

**Hearing date: September 21, 2020 at 10:00 a.m.**

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

In re:

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

C.A. No. PC-2019-11756

**LIQUIDATING RECEIVER'S SECOND REPORT  
AND REQUEST FOR INTERIM COMPENSATION**

Thomas S. Hemmendinger (the "Liquidating Receiver"), the permanent liquidating receiver of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (each also, individually, a "Petitioner" and, collectively, the "Petitioners"), hereby reports as follows:

1. On December 18, 2019, this Court appointed the Liquidating Receiver as temporary liquidating receiver of the Petitioners and their respective assets. On January 17, 2020, this Court appointed the Liquidating Receiver as permanent liquidating receiver. The Liquidating Receiver has qualified by posting the surety bond required by this Court.

2. The Liquidating Receiver has to date performed all duties required by law or by orders of this Court.

3. CCCB is the parent of SJHSRI and RWH. Until June 20, 2014, SJHSRI owned and operated Our Lady of Fatima Hospital in North Providence, Rhode Island, and RWH owned and operated Roger Williams Medical Center in Providence, Rhode Island.

4. On June 20, 2014, the Petitioners closed on a transaction involving the sale of these hospitals to subsidiaries of Prospect CharterCARE, LLC. In connection with the transaction:

(a) Prospect East Holdings, Inc., the majority member of Prospect CharterCARE, LLC, was obligated to advance \$50 million in capital contributions to the hospitals (the "Long-Term Capital Contribution") for certain capital projects on or before June 20, 2018.

(b) Prospect CharterCARE, LLC and its subsidiaries were obligated to make at least \$10

million per year in additional capital expenditures related to the hospitals.

(c) CCCB received a 15% membership interest in Prospect CharterCARE, LLC and certain additional rights (collectively, the “Hospital Interests”), including the right to an upward adjustment to CCCB’s membership interest based on any failure by Prospect East to make the Long-Term Capital Contribution.<sup>1</sup>

5. Another Prospect affiliate, Prospect Medical Holdings, Inc., guaranteed the Long-Term Capital Commitment.

6. The LLC agreement for Prospect CharterCARE gave CCCB a “put option” to compel Prospect East Holdings to purchase CCCB’s membership interest. Under the LLC agreement, the parties determine the price for the put option through either negotiation or a contractual valuation process. The membership interest and the put option are substantial assets that, as set forth below, this receivership holds in trust for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”).

7. At the time of the sale in 2014, SJHSRI was the sole sponsor, administrator, and funder of the Plan.

8. In 2017, at the request of SJHSRI, this Court appointed Stephen Del Sesto (the “Plan Receiver”) as receiver of the Plan. At the time, the Plan was substantially underfunded, and the Plan Receiver asserts that the Plan had been substantially underfunded for years before the commencement of the Plan receivership.

9. On June 18, 2018, after an investigation by Wistow, Sheehan & Loveley, PC, special counsel to the Plan Receiver, the Plan Receiver and certain Plan participants as putative class representatives sued the Petitioners, various Prospect entities, various Roman Catholic organizations, and others to recover damages for the benefit of the Plan and its participants. (*Del*

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<sup>1</sup> As of the date of this Report, Prospect East has failed to establish that it has funded the Long-Term Capital Commitment.

*Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. 18-cv-00328-WES (D. R.I.), and *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. PC-2018-4386 (R.I. Super.).

10. In 2018, subject to approval by this Court and the U.S. District Court for the District of Rhode Island, the Petitioners, and the Plan Receiver, and the putative class-action representatives entered into the following settlement agreements:

(a) Settlement Agreement dated as of August 31, 2018 (the “Settlement ‘A’ Agreement”), under which, among other terms, the Petitioners (1) paid approximately \$12.6 million to the Plan Receiver, (2) agreed to hold the Hospital Interests in trust for the Plan Receiver, (3) assigned to the Plan Receiver their interest in an escrow account at the R.I. Department of Labor and Training in connection with potential workers compensation claims, (4) agreed that they were liable for breach of contract to the Plan Receiver and the putative class representatives for not less than \$125 million, (5) agreed to commence this liquidation proceeding, and (6) agreed to cooperate with the Plan Receiver in efforts to maximize the value of the Hospital Interests.

(b) Settlement Agreement dated November 21, 2018 (the “Settlement ‘B’ Agreement”) relating to certain funds that SJHSRI and RWH had transferred to CharterCARE Community Foundation after the June 20, 2014 transaction. The Plan Receiver has collected \$4.5 million in connection with the settlement.

11. Both this Court and the U.S. District Court approved these settlements. The U.S. District Court has also certified settlement classes for purposes of both Settlement “A” and Settlement “B”, appointed the Plan participant plaintiffs as class representatives of all Plan participants, and appointed Wistow, Sheehan & Loveley, PC as class counsel for the two settlements.

12. Despite these settlements, CCCB, RWH and SJHSRI remain defendants in the federal court case. In April and May 2020, the Liquidating Receiver responded to discovery requests by the Prospect Entities related to the plaintiffs’ motion for partial summary judgment. The Liquidating Receiver has also monitored developments in the litigation.

13. Both the temporary and permanent orders appointing the Liquidating Receiver

directed him to perform the Petitioners' obligations under the settlement agreements. Without having assumed the settlement agreements, the Liquidating Receiver has been performing all of the Petitioners' current obligations under them.

14. On March 11, 2019, CCCB commenced a civil action in this Court (C.A. No. PC-2019-3654, hereafter "*CCCB v. Lee*") against Prospect East Hospital Advisory Services, Prospect CharterCARE, LLC, the directors of Prospect CharterCARE, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., various affiliates of theirs, and a number of individual and entity John Does, seeking, among other things:

(a) Specific performance of the entity defendants' obligations to fund the Long Term Capital commitment, both derivatively and non-derivatively.

(b) Specific performance of the entity defendants' contractual and statutory obligations to provide access to the business and financial records of Prospect CharterCARE, and information concerning the funding of the Long Term Capital Commitment, including sufficient information for CCCB and the Plan Receiver to evaluate the put option and determine whether to exercise it.

(c) Specific performance and damages against the individual defendants, Prospect East, and Prospect Advisory for breach of fiduciary duty and for aiding and abetting the breach of fiduciary duty, both derivatively and non-derivatively.

(d) Damages and other relief under the Uniform Fraudulent Transfer Act (now the Uniform Voidable Transactions Act) for transfers related to distributions from various Prospect entities and related to obligations incurred to secure the financing that funded those distributions.

(e) Declaratory relief, including the reformation of the LLC Agreement to give CCCB sufficient time to decide whether to exercise the put option.

15. In November 2019, various Prospect entities applied to the Rhode Island Department of Health for approval of an effective change in control of the Prospect CharterCARE subsidiaries that operate the Our Lady of Fatima Hospital and Roger Williams Medical Center. As of February 19, 2020, the Prospect entities resubmitted their applications.

16. These Prospect entities also applied to the Rhode Island Attorney General for

approval of the effective change in control under Rhode Island's Hospital Conversion Act.

17. According to all of these applications, the current owners of the local Prospect entities' ultimate parent company are Samuel Lee, David Topper (through a family trust), and various private equity funds and investors.<sup>2</sup> The applications seek approval of transactions that would result in Messrs. Lee and Topper owning 100% of the ultimate parent company in exchange for Prospect Medical Holdings—not Lee or Topper—paying the private equity investors almost \$12 million plus an undisclosed amount required to buy out certain options.

18. After a review and investigation by the receivers and Wistow, Sheehan & Loveley, PC of the applications on April 9, 2020 the Liquidating Receiver and the Plan Receiver timely objected and asked the Department of Health to deny the applications on several grounds, including:

(a) The applications are materially incomplete. For example, they fail to disclose material litigation, including *CCCB v. Lee*, in which Mr. Lee, Mr. Topper, and various Prospect entities are defendants.

(b) The applications misrepresent and fail to disclose material terms of the proposed change in control transactions, including the price to buy out the options referred to above.

(c) The proposed transactions fail to identify any benefit to the paying entity, Prospect Medical Holdings, Inc. As noted above, this entity is also a guarantor of Prospect East's Long-Term Capital Commitment. Therefore, consummation of the change in control transactions would impair the Prospect entities' ability to fund that commitment.

(d) The applications misrepresent the financial condition of Prospect CharterCARE, Prospect Medical Holdings, and the Prospect CharterCARE subsidiaries who own Our Lady of Fatima Hospital and Roger Williams Medical Center (Prospect CharterCARE SJHSRI, LLC and Prospect CharterCARE RWMC, LLC). For example:

(1) According to financial statements submitted with the applications, these entities do not have sufficient current assets to fund their operations, much less the

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<sup>2</sup> Messrs. Lee and Topper are defendants in *CCCB v. Lee*.

amounts described in the change in control transactions.

(2) These entities are guarantors of loans that were used in part to fund at least \$457 million in dividends to owners of Prospect Medical Holdings, including Lee and Topper.

19. The applications for approval of effective change in control and the receivers' objections thereto are pending before the Rhode Island Department of Health and the Rhode Island Attorney General.

20. On July 21, 2020, the Department of Health's Health Services Council, an advisory body, commenced its hearing on the Department of Health applications on July 21, 2020. At the hearing, the Plan Receiver's special counsel spoke on behalf of both his client and the Liquidating Receiver in opposition to the applications. The Health Services Council recessed its hearing and will continue it at a later date.

21. The Department of Health and the Attorney General have extended the deadline for their decisions on the Hospital Conversion Act application to November 5, 2020. Their decision was based on questions about the financial impact of the covid-19 pandemic on the local hospitals, the delay in the Prospect entities providing documents to the Department and to the Attorney General, the implications of certain Prospect transactions, and unanswered questions about the proposed transaction.

22. The law firm Adler Pollock & Sheehan P.C. ("APS") represents the Prospect entities in connection with all of these applications. However, APS had served as general counsel to the Petitioners for years before the 2014 sale of the hospital assets and served as counsel to the Petitioners in connection with that sale. The Liquidating Receiver and the Plan Receiver believe that APS's representation of the Prospect entities is a clear conflict of interest. Therefore, on July 10, 2020, the Receivers filed a motion in this receivership for injunctive relief to prevent APS from interfering with the collection of receivership property and from aiding the Prospect entities

in obtaining the change in effective control. This motion is scheduled for hearing on September 17, 2020.

23. Through a series of stipulated orders in *CCCB v. Lee*, CCCB, the Plan Receiver is entitled to receive from Prospect CharterCARE, LLC sufficient information and documents so that he can evaluate the put option and ascertain whether to exercise it. These orders also extended the deadline for CCCB to exercise the put option.

24. Pursuant to these orders, in February 2020 the Plan Receiver and the Liquidating Receiver timely requested such information and documents.

25. However, neither the Plan Receiver nor the Liquidating Receiver received sufficient information and documents. Therefore, after unsuccessful efforts to obtain the information without court intervention, in February 2020 they timely renewed their request for a hearing on a pending motion for injunctive relief to obtain the information and documents and also filed a joint motion to compel production of documents from Prospect.

26. After hearings on these requests and Prospect's objections, on July 21, 2020 this Court issued a written decision granting in part and denying in part the Receivers' requests for information and documents. This Court also extended the deadline for exercise of the put option to 60 days after Prospect CharterCARE, LLC produces the required documents and information.

27. As of the date of this report, Prospect CharterCARE, LLC has not produced anything.

28. Prospect CharterCARE, LLC's operating agreement provides for an eight-member board of directors, CCCB has the right to appoint four (the "Category A Directors"), and Prospect East Holdings, Inc., the majority member, has the right to appoint four (the "Category B Directors"). Therefore, on July 22, 2020, the Liquidating Receiver appointed James H. Aceto, CPA, William J. Lynch, Esq., James P. Riley, and Marc Weinberg, M.D. as the Category A Directors. These gentlemen replaced the original Category A Directors, because the Liquidating

Receiver had determined that the original directors had failed to fulfill their fiduciary duties to Prospect CharterCARE, LLC.

29. On August 6, 2020, Mark Russo, Esq., counsel to Prospect CharterCARE, LLC, wrote to the new Category A Directors, instructing them not to communicate with the Liquidating Receiver, the Plan Receiver, or their respective counsel except through Mr. Russo. This letter constitutes an improper attempt to restrict their ability to fulfill their own duties as directors of Prospect CharterCARE, LLC.

30. As noted in the Liquidating Receiver's first report, at the time of the Liquidating Receiver's appointment, except for these contested matters as to the provision of information and documents, by stipulated order *CCCB v. Lee* had largely been stayed since April 2019. However, pursuant to the stipulated stay order, a party could terminate the stay by issuing a 20-day notice. On March 19, 2020, the Liquidating Receiver issued the notice.

31. Based on the Prospect applications to the Department of Health and the Attorney General, the receivers' investigation thereof, and other investigations, on April 21, 2020 after the expiration of the stay in *CCCB v. Lee* the Liquidating Receiver and the Plan Receiver filed a First Amended and Supplemental Complaint in *CCCB v. Lee*. The amended and supplemental complaint adds facts and causes of action uncovered in the investigations thereof by Wistow, Sheehan & Loveley, PC and the receivers, and adds as defendants: parties to the proposed change in control transaction; and JPMorgan Chase Bank, the administrative and collateral agent for the lenders who provided the funding for the dividends to owners of Prospect.

32. The defendants have filed answers to the amended and supplemental complaint, except as follows:

(a) JPMorgan Chase Bank has filed a Rule 12(b)(6) motion to dismiss. The receivers and the bank have agreed to a briefing schedule on this motion, and a hearing is tentatively scheduled for September 21, 2020.



(b) Green Equity Investors V, LP and Green Equity Investors Side V, LP (the current majority equity owners of the Prospect entities) have filed an untimely motion to dismiss for lack of personal jurisdiction. This motion has not been scheduled for a hearing, no deadline for objections has been set, and no briefing schedule has been set.

33. On December 19, 2019 after this Court appointed the Liquidating Receiver and entered a receivership stay, and shortly after notice of that stay was given to counsel for Prospect Medical Holdings and for Prospect East, Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc. commenced an action in the Delaware Court of Chancery against CCCB for declaratory judgment, injunctive relief and damages (the “Delaware Chancery Action”). On December 19, 2019, the Prospect plaintiffs acknowledged that the receivership stay applies to the Delaware Chancery Action and have agreed not to prosecute the action without permission from this Court.

34. In addition to disputing the merits of the Delaware Chancery Action, the Liquidating Receiver asserts that this Court has exclusive jurisdiction of any disputes between CCCB or the Liquidating Receiver on the one hand and the Prospect entities on the other.

35. On May 22, 2020, this Court approved the agreement between the Liquidating Receiver and the Plan Receiver that the Plan Receiver may file a proof of claim in this receivership on behalf of all Plan participants, and that individual Plan participants not be required to file separate proofs of claim in their capacity as Plan participants. The Plan Receiver submitted a timely sworn proof of claim consistent with this agreement.

36. The bar date for creditors to submit sworn proofs of claim has expired.

37. On other matters:

(a) As stated above, the Liquidating Receiver continues to perform the Petitioners’ current obligations under the settlement agreements with the Plan Receiver.

(b) The Liquidating Receiver continues to collect distributions from various charitable trusts of which SJHSRI or RWH is a beneficiary.

(c) The Liquidating Receiver is considering (1) whether to reject SJHSRI's pre-receivership third party administrative agreement with Beacon Mutual Insurance Company and (2) the effect of rejection on former employees of SJHSRI. This agreement provides for workers compensation payments that Beacon continues to pay former employees of SJHSRI who were injured at a time SJHSRI was self-insured.

(d) At the Liquidating Receiver's request, this Court modified the receivership stay to permit tort plaintiffs to prosecute cases against SJHSRI and RWH for claims that arose before June 20, 2014, on condition that the plaintiffs limit their recovery to any insurance proceeds.

(e) The Liquidating Receiver continues to deal with subpoenas and other court process served on SJHSRI or RWH regarding medical records requests, accounts receivable that predate the sale to Prospect and were sold to Prospect in the 2014 sale, and other matters.

### **Interim Accounting**

38. From April 1, 2020 to June 30, 2020, he has made the following collections and disbursements:

	<b><u>CCCB</u></b>	<b><u>SJHSRI</u></b>	<b><u>RWH</u></b>	<b><u>Aggregate</u></b>
Receipts	\$ 0.00	\$ 62,221.56	\$ 48,817.59	\$ 111,039.15
Disbursements	<u>(20.00)</u>	<u>(41,683.58)</u>	<u>(40,439.51)</u>	<u>(82,143.09)</u>
Net Cash on Hand	\$ 6,117.11	\$ 48,767.00	\$ 405,007.10	\$ 859,891.21

39. Attached hereto as Exhibit 1 is a consolidated income statement for the Petitioners from April 1, 2020 to June 30, 2020.

### **Request for Interim Compensation and Reimbursement of Expenses**

40. From April 1, 2020 to June 30, 2020, the Liquidating Receiver and his counsel put in a total of 156.70 hours and advanced \$74.60 for expenses.

41. The Liquidating Receiver has given this Court a detailed statement of the Liquidating Receiver's time and expenses, and this statement (redacted for privileged and work-product information) is available to parties in interest on request.

42. The Liquidating Receiver asks this Court to award him compensation for services rendered and award him reimbursement for expenses advanced.

**Notice to Parties in Interest**

43. The Liquidating Receiver has served this Report and notice of the hearing thereon to counsel of record in this receivership and to counsel of record for the following parties in interest: the Plan Receiver; the named plaintiffs and the defendants in *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. 18-cv-00328-WES (D. R.I.), and *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. PC-2018-4386 (R.I. Super.); the Prospect entities; and the defendants in *CCCB v. Lee*.

44. The Liquidating Receiver believes that this constitutes sufficient notice of this Report and of the Liquidating Receiver's requests for relief.

WHEREFORE, the Liquidating Receiver prays that this Court:

- (a) Accept, approve and ratify this Report.
- (b) Approve and ratify the acts of the Liquidating Receiver.
- (c) Award to the Liquidating Receiver an interim fee for services rendered and for expenses advanced and authorize the Liquidating Receiver to pay same from cash on hand.
- (d) Award to the Liquidating Receiver such other and further relief as this Court deems appropriate.

Respectfully submitted,

Date: September 4, 2020

/s/ Thomas S. Hemmendinger  
Thomas S. Hemmendinger #3122  
Liquidating Receiver  
Brennan, Recupero, Cascione, Scungio &  
McAllister, LLP  
362 Broadway  
Providence, RI 02909  
Tel. (401) 453-2300  
Fax (401) 453-2345

**CERTIFICATE OF SERVICE**

I hereby certify as follows:

- 1) On September 4, 2020, I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.
- 2) The following parties received electronic notice: any parties entered to be notified through the Electronic Filing System.
- 3) The document was served by United States Postal Service, postage prepaid, on the following persons: see separate certificate of service.

/s/ Thomas S. Hemmendinger  
Thomas S. Hemmendinger

# Exhibit 1

## CharterCARE Community Board et al. Profit & Loss Detail April through June 2020

4:03 PM  
 08/19/20  
 Accrual Basis

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
<b>Ordinary Income/Expense</b>								
<b>Income</b>								
interest Income								
Deposit	04/30/2020			Interest		Roger Williams...	2.46	2.46
Deposit	04/30/2020			Interest		Roger Williams...	2.62	5.08
Deposit	04/30/2020			Interest		St. Joseph He...	6.56	11.64
Deposit	05/31/2020			Interest		Roger Williams...	2.54	14.18
Deposit	05/31/2020			Interest		Roger Williams...	2.71	16.89
Deposit	05/31/2020			Interest		St. Joseph He...	6.56	23.45
Deposit	06/30/2020			Interest		St. Joseph He...	5.90	29.35
Deposit	06/30/2020			Interest		Roger Williams...	2.62	31.97
Deposit	06/30/2020			Interest		Roger Williams...	2.46	34.43
Total interest Income							34.43	34.43
<b>Subpoena/witness fee</b>								
Deposit	06/19/2020	dep	Constable	Service and p...		St. Joseph He...	11.00	11.00
Total Subpoena/witness fee							11.00	11.00
<b>Trust Income</b>								
Deposit	04/10/2020		Bank of America	Saarrah Brown...		Roger Williams...	9,389.75	9,389.75
Deposit	05/22/2020	dep	Bank of America	Townsend		St. Joseph He...	61,314.54	70,704.29
Deposit	05/29/2020	dep	Bank of America	C. Prescott K...		Roger Williams...	3,310.25	74,014.54
Deposit	06/05/2020	dep	Bank of America	Albert M. Stei...		St. Joseph He...	877.00	74,891.54
Deposit	06/05/2020	dep	Bank of America	George L. Flint		Roger Williams...	4,923.75	79,815.29
Deposit	06/05/2020	dep	Bank of America	Albert Steinert		Roger Williams...	877.00	80,692.29
Deposit	06/19/2020	dep	Bank of America	George L. Flint		Roger Williams...	5,740.00	86,432.29
Deposit	06/26/2020	dep	Bank of America	Harry M Miria...		Roger Williams...	24,561.43	110,993.72
Total Trust Income							110,993.72	110,993.72
Total Income							111,039.15	111,039.15
<b>Expense</b>								
<b>Bank Service Charges</b>								
Deposit	04/23/2020			Rebate of ser...		Roger Williams...	-25.00	-25.00
Check	04/30/2020			Service charge		Roger Williams...	25.00	0.00
Deposit	05/08/2020			Rebate of ser...		Roger Williams...	-25.00	-25.00
Check	05/29/2020			Service charge		Roger Williams...	25.00	0.00
Deposit	06/08/2020			Rebate of ser...		Roger Williams...	-25.00	-25.00
Check	06/30/2020			Statement del...		Roger Williams...	3.00	-22.00
Total Bank Service Charges							-22.00	-22.00

**CharterCARE Community Board et al.**  
**Profit & Loss Detail**  
 April through June 2020

4:03 PM  
 08/19/20  
 Accrual Basis

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
<b>Filing Fees</b>								
Check	05/22/2020	1008	ExamWorks Clinical ...	March, April, ...		Roger Williams...	750.00	750.00
Check	06/03/2020	1010	ExamWorks Clinical ...	Jan. and Feb.		Roger Williams...	500.00	1,250.00
Check	06/19/2020	1005	RI Secretary of State	2020 annual rpt		CharterCARE - ...	20.00	1,270.00
Check	06/19/2020	1011	RI Secretary of State	2020 annual r...		Roger Williams...	20.00	1,290.00
Check	06/21/2020	1011	RI Secretary of State	2020 annual rpt		St. Joseph He...	20.00	1,310.00
Total Filing Fees							1,310.00	1,310.00
<b>Mailing service</b>								
Check	05/22/2020	1007	Relevant Discovery			Roger Williams...	373.43	373.43
Total Mailing service							373.43	373.43
<b>Receiver's Fees and Expenses</b>								
Check	05/22/2020	1010	BRCSM	1st interim fee...		St. Joseph He...	38,818.08	38,818.08
Check	05/22/2020	1009	BRCSM	1st interim (pa...		Roger Williams...	38,818.08	77,636.16
Total Receiver's Fees and Expenses							77,636.16	77,636.16
<b>Records Management</b>								
Check	05/05/2020	1009	Xact Data Discovery	Inv. 49-05531...		St. Joseph He...	2,845.50	2,845.50
Total Records Management							2,845.50	2,845.50
Total Expense							82,143.09	82,143.09
Net Ordinary Income							28,896.06	28,896.06
<b>Net Income</b>							<b>28,896.06</b>	<b>28,896.06</b>