petition for Settlement Instructions. To the contrary, the Attorney General has already accepted as fact that CCCB is CC Foundation's sole member. The applicants for the Attorney General's approval for the 2014 Asset Sale told him that in their initial application, and he quoted their statements in his decision approving the 2014 Asset Sale. The Decision states as follows:

> "Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member."[71]

Attorney General's Decision dated May 16, 2014, at 29. The footnote designated "71" states "*Id*.", referring to prior footnote which states "[70] Initial Application, Response to Question 28." The applicants' answer to Question No. 28 indeed was that CCCB (then named CharterCARE Health Partners (CCHP")) was the sole member of CC Foundation (then named CharterCARE Health Partners Foundation).[22] The Attorney

[22] Initial Hospital Conversion Application Re-Submitted January 2, 2014 at 59 (Response to Question 28) ("By way of background, on February 27,2007, St. Joseph Health Services Foundation, Inc. (the 'SJ Foundation') was formed to hold and administer charitable donations on behalf of SJHSRI. SJ Foundation's sole member was SJHSRI and (footnote 21 cont.) it was listed in the official Catholic Directory and was covered by the Catholic Church's tax exemption. Subsequent to and as part of the

General adopted their statement as his own and both acknowledged and approved that arrangement by quoting it in his decision.

The Attorney General and this Court were told the same thing eight months later, in the 2015 *Cy Pres* Petition that was filed by SJHSRI, RWH, and CharterCare Health Partners Foundation (subsequently renamed CharterCare Foundation) on January 13, 2015. That Petition so states twice. In the first paragraph the Petition states:

> CCHP Foundation's sole member is CharterCARE Community Board, formerly known as CharterCARE Health Partners ("CCCB").

Cy Pres Petition ¶ 1. In the fourth paragraph the Petition states:

> CCCB is a Rhode Island 501(c)(3) non-profit corporation and the sole member of the CCHP Foundation. . . .

Cy Pres Petition ¶ 4. The Petition was served on the Attorney General and the Attorney General filed his formal response on April 1, 2015, without any objection to the representations to the Court that CCCB was CC Foundation's sole member.

Thus, the Attorney General does not and cannot dispute that CCCB is the sole member of CC Foundation.

C. The Attorney General Approved Transfer of $8.2 Million to an Insider, in Violation of Rhode Island Law That Gives the Power of Approval to the Presiding Justice and Requires that the Transferee Be an Independent Foundation

The Attorney General himself admits that, in connection with transfers of hospital assets under the Hospital Conversions Act (HCA"), the General Assembly requires:

CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.").

> the creation of an independent non-profit foundation "to hold and distribute" the proceeds of the hospital conversion "consistent with the acquiree's original purpose[,] or for the support and promotion of health care and social needs in the affected community."

Attorney General Response at 2 (citing, *inter alia*, R.I. Gen. Laws § 23-17.14-22).

However, as discussed below, in connection with the 2015 *Cy Pres* Proceeding, the Attorney General completely disregarded, affirmatively violated, and allowed others to violate R.I. Gen. Laws § 23-17.14-22 and related HCA statutes on at least eight levels. Such actions would have been outrageous and likely criminal if a private citizen were responsible. In light of the fact that the Attorney General himself is one of the guilty parties who violated the HCA statutes, it is simply ludicrous that the Attorney General now claims the right to interfere with the Proposed Settlement, as the statutory enforcer of the HCA to which the Receiver (and the Court) must defer.

R.I. Gen. Laws § 23-17.14-22(a) & (b) state as follows:

> § 23-17.14-22. Distribution of proceeds from acquisition – Selection and establishment of an **independent foundation**.
>
> (a) In the event of the approval of a hospital conversion involving a not-for-profit corporation and a for-profit corporation results in a new entity as provided for in § 23-17.14-7(c)(25)(i), it shall be required that the proceeds from the sale and any endowments, restricted, unrestricted and specific purpose funds shall be transferred to a charitable foundation operated by a board of directors.
>
> (b) The **presiding justice of the superior court shall have the authority to**:
>
> > (1) **Appoint the initial board of directors**.
> >
> > (2) **Approve, modify, or reject proposed bylaws and/or articles of incorporation** provided by the transacting parties and/or the initial board of directors.

R.I. Gen. Laws § 23-17.14-22(a) & (b) (emphasis supplied). The Attorney General violated this statute 1) by approving the transfer of $8.2 million to an existing (not a

newly-created) foundation; 2) by allowing that foundation to be controlled by one of the transacting parties, rather than being independent; 3) by completely by-passing the authority of the Presiding Justice of the Superior Court to select the directors and, instead, allowing the parties to the Conversion themselves to select the directors for the foundation subject to the approval of the Attorney General; and 4) by completely by-passing the authority of the Presiding Justice to approve, modify, and reject the proposed articles of incorporation and by-laws of the foundation and, instead, allowing the parties to choose their own articles and by-laws subject to the approval of the Attorney General.

In seeking to justify preventing the Receiver from obtaining any rights in CC Foundation, the Attorney General actually contends that CC Foundation was "an entity the creation of which is statutorily required under the HCA". Attorney General's Response at 5. The Attorney General is wrong factually and contradicts his own Decision approving the Conversion which acknowledged that CC Foundation not only pre-existed the 2013-2014 HCA transaction, but, in fact, was formed in 2007.[23]

The Attorney General also violated and allowed others to violate R.I. Gen. Laws § 23-17.14-25, which states as follows:

> § 23-17.14-25. Implementation.
>
> (a) The presiding justice may take all steps necessary to effectuate the purposes of this chapter and the board shall be appointed no more than sixty (60) days after the completion of the conversion. The board shall act promptly to appoint an executive director, hire staff as necessary, acquire necessary facilities and supplies to begin the operation of the foundation;
>
> (b) The board shall conduct a public hearing to solicit comments on the proposed mission statement, program agenda, corporate structure, and strategic planning. The board shall hold a public hearing within one

[23] See *supra* at 53 n.22 and related text.

> hundred eighty (180) days of establishment of the board and on an annual basis thereafter.

These violations included that 1) the Presiding Justice was denied the opportunity to take any "steps necessary to effectuate the purposes of" Chapter 23-17.14; 2) no pre-approval "public hearing" was held of any kind in connection with the 2015 *Cy Pres* proceeding or the $8.2 million transfer to CC Foundation, much less a public hearing "to solicit comments on the proposed mission statement, program agenda, corporate structure, and strategic planning"; 3) no "public hearing" was held within 180 days thereafter, or at any time; and 4) certainly there have been no "public hearings" on an annual basis.

Thus, the Attorney General committed and allowed others to commit at least eight statutory violations looking at these two statutes alone.

It is indisputable that CC Foundation received $8.2 million because the Attorney General violated and allowed others to violate the HCA statutes he was required to enforce. The consequence was that the entire process was perverted to serve private interests who wanted to control the charitable assets of SJHSRI and RWH.

In addition to these violations of the HCA, the Attorney General acknowledged in his Decision approving the Conversion that SJHSRI and RWH were in voluntary dissolution, but completely ignored the requirement of R.I. Gen. Laws § 7-6-51 that a nonprofit corporation's charitable assets must be applied first to pay the creditors of the corporation, such as the Plan participants, before they can be transferred pursuant to a *cy pres* proceeding.[24] R.I. Gen. Laws § 7-6-51 states as follows:

[24] This issue is more fully discussed in the Receiver's Memorandum in Support of Motion to Intervene in the 2015 *Cy Pres* Proceeding, at 33-39.

> § 7-6-51. Distribution of assets.
>
> The assets of a corporation in the process of dissolution shall be applied and distributed as follows:
>
> (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;
>
> (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
>
> (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.

The court in In re Crossroad Health Ministry, Inc., 319 B.R. 778 (Bankr. D.D.C. 2005), *aff'd, sub nom.* Bierbower v. McCarthy, 334 B.R. 478 (D.D.C. 2005), construed the very phrase "shall be applied and distributed as follows" to unequivocally require a priority of payment to creditors, notwithstanding the same absence of any other additional language. See In re Crossroad Health Ministry, Inc., 319 B.R. at 781 ("The terminology 'as follows' suggests that distributions are to proceed in a sequential fashion, with expenses of dissolution and claims of creditors to be paid first as listed first.").

Notably, *cy pres* proceedings come third in the sequence. Sub-section (3) states that remaining charitable assets "shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation. . . ." However, the Attorney General placed his *cy pres* authority first, ahead of the claims of creditors.

In opposing the Petition for Settlement Instructions, the Attorney General claims to be acting on behalf of charitable donors, but first and foremost the Attorney General is required to apply the law, even if the law restricts his own imagined *cy pres* powers. The fact that the Attorney General violated the law in order to transfer power over $8.2 million from the Presiding Justice to himself should not be overlooked. This was a power grab by the Attorney General which ultimately benefitted private interests that had no right to the funds. The Attorney General unlawfully placed himself over the Presiding Justice of the Superior Court by arrogating her statutory powers to himself, and used his power to deprive the creditors of SJHSRI and RWH (including the Plan participants) of these assets.

As these matters proceed, it will become clear that the Attorney General also failed in his fundamental role of securing and monitoring Prospect East's binding commitment (and Prospect Medical Holding's binding guarantee of that commitment) to invest $50,000,000 over four years for long term capital projects, and an additional $10,000,000 per year for regular capital expenditures. This commitment and guarantee were touted proudly, frequently, and publically as part of a public relations campaign to push through the 2014 Asset Sale in which the Attorney General played a prominent part, but the reality was very different from what the Attorney General and others portrayed. In other words, there will be more revelations of equally or even damaging

serious violations by the Attorney General of the letter and spirit of the laws governing his role in connection with the 2014 Asset Sale, in favor of private interests.

D. The Transfer of CCCB's Interest in CC Foundation to the Receiver Does Not Violate the Attorney General's Decision

1. The Transfer Does Not Violate Conditions 1, 2, or 9

The Attorney General contends that the changes in CC Foundation's governance which will be required under the Settlement Agreement violate the conditions he imposed on his approval of the 2014 Asset Sale, asserting that "[t]hese proposed changes therefore appear to violate the overarching Condition #9, as well as the more specific Conditions # 1 and #2." Attorney General Response at 5.

As with all of the Attorney General's arguments, however, that contention does not withstand even cursory analysis. Conditions 1, 2 & 9 state as follows:

> 1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.
>
> 2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.
>
> * * *
>
> 9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.

However, the Settlement Agreement does not provide for any board or officer overlap between any of the entities in Conditions 1 & 2, and the Attorney General does not explain how or why it violates these conditions.[25] It does not.

[25] In opposition to the Receiver's Motion to Intervene in the 2015 Cy Pres Proceeding, CC Foundation argued that the claim that CCCB was CC Foundation's sole member violated Condition 1 of the Attorney General's decision approving the 2014 Asset Sale, notwithstanding that Condition 1 only refers to overlap of board and officers, not members, and the Attorney General approved the transaction with CCCB as CC Foundation's sole member. Not surprisingly, CC Foundation does not repeat, and the Attorney

As for Condition 9, by definition that Condition could be violated only if the membership rights, power to elect directors, and power to amend by-laws upon which the Receiver relies are not part of the "Initial Application, including all Exhibits and Supplemental Responses." In fact the by-laws of CC Foundation, which confer the rights upon which the Receiver relies, were provided to the Attorney General and made an exhibit to the "Initial Application and Supplemental Responses."[26] Thus, all of the actions concerning CC Foundation contemplated in the Proposed Settlement are indeed pursuant to the "Initial Application, including all Exhibits and Supplemental Responses." The Attorney General had the right and obligation to disapprove those by-laws then, if he felt they violated the HCA. He did not.

Of course, it would have been ludicrous for the Attorney General to have required that all of the applicants and their related entities amend their existing by-laws to eliminate their membership rights, their power to elect directors, and their power to amend corporate by-laws. What the Attorney General appears to be arguing is that the HCA applicants and their constituent entities, and their by-laws, directors, and members, were frozen in time and place on June 20, 2014, and any changes since then are unenforceable, unlawful, and, indeed, criminal, even if permitted under by-laws the Attorney General approved. That argument is both legally and practically ridiculous.

The Attorney General claims that the Settlement Agreement violates Conditions 1, 2 & 9, and then asserts his right "to take corrective action, both civilly and criminally, should information come to light suggesting that the parties which engaged in the

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General does not assert, that patently meritless argument in opposition to the Receiver's Petition for Settlement Instructions.

[26] See Tab 3 (Affidavit of Benjamin Ledsham dated October 5, 2018) ¶¶ 2-6.

original hospital conversion transaction have failed to adhere in whole or in part to the Department's conditions." Attorney General's Response at 2-3. Such extortionate threats applied to the facts of the Proposed Settlement are disturbing indeed, when made by an actor with such unclean hands.

2. The Proposed Settlement Does Not Create Any Unlawful Conflicts of Interest

The Attorney General also objects that "the Agreement's proposed changes to the by-laws, whereby the board is stacked with compliant members in order to redirect the use of the Foundation's funds, creates conflicts of interest for these board members in terms of their fiduciary duty to the Foundation itself." Attorney General's Response at 4-5. Thus, the Attorney General asks the Court to rule that a member of a nonprofit corporation intent on exercising his legal rights with respect to the assets of nonprofit corporation cannot appoint "compliant members" of the board. In other words, he or she must elect directors who will frustrate and block the member from exercising his legal rights. Of course, that is patently absurd. If the member is lawfully exercising rights provided to the member under the by-laws, not only may a director assist him, he must.

Moreover, the assumption that the directors of CC Foundation that CCCB will elect in connection with the settlement (Attorneys Violet, Kasle, and Callaci) will not adhere to their fiduciary duties to CC Foundation because the Receiver selected them ignores the obvious fact that corporate directors are commonly, if not always, elected by shareholders or (in nonprofit corporations) members. That hardly disqualifies them.

If the Attorney General is implying that the court-appointed Receiver, acting as sole member of CC Foundation, will act unlawfully, and enlist the foundation's board of

directors in his unlawful schemes, and Attorneys Violet, Kasle, and Callaci will go along with those schemes, the Attorney General should simply come out and say so.

3. The Proposed Settlement Does Not Purport to Bind the Current "Directors" of CC Foundation to Do Anything

The Attorney General objects that "the Proposed Settlement Agreement tries to bind the current board of the Foundation in order to alter § 2.01 of the by-laws even though the current board is not a party to the Proposed Settlement Agreement." Attorney General's Response at 4. The Attorney General again misreads the Settlement Agreement. It obligates the current board of CCCB, acting on behalf of CCCB as sole member of CC Foundation, to amend the by-laws of CC Foundation. See Settlement Agreement Exhibit 12 (Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation). CCCB is most certainly a party to the Proposed Settlement. If indeed CCCB is the sole member of CC Foundation, as the Receiver contends and the Attorney General has agreed, then only CCCB has the power to amend the by-laws, because that power is expressly reserved to the member. The board of directors of CC Foundation does not even have that power.

4. The Proposed Settlement Does Not Unlawfully Alter the Corporate Governance and Structure of CC Foundation

The Attorney General then makes the following contentions:

> The Proposed Settlement Agreement seeks to alter the corporate structure and governance of the Foundation—an entity the creation of which is statutorily required under the HCA—and then to divert charitable assets from the Foundation for the plaintiffs' benefit without regard to the restrictions donors had previously imposed on the intended use of those assets. The Proposed Settlement Agreement's terms thus set entirely at naught the extensive HCA application and investigation process undertaken by the Attorney General before he approved the Prospect/CharterCARE acquisition in 2014.

Attorney General Response at 5. What the Attorney General overlooks, however, is that the Receiver will "alter the corporate structure and governance of the Foundation" pursuant to CC Foundation's by-laws, which were submitted to, reviewed, and approved by the Attorney General in connection with the 2014 Asset Sale. In other words, the Receiver will be exercising powers that the Attorney General has already approved. Thus, rather than deviating from the structure which the Attorney General approved, the Receiver will be applying that structure.

Moreover, there is nothing unusual or unlawful in CC Foundation's by-laws, to which the Attorney General could object even now. Under RINCA, the member of a non-profit corporation is entitled to elect directors if the by-laws so provide:

> (b) The directors constituting the first board of directors shall be named in the articles of incorporation and hold office until the first annual election of directors or for any other period that may be specified in the articles of incorporation or the bylaws. **Subsequently, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws.** In the absence of a provision fixing the term of office, the term of office of a director is one year.

R.I. Gen. Laws § 7-6-23(b) (emphasis supplied). Those directors have the power to amend the by-laws unless the articles of incorporation or by-laws provide otherwise:

> The initial bylaws of a corporation shall be adopted by its board of directors. **The power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board of directors** unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

R.I. Gen. Laws § 7-6-16 (emphasis supplied). If the Attorney General wanted to prohibit the sole member of CC Foundation from electing the directors and amending the by-laws, the Attorney General should have done so. Instead he approved the very by-laws to which he now objects.

In short, the Attorney General is grasping at straws to justify his opposition to the Receiver's Petition for Settlement Instructions. In fact that opposition is based upon a callous disregard for the rights of the Plan participants to the pensions they earned, and preference for the for-profit operations of Prospect Chartercare. What shows that best is the Attorney General's argument that CC Foundation's assets can only be used for "funding a pension liability" if that "is necessary to save a hospital's collapse," and that "[i]f diverting this income will not have any impact on the provision of health care by the existing providers, then in the State's view, application of *cy pres* is not justified." Attorney General's Response at 9. The "existing hospitals" are the for-profit entities Prospect Chartercare St. Joseph and Prospect Chartercare Roger Williams.

Thus, even now, the Attorney General is opposed to the Plan participants receiving the funds transferred to CC Foundation in connection with the 2015 *Cy Pres* Proceeding, with one exception -- if necessary to prevent the for-profit hospitals' collapse. The Attorney General makes these statements but completely ignores the point that these funds properly should have been paid to the Plan in 2014.

Incidentally, and not out of any desire to benefit Prospect East, the fact is that Prospect Chartercare St. Joseph and Prospect Chartercare Roger Williams (and all of the other Prospect entities who are Defendants in the Federal Court Action) will benefit from the Plan participants' receipt of those funds, because that will reduce their damages against them. Many of their current employees will also benefit in the capacities as Plan participants. Thus, the Attorney General should be supporting the Proposed Settlement under his own twisted logic that his support is dependent upon a showing that it will aid the existing hospitals.

At the very least, the Attorney General failed to "mind the store" when it came to the rights of Plan participants in 2014, and continues to oppose their assertion of their lawful rights. Apparently, it will take the zealous advocacy of the Receiver on behalf of the Plan participants to obtain for them what was rightfully theirs over four years ago.

CONCLUSION

Accordingly, the Receiver requests that the Court deny the objections of CC Foundation, prospect East, and the Attorney General, and recommends that the Court authorize and direct the Receiver to proceed with the Proposed Settlement.

Respondent,
Stephen F. Del Sesto, Esq., Solely in His Capacity as Permanent Receiver of the Receivership Estate,
By his Attorneys,

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Dated: October 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the ____ day of October, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

EXHIBIT 1

REVISED

BY-LAWS

OF

CHARTERCARE HEALTH PARTNERS FOUNDATION

Adopted on August 22, 2011 and revised on October 8, 2013*

By: _____
Kenneth Belcher, Secretary

*This revision is to address a typographical error in Section 2.01 of the Bylaws which identified CharterCare Health Partners as "SJHSRI" rather "CCHP" and is in furtherance of the resolution approved at a Meeting of the Sole Member and the Directors of St. Joseph Health Services Foundation dated August 22, 2011, that changed the name of the Foundation to "CharterCare Health Partners Foundation" and directed that its sole member be CharterCare Health Partners..

ARTICLE I

GENERAL

SECTION 1.01. Name and Purpose. CharterCare Health Partners Foundation (the "Foundation") is a nonprofit corporation organized exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the regulations promulgated thereunder. Such purposes are set out in Article Third of the Articles of Incorporation of the Foundation, from time to time in effect (the "Articles of Incorporation").

Notwithstanding any other provision of the Articles of Incorporation or these By-Laws, the Foundation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or corresponding section of any future federal tax code. No substantial part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided by Section 501(h) of the Code), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

SECTION 1.02. Powers. The Foundation shall have the power, either directly or indirectly, either alone or in conjunction and/or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the Foundation is organized, and to aid or assist other organizations whose activities are such as to further accomplish, foster, or attain any of the Foundation's purposes. Notwithstanding anything herein to the contrary, the Foundation shall exercise only such powers as are in furtherance of the exempt purposes of organizations as set

forth in Section 501(c)(3) and the Code and the rules and regulations promulgated thereunder.

SECTION 1.03. Nonprofit Status. The Foundation is not organized for profit and no part of the net earnings of the Foundation shall inure to the benefit of any director or officer. In the event of the liquidation of the Foundation, whether voluntary or involuntary, no director or officer shall be entitled to any distribution or division of the Foundation's property or the proceeds thereof, and upon such liquidation, the balance of all money, assets and other property of the Foundation, after the payment of all its debts and obligations, shall be distributed pursuant to Section 8 of Article Fourth of the Articles of Incorporation.

SECTION 1.04. Principal Office. The principal office of the Foundation shall be located at 200 High Service Avenue, North Providence, Rhode Island. The Foundation may have such other offices or places of business, either within or outside the State of Rhode Island, as the business of the Foundation may require and as the Board of Directors may from time to time establish.

SECTION 1.05. Registered Office. The registered office of the Foundation shall be located 200 High Service Avenue, North Providence, Rhode Island. The registered office may be changed from time to time by the Board of Directors in compliance with the provisions of applicable law.

ARTICLE II

MEMBERSHIP

SECTION 2.01. Membership. The sole Member of the Foundation shall be CharterCare Health Partners ("CCHP"), a Rhode Island non-profit corporation qualifying as tax-exempt under Section 501(c)(3) of the Code. CCHP may from time to time designate a representative who shall act with the full power and authority of the Member. No membership may be assigned

or transferred or encumbered in any manner whatsoever, either voluntarily, involuntarily or by operation of law. Any proposed or attempted assignment, transfer or termination of membership shall be void. Notwithstanding the foregoing, any legally appointed successor to CCHP by way of corporate merger, acquisition or other similar event shall become the sole Member hereof.

SECTION 2.02. Enumerated Powers. The powers of the Members shall be limited to taking action on the activities enumerated below and those activities expressly requiring action of the Members pursuant to law or the Articles of Incorporation:

(a) election of the independent directors;

(b) authorization or approval of any amendment to the Articles of Incorporation of the Foundation;

(c) authorization or approval of any amendment to the By-Laws of the Foundation;

(d) authorization or approval of any change to the name of the Foundation;

(e) authorization or approval of any merger, consolidation, reorganization, or sale, transfer, disposition, pledge or hypothecation of all or substantially all of the assets of the Foundation;

(f) authorization or approval of the establishment and the organizational documents (including any amendment, revision or repeal thereof), of any equity or contractual joint venture between the Foundation and any third party in which the Foundation will have more than a twenty percent (20%) interest in the revenues or profits of the joint venture, excluding contracts in the ordinary course of business;

(g) authorization or approval of any plan of dissolution, liquidation,

assignment for the benefit of creditors, petition for voluntary bankruptcy or appointment of a receiver, or any plan for winding up the affairs of the Foundation, or any liquidating distribution by the Foundation;

(h) authorization or approval of the incurrence of any debt, loan, borrowing, debt guarantee, whether as primary obligor or co-obligor, pledge, lien, hypothecation, security interest or encumbrance on any of the property or assets of the Foundation;

(i) authorization or approval of any acquisition or lease of, or interest in, real estate, by the Foundation;

(j) authorization or approval of undertaking any expenditure outside of the annual budget whether by contract or otherwise, in excess of $25,000;

(k) authorization or approval of entering into any contract or commitment which involves aggregate payments in excess of $50,000 in any year; and

(l) authorization or approval of the settlement of any litigation or other dispute involving the Foundation.

SECTION 2.03. Annual Meeting. The annual meeting of the Members shall be held on such date and at such place and time as the Board may designate. If such meeting is for any reason not held on the date determined in accordance with this section, a special meeting, as defined below, in lieu of the annual meeting may be held with the same force and effect of the annual meeting.

SECTION 2.04. Special Meetings. A special meeting of the Member may be called at any time by the President, the Board of the Foundation, or by the Member.

SECTION 2.05. Notice. Notice of the annual meeting or any special meeting shall be

given by the Secretary to the Member at the Member's address on file with the Secretary either by mail or electronic communication, at least seven (7) days prior to the meeting and in the case of a special meeting, stating the purpose thereof.

SECTION 2.06. Voting. The Member shall have one (1) vote on all matters on which the Member is entitled to vote.

SECTION 2.07. Action Without a Meeting. Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing and if such written consent is filed with the records of the Foundation. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.01. General Powers. The Foundation's property, affairs and business shall be managed by the Board and the Board shall have, and may exercise, all of the powers of the Foundation, except those reserved to the Members by law, the Articles or these By-Laws.

SECTION 3.02. Number; Qualification and Election. The members of the Board serving at the time CharterCARE Health Partners becomes the sole Member of the Foundation shall remain in office until a new Board is elected by the sole Member at its annual meeting or at a special meeting. Commencing with such election the Board shall consist of a total of fifteen (15) directors, which shall include two (2) individuals who shall be ex officio directors and the remaining thirteen (13) directors who shall be elected as set forth herein by the Member at its annual meeting or at a special meeting. Each member of the Board shall have equal voting authority. The two (2) ex officio members of the Board shall be the individuals then serving as the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO") of CharterCARE

Health Partners and the thirteen (13) remaining members of the Board shall consist of four (4) individuals selected by the Member from among those individuals who are then serving as members of the CharterCARE Health Partners Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the Roger Williams Medical Center Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the CharterCare Health Partners Board of Trustees and five (5) individuals who shall be independent directors. An ex officio director who is no longer serving as either the CEO or the CFO of CharterCARE Health Partner shall be immediately replaced by the individual then serving in that capacity and a director who was selected by the Member as set forth herein from among the members of the Board of Trustees of CharterCARE Health Partners, Roger Williams Medical Center or CharterCare Health Partners who is no longer serving in that capacity shall be immediately replaced by the individual then serving in that capacity.

SECTION 3.03. Nomination Process. The Nominating Committee of the Member shall serve as the Nominating Committee. At least fifteen (15) days prior to the Member's annual meeting or a special meeting called for the election or replacement of directors of the Foundation, the Nominating Committee shall provide to the Board of Trustees of the Member a list of nominees for election as independent directors and a list of nominees for election as directors from the members of the Boards of Trustees of CharterCARE Health Partners, Roger Williams Medical Center and CharterCare Health Partners. The Nominating Committee shall adopt such procedures, including procedures for the solicitation of potential nominees, as are necessary to carry out its duties.

SECTION 3.04. Increase and Decrease in Number. The number and designation of

directors of the Foundation may be modified from time to time by majority vote of the Board.

SECTION 3.05. Term. Each director, other than ex officio directors and other than as set forth herein, shall hold office for a three (3) year term, up to a maximum of two (2) terms, and until a successor shall have been duly appointed and qualified or until death, resignation or removal in the manner hereinafter provided and each ex officio director shall hold office so long as he or she is serving as either the CEO or the CFO of CharterCARE Health Partners. Terms of the initial directors elected after CharterCARE Health Partners becomes the sole Member at its annual meeting or at a special meeting shall be staggered such that each year the terms of a portion of the directors shall expire.

SECTION 3.06. Quorum and Voting. A majority of the total number of directors at the time in office shall constitute a quorum for the transaction of business at any meeting. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time without further notice until a quorum be had. Each director shall have one (1) vote on all matters addressed by the Board. The directors shall act only as a Board, and the individual director shall have no power as such.

SECTION 3.07. Place of Meetings. The Board may hold its meetings at any place within or without the State of Rhode Island as it may from time to time determine and shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 3.08. Action Without a Meeting. Any action required or permitted to be taken by the directors may be taken without a meeting if all of the directors consent in writing and if the written consents are filed with the Foundation's records. Such consents shall be treated for all purposes as a vote at a meeting.

SECTION 3.09. Telephonic Participation In Meetings. Directors may participate in their

respective meetings by means of telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

SECTION 3.10. Annual Meetings. The annual meeting of the Board shall be held immediately following the Members' annual meeting. If any day in which the annual meeting is fixed shall be a legal holiday, then the meeting shall be held on the next succeeding business day that is not a legal holiday. If for any reason such annual meeting is omitted, a special meeting may be held in place thereof and any business transacted or elections held at such special meeting shall have the same effect as if transacted at the annual meeting. Purposes for which an annual meeting is to be held, in addition to those prescribed by law or these By-Laws, may be specified by the President or by a majority of the Board.

SECTION 3.11. Regular Meetings. Regular meetings of the Board shall be held as often as the Board shall determine from time to time by vote. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day that is not a legal holiday. Notice of regular meetings need not be given.

SECTION 3.12. Special Meetings; Notice. Special meetings of the Board shall be held whenever called by the President. Notice of each such meeting shall be given by the Secretary or the person calling the meeting by mailing such notice addressed to each director at his/her residence or usual place of business, or conveying such notice electronically, verbally by telephone or personally, at least twenty-four (24) hours before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting, but need not state the purpose thereof except as otherwise expressly provided in these By-Laws. A statement contained

in the minutes of any Board meeting over the signature of the Secretary to the effect that due notice of such meeting has been given shall be conclusive evidence that proper notice of such Meeting has been duly given.

SECTION 3.13. Waiver of Notice. Notice of the time, place and purpose (unless otherwise specified) of any Board meeting may be waived in writing by any director either before or after such meeting and attendance in person at a Board meeting or any meeting held in lieu thereof shall be equivalent to having waived notice thereof.

SECTION 3.14. Resignation of Directors. Any director may resign at any time by providing written notice to the Board, the President or the Secretary. Any director's resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.15. Removal of Directors. Subject to these By-Laws, any director may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 3.16. Vacancies. In the case of director vacancies caused by death, resignation, removal, disqualification or any other cause, the Board, by an affirmative vote of a majority of the directors then in office, shall use best efforts to elect a duly-qualified individual to serve the remainder of the departing director's term. Notwithstanding the foregoing, any actions taken at a meeting or as otherwise provided herein while such positions are vacant shall be valid so long as a quorum is then present.

SECTION 3.17. Compensation. No director shall receive any compensation for his/her services as a director of the Foundation.

ARTICLE IV

COMMITTEES

SECTION 4.01. Appointment. The Board may from time to time by vote create such committees of directors, officers, employees or other persons for the purpose of advising the Foundation's Board, officers and/or employees in all such matters as the Board shall deem advisable and with such functions and duties as the Board shall prescribe by vote. Each committee shall have a chairperson appointed by the President. Unless otherwise expressly required in these By-Laws, committee members shall be appointed by the President; provided, however, that any such appointment may be reversed by majority vote of the Board. Committee members may be but need not be directors. The Board shall have power to increase or decrease the number of members on any committee at any time and to discharge any such committee, either with or without cause, at any time.

SECTION 4.03. Meetings and Notice. Committee meetings may be called by the President or the committee chairperson. Each committee shall meet as often as necessary and appropriate to perform its duties. Notice of a meeting's date, time and place shall be given at such time and in such manner as to provide reasonable notice to committee members of the meeting. Each committee shall keep minutes of its proceedings.

SECTION 4.04. Removal and Vacancies. The President may remove any committee member or chairperson whose selection is not otherwise specified in the By-Laws. Vacancies in any committee's membership may be filled by appointments made in the same manner as provided for in the original appointments.

SECTION 4.05. Quorum. Unless otherwise provided in the Board's resolution designating a committee, each committee member shall have one (1) vote and a majority of the

whole committee shall constitute a quorum. The act of a majority of the members present at a committee meeting at which a quorum is present shall constitute the act of the committee.

SECTION 4.06. Rules. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with any roles adopted by the directors.

ARTICLE V

OFFICERS

SECTION 5.01. Enumeration. The officers of the Foundation shall consist of a President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time appoint. Each officer of the Foundation shall be a director.

SECTION 5.02. Election, Qualifications and Term of Office. The officers shall be elected by the Board at the annual meeting of the Foundation or special meeting held in lieu thereof. Each officer shall hold office for a one (1) year term and until a successor shall have been duly elected and qualified or until death, resignation, disqualification or removal in the manner hereinafter provided.

SECTION 5.03. Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 5.04. Resignation. Any officer may resign at any time by giving written notice to the Board or to the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified herein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Board at any regular or special meeting.

SECTION 5.06. The President. The President shall act as chair of the Board and have general charge and supervision of the affairs of the Foundation. The President shall perform such other duties assigned to him/her by the Board.

SECTION 5.08. The Secretary. The Secretary shall record or cause to be recorded all the proceedings of Board meetings and meetings of all committees to which a secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of the records and of the Foundation's seal; and have such other powers and perform such other duties as the Board may from time to time prescribe.

SECTION 5.09. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all Foundation funds, credits and property, render a statement concerning the condition of the Foundation's finances at all regular meetings and, upon the Board's request, make a full financial report to the Board. The Treasurer also shall have charge of the Foundation's books and records of account, which shall be kept at such office of the Foundation as the Board shall from time to time designate; be responsible for the keeping of correct and adequate records of the Foundation's assets, liabilities, business and transactions and at all reasonable times exhibit the books and records of account to any of the directors; review the Foundation's budget annually; be responsible for monitoring the budget; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board or the President.

SECTION 5.10. Other Officers. Each other officer chosen by the directors shall perform such duties and have such powers as may be designated from time to time by the Board.

SECTION 5.11. Other Powers and Duties. Each officer shall, subject to these By-Laws

and in addition to the duties and powers specifically set forth in these By-Laws, have such duties and powers as are customarily incident to his/her office. The exercise of any power which by law, the Articles or these By-Laws, or in accordance with any vote of the Board, may be exercised by a Foundation officer only in the event of another officer's absence or any other contingency, shall bind the Foundation in favor of anyone relying therein in good faith, whether or not such absence or contingency existed.

SECTION 5.12. Bonding. Any officer, employee, agent or factor shall give such bond with such surety or sureties for the faithful performance of his/her duties as the Board may from time to time require.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 6.01. Indemnification. Subject to the exclusions hereinafter set forth, the Foundation will indemnify an Indemnified Person against and hold the Indemnified Person harmless from any Covered Loss or Covered Expenses.

SECTION 6.02. Advance Payment of Covered Expenses. The Foundation will pay the Covered Expenses of an Indemnified Person in advance of the final disposition of any Proceeding. The advance payment of Covered Expenses will be subject to the Indemnified Person's first agreeing in writing with the Foundation to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was otherwise not entitled to indemnity under this Article VI.

SECTION 6.03. Exclusions.

(a) The Foundation will not be liable to pay any Covered Loss or Covered Expense (an "Excluded Claim"):

(i) With respect to a Proceeding, if the Foundation determines that the Indemnified Person (i) did not conduct himself or herself in good faith, (ii) engaged in intentional misconduct, and (iii) in the case of a criminal proceeding, knowingly violated the law;

(ii) With respect to a Proceeding in which a final judgment or other final adjudication determines that the Indemnified Person is liable on the basis that personal benefit was improperly received by him or her;

(iii) For which the Indemnified Person is otherwise indemnified or reimbursed; or

(iv) If a final judgment or other final adjudication determines that such payment is unlawful.

(b) With respect to a Proceeding by or on behalf of the Foundation in which the Indemnified Person is adjudged to be liable to the Foundation, the Foundation may indemnify the Indemnified Person for his or her Covered Expenses but shall not indemnify the Indemnified Person for his or her Covered Loss.

(c) Notwithstanding any other provisions herein, the Foundation shall indemnify an Indemnified Person for any Covered Expense in the event that the Indemnified Person is wholly successful, on the merits or otherwise, in the defense of any Proceeding under Section 6.03(a)(i).

SECTION 6.04. Notice to Foundation; Insurance. Promptly after receipt by the Indemnified Person of the notice of the commencement of or the threat of commencement of any Proceeding, the Indemnified Person will, if indemnification with respect thereto may be sought from the Foundation under this Article VI, notify the Foundation of the commencement thereof. If, at the time of the receipt of such notice, the Foundation has any directors' and officers'

liability insurance in effect, the Foundation will give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Foundation will thereafter take all necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, any and all Covered Loss and Covered Expense payable as a result of such Proceeding in accordance with the terms of such policies.

SECTION 6.05. Indemnification Procedures.

(a) Payments on account of the Foundation's indemnity against Covered Loss will be subject to the Foundation's first determining that the Covered Loss results from a claim which is not an Excluded Claim. Such a determination will be made by a majority vote of a quorum of Trustees not at the time parties to the Proceeding or by majority vote of the Members. The determination required by this Section 6.05 will be made within sixty (60) days of the Indemnified Person's written request for payment of a Loss, and if it is determined that the Covered Loss is not an Excluded Claim, payment will be made forthwith thereafter.

(b) Payment of an Indemnified Person's Covered Expenses in advance of the final disposition of any Proceeding will be made within twenty (20) days of the Indemnified Person's written request therefor. Any determination required as to the reasonableness of requested Covered Expenses shall be made in accordance with Section 6.05(a). From time to time prior to the payment of Covered Expenses, the Foundation may, but is not required to, determine (in accordance with Section 6.05(a) above) whether the Covered Expenses claimed may reasonably be expected, upon final disposition of the Proceeding, to constitute an Excluded Claim. If such a determination is pending, payment of the Indemnified Person's Covered Expenses may be delayed up to sixty (60) days after the Indemnified Person's written request therefor, and if it is

determined that the Covered Expenses are not an Excluded Claim, payment will be made forthwith thereafter.

SECTION 6.06. Settlement. The Foundation will have no obligation to indemnity the Indemnified Person under this Article VI for any amounts paid in settlement of any Proceeding effected without the Foundation's prior written consent. The Foundation will not unreasonably withhold or delay its consent to any proposed settlement The Foundation may consent to a settlement subject to the requirement that a determination thereafter will be made as to whether the Proceeding involved an Excluded Claim or not.

SECTION 6.07. Rights Not Exclusive. The rights provided hereunder will not be deemed exclusive of any other rights to which the Indemnified Person may be entitled under the Act, any agreement, vote of disinterested directors or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such position or office, and shall continue after the Indemnified Person ceases to serve the Foundation in an official capacity.

SECTION 6.08. Enforcement.

(a) The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 6.05 above.

(b) In the event that any action is instituted by the Indemnified Person under this Article VI to enforce or interpret any of the terms of this Article VI, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such action was not made

in good faith or was frivolous.

SECTION 6.09. Successors and Assigns. This Article VI will be (a) binding upon all successors and assigns of the Foundation (including any transferee of all or substantially all of its assets); and (b) binding on and inure to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person. If the Foundation sells or otherwise transfers all or substantially all of its assets to a third party, the Foundation will, as a condition of such sale or other transfer, require such third party to assume and perform the obligations of the Foundation under this Article VI.

SECTION 6.10. Amendment. No amendment of this Article VI will be effective as to an Indemnified Person without such Indemnified Person's written consent.

SECTION 6.11. Insurance. The Foundation shall have, to the fullest extent permitted by state and federal law, the power to purchase and maintain insurance on behalf of any Indemnified Person against any liability asserted against or incurred by an Indemnified Person arising out of his or her status as an Indemnified Person whether or not the Foundation would have the power to indemnity the Indemnified Person against such liability pursuant to this Article VI.

SECTION 12. Definitions.

"Covered Act" means any act or omission by an Indemnified Person in the Indemnified Person's official capacity as a member of the governing body, director, trustee, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other entity or enterprise, including entities and enterprises which are subsidiaries or affiliates of the Foundation, or employee benefit plan.

"Covered Expense" means any reasonable expense incurred by an Indemnified Person in connection with the defense of any claim made against the Indemnified Person for Covered Acts

including legal, accounting or investigative fees and expenses, including the expense of bonds necessary to pursue an appeal of an adverse judgment.

"Covered Loss" means any amount which an Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for a Covered Act including judgment for, and awards of, damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

"Excluded Claim" is defined in Section 6.03.

"Indemnified Person" means any individual who is or was a director or officer of the Foundation.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE VII

CONFLICT OF INTEREST

SECTION 7.01. Policy Adoption. The Foundation is committed to pursuing its mission and to conducting its affairs in accordance with high professional, religious and ethical standards which include the avoidance of detrimental conflicts of interest. The Foundation believes that avoiding such conflicts is imperative in preserving the public's trust. Persons who agree to serve the Foundation should not use their position for personal gain, or to expose the Foundation to potential harm as a result of conflict of interest.

The Foundation shall adopt and maintain a Conflict of Interest Policy which applies to Designated Persons, as defined below, and deliberations by the Board and its committees.

SECTION 7.02. General Principles. Any Designated Person has an obligation to: (i) protect decisions involving the Foundation against conflicts of interest; (ii) maintain the

confidentiality of information obtained through service to the Foundation; (iii) assure that the Foundation acts for the benefit of the community as a whole rather than for the private benefit of a Designated Person; and (iv) fully disclose any personal business opportunities that are competitive with the Foundation or in which the Foundation would have an interest. In the furtherance of these obligations all Designated Persons shall exercise the utmost good faith in all transactions touching upon their duties to the Foundation or its property. In their dealings with and on behalf of the Foundation, they shall be held to a strict standard of honest and fair dealing. Designated Persons shall scrupulously avoid any conflict between their individual interests and the interests of the Foundation in any and all actions taken by them. They shall disclose any interests or activities in which they are involved or become involved, directly or indirectly, that could conflict with the interests or activities of the Foundation and shall obtain approval prior to commencing, continuing, or consummating any activity or transaction which raises a possible conflict of interest. Designated Persons are also obliged to disclose any potential conflict of interest arising from the interests and activities of their Immediate Family, as defined in the Policy. Failure to comply with the Conflict of Interest Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, may, if the Designated Person is an employee of the Foundation, result in disciplinary action up to and including dismissal, subject to the terms of any applicable employment or collective bargaining agreement or, in the case of a Designated Person who is a Trustee, the Trustee shall be deemed to have resigned.

SECTION 7.03. Designated Persons. "Designated Persons" shall include the following:

(a) Members of the Board of Directors of the Foundation;

(b) Members of administration or senior management of the Foundation;

(c) Committee Chairpersons or members of a Committee with Board delegated powers, who have a direct or indirect ability to influence the use of Foundation resources;

(d) Persons and/or staff members with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Foundation; and

(e) Any other person(s) and/or staff members whom the Board may from time to time designate.

ARTICLE VIII

FISCAL AUTHORITY

SECTION 8.01. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the directors may select.

SECTION 8.02. Gifts. The directors may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation.

SECTION 8.03. Budget. An annual budget shall be prepared at the President's direction for approval by the directors at their annual meeting.

ARTICLE IX

EXECUTION OF DOCUMENTS

SECTION 9.01. Contracts, etc., How Executed. Unless otherwise determined by the Board, the President or the Treasurer may enter into any contract or execute and deliver any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Foundation. The Board, except as otherwise provided in these By-Laws, may authorize any other or additional officer, officers, agent or agents of the Foundation

to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Foundation and such authority may be general or confined to specific instances. Unless authorized to do so by these By-Laws or by the directors, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or render it liable pecuniarily for any purpose or in any amount.

SECTION 9.02. Checks, Drafts, etc. All of the Foundation's checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates shall be signed or endorsed by such of the Foundation's officer, officers, employee or employees as shall from time to time be determined by Board resolution.

SECTION 9.03. Shares Held by Foundation. Any shares of stock issued by any corporation and owned or controlled by the Foundation may be voted at such corporation's shareholders' meeting by the Foundation's President or the Treasurer.

ARTICLE X

SEAL

The seal of the Foundation shall be in the form of a circle and shall bear the Foundation's name and the state and year of its incorporation.

ARTICLE XI

FISCAL YEAR

Except as from time to time otherwise provided by the Board, the Foundation's fiscal year shall commence on the 1st day of October of each year.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Personal Liability. Directors and officers of the Foundation shall not be personally liable for any Foundation debt, liability or obligation. All persons, corporations or other entities extending credit to, contracting with or having any claim against the Foundation may look only to the Foundation's funds and property for the payment of any debt, damages, judgment or decree, or of any money that may otherwise become due or payable to them from the Foundation.

SECTION 12.02. Corporate Records. The original or attested copies of the Articles of Incorporation, these By-Laws, and records of all meetings of the Members and the Board and all of the Foundation's records, the names and the record addresses of all directors, Members and officers shall be kept in North Providence, Rhode Island, at the Foundation's principal office or at an office of its Secretary or Resident Agent. Said copies and records need not all be kept in the same office_ They shall be available at all reasonable times for the inspection of any director or officer for any proper purpose, but not to secure a list or other information for the purpose of selling said list or information or copies thereof or of using the same for a purpose other than in the interest of the director or officer relative to the Foundation's affairs. Except as otherwise may be required by law, the Articles or these By-Laws, the Foundation shall be entitled to treat a director's, Member's or officer's record address as shown on its books as the address of such person or entity for all purposes, including the giving of any notices and it shall be the duty of each such person or entity to notify the Foundation of his/her/its latest post office address.

SECTION 12.03. Evidence of Authority. A certificate by the Secretary as to any action taken by a director, officer or representative of the Foundation shall be conclusive evidence of

such action as to all who rely thereon in good faith.

SECTION 12.04. Ratification. Any action taken on behalf of the Foundation by a director, officer or representative of the Foundation which requires authorization by the directors shall be deemed to have been duly authorized if subsequently ratified by the directors retrospectively if action by them was necessary for authorization.

SECTION 1.01. Articles of Incorporation. All references in these By-Laws to the Articles shall be deemed to refer to the Articles, as amended, and in effect from time to time.

ARTICLE XIII

AMENDMENTS

Alterations and repeal of the By-Laws, and new By-Laws not inconsistent with the laws of the State of Rhode Island or with the Articles of Incorporation, may be adopted by the Foundation upon the authorization or approval by the Member after such alteration, repeal or new By-Law is proposed by a majority vote of the Board at any meeting at which a quorum shall be present. The proposed alteration or repeal or of the proposed new By-Laws shall be included in the notice of such Board meeting at which such alteration, repeal or adoption is acted upon.

659504.1

EXHIBIT 2

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 et al.	:	
Plaintiffs	:	
v.	:	C.A. NO.: 1:18-cv-00328-W
PROSPECT CHARTERCARE, LLC, et al.;	:	
Defendants.	:	

DEFENDANT CHARTERCARE FOUNDATION'S
CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. Civ. P. 7.1(a), defendant CharterCARE Foundation ("CCF") states that it is a Rhode Island non-profit corporation that has not issued any stock, and accordingly, there is no publicly held corporation that owns 10% or more of CCF's stock.

With respect to whether or not CCF has a "parent corporation," there presently is a dispute regarding whether or not co-defendant CharterCARE Community Board ("CCCB") legally enjoys rights as the sole member of CCF. On August 25, 2011, CCF filed with the Rhode Island Secretary of State's Office Articles of Amendment to CCF's Articles of Incorporation stating, in relevant part, that CCCB was CCF's sole member. No amendment to that portion of CCF's Articles of Incorporation has been filed. CCF contends, however, that it has functioned independently of CCCB for the last three-to-four years. CCF further contends that, well before this action was filed, CCCB's legal rights as CCF's sole member effectively terminated due to waiver and/or abandonment.

This Rule 7.1(a) disclosure is not intended as a comprehensive brief regarding whether or not CCF currently has a "parent corporation." CCF reserves its rights to develop further factual and legal arguments regarding this issue.

CHARTERCARE FOUNDATION,

By its counsel,

/s/ Russell F. Conn

Russell F. Conn, Esq. (admitted *pro hac vice*)
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Dated: September 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2018, I filed and served this document through the ECF filing system. This document is available for viewing and downloading from the ECF system, and the ECF system will automatically generate and send a Notice of Electronic Filing to the following Users of Record:

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EXHIBIT 3

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.

vs.

ST. JOSEPH'S HEALTH PLAN OF RHODE ISLAND RETIREMENT PLAN, as amended

C.A. No: PC-2017-3856

AFFIDAVIT

Benjamin Ledsham, upon due affirmation, hereby deposes and says:

1. I am counsel, along with Max Wistow and Stephen Sheehan, to the Receiver in the above captioned action.

2. On October 4, 2018, I visited the website of the Rhode Island Attorney General's Office of the Health Care Advocate at the URL http://www.riag.ri.gov/CivilDivision/OfficeoftheHealthCareAdvocate.php.

3. Appearing on that webpage, under the caption "Recent HCA Reviews" and the sub-caption "CharterCARE/Prospect", are web links labeled:

- "CharterCARE/Prospect Final Decision"
- "CharterCARE Initial Application"
- "CharterCARE/Prospect 1st Amendment to Asset Purchase Agreement"
- "Public Exhibits"
- "Additional Public Exhibits"

4. By following the web link for "Public Exhibits", I downloaded the compressed .ZIP archive located at http://www.riag.ri.gov/documents/CharterCareExhibits.zip.

5. This compressed .ZIP archive contained thirty seven folders with names corresponding to exhibit numbers. Among them is a folder named "Exhibit 10B".

6. Within the folder named "Exhibit 10B" were four .PDF files including one with the file name PHCA000074.pdf, which is bates stamped PHCA00074 through PHCA00097 and entitled *REVISED BY-LAWS OF CHARTERCARE HEALTH PARTNERS FOUNDATION Adopted on August 22, 2011 and revised on October 8, 2013*.

Benjamin Ledsham

SUBSCRIBED AND AFFIRMED to before me this 5th day of October, 2018.

NOTARY PUBLIC
My Commission Expires: 9/5/21

Exhibit F

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 OCTOBER 10, 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
SCOTT BIELECKI, ESQUIRE	FOR CHARTERCARE
ANDREW DENNINGTON, ESQUIRE	FOR CHARTERCARE
RUSSELL CONN, ESQUIRE	FOR CHARTERCARE
ROBERT FINE, ESQUIRE	FOR CHARTERCARE
LYNNE DOLAN, ESQUIRE	FOR CHARTERCARE
PRESTON HALPERIN, ESQUIRE	FOR PROSPECT MEDICAL
JOSEPH CAVANAGH, ESQUIRE	FOR PROSPECT MEDICAL
DEAN WAGNER, ESQUIRE	FOR PROSPECT MEDICAL
EDWAN RHOW, ESQUIRE	FOR PROSPECT MEDICAL
CHRISTINE DIETER, ESQUIRE	FOR R.I. FOUNDATION
LAUREN ZURIER....ESQUIRE	ATTORNEY GENERAL'S OFFICE
MARIA LENZ, ESQUIRE	ATTORNEY GENERAL'S OFFICE
DAVID MARZILLI, ESQUIRE	ATTORNEY GENERAL'S OFFICE
ARLENE VIOLET, ESQUIRE	FOR THE PENSIONERS
ROBERT SENVILLE, ESQUIRE	FOR THE PENSIONERS
CHRISTOPHER CALLACI, ESQUIRE	FOR U.N.A.P.
STEVEN BOYAJIAN, ESQUIRE	FOR ANGELL PENSION

GINA GIANFRANCESCO GOMES
COURT REPORTER

CERTIFICATION

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 108, inclusive, are a true and accurate transcript of my stenographic notes.

GINA GIANFRANCESCO GOMES
COURT REPORTER

WEDNESDAY, OCTOBER 10, 2018

MORNING SESSION

THE COURT: Good morning. Madam Clerk, I would ask that you please call the case.

THE CLERK: Your Honor, the matter before the Court is PC-2017-3856, St. Joseph's Health Services of Rhode Island v. St. Joseph's Health Services of Rhode Island Retirement Plan. This matter is on for the Receiver's Petition for Settlement Instructions. Would counsel please identify themselves for the record.

MR. DEL SESTO: Good morning, your Honor, Stephen Del Sesto, Court-Appointed Receiver.

MR. WISTOW: Max Wistow, counsel to the Receiver.

MR. SHEEHAN: Good morning, your Honor. Stephen Sheehan, also counsel for the Receiver.

MR. BIELECKI: Good morning, your Honor. Scott Bielecki for CharterCare Foundation.

MR. DENNINGTON: Andrew Dennington for CharterCare Foundation.

MR. CONN: Russell Conn, CharterCare Foundation.

MR. HALPERIN: Preston Halperin for Prospect Medical East and Prospect Medical Holdings.

MR. CAVANAGH: Joseph Cavanagh for Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC.

MR. WAGNER: Dean Wagner on behalf of Prospect Holdings and Prospect East.

MS. DIETER: Christine Dieter on behalf of the interested non-party Rhode Island Foundation.

MS. ZURIER: Lauren Zurier on behalf of the Attorney General.

MS. LENZ: Maria Lenz also on behalf of the Office of Attorney General Interested Parties.

MR. LEDSHAM: Benjamin Ledsham on behalf of the Receiver.

MS. VIOLET: Arlene Violet on behalf of some 357 elderly participants.

MR. CALLACI: Chris Callaci on behalf of 400 participants in the UNAP, your Honor.

MR. FINE: Robert Fine for CharterCare Community Board, St. Joseph's Health Services of Rhode Island, and Roger Williams Hospital.

MR. BOYAJIAN: Steve Boyajian for the Angell Pension Group.

THE COURT: Okay. I would also just ask, although they may not be appearing for the proceeding before me, if there is any attorney that has entered in either the State or federal proceeding that has not identified themselves.

MR. MARZILLI: David Marzilli on behalf of the

Attorney General.

MR. HALPERIN: Your Honor, with me is Ekwan Rhow. We filed a motion for pro hac vice admission and that's probably just coming across your desk.

MR. SHEEHAN: No objection, your Honor.

MR. SENVILLE: Robert Senville, co-counsel to Arlene Violet on behalf of the pensioners.

THE COURT: Thank you.

MS. DOLAN: Lynne Dolan on behalf of CharterCare, LLC.

MR. BREQUET: Your Honor, Mr. Kasle asked me to say he has a conflict today.

THE COURT: Thank you very much. Before we get started, I am going to request if anyone is going to address the Court, address the Court from the lectern. This way we make sure our court reporter can get a clear record, and we will proceed forward in a moment with the petition of the Receiver. The Court has had the opportunity to review the extensive papers, objections, and replies filed by a number of parties in this case, but in order to limit some of this today, I would just like to ask a question that I believe from CharterCare Foundation it was in their brief whether any of the objecting Defendants have an objection to this Court approving the distribution of what was termed the initial

lump sum settlement, which is the $11,150,000 and the DOT escrow is less than $600,000. I just wanted to kind of start with that point so I have an understanding in terms of what is in dispute here.

MR. DENNINGTON: Your Honor, Andrew Dennington for CharterCare Foundation. No, and I think that we would be in a very different posture if that was the only interpreting sum.

THE COURT: The other objecting party was Prospect.

MR. HALPERIN: The Prospect entities do not object to that, your Honor.

THE COURT: And, again, I'm not reaching standing but I just want to know. The other objection was filed by the Attorney General's Office.

MS. ZURIER: We have no objection to the distribution of that asset, your Honor.

THE COURT: Okay. And I would assume the filings on behalf of the planned participants by Attorney Kasle, Attorney Violet, and, I believe, Attorney Callaci, you certainly don't have an objection.

MS. VIOLET: That is correct, your Honor. We have no objection.

MR. CALLACI: No objection, your Honor.

THE COURT: With that, I am going to ask the Receiver to proceed in a moment. I do want to indicate

to the parties after reading the papers there are certain issues the Court is particularly interested in, and the first is the standard that this Court should be applying in this case and if it is the Jeffrey's factors of the First Circuit, which Judge Silverstein had written about or another, what the underlying position is in terms of the factors, if any, that they either met or not met.

The second is, and this is really for the Receiver, what exactly is the Receiver asking the Court to approve? From reading the papers is it an approach that may be potentially litigated in certain steps along the way or to have this Court approve the settlement as a matter of law that the Receiver can proceed with all of those steps? And a subset to that is if it is just an approach, in what form and by what method? If someone contests something that they have standing for, where they envision that that would be heard.

The next issue does deal with standing is who, if any, of the objecting parties have standing to object to the proposed settlement. I saw two very different approaches from the Receiver and then CharterCare and one dealing with some of our Supreme Court case law of the standing inquiry, and then there was also advanced by CharterCare the party of interest under 11-1-9(b) of the bankruptcy code, which should be applied, or whether both

should be applied.

And then the final, and this really goes more towards the Prospect entities, is where the determination should be made in accordance with 23-27.14-35, known as the Court Approved Settlements, whether that determination should be made here or in the Federal Court litigation proceeding.

So that being said, I'm certainly going to allow, this is an important matter, all sides to take the appropriate time to go through whatever they want to reference in their papers. Counsel for the Receiver may proceed.

MR. DEL SESTO: Good morning, your Honor, Steven Del Sesto, the Receiver for the plan. Your Honor, I am going to be deferring time to Special Counsel for argument. Obviously, if your Honor has any questions, I am here to answer those and I reserve some time to respond, if I believe it's appropriate.

At the beginning of this hearing, your Honor, I want to just kind of cut to the conclusion, which is in my opinion the settlement is in the best interest of this plan, in the best interest of the participants. And, quite frankly, your Honor, to somewhat address the question your Honor asked of the parties a few minutes ago, even if the settlement did not include the

assignments that are included as part of that settlement, the infusion of $12 million in and of itself would warrant recommendation of the settlement. We have identified to the Court the difficulties and the problems associated with those assignments. We're well aware of them. We made the Court well aware of them. Even if we either choose not to pursue them or failed in our pursuit, the infusion of $12 million into this plan, I don't believe anybody in this room could argue that that is not in the best interest of the plan.

I just wanted to begin the hearing that way and advise the Court of my opinion as the Receiver after months of negotiations which resulted in the settlement that is before your Honor this morning.

THE COURT: Thank you. Why don't we turn it over to Special Counsel.

MR. WISTOW: Good morning, your Honor.

THE COURT: Good morning.

MR. WISTOW: And good morning to the other your Honor.

THE COURT: I apologize. Chief Judge Smith of the Federal Court is here with us as well today to observe.

MR. WISTOW: I've got to be on my toes to make sure I don't say something here and something else later in the Federal Court. The first thing I do want to clarify

before I get into the proposed procedure I would ask the Court to follow, when the Receiver says that he believes that the settlement, if it ultimately ended up as only $12 million would still be beneficial to the estate, we hardly agree with that. I believe, and it should be made clear, that what he's saying is the assignments of the various plans are valuable and would be a better result. If those are shot down later, we would still end up with a settlement that was okay, but we do want to pursue the assigned plans.

Having said that, your Honor, there is really two aspects to how we can address this. The procedure is not entirely clear in my mind I'm going to propose under, that is, to discuss first the general and overarching issues of standing, injury, what Court should address these various problems. And Mr. Sheehan is prepared to address that at length. I would propose that after that presentation that the Defendants respond on that issue and also set forth with specificity some of the arguments they are making on the merits. For example, Prospect CharterCare is saying that the settlement should not be approved because this would represent an illegal transfer of the 15 percent ownership interest in Prospect CharterCare, LLC. We are prepared to address that on the merits to show the Court that we believe as a matter of

law it is an appropriate assignment for reasons we could get into. However, our principle feeling is that those issues, who is right, who is wrong, really should be put off for another day, either before the Federal Court or perhaps even the Federal Court saying you're going to get these assignments as part of the settlement. Go try to enforce them in an appropriate form. That remains up in the air. But that is my proposal as I proceed this morning, and it would give us a good deal of guidance if you can tell us whether or not that methodology makes sense.

THE COURT: I'll allow you to take the issues that you want. That being said, even if the Court feels it can decide, for example, the standing issue as a matter of law, I am still going to allow them to make a record. But, certainly, I think how we can be best served before we even get to the standing and the objections is take us through the settlement and, as I said, what the settlement does or it doesn't do and why it's in the best interest of the estate.

MR. WISTOW: I'm going to defer to Mr. Sheehan. I was going to begin to speak, but when he jumped up, he sent me the signal.

THE COURT: Attorney Sheehan, please proceed.

MR. SHEEHAN: Good morning, your Honor.

THE COURT: Good morning.

MR. SHEEHAN: Mr. Wistow and I have a division of labor. I am going to address five points. The five points I'm going to address are first the standard applicable to the Court's review. Second, I'm going to explain what the settlement does. Third, I'm going to address why and how it's fair and reasonable to the receivership estate. Fourth, I'm going to address the argument that somehow the Receiver lacks authority, and the argument that the settlement is unlawful or collusive. Fifth, I'm going to address the point that the objecting parties lack standing.

Now, Mr. Wistow is going to go off on the fifth point and essentially proceed on the assumption that they do have standing and is going to address all of the merits. We're not going to overlap to the extent we can avoid it, your Honor. I apologize if any of that does occur.

The legal standard, as we pointed out in our memorandum, your Honor, there is no authority we're aware of that addresses the legal standard in the context of the settlement approvals by one court authorizing a Receiver to go to another court for settlement approval. So, your Honor, it really comes down to basic juris prudence between state court receivership proceedings and

Federal Court. We have cited your Honor to a District Court case, which in turn cites to a U.S. Supreme Court case in Princess -- something, something, something v. Something -- Lida of Thurn and Laxis v. Thompson, I believe it is. In any case, what they say as a matter of general law is that if a state court receivership is in existence and a particular asset has value to the receivership estate and the rights to that asset then are sought to be litigated in Federal Court, that the Federal Court will show deference to the state court that had initial jurisdiction over the property.

In this case, your Honor, obviously the Federal Court cannot completely abstain from addressing the issues because the case in Federal Court is a class action. Only the Federal Court on that class action can issue an approval. So what we have is what they call in conflicts of law, a decoupage. You have to cut it up a little bit. And what we propose, your Honor, the best way to cut it up and the one that causes no prejudice is that your Honor address whether the settlement is fair and reasonable in the interest of the receivership estate and stop there.

And the next step would be the Receiver, if your Honor approves the settlement, would go to Federal Court. In Federal Court the issues will be: First, is the

settlement appropriate as a settlement of a class action under the federal rules? Second, is the settlement a good faith settlement so as to trigger the benefits to both the Receiver and the settling Defendants of the special statute? And what those benefits are, your Honor, is that with respect to the Receiver the benefit is that it limits the non-settling parties to a credit based upon the amount paid by the settling party, which happens to be the majority rule in the United States, but in Rhode Island it's not the common rule. That's why a statute had to be past and the benefit to the settling Defendants is that it precludes contribution claims against them. So we explained a little bit further in our memorandum, your Honor, the perils of your Honor deciding issues and then our having to go to Federal Court and argue whether it encompasses what it encompasses exactly. This seems to be the cleanest way to proceed.

Now, with respect to the first point, is the settlement fair and reasonable for the legal standard, putting aside this issue in different courts, if we are going to proceed on the assumption that at least this Court is going to look at whether it's in the best interest of the receivership estate, the first point I would like to make is the Court is not being asked to

substitute the Court's judgment for the Receiver. And Judge Silverstein's case says that there are a lot of cases that say that. Judge Silverstein states that the court gives deference to the prudent business judgment of the Receiver. Now, the Receiver and Special Counsel have devoted thousands of hours to this case and for courts in receivership proceedings to function, judges can't spend thousands of hours on a particular case. So there is a benefit for the Court giving deference for the Receiver in terms of the administration of the receivership estate.

The next point I would like to make is the issue is whether the settlement as a whole is fair and reasonable. It's not whether each provision in the settlement itself is necessary or is required for the settlement to be fair and reasonable. It's whether the package that is presented as a whole is fair and reasonable. And there is a case I cited, your Honor, from the bankruptcy court in the Eastern District of Pennsylvania, In Re: Edwards, 228 B.R. 552, and there the Court said -- this is in the context of the bankruptcy, your Honor, where a Court has to approve a trustee settlement as your Honor has to approve a receiver settlement. There the Court said, "The Court's role is not to conduct a trial or a mini-trial, or to decide the merits of individual issues.

Rather, it is to determine whether the settlement as a whole is fair and equitable."

The next point, your Honor, is what is the settlement about? What are the elements of it?

THE COURT: Counsel, before you get to that, and I understand what you're saying about the general rule is the best interest. You addressed a little bit some of these prongs. If the Court was to say we're going to at least look for advisement for the Jeffrey's factors, can you just address that probability of success?

MR. SHEEHAN: Yes, your Honor. I intended to pick that up when I got to why this particular settlement is fair and reasonable.

THE COURT: If you're going to -- I just want to make sure you touch on it at some point.

MR. SHEEHAN: I am going to ask the Court to apply the standards that Judge Silverstein adopted from the First Circuit. The settlement involves primarily four asset recoveries. The first is cash, and there is a minimum, a base, in the settlement agreement for the cash that would be due upon the effective date of the settlement, which is, I believe, five days after the Federal Court approves the settlement, assuming the Federal Court approves the settlement. Now, that base is actually higher at this point. We heard from counsel for

the settling Defendants that he has additional cash. That number is close to $12 million at this point and may be in excess of that. And it is also more than 95 percent of the settling Defendants' operating funds.

THE COURT: So that sum does not include DLT?

MR. SHEEHAN: It at this point does not include the remaining 750 on the DLT. Mr. Land obtained a payment from some other source but that has not been released yet, your Honor. That 750 is still out there. But it's over 95 percent of the operating funds and that is important to evaluate the fairness of the settlement showing what is actually given up as a percentage of what could be obtained. We're getting well over 95 percent of their cash.

Now, the second element or aspect of the settlement is the assignment of CharterCare Community Board's right and Prospect CharterCare, and I call that CCCB or Community Board. And in the initial transaction Community Board received a 15 percent interest and Prospect CharterCare, LLC, that's the holding company that owns the two entities that have the licenses to run the hospital. In essence, the Community Board owns 15 percent of the two hospitals at that time in 2014. Now, in 2014 Prospect CharterCare valued that interest in its books at $15.9 million and it was a component and I don't

need to now go into what those components were, your Honor, because it is what it is. We know no reason today that number would have changed. On the other hand, we don't have access to the internal accounting financials that would answer the question what that present value is today. To some extent the value of that interest cannot be determined for purposes of this petition for settlement instructions.

Now, there is also the issue of restrictions on the Community Board's rights to sell that asset and Mr. Wistow is going to discuss that on the merits. But one point that needs to be addressed in this context of explaining what the settlement does is to point out the put option. There is an undertaking in the settlement agreement that Community Board on the effective date, which is June of 2019, five years from June of 2014, so about seven months from now we'll exercise the put option and essentially call upon its co-limited liability company or what we'd like to call joint venturer Prospect East to buy them out.

Now, one very important feature of this asset, your Honor, unlike what I'm about to discuss concerning the CharterCare Foundation is that if this settlement proceeds, the Receiver will be entitled -- the Receiver's right to collect on that asset is not dependent upon the

issues being litigated in the Federal Court. In other words, it doesn't matter whether there were fraudulent conveyances, et cetera, et cetera, et cetera, as alleged in the 23 counts in the current amended complaint in the Federal Court. It's a straight outright tried and transfer of a property, and so that gives a little more potential likelihood of recovery because we don't have to then go into Federal Court to prove our rights. There are problems that Mr. Wistow will address and Prospect CharterCare will address as to whether we get there in the first place, but I don't think anybody is going to say that our right to enforce is dependent on proving fraud. In other words, we could lose the entire Federal Court action and still get that asset.

The third asset in the settlement is the assignment of CharterCare Community Board, that is to say Community Board's interest in CC Foundation. Those also are difficult to value. At of the end of last year they had assets of over $8.7 million. They are charitable assets and the Receiver cannot and does not intend to simply take the charitable assets. What the Receiver does intend to do and has the right to do, and let me say has the present intent to do, reserving the right to essentially change his mind. Just so the Court knows, the direction the Receiver is proceeding, what the

Receiver is contemplating is if he's asserting his rights as the sole member in the Foundation, and Mr. Wistow is going to discuss the merits of that claim, but asserting his rights as the sole member of the Foundation to put the Foundation into judicial liquidation. That is an expressed provision in the bylaws and the judicial liquidation statute has a predicate for that. A member may put an entity into liquidation on a showing that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent. So here we're tying into the merits of the Federal Court case on that one, and our argument will be they have no authority. And then there's a straight outright to simply have a dissolution continue under the supervision of the Court. So it may be we'll be entitled to proceed with liquidation without having to show fraud.

Now, the procedure in liquidation we have gone to in many contexts, your Honor. We take the position, once again, that there is a list of priorities of payments. First, in the case of judicial liquidation there is administrative expenses and payment to creditors. So that is how we will make that argument to try to recover that $8.7 million.

The fourth asset that is the subject of the settlement agreement is the Receiver hopes to obtain

recovery in liquidation proceedings of the settling Defendants. We want to put the Foundation into liquidation. The settling Defendants have agreed to go into liquidation in the settling agreement. And the reason they're going into liquidation rather than simply giving us everything they have is they have assets that cannot be immediately turned over. They're in reserve accounts and there are matters dealing with those reserve accounts that have to be resolved, such as the DLT reserve account. So the plan is to put these entities into judicial liquidation. Notice will be given to all parties, creditors, similarly in the CC Foundation case notice will be given to the Attorney General with respect to the charitable assets, and here the Receiver has reserved a right to assert his claims against the assets in liquidation.

Now, those assets are very difficult to value at this time. There is about $2 million tied up in reserve accounts. There is a dispute with Medicare, which they may end up getting money or may end up having to pay money, and there is a right to future income from charitable trusts which is in perpetuity, your Honor, which is a very valuable right. In other words, these outside trusts are pouring cash into this entity in perpetuity. That is what the settlement is, your Honor,

those four key asset recoveries. There is a lot more to it, but I think for purposes of understanding the mechanics of the money I think that is a pretty good start.

Now, why is the settlement fair and reasonable? That analysis is based on a comparison of the value of the settlement to the value of the claims being settled and that is the education partnership overarching standard and then the Court sets forth the four factors - probability of success, likelihood of difficulties in collection, complexity, delay of the litigation, and, fourth, the paramount interest of the creditors. Applying those factors to this settlement, the settling Defendants are basically turning over the vast bulk of their assets in going into liquidation where the Receiver can claim what is left.

Given that, because they're turning over their limited assets, this settlement would be fair and reasonable even if the Receiver had a hundred percent probability of success on the merits, had stipulated damages of $125 million. Because as one of the factors points out, the likelihood of difficulties in collection, you can't get blood from a stone. All you can get is what the settling Defendants have. This is the rare case in which it is guaranteed, your Honor, that there would

be less to recover at the end of the day even if the Receiver prevails on all claims against the settling Defendants, then the Receiver is accepting the settlement now. It's just guaranteed, rock-solid guaranteed.

And the reason for that, your Honor, is between here and there is the determination of the merits of the Receiver's claims. They are entitled to full discovery. Summary judgment is unusual. Trial probably will be required. You have to consider the possibility of an appeal, so when the time comes to have an enforceable judgment with many millions of dollars in defense costs later. Thus, it's guaranteed that the Receiver will collect much less then than he gets now under the settlement, even if we have a hundred percent probability of success, but we don't have a hundred percent probability of success. Litigation is not ever a hundred percent and we have a lot to prove.

Now, in weighing whether the settlement is fair and reasonable to the receivership estate, you have to consider what is the impact of not accepting a settlement on the receivership estate. This is the impact: If we go forward and lose against the settling Defendants, we get zero. If we go forward and lose against the other Defendants as well, not only do we get zero, we lost the only chance to get a recovery for the receivership estate

through this settlement. Now, if we win, as I said, your Honor, we get much less.

So, your Honor, I really do think the issue of whether this is fair and reasonable is almost indisputable. And in reading the papers carefully from the objecting parties, I don't hear anyone claiming that the economics of the receivership estate is not sufficiently favorable to the receivership estate to execute a fair and reasonable settlement.

THE COURT: On the expense issue, it's your understanding that the defense costs with respect to the claim would be coming out of this or just a portion of the initial lump sum?

MR. SHEEHAN: We understand, your Honor, and Mr. Conn, if he wishes, can address this. I hope I'm not -- because your Honor asked, we understand they have a D & O policy, but it's a waste in policy and they're already 25 percent into it or more. Your Honor, we have experience in the 38 Studio cases with wasting policies of $10 million --

THE COURT: I'm talking about the settling Defendants.

MR. SHEEHAN: Oh, I'm not aware of their having any.

THE COURT: I guess my question is in terms of expense if those litigations continue --

MR. SHEEHAN: I misspoke.

THE COURT: It would be, as we talk about in insurance, a cannibalization on the part of the policy.

MR. SHEEHAN: I believe that is the case, your Honor. I am not aware that any claim has been filed against any insurer that has the defense obligations by the settling Defendants, and I believe that is the case that it would just be a cannibalizing of the actual estate.

Now, the fourth point, does the settlement exceed the Receiver's authority? And Prospect East makes the argument that what Mr. Del Sesto should have done is come to the Court with notice to all parties and say there is a settlement I'm thinking about doing, here is some of the terms we tentatively talked about, and will you approve this, your Honor, and that will give Prospect the opportunity to come in and argue why some of those individual terms should not be included.

Well, this is litigation, you Honor, and settlement is hard to reach in open court with a big discussion of all different parties with different interests coming in and trying to decide what's fair to everybody. And, your Honor, we would ask in that context to approve a morphs thing. The Court would not even know what settlement it was instructing the Receiver to proceed with because

until you have a binding agreement, you don't know what the agreement is. So instead of following Prospect's suggestion, the Receiver executed a settlement agreement that's binding on the Receiver, that's binding on the settling Defendants subject to Court approval leaving full power in this Court and in the Federal Court with the argument that that somehow exceeds the Receiver's authority as a matter of logic is absurd, and it's also contrary to the order appointing the Receiver, which gives him the express authority to compromise claims.

THE COURT: Can you explain to me, and I understand your logic, what about the filing of the UCC?

MR. SHEEHAN: The filing of the UCC is the ability to preserve the status quo pending this Court's determination. That's all it is. The signing of the settlement agreement is preserving the status quo pending the Court's determination. The settlement agreement preserves the status quo inter se between the parties. The security agreement preserves the status quo as to the world outside who may seek to come and gobble up the assets if they're committed to the settlement. It is in no way a recovery and it goes away automatically if the settlement is not approved.

And, by the way, your Honor, one could argue that security interest is redundant. It's redundant because

the Court issued an order enjoining any proceeding against assets that are part of the receivership estate, and that order might prevent any creditor from seeking to attach the assets of the settling Defendants now that they are tied into the settling agreement.

THE COURT: It sounds like that's an issue we're going to deal with next week.

MR. SHEEHAN: Right. Now, one point to make before I move on, your Honor, with the argument that the Receiver is exceeding his authority, what Prospect really wanted to do is blow up the settlement, and nothing shows that better by their, after the filing of the petition for receivership and the petition for settlement instructions, filing the petition for declaratory order with the Attorney General and we filed our motion to adjudge them in contempt. What they're asking you to do is after the fact invalidate the settlement agreement. One can only imagine what pressure they would have brought to bear had they been given an opportunity to interfere before the settlement agreement became binding as an asset of the receivership estate. That disposes, I believe, of the argument that the Receiver lacked authority.

The next argument is that the Court should not enforce the settlement because it's unlawful, and what

they focus on then is it may not be enforceable in the sense that the assignments may not be enforceable or the rights that the Receiver purports to have the right to exercise upon receiving the assignment are not proper rights. That is not what the courts mean when it says the courts won't approve unlawful settlements. All of the cases we explained to your Honor in detail, which had language generally to that effect, dealt with settlements that were per se unlawful. The cleanest one was where the Court said what we have here is a settlement with a witness to share the recovery with the witness on a claim where the witness' testimony is essential, which the Court said violates federal law in paying something of value for testimony. It's a crime. So the very agreement itself was a crime.

We're not talking about that here at all. Instead, we're talking about the bread and butter, the run of the mill kind of claims that are brought in litigation all of the time. Claims that may be disputed, that may be uncertain, but cannot be characterized as unlawful. And to suggest that the Receiver cannot accept claims when there is an argument as to the validity of the claims, when the argument is the validity of the assignment cripples the Receiver in a way no other contracting party, no other settling party, no other litigant is

crippled. It really is a silly argument and the proof of that is they found not a single case that deals with that kind of analysis.

To the contrary, we cited your Honor to the bankruptcy court case from Connecticut, which really shows in many ways a strong analogy here. There the bankruptcy trustee had assigned the debtor's legal malpractice claim to a creditor and the creditor was going to pursue that claim and share the recovery with the trustees. Now, there was an issue. I believe the law of Arizona actually applies, even though it was in Connecticut, and there was an issue as to whether under the law of Arizona you could assign legal malpractice claims. The Federal Court approved the settlement noting there is an issue as to whether or not this assignment is enforceable. You go find out, I'm going to retain jurisdiction, and if it turns out it's not enforceable we will deal with that later. That's the In Re: SE Techs case, which is cited in our memorandum, T-E-C-H-S.

Now, so the argument that it's unlawful just really, really takes uncertain and doubtful claims and makes them unlawful. In which case we would be suing for abuse of process all over the place, your Honor, every time you lost a case. On the collusion point, the reason that

Prospect East argues that the settlement is collusive is because it disadvantages Prospect East. And when I get to the standing argument, I am going to address why that is insufficient to give standing, why it does not constitute plain legal prejudice, which is the standard. And you can't come in through the back door and make the argument under the guides of collusion that you're prevented from making as an effect on your legal interest, as we will get to, to give standing.

But in any event, the collusion that exists here is all to the benefit of the receivership estate. In other words, I'm using collusion non-judgmentally to mean an agreement between the settling Defendants and the Receiver in which the Receiver demands as part of the settlement that the settling Defendants do certain things to damage or improve the Receiver's tactical position against third parties. That is what settlements often do.

And the best case on that point, your Honor, and just coming right out and saying that is the Quad/Graphics case from the Seventh Circuit in which the Court held that the Receiver has the right to use a settlement to gain tactical advantages over non-settling Defendants and pointed out from any settlement some disadvantage to the remaining Defendants is bound to

occur and may, in fact, be the motivation behind the settlement. There is nothing wrong with me settling with party A to improve my claim against party B.

Now, your Honor, we come to issue of standing and the objectors lack standing for several reasons, and I'm going to get into all of them. But before I do, I would really like to address why it matters, whether these issues are decided now or later, and the answer to that question is it depends. If you're the settling Defendants it matters very little. There is some inconvenience and some delay. If you're the receivership estate, it's the end of the world potentially. And the reason I say that, your Honor, with respect to it matters very little to the objecting parties, is that their objections are going to be the same when the Receiver in an adversary proceeding asserts the claims based on the rights the Receiver purports to have than they have now. They are going to have the same objections. The Court is not giving its imprimatur and we're not asking -- as the Court asked at the outset, we're not asking for the Court to rule as a matter of law that these rights are enforceable, et cetera. To the contrary, we would think that would be inappropriate, your Honor, because this is right now pre-assertion of a dispute on those rights. It's not ripe to make that determination.

THE COURT: So tell me a little about what you envision in terms of an adversary proceeding where, not here, but at some point the parties will have the opportunity if they have standing there to assert certain rights.

MR. SHEEHAN: There are several ways, your Honor. We are contemplating bringing what is called a usurpation action against CC Foundation to essentially throw out a claim usurping individuals, usurping the power of the board. We intend to put CC Foundation into a judicial liquidation, and in that context our claim to be a sole member would be adjudicated.

With respect to the 15 percent interest in Prospect CharterCare, we intend to demand that Prospect CharterCare pay over the value of the 15 percent in connection with the exercise of the foot and if they don't we're going to sue them. All of this is going to go into court and what is more, your Honor, it's going to go into the court proceeding that is already started where these very assets are already tied up. We are already asserting claims in the Federal Court litigation to all of the assets of Prospect CharterCare. We're claiming they received them in a fraudulent transfer. If we get all of those assets, Community Board's 15 percent interest in Prospect CharterCare is a stock certificate

you can tape on the wall. It is worthless because there are no assets.

We are asserting in the Federal Court that the $8.2 million should not have gone to CC Foundation in the first place. That it's a fraudulent transfer and should have gone to the debtors under the dissolution and liquidation statutes. Once we prevail on that theory, if we do, a membership interest in CC Foundation is another certificate one could tape on the wall that has no other value because there is nothing left.

THE COURT: What about before we get there, the settlement agreement talks about immediately assigning certain rights.

MR. SHEEHAN: Absolutely.

THE COURT: So does that just occur and for other parties to contest it if they receive notice of it?

MR. SHEEHAN: They can. I mean we will give notice of the assignment. In fact, the settlement agreement expressly requires notice of assignment to be given. If they feel at that point they want to try to litigate the the validity of the assignment in the context of the mere existence of the assignment before any rights have been asserted, they can try. We will argue again that it's premature until we're asserting any rights based on the assignment but they can take a different position.

THE COURT: When you're saying they, I assume you're referring to CharterCare Foundation and Prospect. According to the A.G.'s objection they may have an issue with respect to that.

MR. SHEEHAN: The A.G. has standing with respect to any charitable assets and certainly would have the right to participate in the liquidation proceeding against the Foundation and the A.G. would contend that these assets cannot be used to pay the claims of the plan because they are charitable assets and that is already in the court proceeding where the issues have been identified, the roles of the parties are clear, in essence, where the question is ripe.

Now, so we believe, your Honor, that postponing that determination has very little impact on the objecting parties, but it has horrible impact on the receivership estate if those issues are decided now or before Judge Smith in the Federal Court. And the reason is that all of the objectors have taken the position that if this Court or if -- well, they haven't addressed Judge Smith's court yet. If this Court concludes that these assignment provisions are improper, that the Court has to reject the entire settlement. And we do not adopt that argument now, but we have to say that there is case law that very strongly supports that position and the reason is that a

settlement agreement is a contract. The Court typically cannot rewrite a party's contract for them.

There is a case from the Western District of Arkansas, In Re: Living Hope Southwest Medical Services, involving the Court's approval of a trustee's recommended settlement where the Court said a compromise or settlement is by definition a negotiated consensual agreement. A bankruptcy court cannot rewrite the agreement and by doing so approve terms that is different from those to which the parties agree. A bankruptcy court must, "accept or reject the settlement as presented." And that is clearly the law in the Federal Court, your Honor, in connection with class actions. There is dozens of cases that say that.

What that means, your Honor, is that the $12 million that my brothers and sisters are now saying they have no objection to being distributed, there is no obligation on the part of the settling Defendants to pay the $12 million. It's very easy for them to say that, but there is no contractual obligation or duty on behalf of the three settling Defendants to do that if the Court rejects the settlement.

And I would like to contrast, your Honor, to the context in which the Receiver asserts rights in an adversary proceeding having already obtained the $12

million if it's determined in the adversary proceeding that my brothers are correct, that these assignments are invalid, the consequence then is not that the settlement is invalid. The consequence then is that this attempt by the Receiver to collect assets fails against those individuals, but the Receiver keeps the benefits of the settlement.

So, in essence, what one is weighing, your Honor, in weighing the decision to address the merits of these objections now or in an adversary proceeding, one is weighing the inconvenience to the objecting party of the delay. Again, the loss is $12 million that no one disputes the receivership estate should obtain. It's not as if there is an argument about whether they should get the $12 million. It's just an unfortunate consequence of the rule that a court in approving or disapproving a settlement has to go up or down. The Court can't rewrite a contract. The way to get around that unfortunate unintended consequence and save the receivership estate from gross, horrible prejudice, assuming my brothers are right in their objections, is to determine it in an adversary proceeding. To determine it now is just a willful injury to the receivership estate for no purpose other than inconvenience of delay.

When one considers inconvenience of delay, my

brothers and sisters in the receivership estate are going to be litigating many issues possibly for many years in the Federal Court regardless of this particular settlement agreement, and we're going to be litigating issues involving the very assets. They're not going to be able to, even if this Court were to accept their arguments now as to the validity of the assignments, they're not going to free the assets up. They are already the subject of claims in the Federal Court. So their inconvenience, I'm not sure if there is any.

THE COURT: Counsel, you wouldn't disagree that if the Court were to hypothetically authorize to enter into the settlement agreement, that the Court separately could impose certain conditions on the Receiver, notice and other things they need to do in connection with going forward?

MR. SHEEHAN: Not only could the Court do that, your Honor, we would welcome that. We have no desire to act here in the dark of the night. Really some of these statements in the opposition memorandum sort of apply to suppliers not Receivers.

THE COURT: One of the primary issues is the objections, and we'll deal with this later, are they premature?

MR. SHEEHAN: I'm going to get to that now, your

Honor. As a prefatory to that, I want to explain what is at stake on the prematurity argument. Now, we can get to the merits of the prematurity argument. They're premature, your Honor, because at this point regardless of what the Court rules in terms of this settlement, it causes no injury to the objectors and that is because all the Receiver is going to do is go to another court. The Receiver is not going to take any actions on the settlement other than go to another court, and, therefore, the objectors are not going to be in any worse position then than they are now.

Now, that's assuming that their objections have merit. Obviously, if they're objections have no merit, then they are not suffering any injury by postponing the determinations of labor. Even if they do have merit, they suffer no injury. Then they actually suffer no injury until an adversary proceeding is done, until rights are exerted and that is key, your Honor. It really is important to get past the settlement stage between these two courts before those rights are adjudicated.

Now, the next point, your Honor, prematurity is certainly an element of standing. There are standing arguments that stand on their own rights, and the first is that their objections are not justiciable. That's an

issue of basic requirement. No court can decide an issue unless it's justiciable.

THE COURT: Your firm spent a lot of time on Watson v. Fox, which our Supreme Court interpreted in detail.

MR. SHEEHAN: Now, justiciability has two elements - a party has to have standing and a party has to have a legal hypothesis that would entitle the plaintiffs to real and articulable relief. We focus on here with respect to justiciability is the lack of standing. For purposes of justiciability, standing is defined. It means that the objectors must have an injury in fact and an injury in fact is defined as an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical. That is a paraphrase of the Warwick Sewer case from 2012. They have no invasion of a legally protected interest by virtue of the granting of the settlement if your Honor limits its ruling to whether or not it's in the best interest of the receivership estate, or if Judge Smith approves the settlement without ruling on the merits of these objections. So the issue is not justiciable at this time.

The second reason they have no standing, your Honor, is because there is a separate stricter standing requirement that goes beyond justiciability that is

applied in the context of petitions to approve settlements. And that standard, your Honor, is that non-settling parties have no standing to object until the settlement causes them plain legal prejudice, and we have cited a number of cases for that proposition, your Honor, none of which, I believe, have been disputed. And the reason it's a stricter standard than mere justiciability, your Honor, is the rule advances the policy of encouraging the voluntary settlement of lawsuits. There is a case out of the Second Circuit, 2014, that makes that point. It's called Bhatia v. Piedrahita, 756 F.3d 211. The cases establish that plain legal prejudice is a strict standard. It does not include mere injury in fact. It does not include tactical disadvantage from a settlement. It does not include that the settlement makes a second-like lawsuit likely or certain. That is the Quad/Graphics case again, your Honor.

So the fact that this settlement is going to potentially spin into additional lawsuits does not give standing to the objecting party as a matter of law. It does not constitute plain legal prejudice. Your Honor, the overall position for which we are advocating that these issues be decided in the context of the adversarial proceeding -- actually, although there is no specific

authority involving settlements, other than the case to which I referred your Honor from Connecticut that we are aware of, the general rule is that parties are not allowed to litigate a trustee or Receiver's claims against them until those claims are asserted.

And we cited a number of cases, four or five to that effect, but the clearest case is In Re: Hartley, 36 B.R. 594, where punitive debtors of the bankruptcy estate went into court for an injunction to enjoin the trustee from suing them on claims. The trustee was asking for authority to make those claims and they came in and said don't give them the authority and they raised the point that don't give them the authority because the claims lacked merit. Very analogous to what we have here, your Honor. And what the Court said is that the merits of the trustee's claims, if any, against the third party should be determined in whatever form the trustee initiates in his claim and should not be preempted by this Court. The Court should not and will not rule on the merits of the trustee's claim, if any, other than in an appropriate adversary proceeding initiated on the claim, and the benefits of that are clear, your Honor. It ensures a concrete dispute.

For example, your Honor, Mr. Del Sesto pointed out at the outset that this settlement is valid even if after

the settlement is approved, assuming it is approved, the Receiver chooses not to proceed on any of these assigned claims. Well, in that case this whole argument about whether those assigned claims are valid is moot. So the Court really is being asked to rule before the Receiver has committed himself to even asserting those claims. Courts don't do that for a reason, your Honor, because otherwise people would be coming to court every time we have a question. That's not what courts are about. Courts are about adjudicating concrete disputes, and that's why trustees are entitled to bring the claim. One could imagine if in receivership proceedings the merits are being litigated about all the claims the Receiver is going to assert. That is the pre-bite at the apple we mentioned in our memo. He comes in and says the claims are meritless, loses, and then when the Receiver asserts the claim, makes the same argument again.

Finally, your Honor, at the end of the day it's clear the objectors have absolutely no interest in benefitting the receivership estate. They have their own interests but they're not the interests of the Receiver. They are adversaries. They are in litigation with the Receiver. What is much more important, your Honor, to our application for the petition for settlement instructions is the support from the hundreds of plan

participants, your Honor, represented by Attorney Kasle, Violet, Callaci, and the many other individuals who don't have the benefit of an attorney at this time and who will benefit from the settlement.

THE COURT: Counsel, when you talked about standing, again we have a few objections. Do you have a position in terms of whether the Attorney General has standing at this point?

MR. SHEEHAN: I agree that the Attorney General -- well, your Honor, no, the Attorney General does not have standing, absolutely does not. And the reason the Attorney General does not is there is nothing happening to charitable assets now. There is just the adjudication of the right of a member of a charitable corporation. We are a long way from getting near those assets. Every dispute in a nonprofit corporation between the members does not involve the Attorney General coming in and coming up to a decision as to what the bylaws provide or don't provide and who gets the vote and when. It's only when the corporation gets around to doing something with charitable assets. That's the trigger and that trigger is just as we're not doing anything with the 15 percent interest in Prospect CharterCare. We're not doing anything with those charitable assets, so absolutely zero standing to the Attorney General now, just as much, if

not more, than the other objecting parties.

THE COURT: For example, talking about Prospect, if the Receiver down the road was to take the position that they could, either through the put option or through some assignment, and the Attorney General, it's in their papers, Prospect has it in their papers, that somehow this transfer is a violation of the Hospital Conversion Act, are you saying that at some point they have the ability to take that position?

MR. SHEEHAN: Your Honor has just posed a hypothetical to me and --

THE COURT: What I'm trying to do is kind of key off and maybe it will become clearer when Prospect goes through some of the issues.

MR. SHEEHAN: I just want to emphasize they haven't made that argument, as your Honor has pointed out.

THE COURT: The Attorney General has not.

MR. SHEEHAN: And were they to make that argument now, the answer again would be that until the settlement is approved, we don't even have the right to obtain that 15 percent interest, and so it's premature until this court acts and until Judge Smith's court acts. It's premature because, for example, should Judge Smith disapprove the settlement, the Attorney General has nothing to complain about. So one doesn't get to

disputes that may never arise.

THE COURT: Thank you. Attorney Wistow, did you have something to add?

MR. WISTOW: I'm sorry.

THE COURT: When you came up initially, I thought you said Attorney Sheehan would speak and I didn't know if you had something further.

MR. WISTOW: I am hoping the procedure we follow is that now the Defendants speak and then I respond to that.

THE COURT: That's fine. In terms of the objections that the Court received, we are going to move on next to the CharterCare Foundation. Good morning.

MR. DENNINGTON: Good morning, your Honor. Andrew Dennington for CharterCare Foundation. And on behalf of CharterCare Foundation our request is that this Court expressly disapprove of the settlement, even in the limited form of approval that the Receiver is inviting the Court to undertake. I understand that the Receiver has basically put out an invitation that the Court should limit its review simply to whether the settlement is in the best interest of the planned participants. Stated plainly, whether it's a proverbial good deal for the debtors, and, basically, set aside all other issues to be dealt with at the Federal Court stage. And we have a very different opinion because I think you cannot set

aside the legality issue.

First, I would like to address the standing argument and after I address standing, I will address our specific grounds for objecting to the settlement on the grounds that it violates Rhode Island law and public policy and at the end I would like to wrap up my comments. And also in my argument I have a comment about the prejudice that would occur to CharterCare Foundation if we basically kick the can down the road on the legality question one more time.

So I would suggest that in a case like this where there is hundreds of pages of paper and there is a seeming perception that we strongly Court on every single point, that it's useful for the Court to pick out a couple of points where there is actually some conversion between the arguments made by CharterCare Foundation and the Receiver. Those can be used as kind of a focal point to help build to get to a fair and just outcome. I thought it was very significant that both the Receiver and CharterCare Foundation agree that in the absence of any applicable Rhode Island state court law regarding how a judge in your position should handle a petition for approval of a settlement in a receivership action that we turn to the bankruptcy code and federal case law interpreting. That's one thing we agree on.

As we laid out at pages 10 through 12 of our objection, we think it's clear under federal bankruptcy law the standing issue turns on whether one is a party in interest. I think what they are raising here is a separate prudential standing.

THE COURT: I guess, counsel, I think the Court's concern is our Supreme Court in the Reynolds case said, look, we have no state law on the issues, no precedent, and as far as priority creditor claims we're going to look to the bankruptcy code. And over time Judge Silverstein himself said, yes, we're going to look to the bankruptcy law. I guess my question is, and I understand the part of the interest standard, but what about the fact that we do have very specific precedent dealing with the standing issue from the Rhode Island Supreme Court. Does the Court have the ability to say I'm going to disregard that and I'm going to go under the bankruptcy code under 919 or whatever section and look at the party of interest standard. So it's which the Court would be applying and that's what I'm wrestling with.

MR. DENNINGTON: I think you do have to apply both. There is a threshold justiciability prudential standing doctrine and then there is the injury in fact standing to object to settlement. It's also true in the Federal Court. There is an Article 3 prudential standing. I was

looking for a specific case that I was trying to get my hands on that would help me here. It's the Congregation Jeshuat Israel case. It's a trial court decision. There is an excellent quote basically getting at the heart of the standard doctrine is to prevent mere kibitzers from coming up and interest group seekers from going about issues. If, for example, a private interest group, like the Philanthropy Roundtable, which would have members to protect charitable assets, was to be here making an argument, maybe there is an issue there. Here, is there injury in fact to us from this proposed settlement? Basically what they are asking you to do is to give CharterCare Community Board a gun to shoot CharterCare Foundation, and the issue is I don't think --

THE COURT: Counsel, if what you're saying is if I accept party in interest, it's still a two step and there is plenty of case law on that. How does CharterCare Foundation meet that injury fact at this stage of the proceeding if we need to get there before you get to the party in interest?

MR. DENNINGTON: Sure. And in answer to that question I would like to emphasize how CharterCare Foundation has a pretty unique position as opposed to the other three groups of defendants, which are the Diocesan defendants, the Prospect entities, and the old Heritage

Hospitals/CCCB.

Now, it was not really in response to a question but Mr. Sheehan did hint at the fact that CharterCare Foundation has very limited resources, and the ultimate question in this case is: Is what we are doing legal or not legal? We are in the business of administering charitable trust assets in a manner, which is in accordance with the original donor's intent as inconsistent with your Honor's April 20, 2015, order. For many of the same reasons that we had standing to object to the attempt to vacate or we will have the standing to vacate that order, we likewise have standing to object to the proposed settlement.

I mean just to call a spade a spade, this is the settlement agreement. The ultimate object of which is to take the charitable trust documents and to use them for a purpose which is not consistent with the donor's intent. That's the ultimate issue. And I think the Court should be sensitive to the fact that many times standing is an attempt to kind of defer or deflect attention from a substantive issue, which here is that ultimate question - is this legal or is this not? Going back to the analogy about the gun, I don't think we have to wait until the gun is literally in the face of our client to say now we have a injury in fact. We all know where this is going,

and I am going to answer your question but I do want to bring the Court's attention at the appropriate point to the In Re: Telcar case.

THE COURT: Can you point me to a case? I guess what you're saying is we all know it's coming, therefore, we should be allowed to get involved now and not in an adversarial position.

MR. DENNINGTON: Yes, sir.

THE COURT: Not with respect to the party in interest, but with respect to the standing issue, with respect to the the state law standing issue. I read the party in interest case and, yes, it has been interpreted, even though it talks about trustee and creditor, it uses the word excluding. The courts have gone and expanded that. I'm more concerned with what you're saying it's a two-step process.

MR. DENNINGTON: I think they are very related concepts so I'm going to answer your question and then I'm going to go back to the In Re: Telcar case. As I was saying, we are different. I think the prejudice and the injury that CharterCare Foundation suffers from this two-step, three-step process, don't worry, we're not going to litigate the ultimate entitlement to these funds until Judge Smith sees it.

There is also a suggestion in their papers that they

intend to argue that even if you were to limit their review and preserve our objection to make the legality objection in Federal Court, they would still say we still don't have an injury in fact, we still don't have standing. We are unique in that we suffer real harm from the ride itself, from the litigation. Okay.

Mr. Sheehan made reference to, you know, the circumstances that drive the defense of CharterCare Foundation. Remember, we are not a non-profit entity. We're a charitable trust to administer that donor intent, one full-time employee. So you can put us out of business with a decision which says the funds you got in 2015 never should have came to you. You know, it is okay to take charitable trust assets and use them in a way that is not in accordance with your intent or you can also put CharterCare Foundation out of business through a long litigation process. That would be bad because if the Court truly feels that it's the law that charitable trust assets may be not be used in a manner inconsistent with donor intent, then we don't want to have a process that unintentionally puts CharterCare Foundation out of business because every opportunity you'd want to get to the heart of the matter. The Receiver has a litigation strategy of saying we'll do it six months from now, we will do it six months from now.

This is an interesting point. This was my conclusion but I'll cover it now. Why is everyone here? Why are so many people here? It's to get the $12 million. We don't have a problem with that. Okay. We want that to move expeditiously, but the Receiver created the situation that we're in right now, which is bundling up the settlement with all these other more extensive provisions. You can't reasonably expect we're going to stand by seeing a settlement, which is going to deliver a death war and say nothing about it. Okay. We're going to vigorously present our argument here.

Now, in the In Re: Telcar Group case, I have brought copies of it.

THE COURT: I've actually read it.

MR. DENNINGTON: Wonderful. Okay. That is significant, you know, identifying areas where we tend to agree. There is a suggestion that we both recognize that is an important case. It's a federal bankruptcy case in which a punitive debtor of a debtor, that's the majority term to refer to us, successfully convinced the bankruptcy judge to disapprove a settlement because it was against public policy. Mr. Sheehan's description of the fact was not entirely accurate. He said the holding of the case was the judge found the contract was illegal. Actually, the judge said, there was a criminal statute at

issue, "Whether it is actually criminal conduct is not for the Court to now decide. Rather, the Court must consider the effect of the settlement and no matter how the issue is parsed, the reimbursement to Mignone is tied to success in the litigation against the Levey entities."

In other words, call a spade a spade. The ultimate object to this is to have an arrangement where one guy gets the money in exchange for testifying in a case. That's wrong. Our analogy here is we're a punitive debtor of a debtor and the ultimate object of this case is to take all of our charitable trust assets and give them to the Receiver which violates the charitable trust act in Rhode Island common law.

So I think your Honor's question was more about credential standing. Again, the In Re: Telcar Group case doesn't discuss this, but that could be either of two ways. The judge overlooked it, all the parties in the case overlooked it, or that we were so clear that standing was present that the Court elected to let that punitive debtor be heard.

So if you'd like I can move on to the more substantive issues.

THE COURT: Please.

MR. DENNINGTON: This is an admittedly extreme hypothetical, okay, but I just make it to try to

illustrate a point here. What if instead of a settlement term, which says CharterCare Community Board feels it's under threat, wants to get out of the case, the Receiver is demanding all their money, they want something more, instead of throwing in this punitive claim for CharterCare Foundation, they said we will cooperate with you in robbing a bank. We'll cooperate with you. We have this related entity. We think they can pick their pockets. We'll help you do it. That was the settlement that came to the Court. It's an extreme example. But would your Honor say it's in the best interest of the planned participants and it's not this Court's role to get into questions of the legality? We'll just kick the can down the road. I don't think you can do that.

And I think the key quote from the In Re: Telcar Group case that handles both the legality issue and the standing issue is that, "Although it has been urged that the Court need not entertain the objections of the non-creditor parties," comma, and I put parties in bold, "the Court is obliged to consider the public policy implications of the settlement, whether or not the issue is raised at all, much less by a non-party." In other words, it doesn't even really matter if there is someone that actually is following the law and says this is wrong. The Court has its own obligation to do that.

THE COURT: What exactly is the court saying is law? I understand based on what your brother counsel said that there may be a dispute whether or not the Receiver can take the interest, then there may be a dispute if there is an interest whether there was some type of waiver argument, that the language counsel used in a prior proceeding, and, ultimately, if all that happens and there is a board that is appointed, there may be an issue in terms of kind of the $8 million question, which is what happens to charitable assets that may have a specific donor intent with respect to the creditors? Aren't we allowed to step away from -- what if the Court should decide all that now and say this is illegal and shouldn't be allowed to do anything?

MR. DENNINGTON: Yes.

THE COURT: Okay.

MR. DENNINGTON: For example, and I can analogize to the In Re: Telcar case. Similarly here, the approval was to green light another proceeding, an adversary proceeding. I think if special counsel was appearing and was the one responding to the proposed settlement in that case, they would make the argument this is premature. Judge, you should defer this because there is going to be an adversary proceeding. Mignone will be called to testify. At that point you should wait to determine

whether -- that is the proceeding that is referenced in 18 U.S.C. 201. That is when we determine whether or not that is legal and I think it certainly supports our position. That's why I'm stressing it so much. The judge did not go through all those semantics, didn't parse the issues in that way. Again, I keep emphasizing --

THE COURT: So in other words, I should, within the receivership proceeding, create an adversary proceeding or a trial to make a determination because I can't do it without hearing from the sides. I can't just say the settlement agreement as a matter of law. You may say I could. I haven't looked at the settlement. But I should hear that and conduct that process before the Court approves this to go on to the next step.

MR. DENNINGTON: I'm not suggesting that.

THE COURT: Okay.

MR. DENNINGTON: Because I don't think you need -- this is an issue which can be determined, the legality issue -- we have no law. I don't think we need -- we don't have too many real -- there is not a factual dispute that the assets that CharterCare Foundation are restricted charitable trust assets. I point the Court to the case law suggesting why those may not be diverted and used in a manner not consistent with the donor's intent.

I don't think you need to have a whole trial.

THE COURT: Okay. Assume we get to the end and there is a determination that those restricted assets that can't be transferred, would the Receiver have the ability to, if they can, take on the interest to then replace the board, and I know there is an issue in terms of who the board members may be, and they may say, look, we don't need an administrator who is going to take assets out. We want to do it in a different way. Even if we can't do anything with that $8.2 million, there is still things we want to do. Is there a determination that has to be made that the interest is transferable to the Receiver and can the Receiver as the sole owner replace the board? Otherwise, I set you free and say we don't have a shareholder anymore or a member. It's the board and whoever else so just go ahead.

MR. DENNINGTON: Your Honor, under the Rhode Island Contract Corporation Statute, a Rhode Island nonprofit corporation may have one or more members or no members.

THE COURT: I understand that. Right now at least the settling Defendants, I understand they may have a dispute.

MR. DENNINGTON: There is a dispute. We're definitely not going to be getting into today.

THE COURT: You're asking me not today, but before I

go through this to make my way through, you know, all those issues.

MR. DENNINGTON: Well, I mean if your Honor is inclined to -- we feel quite strongly but --

THE COURT: And I read all the alternatives in your papers.

MR. DENNINGTON: Okay. So here is what I would suggest. In one of the questions you posed to Mr. Sheehan, you said the Court can impose certain conditions, just notify them. We know that it's going to happen. That would be about the time we should then jump up and file more papers and object to it. As I said, okay, that path seems to be the path of unintentional giving up of restrictive charitable assets because it leads to the death of CharterCare Foundation through prolonged litigation instead of a carefully considered judicial decision, but I think that is not a meaningful condition.

A better condition would be -- the Rhode Island Attorney General is a necessary party to this question. You can impose a condition that says, you know, that portion of the settlement is only approved upon the express condition that the Rhode Island Attorney General approves it. That was a condition that was in the HCA decision. That was a predicate to any transferred

charitable trust assets and/or that provision of the settlement agreement is conditioned upon some type -- and I haven't articulated this as well, but some type of a successful motion to vacate that order.

And one thing I observed and I don't know whether my antenna are reading this correctly. It's interesting that in a joint conference call between your Honor and Judge Smith there was a great deal of anticipation built up for the intervention motion of the 2015 Cy Pres action. Your Honor issued your bench decision allowing that but making it clear it was not a ruling on the merits. The natural next step, we thought it was going to come one day later, is the much anticipated, much celebrated motion to vacate, which was going to get right to the heart of the matter. I sense they want to dodge this issue because they know it was a weak point. We want to get right to the heart of the matter, which is restrictive charitable assets can't be used for a donor intent. And if you find that they can, then there is a ruling, potentially we appeal it, but we've got an answer to that.

THE COURT: I believe to put it in context, if you're going to talk about statements on the call, there was a comment by counsel representing your client that we are seriously considering going up a writ of cert

certiorari which may delay this issue as well.

MR. DENNINGTON: That's right. That's a fair point, your Honor. It hasn't happened yet.

THE COURT: Right.

MR. DENNINGTON: I will try to wrap up. I think you have the thrust of what I'm saying. One of your questions the way to frame my last argument, this is where I think there is going to be a lot of overlap between what I say and what the Attorney General says. You posed kind of, I think, a different maybe the third path about how the death of CharterCare Foundation which is that all of the board gets fired. There is a letter saying Mr. Conn and Mr. Dennington you're fired, and, you know, there is that change in control. Okay.

As you know, why we think this violates Rhode Island law is because the CharterCare Foundation is no longer an independent foundation and I thought there was a remarkable concession by the Receiver at pages 55 to 56 of their reply brief. They, in making, in our view, inappropriate hyperbolic attacks on the Attorney General listing numerous ways that the Attorney General purportedly violated the Hospital Conversion Act, one of them was allowing CharterCare Foundation to be controlled by one of the transacting parties, i.e. CharterCare Community Board rather than being independent. This is a

remarkable concession because they're saying that the Hospital Conversion Act prohibits CharterCare Foundation from being controlled by CharterCare Community Board. They basically admitted that the means to break into the house violates the Hospital Conversion Act. You have what you need right now to make that determination.

THE COURT: Would you feel more comfortable if I said, fine, under the other statutes -- I know it was raised by your brother in a footnote kind of back way -- if I say, fine, I'm going to ask the presiding justice for a point of view?

MR. DENNINGTON: Well, as I think your Honor said about one of the other arguments, you got a lot on your plate, and this is another fairly complicated issue and the context in which that came up was there was this petition for settlement instruction was originally marked on less than ten days notice. We had to run in court as quickly as we could about the reasons why the Hospital Conversion Act requires CharterCare Foundation being an independent board. Now, remember CharterCare Foundation was not a new entity. It was an existing entity. That statute references a new entity. What happened was, and there is specific discussion of this in the A.G. HCA approval is that the A.G. said, you know, the ultimate, you know, goal here is independent foundation. We have

an existing foundation. What we can do is impose a condition prohibiting board overlap and monitor conditions and that will ensure if it shall be independent. That is what happened here.

Again, it's really kind of a non-issue. We are facing the Federal Court complaint. We're facing the state court complaint, the 2015 Cy Pres proceeding, the new amended complaint filed at 6:15 on Friday evening, and now they're contemplating other -- I don't know what the term was, usurpation action. You should reserve judgment until it's actually presented in papers and we have a real opportunity to present. This doesn't go to the issue of whether the settlement is legal or illegal.

So I think I made my argument. If you have any other questions.

THE COURT: No. Thank you very much. The court reporter has been going for about an hour and 40 minutes. We are going to take about a ten-minute break and when we return if the other defendants as well as I will hear from the plaintiff. The Court is in recess.

(R E C E S S)

THE COURT: We're going to keep this somewhat manageable. I am going to ask Attorney Wistow if he wishes to respond to CharterCare Foundation and then we'll move on to the next issue.

MR. WISTOW: Thank you, your Honor. The first thing that I want to address is the defendant's disappointment that I haven't jumped all over the Cy Pres case and the motions to intervene. My only excuse, and I hope the Court accepts it, is that we're a small firm, to paraphrase Daniel Webster, although there are some who love us, and we been kind of preoccupied in the last several days with this thing. We intend to get to the motion to intervene case promptly.

Now, with regard to the particular statements that my brother made a few moments ago, he really begs the question. He says on the one hand that the settlement violates Rhode Island law, and I'm going to propose, unfortunately, in a tedious way to show you why we believe it's completely in compliance with Rhode Island law. I also want to point out the startling statement that Mr. Dennington made about how we are urging that an independent foundation be set up and now we're talking about CCB being connected with it. As recently as September 28th CharterCare Foundation put in a correction to its objections and I think it sheds some light to the point we're talking about.

Originally, your Honor will recall, that Mr. Conn, on behalf of the CharterCare Foundation, handed up to your Honor a statute which indeed called for an

independent foundation. And then he pointed out that that statute was not adhered to in any way, shape, or form because it required the presiding judge to select the board of directors to agree to the form of the articles of the association, the bylaws, the statute required a meeting, a public hearing, within a 180 days and a public hearing every six months thereafter.

So, astonishingly, after Mr. Dennington stands up and says I made the admission about an independent situation that has to exist, he says in his latest submission, I'll read his footnote on page seven. "That sentence disposes of the Receiver's newly threatened claim that CCF's Board of Directors is comprised of usurpers because the presiding justice of the Superior Court did not appoint those directors pursuant to Rhode Island General Laws," and then cites them.

"That issue (or more accurately, non-issue) came up during the September 7, 2018, hearing to consider whether CCF, the Attorney General, and Prospect should have additional time to brief their objections to the settlement petition. During that hearing, the CCF's counsel handed this Court a copy of Rhode Island General Laws 23-17.14-22 to illustrate how the HCA required CCF to be an independent entity, free of CCCB's control. Upon further review of the A.G.'s HCA approval and the

statute itself, it is now clear to CCF's counsel that the Attorney General correctly determined that that statute did not apply." He then goes on to say, however, the Attorney General's decision required independence.

Now, the problem with that is, we address that in detail, where the Attorney General has specifically laid out, and we will get to this in a moment, those things that he objects to regarding our settlement with CCF, and he specifically points to three items, which I think you will see as a matter of law do not apply, that the argument is simply wrong.

A couple of other points, this issue of violating law, the case that my brother relies on is absolutely a correct case. There was no question that the settlement they were asking the Court to approve represented an agreement with the settling parties that he would provide favorable testimony in the trial and would get a release for that. Now, you know, maybe the government can do that in plea bargaining, but private individuals cannot do that and there is a specific federal statute that makes it a crime. So that was very simple to say we're not going to enforce that agreement because it would enforce a criminal act. There is nothing remotely like this. This issue about whether or not we're entitled to do what we're claiming to do is completely either up in

the air or in our favor.

And I would like to point out -- two things I want to mention. Some issue came up about using up the assets of the settling defendants if the case doesn't settle and the answer is that the prudent lawyers that they are, Messore, Land, and Fine, who is here in court, once we sue them, this goes back to June, I sent the complaint to the insurance company who told them, as insurance companies are known to do, good luck, we're not covering. So they have been defending this thing, and I believe, frankly, that the insurance company is correct and that there is no coverage.

Now, it's also important to understand in the context of this case that we're attempting to settle with three entities, the CharterCare Community Board, and its subsidiaries, the old Roger William's Hospital, so-called Heritage Hospital, and the old St. Joseph's Hospital, sometimes called Fatima. Those three entities since the conversion have been under completely new management and have been guided by Mr. Fine and Mr. Land as counsel. They have examined the facts now, after we brought the suit and seen our discovery and they, new folks, have decided it's time to get out of dodge. So that is something to bear in mind here.

I want to address the issue of the relationship

between CCB, that is the CharterCare Community Board, one of the settling Defendants, and the proposed assignment to the Receiver of whatever rights CCB has in CharterCare Foundation. Now, first I want to say CCB is definitively the sole member of the nonprofit corporation CC Foundation, which was formerly known as CharterCare Health Partners Foundation, and that was the case, your Honor, even before the Cy Pres in 2015. That foundation held at that time a measly sum of money compared to what we are talking about today, something like $200,000.

Now, in the federal case corporations are required to make corporate disclosure statements and they did do that in the federal case, and I quote what CC CharterCare Foundation said to Defendants. They said, "On August 25, 2011, CharterCare Foundation filed with the Rhode Island Secretary of State's Office Articles of Amendment to CCF's Articles of Incorporation stating in relevant part that CCB was CCF's sole member. No amendment to that portion of CCF's Articles of Incorporation has been found. CCF contends, however, that it has functioned in benefit of CCB for the last three to four years."

Now, that relates, your Honor, to the claim they are making that even though the law requires the articles of association to show the members, they're saying that CCB has abandoned its rights, has walked away from them, has

not been involved.

But then before this Court, in the submissions made to this Court in their objection on page two of one they say the following about this abandonment issue, "CCF acknowledges, however, that this receivership action is not the proper forum in which the parties should be litigating the merits of the abandonment issue. CCF intends to litigate that issue in a separate forum." So what we have is a matter of record the sole member is CCB and a statement that they have the theory of abandonment, which we addressed previously we think is without merit. They themselves are saying this is not the place to argue this.

Now, on the conversion, the decision of the Attorney General, on March 16, 2014, he said on page 29 and I quote, "Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of St. Joseph's Foundation were revised to change its name to CharterCare Health Partners Foundation and to make CCHP its sole member." CharterCare Health Partners Foundation had a subsequent name change.

So here we are the Attorney General is saying eight months later, your Honor, in January -- by the way, I want to go back. The submission to the Federal Court was on September 20, 2018. It's not exactly an ancient

declaration. In any event, the Cy Pres petition that your Honor heard was filed on January 13th of 2015, and in that petition given to the Court the very first paragraph said CharterCare Health Partners Foundation's sole member is CharterCare Community Board formerly known as CharterCare Health Partners. In the fourth paragraph of the same petition they gave your Honor they said CharterCare Board is a Rhode Island 501(c)3 nonprofit and the sole member of the CCHP Foundation. The Attorney General filed his reply to the petition on April 1, 2015, made no comment, didn't contradict that, et cetera.

Now, we get to the question is the membership assignable? And, by the way, I apologize for this nitty-gritty analysis, which I don't really think is before the Court but I feel compelled to get into.

THE COURT: I understand. If you can just try and --

MR. WISTOW: I'll try to. Is membership assignable? The answer is yes because the only entities that are allowed to amend the bylaws under these circumstances is CCB and the settlement expressly provides that within five days of the effective date, meaning when hopefully the Federal Court approves the settlement, there will be an amendment to the by-laws allowing the assignment. It is our position, Judge, that the bylaws that prohibit the

assignment were done by what we call the usurping directors that were improperly appointed.

Now, the Receiver ultimately will get, if the settlement goes through in both these courts, the plan is just what they're saying. The Receiver we will get CCB's rights. The Receiver will act lawfully or what he thinks is lawfully. He will bring stuff before this Court before we do anything. There will be notice to them. If they read the settlement agreement carefully, it expressly says they are going to get notice.

We still need to prove our claims. We have two different issues here. We have the claims of the Receiver and the planned members, qua Receiver plan members, saying they never got notice of the Cy Pres, there were misrepresentations made, et cetera, et cetera. What we're trying to get here, frankly, is the second theory of recovery where we don't even -- I'm not saying we won't get into the other one. We have two disparate theories of why the money should come to us. And one of those possible resolutions would be to put the foundation into judicial liquidation, which by its very name means that it will be court supervised.

Now, our position, and I want to get into this very deeply, is that these charitable funds are subject to a statute in Rhode Island which specifically says that when

you liquidate a nonprofit, you first pay your creditors any administrative costs and then you go to the charitable aspects of it. I heard somebody say how would it be if somebody made a charitable gift to a museum and then there was a bankruptcy and somebody fixed the roof that protected the paintings, he can't get any of the money. And there is a lot of law on this and I'm not going to ask your Honor to decide it.

Now, on page five of the A.G.'s objection to our request for settlement, and, by the way, the A.G., as your Honor has noticed, really is not involving himself in anything in the objection except the CharterCare Foundation.

THE COURT: And I think that would be better kept in her response.

MR. WISTOW: Fine. But there is something Mr. Dennington said that I can't let go without commenting. He said that all of the people here, all they're interested in is the $12 million going into the fund. My response is very simple. Of course, they're interested in that, but they are not only interested in that. They're interested in the 15 percent ownership interest in Prospect CharterCare which by Prospect CharterCare's own financial statement is worth about $16 million. That number is up in the air, but it's not fair to say that

these people are just looking for the $12 million.

The documents that we believe enable us to do what we are attempting to do were all approved by the Attorney General without exception. Now, what we're having here is in 2015 at that time $8.2 million went to a preexisting foundation. It was controlled by a transacting party, CCB. The A.G. and CCF bypassed the presiding justice to select directors, bypassed the presiding judge to approve modification, and basically allowed people with no authority to amend the bylaws.

Now, what is the substantive problem we are really addressing here? When one looks back at the transaction in 2014, really the parties on the selling end was CCB, which was the member that owned the two old hospitals and some other assets. It was a holding entity essentially. So the transaction ends up where the underlying hospitals, which had creditors, doesn't get the 15 percent. The 15 percent goes to the holding company. To make a very homely example of what they did, it's as if a shareholder, one shareholder, owned a laundromat and the machines in the laundromat were worth $100,000, fair market value but the corporation --

THE COURT: I am trying to keep this as brief possible.

MR. WISTOW: Forgive me, your Honor. I'm trying to

eliminate whatever I can. It's painful, your Honor. I spent so much time doing this but I think you're right. I think I'm getting into too much detail.

On the issue of whether or not the transfer of the 15 percent violates the LLC agreement, that really is an issue of somebody else. So I will subside, your Honor. Thank you.

THE COURT: Thank you very much.

MR. DENNINGTON: Your Honor, I would like to briefly respond. I promise I will be 90 seconds.

THE COURT: You got a minute. Go ahead.

MR. DENNINGTON: Okay. Three points. On the corporate independence issue, I think the quick answer is this is not being litigated here, but from our standpoint, as CharterCare Foundation's counsel, where we have a challenge with the paperwork but we don't have a challenge with the intent. And the Receiver is not going to have any evidence that CharterCare Community Board actually ever engaged in conduct control oversight, which is consistent with the claim to CharterCare Foundation.

Second, another reason why you should not go into the Section 32 HCA standing issue, let's turn that around on them. What standing do they have to complain that the presiding justice of the Superior Court didn't appoint the directors four years earlier? How would that have

led to any different result in this case?

And, third, it doesn't matter who is on CharterCare's Foundation Board -- I'm sorry. Whether it's Attorney Violet or any other attorney in this room, any person. That person cannot assign in a revokable assignment of CharterCare Foundation's charitable assets to the Receiver at least without permission from the Rhode Island Attorney General and that is a condition you want to consider, which is conditioning the approval of that portion of the settlement upon the prior express permission of the Rhode Island Attorney General.

THE COURT: Thank you. I think it makes sense now to hear from the Attorney General. Before we start, I did get your reply. I want to thank you very much for the Attorney General's clarification about the administrative ability.

Ms. ZURIER: You're welcome, your Honor. I think I can still say good morning.

THE COURT: You've still got two more minutes.

MS. ZURIER: My focus this morning is going to be on what the Receiver has indicated is his ultimate goal whether to what extent and if so how the Receiver can add the $8 million of CharterCare Foundation's assets to the estate for the benefit of the pensioner. In terms of standing, the fact that the Receiver recently moved to

vacate the Cy Pres order from 2015, I think makes it abundantly clear that the Attorney General has standing in the context of our charitable trust powers. We appreciate that it would be very useful to the Receiver to rely on the Foundation's assets to help satisfy the pensioners' claims. But, by the same token, we do have the responsibility for ensuring that the intentions of the many donors who entrusted their assets to the hospital predecessors are honored. Donors gave their money in order to finance cancer research and continuing medical education. The public has benefitted from their generosity and their interests should be considered in this proceeding as well.

And, actually, that brings me to the next point I wanted to make which is why decide any of this now? The best interest of the receivership should also include a consideration of legality. There has already been a motion to vacate the Cy Pres order. It is abundantly clear that that is moving forward. It started before this Court had even approved the settlement. Every moment, every month that goes by, where the Foundation cannot act as a charitable foundation and follow the donors' instructions is causing harm to the donors' intent and to the public it benefitted. Therefore, we would like to have a decision about that intent now

rather than waiting until some future proceeding several years down the line when the issue concerning the status of those assets is determined. As I said, the illegality is created in our view because right now what they're doing violates a still existing order of this Court and we assume that the outcome of the motion to vacate is not predetermined.

Now, why is there a need for a Cy Pres proceeding now? We have been cut out of the loop on much of this prior litigation. As a matter of fact, someone told me this morning that there was an amended complaint filed in Federal Court Friday. We did not get a copy. We were not participating in the phone conference that was held several weeks ago. And because of all of this we had to kind of play catchup. In our view it would make a lot more sense to have to resolve the Cy Pres issue first so you know how much money you're actually dealing with than to implement settlement and have all the issues regarding donated intent and whether those assets are, in fact, part of the estate for purposes of any dissolution that might occur, to have all of that resolved perhaps several years down the road.

In 2015 our office and Bank of America trustee took a very careful look at thousands of pages of documentation regarding the donated intent of the $8

million in funds. And it's important to remember that you keep talking about $8 million, but from the point of view of the charitable trust doctrine, it's a series of discrete funds, each of which has a separate restriction. Some of those restrictions are more specific and the Attorney General believes could not ever be transferred to the Receiver for the same reasons that they weren't transferred to the hospitals in the course of the windup four years ago. Other assets may have restrictions that because they're a more general expression of donated intent, arguments can be made in other states, like New York have been made, to allow some of those funds to be used for the benefit of creditor's like the pensioners. But without knowing how much money you're talking about it's all of a very theoretical discussion and impossible to really know how the rest of the litigation and the other claims might play out.

As for the argument about the dissolution of a nonprofit corporation, I recognize that 7-6-51 and 7-6-61 both appear to prioritize creditors' rights above those of the charitable trust donors. However, there is a split in the law. And New York, which has a great many foundations, has a similar statute and actually prioritizes donative intent based upon an analysis of the law that goes beyond merely looking at the nonprofit

corporation statute, which after all is applicable not just to charitable trust organizations like the Foundation, but also to things like the University Club and Agawam Hunt, which wouldn't have the same charitable trust implications from our office's perspectives.

So those decisions are premature to make now because the dissolution action hasn't been brought. They could possibly be explored in a Cy Pres proceeding because this Court would then be in a position to examine which assets are potentially part of the receivership estate dissolution and which are not. But, again, to talk in one lump sum without discerning donor intent is really difficult and abstract and doesn't do the Foundation or any other party to this proceeding any good.

THE COURT: Just a question, I'm trying to understand the prejudice if this issue is dealt with down the road. There is agreement, as you know, between the Receiver and CharterCare Foundation where the four, four and a half percent of money is still being distributed so that is going forward. So I just want to make sure you're not thinking that nothing is happening.

MS. ZURIER: I think there is some money being distributed, but the whole scope of the donors' intent is not being furthered. When you couple that with the possibility that some of those assets are going to be

expended in tortuous litigation for several years, I think on balance it makes sense to decide the scope of the corpus now and then deal with the settlement. Rather than deal with the settlement and then watch what we all know is going to take place. We'll be in here in a Cy Pres proceeding and we'll be in Federal Court in a Cy Pres proceeding. We all know where that is going. It just doesn't make sense and I don't think it's legal given the current 2015 order that is in place for the Court to condone a settlement that seems to be in clear violation of that order.

THE COURT: I'm just trying to understand what is in clear violation of that order if ultimately what the Receiver is saying happened? But aren't there a lot of steps before we get there?

MS. ZURIER: Some of them seem to have occurred despite the fact that the Court hasn't approved the settlement. The settlement required a motion to vacate be filed after the settlement is approved. The motion has already been filed. You can accept the Receiver's contention at face value that this is all theoretical but I think we're all fooling ourselves.

Finally, I want to address the remarks of the Receiver concerning the Hospital Conversion statute and how it was the Attorney General's intention to freeze the

status of the parties as of 2014 with respect to the conditions that were issued as part of this decision approving the conversion. As the Attorney General has made clear in its papers, the statute empowered us to impose conditions on a for-profit hospital conversion in order to preserve the integrity of the transaction after the office approves it and those conditions lasted for three years. It's interesting that we are only here now because some of the three-year conditions that would have absolutely prevented the settlement agreement from occurring have expired.

THE COURT: But that was the Attorney General's choice. You could have limited it to ten years.

MS. ZURIER: Absolutely, and I'm not saying that the conditions should have been different. All I'm trying to point out is we're being accused of a power grab. We're being accused of trying to grab access for private parties. No. What we were doing is implementing the provision of the Hospital Conversion Act that the General Assembly past and gave us the power to do.

And my biggest problem with the Receiver's argument is there is an awful lot of assumptions about the motive and intent on the part of the Attorney General as well as some of the other parties here, but none of that is demonstrated with actual facts. And I would hope that

the Court would keep that in mind in terms of deciding the good faith nature of the settlement and whether other issues need to be addressed first. So if the Court has any questions.

THE COURT: So are you suggesting, because it wasn't in your papers, that the Court should be making a determination under the joint tortfeasor law whether or not this settlement should be approved?

MS. ZURIER: No, the Attorney General is suggesting that it makes more sense to have a Cy Pres proceeding first and figure out what assets are available and what the donors' intent are. How much of the potential money is in the pot and what it can be used for before continuing to implement the remainder of the settlement.

THE COURT: I just want to say there is fact, there is the law, and there is commentary. And the Court with respect to this proceeding understands there is some commentary made about the Attorney General's office and actions and that is very easy to put aside. Just like I assume your comment about the Court predetermining anything is taken in the same way. Certainly, just as you took offense, certainly the Court can take offense to your suggestion.

MS. ZURIER: I apologize, your Honor.

THE COURT: Your apology is accepted.

MS. ZURIER: I did not mean to imply that the Court had predetermined.

THE COURT: Thank you very much.

MR. WISTOW: I want to correct an unintentional misstatement. The settlement agreement did not provide for us to file a motion to intervene. We filed the motion to intervene long before the settlement agreement was in place. If you look at the settlement agreement, you will not find where we are agreeing to file a motion to intervene. What I think my sister is referring to is the fact that the settling parties agree not to object in that intervention which I see nothing wrong with.

Let me say very briefly, the New York statute that my sister is talking about is completely different from the Rhode Island statute. I think your Honor will probably recall that when CharterCare Foundation put its brief in, it went out of its way to say the Rhode Island statute is a relic. That only 15 other statutes adhere to what Rhode Island does and New York has the more modern view. Well, we still are courts, not legislature, and that may be the strongest argument I have heard in my favor. There is only 14 other states that follow Rhode Island. New York is different. My sister says we waited three years before we did this. I would like to remind the Court -- well, I don't have to remind the

Court. The Court knows that after the three years were up, the three years would have been June, 2017. The petition for the receivership came after that so we don't feel guilty that we sat about.

Now, the arguments of the A.G. are given to you at 30,000 feet. Here is what they actually said were our violations and they are on page 60 of our reply. They come from the argument of the Attorney General.

"1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals." There is not and there will be not under our proposal.

The second one, "There should be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, the CCHP and the Heritage Hospitals." There is not and there will be not. Those two conditions that he said were violated, they simply don't if they read the settlement carefully.

Finally, the last objection I don't know how to address. It says, "That the transaction be implemented as outlined in the initial application including all exhibits and supplemental responses." We believe we've done that. Your Honor knows there are hundreds and hundreds and hundreds of pages. We believe we have complied completely. And your Honor also knows and

correctly pointed out, in the interim the Foundation by agreement, which became an order, is able to fund 4.5 percent of its charitable assets. And, by the way, I can tell you is currently being defended by a commercial insurance company. Thank you, your Honor.

THE COURT: Thank you. Next, we are going to move on to Prospect. Counsel.

MR. HALPERIN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. HALPERIN: Preston Halperin for the Prospect entities. Your Honor, I know the hour is getting late and I'm sure everyone is getting tired and hungry. I would ask that you permit me to just go through this. I will be as brief as I can.

THE COURT: Absolutely.

MR. HALPERIN: Your Honor, I am going to take a step back. I come at this from a slightly different prospective. I have been practicing before the Superior Court in receivership actions for 20 years and I've participated as counsel for Receivers and I have been at all sides of the various transactions and party's agreements. And in each case that I have been involved in a settlement agreement has been reached when appropriate by a Receiver. It might even be drafted. It's often drafted. It might even be executed, but it's

always been presented to the Court for approval before it becomes implemented. In this case it seems that the Receiver is going in two different directions with the same document. In the case of the Foundation, the Receiver is saying we haven't gone forward yet. We're going to give them notice and they will have an opportunity to be heard.

In the case of the Prospect entities and the effect with the Prospect CharterCare, LLC, agreement, it has gone forward. It has actually taken the assignment. It has actually received the security interest and it has filed a uniform UCC-1 financial statement. That is different than reaching an agreement and seeking court approval. That is an injury right now to the Prospect East entity, which is a party to the LLC agreement as well as to the Prospect CharterCare, LLC entity, which is, obviously, the subject of the LLC agreement.

I know the Court is well aware of this, but it needs to be said, and we said it right at the outset, that the Prospect entities have absolutely no issue with the money that might be in the hands of CCCB going to the pension holders. As everyone is aware, the Prospect entities came on the scene in 2014. At which time it has been acknowledged in the Receiver's complaint that the pension plan was already willfully under funded. I'm not going

to get into the merits of the case at all. Obviously, that is for another day, but the receivership proceeding is something that is involved, as the Court knows, mostly in the last 20 plus years. We don't have a rule book to go to as to exactly how we do things in receivership court.

My experience is the reason why this process is so successful is that interested parties have always been heard and the courts have always been respectful of the rights of third parties and would not authorize, direct, or permit a Receiver to trample those rights without there being a fair opportunity to be heard. This is a fair opportunity to be heard and we very much appreciate that. However, the Receiver went forward without that fair opportunity to be heard on whether or not it was appropriate to take the CCCB assignment and put the security interest in place and that is not particularly the way things have been done over my 20-years experience with this Court.

The Receiver is attempting to act as I would suggest a private litigant might with very aggressive strong-arm tactics to win at any cost to bring money into the estate, and while that sort of approach may become appropriate in private litigation, that is not typically what the Receiver does. And the reason why I don't think

it's appropriate, your Honor, is because the Receiver is acting as an instrument of the Court. The Receiver is not a private litigant. In the end the Receiver takes his direction from the Court. So whatever the Court thinks is appropriate and fair and reasonable is what the direction is going to be to the Receiver.

So here you have a Receiver who is saying to the Court I think it's appropriate to go ahead and essentially breach an agreement that has contractural provisions, the LLC agreement, and disregard those provisions and saying to the Court it's okay because that can be litigated at another day. That may be true but that doesn't mean it's what the Court would like to do knowing that there is an LLC agreement out there, knowing that they're clear anti-transfer provisions.

I know we are not going to get into the merits of it. I'll just give you two sentences. My brother is going to stand up and say that the assignment is perfectly valid.

THE COURT: It's in their papers.

MR. HALPERIN: There is one thing I want to add to that. We did not do a reply. If your Honor looks at Sections 13.1 of the LLC agreement, even that sort of assignment or transfer to the affiliates requires the approval in form and substance of the manager of the LLC

and the opinion of counsel. Clearly we don't have those things. Clearly that agreement has not been complied with.

Now, the question has come up how can this go forward and what should happen. I would suggest to the Court that if the Receiver were to come to the Court with an independent petition to go ahead and take the assignment of the interest of CCCB and to attempt to step into the shoes as a voting member of CharterCare LLC, the Court would look at that independently and would decide whether or not based on the provision of the LLC, based upon the impact of that, that would be an appropriate direction for the Receiver to have the Court's permission. And I think if that were an isolated transaction, I think the Court would say the agreement is what it is. There are provisions for resolving it. Venue in that agreement is Delaware and if, in fact, there is going to be a dispute as to whether or not the CCCB can transfer its interest, that is between CCCB whether it's the Receiver in its shoes or CCCB and Prospect and that is something that can be litigated under the terms of that agreement in Delaware.

The question for the Court is do you, your Honor, want to set in motion all of these lawsuits without regard to whether or not they are likely to succeed,

whether or not on their face they present problems that the Receivership should not be involved in simply giving the Receiver's counsel carte blanche to just launch these proceedings. There is a domino affect here. It's not just about putting money into the pension plan, which we understand and support. It's about what will happen next.

And if this settlement is permitted to go forward, what will happen is that the board of the Prospect CharterCare, LLC is now 50 percent comprised of the CCCB members will be essentially controlled by the Receiver and those directors will create havoc. There would be a deadlock. There will be effective change of control issues that need to go in front of our regulators. This will put in motion problems that will affect the operations of the hospital.

That is a very significant concern and one that I don't think the Court should simply take the approach of we will kick that can down the road. We know that is what their game plan is. They want to create that deadlock or that impasse. They want to use that court authority, that power, which would come solely from the settlement in order to leverage a settlement that is the subject of litigation. That is the reason why the Court should not approve this because these are questions that

need to be litigated before they happen, not after they happen, and it isn't in my view something that the Court should support to give that sort of unfettered authority to a Receiver as opposed to a private litigant who has the right to file papers and then you have an adversary proceeding.

In previous receiverships all the parties had worked in a collaborative way as possible to achieve a result, and I can remember cases from the A.G. and the Department of Health were regularly at the table. There is a way to achieve the result that is being sought here and there is a process to get to that result. But giving the Receiver the authority to implement the settlement that the A.G. says has issues, the Foundation says has issues, that the Prospect entities say has issues that can be read by looking at the LLC agreement, I would suggest is not the appropriate way for this receivership to proceed. There are evidentiary issues that have to be heard. We can't resolve any of those here.

I would ask that the Court take this a step at a time and if the Court is inclined to go ahead and approve the settlement, I have no doubt that the CCB parties will agree to virtually any settlement that the Receiver approves as evidenced by what they have already agreed to. I think the suggestion that the Court deny the

settlement or doesn't approve it, you're going to not have a settlement is really disingenuous at best. The settlement in my view as presently prepared is in excess of the authority of the Receiver.

And I point out the fact that when the Court entered the permanent order appointing the Receiver, it specifically said on October 27, 2017, "Wistow Sheehan & Lovely have the authority to litigate and settle claims against third parties 'related to the prior management administration and oversight of the retirement plan.'" I don't know that the Court envisioned that authority extending to invading charitable assets of the Foundation or taking on provisions of an LLC agreement or any of the assignments that are in place that affects the rights of these third parties. They go well beyond management, oversight, and administration of the plan.

The Receiver says there is a provision in the agreement that if the settlement is not approved, the parties are going to return to the respective provisions. As I said earlier, your Honor, that is essentially like saying we are going to unring this bell. There's already been assignment. There has already been surety interest. We're going to go ahead and we're going to undo that. That is not the way the Receivership should be proceeding. I think it's bad precedent as well as bad

policy.

I am definitely not going to address any of the substantive issues that the Attorney General raised although I understand their point and I agree with it. Your Honor, regarding the question of the applicability of the special statute, I'd like to address that. We don't have the litigation before the Court that is being settled. We don't have the complaints. There is another civil action that's been stayed, but in this Receivership action we don't have those pleadings. So I do feel that the ultimate decision on whether or not that is collusive or whether or not it's in good faith should lie with Judge Smith when he approves or doesn't approve the settlement.

However, I do think it is extremely appropriate for the Court to be aware of and to look at that statute because the Court would not want to knowingly approve or direct his Receiver to enter into an agreement that on its face appears to the Court to include collusive statements, and Mr. Wistow says there is nothing collusive about it. Well, it's certainly unique for a party settling a case to admit that the damages are $125 million and to be part of the group that actually was the employer in this case and had the responsibility for multiple years of dealing with this retirement plan to

make a statement in the settlement agreement that they have a small part of the liability. To me that shouts out for some sort of attempt to gain an advantage for collusion. If the Court agrees with that, the Court should perhaps consider directing the Receiver to remove those provisions because the Court has the ultimate decision making control, not the Receiver and not the Receiver's counsel.

I think this is a settlement that should go through and can go through, but I think it should go through in a way that respects the various rights of all of the parties and at this juncture I think that personally that should be limited to dealing with the financial consideration. Anything else that the Receiver wants to do, the Receiver should come back to court with a petition and allow the parties to be heard and by that time there may already be a lawsuit pending in Delaware to deal with the LLC agreement, and the Court will see that get litigated in Delaware and await the outcome of that where there may be an administrative proceeding.

So it's premature to know exactly how this all unfolds, but I say don't give the Receiver carte blanche to start reeking havoc on the rights of third parties and diminishing the assets of this receivership estate by keeping the Receiver involved in running up expenses that

don't need to be run up at this point in time from the point of view of this receivership. Embroiling the receivership in litigation which you know is going to happen may not be in the best interest of the receivership estate.

The last thing I want to say, your Honor, and this has a place in my view, is that the Court is obviously concerned with the receivership estate, with the interest of the pension holders, and rightfully so, but there is also precedent for the Court taking into consideration the public interest when a hospital is involved. And, here, I'm sure your Honor is familiar when Judge Silverstein wrote in May, 2010, in the Landmark Hospital case you have to balance the interest of the parties. In that case he was dealing with competing bids for the hospital.

Here, you have a hospital that is operating and serving the community and have a Receiver who is attempting to interfere with the voting operation of that hospital in order to gain a tactical advantage. There is no telling what that may do but the public interest will be harmed should that happen. I would ask the Court no matter what happens here to really keep very, very close reigns on something that could impact the control of the operating hospitals here in Rhode Island.

THE COURT: If this does not take place and there was no settlement agreement, wouldn't everything you're talking about be done by the current 15 percent owner?

MR. HALPERIN: The current 15 percent owner could make changes, but there are fiduciary duties that govern directors and the director is to the Prospect CharterCare entity. Should they or even the Receiver's appointees take action that would be inconsistent, such as trying to enforce a deadlock in order to create a dissolution or whatever the case may be, they may be in a position to potentially violate the fiduciary duty in order to benefit the pension plan.

THE COURT: Didn't you just answer your own question?

MR. HALPERIN: That it could happen, but it hasn't happened because they have a fiduciary duty. They are trying to step away and get into it by the Court authorizing the Receiver to essentially go at it and I don't think that's what the Court should do under the circumstances. They haven't done that for good reason because it would be a breach of their duty if they did that, your Honor.

THE COURT: Thank you very much.

MR. HALPERIN: Thank you.

MR. WISTOW: I have known Mr. Halperin for many

years and I know he would never intentionally misstate any facts to the Court. He has unintentionally done so. The transfer we are talking about now do not require the approval of the 900 or the majority of the board. If your Honor reads very simply what we have put forward, generally speaking, he's right. By the way, that is part of the -- we are going to get into this once we have the trial, but this 15 percent ownership is so illusory. In most cases the 15 percent owner, who is supposed to have 15 percent voting, can't do anything he would like in most instances. This particular situation is a permitted transfer. If you read 13.1 and 13.1 says -- it's in all our papers. It says, "Unless otherwise provided you can't make the transfer." But 13.2 allows permitted transfers and it says, "Not withstanding the restrictions in 13.1 the following transfers are permitted and shall not be deemed to violate the restrictions in Section 13.1."

Now, that transfers by a member to one or more of its affiliates, et cetera, and we've made extensive arguments and I'm not going to rehearse why we are technically an affiliate. By the way, your Honor, as to whether or not we're an affiliate, I really want to hand something up to your Honor. This was attached, your Honor, as part of CharterCare's objection to the

settlement and it's the petition for declaratory order that they filed with the Attorney General on September 27th. It is in this case because they filed it as an exhibit. I would like to hand it up to your Honor.

(Document handed to the Court and counsel.)

And I would just like to add this question of are we an affiliate to whom the transfer is permitted. Paragraph 23, what I have done, your Honor, is I haven't given you the entire file.

THE COURT: This is Exhibit B on Prospect's objection.

MR. WISTOW: That's right. Thank you. Paragraph 23. This is what Prospect has said some days ago, "It is beyond dispute that the receivership estate is SJHSRI in its role as plan administrator. Therefore, the plan administrator is by plan definition SJHSRI. Under Rhode Island law, the receivership estate stands in the shoes of SJHSRI." Now, I tell you there is no question that CCB is an affiliate of St. Joseph's Hospital and this just amplifies the argument that we made.

Paragraph 71 of that same petition, these are the statements of Prospect CharterCare. "It is beyond dispute that there is an identity of parties between the conversion and CEC proceedings and the Federal Court litigation in that the Acquiror, which is Prospect

CharterCare, and the receivership estate were both transacting parties in the conversion and CEC proceedings."

If that doesn't clinch you at least to what they think an affiliate is, I don't know what it is. I'm not going to go through the convoluted argument as to why we are affiliates. I will rely on what was said.

Now, a couple of things, your Honor. We had the temerity to sign a binding settlement agreement. I have two justifications for that. The first is the order that your Honor entered paragraph five, "The said Receiver B is hereby authorized, empowered, and directed to take control, possession, and charge of said respondent and his assets wherever located and manage and continue the administration and oversee the respondent and to reasonably preserve the same and is hereby vested with title to the same, to collect and receive the debts, property, and other assets of said respondent" -- here it is -- "with full power to prosecute, defend, adjust, and compromise all claims and suits of, by, against, or on behalf of said respondent and to appear, intervene, and become a party," et cetera.

He had express authority to do what he did. We all said this is not a run-of-the-mill settlement. We owe it to the Court to come in and say, here is what we have

done. If you want to undo it Judge Stern, it's up to you to undo it. It's not unlike -- in fact, it's exactly like the purchaser or seller of real estate entering into a binding contract saying it's subject to the zoning board of review. If the zoning board says no, provided everybody acts in good faith to attempt to get the approval, then you have the continuation of the binding contract. If the zoning board says no, there is no longer any contract. That's what our agreement provides. I feel, and I hope your Honor agrees, we did not overstep our bounds. We could theoretically have done this without coming to you and gone straight to the Federal Court. We didn't think it was prudent in this complex situation to do that.

The whole business about the 15 percent, this is very, very important to us. We have filed a motion to adjudge in contempt. By the way, my brother just signaled his thinking about bringing a lawsuit in Delaware. You know, our motion to adjudge in contempt, I actually wrote him a letter telling him ahead of time if you want to sue us, if you want to do something to impair the contract, which he acknowledges is a binding contract.

THE COURT: I understand that. I also understand that counsel has not had opportunity to respond to that

motion.

MR. WISTOW: I just want to emphasize I really think it would be outrageous to not ask permission of this Court to invalidate a contract in Delaware as he is planning to do.

By the way, he says he has been a Receiver for many years and this is absolutely unique to agree to damages. I don't think I have ever been a Receiver, to be honest with you. So I'm not going to talk about what is common or uncommon in receiverships, but I have been involved in I will say hundreds of settlements of contested cases and it absolutely is common for a Defendant to agree to the damages in a case so that it can be used by the plaintiffs against non-settling Defendants or more particularly against an insurance company. So maybe it's unique in his experience. It's common in mine.

And, by the way, nobody is suggesting that that admission by them is somehow binding on the other Defendants. The fact of the matter is, Judge, I'm not going to get into -- your Honor, has amply shown over the time that I have been before you that you read the papers carefully, and justifiably get a little short if I start going over them in too much detail.

I do want to add this one point. This 13 percent -- 15 percent is a huge deal because I can tell you as part

of the settlement process that we have been trying to get through the 15 percent holder, CCB, an accounting of the promised $50 million that was supposed to have been put in by Prospect CharterCare. That was part of the original consideration. It was flaunted. It was publicized. We had every reason to believe, because we have been so frustrated about getting information about what they put in, that we actually are going to file another motion to adjudge Prospect CharterCare in contempt because they have not responded to the subpoenas which you had authorized us to settle in giving this information. They have actually affirmatively said they would not give the information to Mr. Fine because they were afraid he was going to share it with us. That was the information we were entitled to.

So all I ask is this, your Honor: There is nothing final about any of this. This whole issue of can they transfer this to us, can they not, if your Honor wants to sit down and read through the papers and make an adjudication of whether or not it's legal, then I would suggest that that probably should be res judicata when we get to the Federal Court on that issue.

So I still suggest probably the simplest straightforward thing is -- this is for the benefit of the estate. You know, my brother says and I really thank

him for his consideration that he wants to save the state money. I'm sure that is one of his principle concerns. First of all, there are no legal fees that we're charging. We're on a straight contingency. So far it's starting to look like I'm getting something like the federal minimal wage for the number of hours we're putting in to this thing. Yes, there will be some expenses but those will be minimum. There are no significant attorney fees. Mr. Halperin need not lose sleep over the loss of money to the estate.

THE COURT: Counsel, what about the issue of by filing the UCC and taking the assignment that now Prospect entities can say there has been an injury?

MR. WISTOW: My answer to that is very simple. That is a prohibition on hypothecate. Absolutely. We acknowledge that. Our justification is two fold.

THE COURT: I'm asking a different question. With respect to the standing, the position was that the objecting parties, especially CharterCare Foundation and Prospect, don't have standing. By now the security interest being filed, do you agree or not with counsel?

MR. WISTOW: I guess what we're talking about is -- I don't know the answer. I'm not the legal scholar Mr. Sheehan is. But I will say this: I don't see how Prospect CharterCare is injured in any way, shape or form

by CCB transferring the 15 percent unless it's a breach of contract, and I say it's not a breach of contract and we specifically say -- we laid it out for your Honor why we're entitled as an affiliate to do what we did in spite of what my brother says. It's easy enough for your Honor. Just take a look at paragraphs 13.1 and 13.2 and you decide whether or not we needed anybody's permission to make this transfer. I submit we do not. If your Honor thinks as a matter of law we breached the contracts, I would be utterly surprised.

In any event, whether or not we have standing, still they have no injury of any sort. So I would ask your Honor to please allow this thing to go forward. It's going to be many months until Judge Smith dismisses all of our claims. The motion to dismiss pending would be many months before we have anything really to say about the merits of this thing. And even then, your Honor, it may follow that our attempts to force the $50 million to be paid, which is one of the things we want to do.

THE COURT: Thank you very much.

MR. WISTOW: Thank you, your honor.

THE COURT: There are a few other parties that filed memorandum in support of the Receiver. Attorney Violet.

MS. VIOLET: Your Honor, Mr. Callaci asked me to

read his statement briefly.

THE COURT: Go right ahead.

MS. VIOLET: And if I could take 60 seconds to reiterate our adoption of the argument made by the Receiver's counsel, and while there is somewhat of a mini trial that has occurred here, we still think that this Court should not be adjudicating all the possible objections to the proposed settlement. The issue really should be limited to whether it's in the best interest of the Receivership estate for him to proceed with the proposed settlement and leave all the other possible objections to be dealt with in the first instance by the Federal Court.

Your Honor, on behalf of my clients, I think that is the most expeditious way to handle it. Their ages are 75 to 99. This helps really alleviate the $12 million, the deep concern they have every single month. I also want to say that also by having this proposed settlement it really mitigates the winners versus the losers and we never then have to reach any of subsidiary arguments as to who is more entitled or not at this point.

Now, on behalf of Chris Callaci, UNAP, and the 400 plan participants, and I quote: "I want to speak to the objection that the Prospect entities have filed with respect to the proposed settlement agreement and the

reasons they give as to why the Court should refuse to approve. On page six of their memo they argue, "The Receiver has acted in a manner inconsistent with his role as a fiduciary of the court." We don't think so, and, your Honor, he then cited to the very same paragraph five that Max Wistow alluded to where you gave him full power to adjust and compromise all claims and suits against the respondent, including paragraph A where they could engage Wistow Sheehan & Lovely to serve and confirms and ratifies his authority to do so." Mr. Callaci continues on page 15 of the memo, "The Prospect entities argue that the proposed settlement agreement is not in the best interest of the Receivership estate." According to Mr. Del Sesto just the opposite is true.

On page eight, paragraph 17, of this petition the settlement instruction he writes, "It is absolutely certain that if the proposed settlement is not approved, the settling defendants' assets will be further dissipated by litigation, expense, and claims of other creditors such that it is indisputable that the sum that the plaintiffs may collect from the settling Defendants, if they prevail, will be substantially less than what is being offered in the settlement." The Receiver goes on to say on page 13, paragraph 35, "He believes that the proposed settlement advances the interest of the

receivership estate for the plan and the plan participants." When it comes to what is in the best interest of the estate, the plan, and plan participants, the people I represent find the words of Mr. Del Sesto far more reliable than the words of the Prospect entities, who are defendants and who are alleged to have played a central role in the very collapse of the pension fund.

The proposed settlement agreement before you is the product of good faith negotiations engaged in by a number of very capable and well-respected attorneys. The argument that this is evidence of collusion is certainly a stretch. But their next argument is particular troubling to us at UNAP. The Prospect entities argue that the settling parties violated the HCA by, "Disregarding the prior administrative and regulatory positions of Rhode Island Attorney General and the Rhode Island Department of Health."

How dare the Prospect entities complain about someone disregarding the regulators and the decision of the Attorney General and the Department of Health? One regulator asked Prospect and CharterCare the following question point blank: "What is the plan going forward to fund liability?" Answer: "Future contributions to the plan will be made on recommended annual contribution

amounts as provided by the plan actuary advisors." You will find that exchange on page 60, paragraph 222 to 223 of the complaint that is pending here in Providence Superior Court as well as the complaint in Federal Court.

When our Attorney General approved that conversion he issued a decision with conditions. On page 52 of his decision he wrote, "Upon any change in what was represented by the transacting parties in connection with the approval of this transaction reasonable prior notice shall be provided to the Attorney General." And on page 54 he required them to, "Notify the Attorney General of any actions out of the ordinary course taken in connection with the St. Joseph's pension or any material changes in its operation and/or structure."

Neither Prospect or CC ever notified the Attorney General that no contributions were going to be made to the pension plan post conversion. There was absolute silence in that regard, but the Attorney General and the Department of Health required as a condition of approval the proposed conversion. And I quote, "The transaction be implemented as outlined in the application." See also the Department of Health quote, "The transacting party shall implement the conversion as detailed in the application." Neither Prospect or CharterCare implemented the conversion as detailed in the

application. No contributions have been made to the pension since the conversion in 2014. Therefore, Prospect entities' new found respect for our Attorney General and Department of Health cannot be more than self-serving.

Your Honor, the 400 or so folks that I represent have expressed their full support in the proposed settlement agreement. They see it as a ray of hope that perhaps they will be able to retire with some dignity and respect coming out of this proceeding. This proposed settlement, if approved, will also move along what would otherwise be a very painful and difficult process for all involved in determining what reductions in benefits will need to be made and the extent to which planned participants will suffer in that regard. As such, we respectfully request that the Court approve the proposed settlement agreement."

THE COURT: Attorney Fine.

MR. FINE: Thank you, your Honor. I represent the settling Defendants. We have not filed anything but fully support the Receiver's request and join in the legal argument. We believe it's the most appropriate action for these three defendants to take. The relief is we will obtain half value. We believe it's in the best interest of the pension holders as well as the settling

defendants.

I am happy to try and answer any questions the Court may have to the settling defendants.

THE COURT: Not at this time. Thank you very much.

MR. FINE: Thank you, your Honor.

THE COURT: Very good. That brings this three and a half hour hearing to a close. Yes. I'm sorry.

MR. BREQUET: Your Honor with the Court's permission, I would like to speak on behalf of Mr. Kasle that the 247 persons that he represents are in full support of this particular settlement.

THE COURT: Thank you very much. The Court understands the timeliness of the disagree's decision in this case so the Court is going to reserve. The Court will be issuing a written decision. In order to move that along, the Court is going to direct the Receiver to order a copy of the transcript of the proceeding today so we can move along the Court's consideration.

I want to thank all of the parties for their arguments, and, most importantly, their briefing in this case. I think it really brought out some of the issues that this Court needs to wrestle with in coming to a decision. With that, this Court will be in recess and I believe the next thing on the calendar is a motion we have on this case next week with Attorney Russo. Thank

you all very much. The Court is in recess.

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