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.	:	

PLAINTIFFS' OBJECTION TO THE PROSPECT DEFENDANTS' MOTION TO POSTPONE DEADLINES

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Plaintiffs hereby object to the motion (ECF No. 184) filed by Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (the "Prospect Entities") to postpone all the deadlines set forth in the Third Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 183) (the "Third Stipulation and Consent Order").

As discussed below, Plaintiffs have already allowed Defendants months of additional time, rather than burden the Court with discovery disputes. The result, however, is that Defendants just ask for more time so they can indefinitely postpone resolution of Plaintiffs' pending motion for summary judgment. Meanwhile the assets of the Plan continue to be depleted and the Prospect Entities are aggressively attempting to put their own assets beyond the reach of any judgment Plaintiffs may obtain in this case. Accordingly, Plaintiffs strongly object to the motion for further delay.

Although the Prospect Entities have entitled their motion as a "Motion to Extend Discovery," it is actually much broader. The motion seeks to postpone *all* deadlines. Those deadlines include not only the June 26, 2020 initial discovery deadline, which in any event will not elapse for almost two more months, but also (and more immediately) the May 12, 2020 deadline for Defendants (1) to file their objections to Plaintiffs' pending motion for partial summary judgment; (2) to file their own cross-motions for summary judgment; and (3) to serve amended and supplemented responses to Plaintiffs' interrogatories, document requests, and requests for admission.

In fact, this would be the second extension of that schedule, which was intended by the Court to allow an expeditious resolution of a limited issue concerning the applicability of ERISA to the Plan, but instead has become an exercise in delay. As

discussed below, the first extension was the result of the Prospect Entities' decision to make no discovery requests during the first two months of a three-month discovery period, as well as their refusal to provide responsive answers to Plaintiffs' discovery on the key issues.

During the first extension, the Prospect Entities chose not to conduct discovery and instead now seek another extension to accomplish what they could and should have accomplished under the original deadlines, much less the deadlines as once extended.

BACKGROUND

This case has been pending for almost two years, since June 2018. Defendants[1] have not answered the Complaint. Instead they filed voluminous motions to dismiss. During the hearing on the motions to dismiss on September 10, 2019, the Court asked for the parties' positions on whether the Court should defer decision on the motions to dismiss and order a period of limited discovery concerning the issue of whether and when the Plan was subject to ERISA, to be followed by motions for summary judgment on that issue.[2] The Defendants all favored this approach, but Plaintiffs expressed concern that it would delay the case.[3] The Court ultimately ordered the parties to attempt to agree upon the terms for focused discovery, failing which the Court would consider the parties' respective proposals.[4]

[1] Herein "Defendants" refers to the remaining non-settling Defendants, i.e. the Diocesan Defendants, the Prospect Defendants, and The Angell Pension Group, Inc.

[2] See Hearing Transcript, Tuesday, September 10, 2019 Afternoon Session, at 69-70.

[3] See Hearing Transcript, Tuesday, September 10, 2019 Afternoon Session, at 70.

[4] See Hearing Transcript, Tuesday, September 10, 2019 Afternoon Session, at 74-75.

Pursuant to the Court's direction, Plaintiffs for several weeks sought acceptable terms from Defendants, which culminated on October 22, 2019 with the filing of the parties' Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170), which essentially provided for a prompt exchange of documents, followed by Plaintiffs' motion for summary judgment, and a limited period of discovery thereafter focused on the issues raised by Plaintiffs' motion for summary judgment.

Pursuant to that stipulation[5], in November 2019, the parties exchanged the comprehensive and voluminous document discovery that had been produced in the Superior Court receivership proceeding, and on December 17, 2020, Plaintiffs filed their motion for summary judgment on Count IV (declaratory relief), focusing on one prong of the test for satisfying ERISA's "church plan" exemption. That motion contends that the Plan ceased to be a church plan exempt from ERISA by July 2011 (or at the very latest, April 2013), because there is no genuine dispute that the Plan had ceased to be maintained by an organization whose principal purpose was administering or funding the Plan (i.e. a so-called "principal purpose organization").

Then Plaintiffs spent more weeks attempting to get Defendants' agreement to a schedule for focused discovery, until finally on January 8, 2020, the Parties filed their Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175). In that stipulation, the parties agreed to two 90-day periods of limited discovery and the schedule for opposition and reply memoranda. The first period of discovery would commence upon the entry of the Stipulation and Consent

[5] As well as the Defendants' separate Stipulation and Proposed Order (ECF No. 171).

Order, which occurred on January 13, 2020 (the "Initial Limited Discovery Period"). The purpose of this Initial Limited Discovery Period was to allow all the parties to conduct targeted limited discovery on the sole ground upon which Plaintiffs' relied for their motion for summary judgment, which was that the St. Joseph Health Services of Rhode Island Retirement Plan failed to qualify for the "church plan" exemption because the Plan was not being maintained by a so-called "principal purpose organization" as required by ERISA. Following the expiration of the Initial Limited Discovery Period, the Defendants would file their summary judgment objections and cross-motions, and the second round of limited discovery would ensue concerning the issues raised by those objections and cross-motions. See ECF No. 175 ¶ 5.

On the first day of the Initial Limited Discovery Period (January 13, 2020), Plaintiffs immediately served interrogatories, requests for admissions, and requests for documents on the Prospect Entities and other defendants. The Prospect Entities had the same opportunity to seek discovery on day one, and knew exactly what the relevant fact issues were because they already had Plaintiffs' motion for summary judgment with its detailed Statement of Undisputed Facts. Instead, however, they chose a different and dilatory approach.

The Prospect Entities waited until March 6, 2020, nearly two months into the three month Initial Limited Discovery Period, to begin conducting *any* discovery, and even then, only served interrogatories and document requests on Plaintiffs as well as (at that time unbeknownst[6] to Plaintiffs) on St. Joseph Health Services of Rhode Island.

[6] Notwithstanding the requirements of Fed. R. Civ. P. 5(a)(1), the Prospect Entities failed to serve Plaintiffs with copies of these latter discovery requests propounded on other Defendants until March 16, 2020.

In addition, and unbeknownst[7] to Plaintiffs, counsel for the Prospect Entities *inexplicably* issued a *subpoena duces* tecum to Defendant CharterCARE Community Board, notwithstanding that it was also a Defendant.[8]. The Prospect Entities subsequently withdrew their improper subpoena and issued[9] interrogatories and document requests to CharterCARE Community Board on March 12, 2020, to which responses were not due until at least April 13, 2020, the last day of the Initial Limited Discovery Period.[10]

At that time, the Prospect Entities knew that Plaintiffs' and SJHSRI's responses to their discovery requests would not be due until a week before the discovery period was going to expire, and CCCB's responses would not be due until it had already expired, in either event leaving the Prospect Entities no time to conduct depositions! Indeed, on April 6, 2020, when Plaintiffs served their timely discovery responses, only a week remained before the Initial Limited Discovery Period was (at that time) due to expire on April 13, 2020.[11] Nevertheless, the Prospect Entities chose to conduct no other discovery in the interim, including zero depositions.

[7] The Prospect Entities failed to provide Plaintiffs with prior notice—indeed any notice—of the subpoena as required by Fed. R. Civ. P. 45(a)(4) ("If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each part.").

[8] On March 6, 2020, counsel for the Prospect Entities issued a subpoena duces tecum to "Keeper of Records, CharterCARE Community Board," returnable at April 6, 2020 at 10:00 a.m. Defendant CharterCARE Community Board is a defendant subject to document requests under Fed. R. Civ. P. 34, not a third party subject to subpoena process under Fed. R. Civ. P. 45.

[9] Again without the required notice to Plaintiffs. The Prospect Entities eventually gave belated notice of its interrogatories and document requests on March 16, 2020.

[10] The Prospect Entities incorrectly state in their motion that responses were due on April 12, 2020, which was a Sunday. See Fed. R. Civ. P. 6(a)(1)(c).

[11] As discussed *infra*, the end of the Initial Limited Discovery Period was subsequently extended until June 26, 2020.

Meanwhile, the Prospect Entities (and the Diocesan Defendants) had been responding to Plaintiffs' discovery requests with deflection: when the Prospect Entities served their responses on the final day they were due, they claimed that they could not state whether or not they contended that the Plan was maintained by a "principal purpose" organization until all discovery was complete and they had filed their objections to Plaintiffs' motion for summary judgment.[12] Plaintiffs immediately insisted that Defendants were required to state whether or not they so contended, but they refused. On February 14, 2020, Plaintiffs began what turned into another month-long effort to meet and confer with *inter alia* the Prospect Entities, to obtain responsive answers on that key issue. Indeed, Plaintiffs prepared extensive draft discovery motions which were provided to the Defendants and the Court pursuant to the Court's requirement for an informal discovery conference prior to filing such motions.

Then, on March 18, 2020, which was the day the informal conference was scheduled to occur and six weeks after Plaintiffs had begun seeking an informal resolution of the dispute, the parties filed, and the Court entered, the Third Stipulation and Consent Order (ECF No. 183). This Third Stipulation and Consent Order embodied the parties' agreement that, *on a date certain*, May 12, 2020, Defendants would (a) file their objections (if any) to Plaintiffs' pending motion for partial summary judgment; (b) file their own cross-motions for summary judgment (if any); and (c) serve amended and supplemented responses to Plaintiffs' interrogatories, document requests, and requests for admission, in which Defendants would state whether or not they contended

[12] These issues were addressed *in extenso* in Plaintiffs' motions to compel discovery, which Plaintiffs on March 4, 2020 e-mailed to the Court together with a request for an informal conference, pursuant to the Court's standing policy of mediating discovery disputes prior to the filing of motions. See Notice Regarding Discovery Disputes (January 11, 2019).

that the Plan was maintained by a "principal purpose" organization.[13] In addition, and notwithstanding the May 12, 2020 date, the parties agreed to extend the end of the Initial Limited Discovery Period until June 26, 2020, which would enable Plaintiffs to conduct further discovery on that key issue,[14] including depositions, prior to filing their reply memorandum.

All of that constituted the agreement of the parties, both filed with and entered by the Court on March 18, 2020; nine (9) days after the Governor issued the Declaration of Disaster Emergency[15] on March 9, 2020; five (5) days after the Chief Judge issued the General Order Regarding Continuity of Operations Regarding Coronavirus Pandemic[16] on March 13, 2020; and one (1) day after the Clerk informed the public that the Court itself remains "100% operational" through (*inter alia*) remote conferences and hearings:

> The United States District Court for the District of Rhode Island wants to assure the public that we are 100% operational. While public access to our physical facility will be limited due to the public health guidance issued by the Centers for Disease Control and Prevention ("CDC") and local health officials, we are heeding the social distancing recommendations but employees continue the important work of justice via telework computing.
>
> Although the way in which we perform our vital functions is a

[13] By separate stipulation, ECF No. 177, Plaintiffs and Defendant The Angell Pension Group, Inc. agreed it need not supplement its responses to Plaintiffs' discovery requests and will not be filing any objections or cross-motions in response to Plaintiffs' pending summary judgment motion.

[14] This additional window was necessary because Defendants refused to state, prior to filing their opposition memoranda, whether or not the Plan was ever maintained after 2008 by a "principal purpose" organization. Accordingly, the first opportunity Plaintiffs will have to take depositions exploring Defendants' contentions on that issue will be after Defendants have filed their objections and take a position on those issues.

[15] Available at https://governor.ri.gov/documents/orders/Executive-Order-20-02.pdf.

[16] Available at https://www.rid.uscourts.gov/sites/rid/files/General%20Order%20Pandemic%20for%20Building%20Entrance%20-%20FINAL.pdf.

little different, we continue to:

* * *

● Conduct telephonic and video conferences and hearings.

* * *

March 17, 2020 Public Notice: The Federal Court Remains 100% Operational.[17]

As discussed below, the Prospect Entities' motion seeks to further stall the progress of this case until the COVID-19 pandemic has ended,[18] notwithstanding that the Court remains 100% operational and fully committed to the administration of justice.

ARGUMENT

I. The COVID-19 emergency already preceded the Third Stipulation and Consent Order, whose agreed deadlines Prospect now unilaterally seeks permission to postpone

As noted above, the Prospect Entities, Plaintiffs, and the other parties agreed to the Third Stipulation and Consent Order and filed it with Court on March 18, 2020, nine (9) days after the Governor issued the Declaration of Disaster Emergency on March 9, 2020, and five (5) days after the Chief Judge issued the General Order Regarding Continuity of Operations Regarding Coronavirus Pandemic on March 13, 2020. Indeed, the Prospect Entities specifically point to the Governor's Declaration of Disaster Emergency as purported support for their motion, see id. at 2, notwithstanding

[17] Available at https://www.rid.uscourts.gov/sites/rid/files/courtisoperational3.17.20.pdf.

[18] The Prospect Entities expressly "request that the Court GRANT this Motion, extending the deadlines in the Third Stipulation and Consent Order by ninety (90) days, **subject to further extension upon motion to the Court in the event that the COVID-19 pandemic persists**." Prospect Entities' Motion at 3.

that it preceded the Third Stipulation and Consent Order by more than a week, and that at that time the Governor was already ordering restrictions on large gatherings.[19]

That emergency was already one of the background conditions when the Prospect Entities agreed to the present deadlines in the Third Stipulation and Consent Order. Thus, there is no change in circumstances. The Prospect Entities should not be permitted unilaterally to change their agreement based on the same circumstances already underlying and giving rise to that agreement.

II. The recent service of Plaintiffs' timely responses to the Prospect Entities' belated discovery requests do not justify the postponement of the agreed deadlines

As discussed *supra*, the Prospect Entities inexplicably waited for almost two months of the three-month Initial Limited Discovery Period to elapse before seeking to conduct any discovery, consisting of interrogatories and requests for documents that they served on March 6, 2020. Thus, the timing of Plaintiffs' timely responses to those discovery requests, on April 6, 2020, was controlled by the Prospect Entities.

III. The fact that Defendants' dilatory conduct forced Plaintiffs to postpone conducting their own Rule 30(b)(6) depositions until after Defendants update their written discovery responses on May 12, 2020 does not justify postponing that deadline or the other deadlines

The Prospect Entities state, without explanation, the following as grounds for their motion:

> In addition, while Plaintiffs may object to the Prospect Entities taking depositions, plaintiffs have also noticed Rule 30(b)(6)

[19] See Second Supplemental Emergency Declaration (dated March 16, 2020) available at https://governor.ri.gov/documents/orders/Executive-Order-20-04.pdf.

> depositions, which they have elected to postpone to a later date.

Prospect Entities' Motion at 2.

On March 10, 2020, while Plaintiffs were still negotiating with Defendants to reach an agreement about Defendants' responses to Plaintiffs' written discovery requests, Plaintiffs served Rule 30(b)(6) deposition notices on the Prospect Entities and the Diocesan Defendants.[20] Plaintiffs designated, as subject matters, the identity and factual basis for identifying any "principal purpose organization" that may have maintained or administered the St. Joseph Health Services of Rhode Island Retirement Plan during the years 2008 to 2017. (As noted, Plaintiffs contend for purposes of summary judgment that there was no "principal purpose organization" administering the Plan by July 2011, or in any event, at the latest, by April 2013.)

To date, Defendants have yet to set forth any contentions or facts whatsoever regarding the "principal purpose organization" issue, although it has been approximately three and a half months since Plaintiffs first served discovery requests regarding that issue. Plaintiffs' proposed Rule 30(b)(6) depositions were meant to explore those contentions, which Defendants have not yet provided. When the time comes, Plaintiffs expect to take those depositions through remote technological means, as appropriate.

As discussed *supra*, on March 18, 2020, the parties filed (and the Court entered) the Third Stipulation and Consent Order which, *inter alia*, set the May 12, 2020 date for Defendants to file their summary judgment objections and cross motions and to update their discovery responses, as well as extending the Initial Limited Discovery Period to

[20] I.e. Roman Catholic Bishop of Providence, Diocesan Administration Corporation, and Diocesan Service Corporation.

June 26, 2020, to permit Plaintiffs to conduct discovery into Defendants' factual contentions on the "principal purpose organization" issue. Accordingly, one day later, on March 19, 2020, Plaintiffs informed Defendants that Plaintiffs' Rule 30(b)(6) depositions of the Defendants were postponed and would be rescheduled. Plaintiffs presently intend to reschedule those depositions to sometime after the May 12, 2020 deadline, by which time Defendants must update their discovery responses and set forth their contentions about the "principal purpose organization" issue.

IV. Even now, the Prospect Entities do not indicate which depositions they seek delays in order to conduct, much less why those depositions could not have been conducted months ago

The Prospect Entities assert, without elaboration, that they "intend to take several Rule 30(b)(6) and nonparty depositions in connection with the pending summary judgment motion." Prospect Entities' Motion at 2. Whose depositions? No deposition notices have been issued. Why were any such depositions not conducted months ago?

Even now, the Prospect Entities have not provided such basic information to the Court in support of their motion. It is their burden to show good cause why they were unable to complete necessary discovery within the original deadline (deadlines!), by explaining the reasons for the delay and specifying exactly what discovery is needed. Instead they seek to exploit the COVID-19 outbreak to totally stall this case.

V. The Prospect Entities only offers vague arguments why unspecified depositions, which they could have conducted months ago in person, cannot be conducted now with appropriate precautions and technology

The Prospect Entities contend without further elaboration:

> Unfortunately, given the number of parties and counsel involved in this case, whose attendance is necessary at each deposition, taking depositions by remote means is not a viable

> alternative to taking in-person depositions. While under normal circumstances a video or telephonic deposition might be viable options, that is not the case when multiple attorneys, the witness, and the stenographer would be required to be in different locations.

Prospect Entities' Motion at 3.

There is no substantiation provided for any of this *ipse dixit*. Similar handwaving has been rejected by other courts. See Herrera v. City of New York, No. 19CV3216ATSDA, 2020 WL 1879075, at *2 (S.D.N.Y. Apr. 15, 2020) (denying the parties' joint request for a 90-day stay of fact discovery and overruling the objection that "the logistical challenges of arranging for remote depositions are always significant, and are further exacerbated by the added difficulty of having multiple parties join remotely from multiple locations, as well as the added difficulty of managing parties' different technological capabilities").

As noted, above, the Court remains "100% operational," and those operations should not be thwarted by the Prospect Entities' refusal to conduct remote depositions. As another court recently observed:

> The court concludes that the parties have not established good cause for an extension of the case deadlines. The parties provide the court with no specifics concerning any discovery that they have been unable to obtain due to circumstances surrounding the COVID-19 pandemic. They assert that the pandemic has "substantially limited" their access to documents and "potential" third-party discovery, but they do not identify any documents or other discovery that they have been unable to obtain. The parties assert that the pandemic impacts their ability to take depositions in person, but they do not discuss why they cannot conduct such depositions by telephone or other remote means. **Although the court understands the parties' preference for taking depositions in person, given the present circumstances, the court urges the parties to consider available**

> **alternatives.** *See* Fed. R. Civ. P. 30(b)(4) ("The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means.").

Velicer v. Falconhead Capital LLC, No. C19-1505 JLR, 2020 WL 1847773, at *2 (W.D. Wash. Apr. 13, 2020) (denying request for 90-day extension of all case deadlines) (emphasis supplied). Similarly, another court has ruled:

> This court will not require parties to appear in person with one another in the midst of the present pandemic. **Nor is it feasible to delay the depositions until some unknown time in the future.** Presently, the parties' June 15, 2020, trial remains on the trial docket. In order to prepare for trial and meet their pretrial deadlines, the depositions must be conducted in the next couple of weeks. The court hereby holds that, under the present circumstances, the depositions to be taken in this case will satisfy Rule 28's requirement that they be "taken before...an officer authorized to administer oaths either by federal law or by the law in the place of examination" so long as that officer attends the deposition via the same remote means (e.g., video conference) used to connect all other remote participants, and so long as all participants (including the officer) can clearly hear and be heard by all other participants.
>
> With this clarification in place, there is no basis to issue a protective order delaying the corporate deposition of SAPS. Accordingly, the Motion to Quash is DENIED.

SAPS, LLCs v. EZCARE CLINIC, INC., No. CV 19-11229, 2020 WL 1923146, at *2 (E.D. La. Apr. 21, 2020) (emphasis supplied). See also Sinceno v. Riverside Church in City of New York, No. 18-CV-2156 (LJL), 2020 WL 1302053, at *1 (S.D.N.Y. Mar. 18, 2020) (in light of COVID-19, ordering that "all depositions in this action may be taken via telephone, videoconference, or other remote means, and may be recorded by any reliable audio or audiovisual means"); De Lench v. Archie, No. CV 18-12549-LTS, 2020 WL 1644226, at *2 (D. Mass. Apr. 2, 2020) ("In light of the current coronavirus

pandemic, the Court encourages the parties to avail themselves of video technology for meetings, depositions, and other communication and interactions arising in the discovery process."). See generally Vasquez v. City of Idaho Falls, No. 4:16-CV-00184-DCN, 2020 WL 1860394, at *8 (D. Idaho Apr. 13, 2020) (ordering that an elderly trial witness testify by live remote testimony or video-recorded deposition, because of COVID-19); In re RFC & ResCap Liquidating Tr. Action, No. 013CV3451SRNHB, 2020 WL 1280931, at *3 (D. Minn. Mar. 13, 2020) (in light of COVID-19, finding "good cause and compelling circumstances that, with appropriate safeguards, justify the use of contemporaneous remote video testimony for both Dr. McCrary and Mr. Crawford, as opposed to postponing the trial any further.").

Offering only unspecific assertions, the Prospect Entities do not explain why it would not be feasible for all participants[21] to participate in a deposition remotely, or what efforts the Prospect Entities have expended to explore and obtain the necessary technological solutions.

While COVID-19 is a novel virus, the technologies facilitating such depositions are anything but novel. Videographic depositions have been conducted since 1971. See Captain William S. Niehaus, USAF, Videotape and the Courtroom Process, 18 A.F. L. Rev. 87, 87 (1976). Fed. R. Civ. P. 30 was amended in 1993 to allow parties to stipulate to taking depositions by remote electronic means. See Fed. R. Civ. P. 30 cmt (1993) ("Paragraph (7) is revised to authorize the taking of a deposition not only by telephone but also by other remote electronic means, such as satellite television, when

[21] Plaintiffs note the irony that ten attorneys have entered appearances in this case for the Prospect Entities, who now complain that this case involves too many lawyers.

agreed to by the parties or authorized by the court."). The Federal Judicial Center's Manual for Complex Litigation, in 2004, observed:

> *Telephonic and videoconference depositions*. Telephonic or videoconferenced depositions can reduce travel costs. Federal Rule of Civil Procedure 30(b)(7) allows the court to order or the parties to stipulate to taking a deposition "by telephone or other remote electronic means." Supplemental examination by parties not present when a person was first deposed may be conducted effectively by telephone or videoconference. Through use of speaker phones, conference calls, or video-conference, distant witnesses may be examined by counsel from counsel's offices, with the court reporter located with the witness or, by stipulation, at one of the attorneys' offices (see section 11.494, extraterritorial discovery). A remote deposition may also be recorded nonstenographically. . . .

Manual Complex Lit. § 11.452 (4th ed. 2004).

Finally, and in any event, there is no *per se* entitlement to live deposition testimony. If the Prospect Entities truly believed that depositions were important, they should have begun conducting them months ago.

VI. The Prospect Entities seek to steal a march on Plaintiffs, by stalling this action while the Prospect Entities actively pursue parallel proceedings in which they seek to gain tactical and substantive advantages for themselves

On March 9, 2020, the Rhode Island Department of Health initiated Change in Effective Control proceedings in response to an application filed by the Prospect Entities and their affiliates. In that application[22], the Prospect Entities, who previously siphoned off approximately $457 million in dividends to shareholders in September 2018, paid from borrowed money, now seek approval to spend at least approximately $12 million

[22] Available at https://health.ri.gov/systems/about/requests/.

(likely much more) of Defendant Prospect Medical Holdings, Inc.'s funds to buy out certain shareholders in its ultimate parent entity.[23] Moreover, the financial statements submitted in support of those applications reveal that as of the most recent statement, Prospect Medical Holdings had cash of only $7,694,000.[24] Thus, Prospect Medical Holdings is stalling this litigation while attempting to transfer all of its cash (and, apparently, to liquidate or transfer some of its non-cash assets) to related parties, which appears calculated to render itself judgment proof in this litigation.

In other words, at a time when the Prospect Entities insist this action should not be permitted to proceed, the Prospect Entities are working diligently to obtain tactical and substantive advantages for themselves at the expense of Plaintiffs.

CONCLUSION

The Prospect Entities are trying to renege on the agreed briefing and discovery deadlines, which were already modified to benefit the Prospect Entities after the COVID-19 pandemic began.

The Prospect Entities' motion should be denied.

Respectfully submitted,

Plaintiffs,
By their Attorneys,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)

[23] See Prospect Medical Holdings, Inc's Consolidated Financial Statements as of and for the Years Ended September 30, 2018 and 2017, at 4 (attached to the Prospect Entities Change in Effective Control applications made available by the Rhode Island Department of Health at https://drive.google.com/file/d/1vYdWVfRgKHQ3u_thgjz0qZA7UuPfFWBS/view). For the Court's convenience, highlighted excerpts of the Prospect Entities' Change in Effective Control applications and financial statements are attached hereto as Exhibits 1 and 2.

[24] See Exhibit 2.

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Dated: April 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 27th day of April, 2020 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 1

Change in Effective Control Application

Version 01.2019

Applicant	Name of Licensee: **Prospect CharterCARE RWMC, LLC d/b/a Roger Williams Medical Center** Name(s) of Parent Entity(ies): **Prospect CharterCARE, LLC, 85% owned by Prospect East Holdings, Inc., wholly owned by Prospect Medical Holdings, Inc., wholly owned by Ivy Intermediate Holding Inc., wholly owned by Ivy Holdings Inc.; Applicant: Chamber Inc.**
Name of Facility:	**Roger Williams Medical Center**
Date of Submission	Submitted November 8, 2019; Resubmitted February 19, 2020

All questions concerning this application should be directed to the Center for Health Systems Policy and Regulation at (401) 222-2788

Please have the appropriate individual attest to the following:

"I hereby certify that the information contained in this application is complete, accurate and true."

11/8/19

signed and dated by the President or Chief Executive Officer

Sheila M Capobianco 11/8/19

signed and dated by Notary Public

SHEILA M. CAPOBIANCO
Notary Public, State of Rhode Island
My Commision Expires August 17, 2022

1. Please provide an executive summary describing the nature and scope of the proposal. Additionally, please include the following: (1) identification of all parties, (2) description of the applicant and it's licensure track record, (3) the type of transaction proposed including description of the transaction and relevant costs, (4) summary of all transfer documents, (5) summary of the organizational structure of the applicant and its affiliates, and (6) whether the facility will be accredited.

Prospect CharterCARE RWMC, LLC d/b/a Roger Williams Medical Center ("RWMC") is a licensed acute care hospital (license number HOSP00133) located in Providence, Rhode Island. RWMC provides a wide array of high quality and cost-effective services to its patients, including emergency department services, ambulatory care services, and inpatient and outpatient services including cancer care, elder care and gastroenterology. RWMC maintains a strong licensure track record of providing high quality services to its patients. RWMC is an academic medical center affiliated with Boston University School of Medicine and is accredited by the Joint Commission.

This application seeks approval for a change in ownership of RWMC's ultimate parent (five companies removed from RWMC) in order to effectuate a buy-out of the private equity investors as described more fully below. The proposed change in ownership of the ultimate parent company will have no impact on the day to day services provided by RWMC. Prospect CharterCARE, LLC ("PCC") wholly owns RWMC, as well as Prospect CharterCARE SJHSRI, LLC d/b/a Our Lady of Fatima Hospital, a licensed acute care hospital, and Prospect Blackstone Valley Surgicare, LLC a licensed freestanding ambulatory surgery center. In addition, RWMC wholly owns Prospect RI Home Health and Hospice, LLC ("PRIHHH"), a home healthcare provider, which wholly owns Prospect CharterCARE Home Health and Hospice, LLC "PCCHHH") a licensed home nursing care provider. PCC is owned 85% by Prospect East Holdings, Inc., ("PEH") and 15% by CharterCARE Community Board ("CCCB"). PEH and Prospect East Hospital Advisory Services, LLC ("PEHAS") are wholly owned by Prospect Medical Holdings, Inc. ("PMH"). PMH is wholly owned by Ivy Intermediate Holding Inc., which is wholly owned by Ivy Holdings Inc. ("IH"). IH is currently owned by a combination of private equity investment partnership (the "Corporate Passive Investor"), Sam Lee, the CEO of PMH, and David Topper, the President of PMH, through his Family Trust. Other management own a small minority of shares. A copy of the pre-transaction organizational chart is attached at **Tab 15**.

The proposed transaction involves a change to IH *only* – a holding company five times removed from the Hospitals. Specifically, the change involves two individual shareholders – Lee and Topper (through his Family Trust) – becoming the sole shareholders of a newly formed entity, Chamber Inc., which will become the parent of IH. A co_ _ of the _ ost-Transaction or_anizational chart is attached at **Tab 15**. The capital costs of the transaction are eleven million nine hundred forty thousand nine-hundred ninety-two dollars ($11,940,992.00)). After the transaction, the Corporate Passive Investor and the other minority management shareholders will no longer retain any ownership in IH. The transaction funds will not come from or affect any of the Prospect CharterCARE entities; instead, the transaction funds consist entirely of available PMH corporate cash. A copy of the Merger Agreement is attached at **Tab 14**.

Following the Transaction, all existing entities described above will remain as surviving corporations. There will be no change whatsoever to any of the existing entities that will in any way impact the operations or governance of the licensed facilities including RWMC. Specifically, PMH will continue to own PEH and PEHAS, PEH will continue to own PCC, and PCC will continue to own and operate RWMC.

APPENDIX A

All applicants must complete this Appendix.

1. Please indicate the financing mix for the capital cost of this proposal. **NOTE**: the Health Services Council's policy requires a minimum 20 percent equity investment in CEC projects.

Source	Amount	Percent	Interest Rate	Terms (Yrs.)
Equity	11,940,992.00	100		
Debt	N/A	N/A		
Lease	N/A	N/A		
TOTAL	$11,940,992.00	100%		

* Equity means non-debt funds contributed towards the capital cost related to a change in owner or change in operator of a healthcare facility which funds are free and clear of any repayment or liens against the assets of the proposed owner and/or licensee and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged.

** If debt financing is indicated, please complete Appendix E.

Appendix D

Source of Funds

No equity – Purchase being made with available corporate cash

All applicants must complete this Appendix.

I. Please provide the total expenditures necessary to implement this proposal and allocate this amount to the sources of funds categories listed below:

TOTAL PROJECT COST: $11,940,992.00*

SOURCE OF FUNDS		AMOUNT
a. Funded depreciation		$
b. Other restricted funds (specify)		
c. Unrestricted funds (specify)		
d. Owner's equity		
e. Sale of stock/other equity		
f. Unrestricted donations or gifts		
g. Restricted donations or gifts		
h. Government grant (specify)		
i. Other non-debt funds (specify)	available corporate cash	11,940,992.00
j. Sub-Total Equity Funds		
k. Subsidized loan (e.g. FHA etc.)		
l. Tax-exempt bonds (specify)		
m. Conventional mortgage		
n. Lease or rental		
o. Other debt funds		
p. Sub-Total Debt Funds		
q. Total Source of Funds		**$11,940,992.00**

* should equal the response for line "q"

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of October 2, 2019, by and among Chamber Inc., a Delaware corporation ("Purchaser"), Chamber Merger Sub Inc., a Delaware corporation ("Merger Sub"), Ivy Holdings Inc., a Delaware corporation (the "Company") and solely for the purposes of Section 6.03(b), Green Equity Investors V, L.P., a Delaware limited partnership ("GEI V") and Green Equity Investors Side V, L.P., a Delaware limited partnership ("GEI Side V" and collectively with GEI V, "GEI").

W I T N E S S E T H:

WHEREAS, at the Effective Time (as hereinafter defined), the parties intend to effect a merger of Merger Sub with and into the Company, with the Company being the Surviving Corporation (as hereinafter defined), and as a result of which Purchaser shall be the sole stockholder of the Surviving Corporation;

WHEREAS, immediately prior to the Closing (as hereinafter defined), Purchaser shall own all of the issued and outstanding capital stock of Merger Sub;

WHEREAS, immediately prior to, and contingent upon, the Closing, (i) Samuel Lee shall contribute all of his shares of Common Stock in the Company to Purchaser and (ii) the David & Alexa Topper Family Trust shall contribute 140,847 shares of Common Stock in the Company to Purchaser, each in exchange for equity interests of Purchaser (Samuel Lee and the David & Alexa Topper Family Trust, collectively, the "Purchaser Investors" and each, individually, a "Purchaser Investor", and the transactions described herein, the "Contribution and Exchange"); and

WHEREAS, the respective boards of directors of each of the Company and Merger Sub have approved and declared advisable, and the board of directors of Purchaser has approved, this Agreement and the transactions contemplated hereby, including the Merger (as hereinafter defined), in accordance with the DGCL (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS, TERMS AND INTERPRETIVE MATTERS

Section 1.01 Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"ABL Credit Agreement" means that certain Amended and Restated ABL Credit Agreement, dated as of February 22, 2018, by and among Prospect Medical Holdings, Inc., as borrower, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the lenders and issuing lenders from time to time party thereto, as amended, amended and restated, supplemented, refinanced, replaced, or otherwise modified from time to time.

"Action" means any claim, controversy, action, cause of action, suit, litigation, arbitration, investigation, opposition, interference, audit, assessment, hearing, complaint, demand or other legal proceeding (whether sounding in contract, tort or otherwise, whether civil or criminal and whether brought at law or in equity) that is commenced, brought, conducted, tried or heard by or before, or otherwise involving, any Governmental Authority.

"Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise.

"Aggregate Purchase Price" shall mean the Total Enterprise Value, plus the aggregate exercise price of all vested In-the-Money Options.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Appraisal Shares" shall have the meaning set forth in Section 2.04(d) hereof.

"Audited Financial Statements" shall mean the audited consolidated financial statements of Prospect Medical Holdings, Inc. for the fiscal year ended September 30, 2018.

"Banker Arrangements" shall have the meaning set forth in Section 4.05 hereof.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in the City of New York, New York and Los Angeles, California are authorized or obligated by Law or executive order to close.

"Certificate of Merger" shall have the meaning set forth in Section 3.02 hereof.

"Closing" shall have the meaning set forth in Section 3.01 hereof.

"Closing Date" shall have the meaning set forth in Section 3.01 hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Common Stock" shall mean the common stock, par value $0.01 per share, of the Company.

"Company" shall have the meaning set forth in the preamble hereto.

"Company Shares" shall mean the shares of Common Stock.

"Company Stockholder Parties" shall have the meaning set forth in Section 9.15.

"Company Subsidiary Interests" shall mean the equity interests of the Company's Subsidiaries.

"ERISA Affiliate" means each trade or business (whether or not incorporated) that together with the Company is treated as a single employer under Sections 414(b), (c), (m) or (o) of the Code, as of the applicable date.

"Escrow Holdback Agreement" shall have the meaning set forth in Section 4.07 hereof.

"GAAP" means United States generally accepted accounting principles consistently applied by the Company, as in effect from time to time.

"Governmental Authority" shall have the meaning set forth in Section 4.04(a) hereof.

"HSR Act" shall mean the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include, without duplication, (a) all Obligations of such Person for borrowed money or for the deferred purchase price of property or services (other than (x) current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices, (y) indebtedness in respect of any pension scheme and (z) payments treated as expenses in the ordinary course of business), (b) any other Obligations of such Person that are evidenced by a note, bond, debenture or similar instrument, (c) all Obligations of such Person in respect of acceptances and letters of credit issued or created for the account of such Person, (d) all Obligations of such Person as lessee that are capitalized in accordance with GAAP and (e) all direct or indirect guarantees of any of the foregoing for the benefit of another Person.

"In-the-Money Option" shall mean each Option that has an exercise price per share of Common Stock underlying such Option that is less than the amount equal to the Per Share Merger Consideration.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree or administrative or judicial decision.

"Letter of Transmittal" shall have the meaning set forth in Section 2.03(c) hereof.

"Liability" means, with respect to any Person, any liability or obligation of such Person whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, whether due or to become due and whether or not required under GAAP to be accrued on the financial statements of such Person.

"Liens" shall mean any lien, security interest, mortgage, pledge, charge or similar matter affecting title, or other encumbrance with respect to any property or asset of the Company and its Subsidiaries.

"Litigation" shall mean any claim, action, arbitration, suit, proceeding or investigation of any kind whatsoever, at law or in equity (including actions or proceedings seeking injunctive relief), by or before any Governmental Authority.

"Merger" shall have the meaning set forth in Section 2.02 hereof

"Merger Sub" shall have the meaning set forth in the preamble hereto.

"Merger Sub Common Stock" shall mean the common stock, $0.0001 par value per share, of Merger Sub.

"Non-Foreign Affidavit" shall mean a certificate prepared in accordance with and conforming to the requirements of Treasury Regulations Section 1.1445-2(b)(2), certifying that the Person delivering such certificate is not a foreign person for purposes of Section 1445 of the Code.

"Non-Recourse Party" shall have the meaning set forth in Section 9.13 hereof.

"Non-USRPHC Certificate" shall mean a certificate, dated the Closing Date and prepared in accordance with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), certifying that the Company Shares are not "United States real property interests" (as defined in Section 897(c)(1) of the Code).

"Obligations" shall mean, with respect to any Indebtedness, any principal, accrued but unpaid interest, penalties, fees, guarantees, reimbursements, damages, costs of unwinding and other liabilities payable under the documentation governing such Indebtedness.

"Option" shall mean any option, warrant or other right, agreement, arrangement, or commitment of any kind whatsoever to which the Company or any of its Subsidiaries is a party relating to the issued or unissued capital stock or other equity interests of the Company or any of its Subsidiaries or obligating the Company or any of its Subsidiaries to grant, issue or sell any share of the capital stock or other equity interests of the Company or such Subsidiary by sale, lease, license or otherwise, including, without limitation, any option to purchase Company shares granted under the Stock Option Plan.

"Orders" shall have the meaning set forth in Section 4.04(b) hereof.

"Out-of-the-Money Option" shall mean each Option that has an exercise price per share of Common Stock underlying such Option that is greater than the amount equal to the Per Share Merger Consideration.

"Payor" shall have the meaning set forth in Section 6.08 hereof.

"Pension Liability" means that certain aggregate liability of the Company and its Subsidiaries for the Crozer-Keystone Health System Employees Retirement Plan (as such plan may be renamed or any successor thereto, the "Crozer Plan") as described in Footnote 11 to the Audited Financial Statements and with such aggregate liability being reflected in the amount of

"Total Enterprise Value" shall mean eleven million nine hundred forty thousand nine-hundred ninety-two dollars ($11,940,992.00).

Section 1.02 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.03 Other Definitional Provisions.

(a) The words "hereof", "herein", "hereto", "hereunder" and "hereinafter" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The term "dollars" and character "$" shall mean United States dollars.

(d) The term "including" shall mean including, without limitation, and the words "include" and "includes" shall have corresponding meanings and such words shall not be construed to limit any general statement that they follow to the specific or similar items or matters immediately following them.

(e) The term "or" is not exclusive, unless the context otherwise requires.

(f) The terms "party", "parties", "parties hereto", "parties to this Agreement" and similar terms, when used in this Agreement, shall refer to Purchaser, Merger Sub and/or the Company, as applicable, unless the context expressly otherwise requires.

Section 1.04 Interpretive Matters.

(a) The Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. The Company may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any reference to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement or otherwise. Any matter set forth in any section of any Schedule shall be deemed to be referred to and incorporated in any section to which it is specifically referenced or cross-referenced, and also in all other sections of the Schedules to which such matter's application or relevance is reasonably apparent on the face of such disclosure. Any capitalized terms used in any Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(b) Any reference in this Agreement to gender shall include all genders and the neuter.

(c) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this

Exhibit 2

Consolidated Financial Statements

As of and for the Years Ended
September 30, 2018 and 2017

The report accompanying these financial statements was issued by BDO USA, LLP, a Delaware limited liability partnership and the U.S. member of BDO International Limited, a UK company limited by guarantee.

BDO

Prospect Medical Holdings, Inc.

Consolidated Balance Sheets
(in thousands, except par value and share amounts)

September 30,	2018	2017
Assets		
Current assets		
Cash and cash equivalents	$ 7,694	$ 27,109
Restricted cash	1,742	30,761
Restricted investments	23,779	15,810
Patient accounts receivable, net of allowance for doubtful accounts of $193,439 and $141,775 at September 30, 2018 and 2017, respectively	350,789	358,914
Due from government payers	32,833	51,152
Other receivables, prepaid expenses and other current assets	128,378	191,190
Income tax receivable	2,737	-
Inventories	37,461	36,967
Hospital fee program receivable	211,454	59,209
Total current assets	796,867	771,112
Property, improvements and equipment, net	623,963	576,933
Deferred income taxes, net	1,975	104,323
Goodwill	305,126	310,695
Intangible assets, net	33,619	40,794
Other assets	57,083	58,543
Total assets	$ 1,818,633	$ 1,862,400

See accompanying notes to the consolidated financial statements.

9. Long-Term Debt

Long-term debt consists of the following (in thousands):

	2018	2019
Senior secured credit facility (net of discount of $20,085 and $7,374, respectively)	**$ 1,094,315**	$ 609,813
Other debt *(1)*	**39,769**	38,321
Less: Deferred financing costs, net ("DFC")	**(16,214)**	(9,906)
Total Debt, net of discount, premium and DFC	**1,117,870**	638,228
Less: current maturities	**(18,429)**	(12,509)
Long-term debt, net of current maturities	**$ 1,099,441**	$ 625,719

(1) Other debt also includes financing obligations related to sales-leaseback transactions. The financing obligations related to sales-leaseback transactions were $24,614,000 and $26,027,000 for years ended September 30, 2018 and 2017, respectively.

Senior Secured Credit Facilities

On June 30, 2016, the Company entered into a six-year $625 million senior secured term loan B (the "Original Term Loan"), the proceeds of which were used to repay $425 million of PMH's existing 8.375% senior secured notes due during 2019; to repay $60 million of borrowings under the Company's existing revolving credit facility (the "Replaced Revolver"); to fund acquisitions, including the acquisition of Crozer; and to finance transaction fees and expenses. The Original Term Loan bore interest at LIBOR (subject to a 1.0% floor) plus 6.0%. The Original Term Loan was issued with an original discount of 1.5%, or $9,375,000. Additionally, the Company refinanced the Replaced Revolver with a new $100 million asset-based revolving credit facility ("Original ABL Facility" and together with the Original Term Loan, the "New Senior Secured Credit Facilities"). Pursuant to various amendments from August 2016 through October 2017, the aggregate commitment amount under the Original ABL facility was increased in stages to $175 million. The maturity date for the Original ABL Facility was June 30, 2021, and the maturity date for the Term Loan was June 30, 2022.

On February 22, 2018, the Company refinanced and replaced both the Original Term Loan and the Original ABL Facility, and entered into an Amended and Restated Term Loan Credit Agreement (the "Amended TL Agreement"), by and among the Company (as the borrower), the lenders party thereto and JPMorgan Chase Bank, N.A. ("JPMorgan"), as administrative agent and collateral agent. The Amended TL Agreement replaced the Original Term Loan with a new Term B-1 Loan ("Term B-1 Loan"). The principal amount of the Term B-1 Loan is $1,120 million and such loan bears interest at LIBOR (subject to a 1.0% floor) plus 5.5%, which as of September 30, 2018 was 7.625%. The Term B-1 Loan was issued with an original discount of 2% and matures on February 22, 2024.

Additionally, on February 22, 2018, the Company entered into an Amended and Restated ABL Credit Agreement (the "Amended ABL Agreement"), by and among the Company (as the borrower), the lenders party thereto and JPMorgan, as administrative agent and collateral agent. The Amended ABL Agreement replaced the Original ABL Facility. Under the Amended ABL Agreement, the maximum revolving

commitment is $250.0 million with ability to expand the facility to $325.0 million, and the new ABL facility (the "New ABL Facility") bears interest at a variable base rate plus an applicable spread that is based on excess availability under the New ABL Facility, as further described in the Amended ABL Agreement, which was 3.875% as of September 30, 2018. The New ABL Facility matures on February 22, 2023. As of September 30, 2018, the available balance on the new ABL facility was $41.0 million.

The proceeds of the Term B-1 Loans and the New ABL Facility (the "New Senior Secured Credit Facilities" were used to refinance the Original Term Loan and the Original ABL Facility, to pay a dividend of $457.0 million to the Company's stockholders, to pay certain expenses associated with the refinancing, to prefund approximately $40 million of pension liabilities of the Company's subsidiaries, to make payments to certain option holders as a result of the Dividend Recapitalization, and to finance certain working capital and other operational needs of the Company and its subsidiaries.

Under applicable accounting literature, deferred financing costs of $11.7 million and outstanding debt discount of $6.7 million as of February 22, 2018 were expensed and presented within loss on debt extinguishment in the accompanying consolidated statements of operations, and new costs of approximately $18.0 million incurred in connection with the refinancing have been capitalized to offset the new long-term debt in the accompanying consolidated balance sheets, and are being amortized over the term of the related debt using the effective interest method.

The New Senior Secured Credit Facilities are guaranteed on a senior secured basis by all assets of the Company and its wholly-owned subsidiaries ("Guarantors") except PHP, CHIC, RRG, Prospect Health Access Network, Inc. and certain immaterial subsidiaries. The New ABL Facility is secured by a first priority security interest on the working capital assets of the Company and the Guarantors and a second priority security interest on their fixed assets. The Term B-1 Loan is secured by a first priority security interest on fixed assets and a second priority security interest on working capital assets. The New Senior Secured Credit Facilities are effectively senior to all of the Company's existing and future indebtedness. The New Term B-1 loan has no financial covenants. However, the consolidated total leverage ratio is required to be calculated and reported on a quarterly basis. If such ratio is above 3.5, then receipts under the QAF 5 program are required to be utilized to pay down principal on the New Term B-1 loan. The Company currently expects to receive QAF 5 payments of approximately $83 million in May 2019, and these are the only expected payments to be received in fiscal 2019 based on current information from the California Hospital Association. The Company has made an accounting election to present all receivables under QAF 5 as current, and to not reflect expected paydowns of debt related to the collection of QAF 5 monies in fiscal 2019 as current debt as the timing is an estimate. The Amended ABL Agreement does not have any financial maintenance covenants. The Amended ABL Agreement has a "springing" fixed charge ratio covenant that applies if excess availability is less than the greater of 10% of the maximum borrowing amount and $22 million. The fixed charge ratio covenant was not required to be tested for the fiscal quarter ended September 30, 2018. The Company was in compliance with all of its debt covenants at September 30, 2018 or obtained a waiver.

Demand Notes

The Company has a commitment from a bank for a $15 million equipment leasing facility to finance various equipment at the Company's hospital facilities. As of September 30, 2018 and 2017, draws under the facility are classified as capital lease arrangements. Draws represent demand notes until conversion to capital leases, and interest accrues on such draws at the bank prime rate plus 1.5% with a floor of 4.5% and payable monthly. As of September 30, 2018, approximately $15 million had been drawn under the line.

Expected Term - The expected term of options granted represents the period of time that they are estimated to be outstanding.

Risk-Free Interest Rate - The Company bases the risk-free interest rate on the implied yield in effect at the time of option grant on U.S. Treasury zero-coupon issues with equivalent remaining terms.

Expected Volatility - The Company estimates the volatility of the common stock at the date of grant based on the average of the historical volatilities of a group of peer companies. The Company has identified a group of comparable companies to calculate historical volatility from publicly available data for sequential periods approximately equal to the expected terms of the option grants. In selecting comparable companies, Management considered several factors including industry, stage of development, size and market capitalization.

Forfeitures - Share-based compensation is recognized only for those awards that are ultimately expected to vest. Compensation expense is recorded net of estimated forfeitures. Those estimates are revised in subsequent periods if actual forfeitures differ from those estimates. The Company used data since December 2010 to estimate pre-vesting option forfeitures.

Stock-based compensation expense for the Ivy Holdings stock options recognized by the Company during the years ended September 30, 2018 and 2017 was $710,000 and $1,118,000, respectively. At September 30, 2018, there were no unvested options, which could potentially vest over the next nine fiscal years, subject to meeting the vesting requirements noted above. There were no remaining maximum estimated stock compensation expense to be amortized to expense in future periods. Options which are expected to vest based on CEO and Compensation Committee discretion are treated as variable stock options and are subject to revaluation at each reporting period. Management determined the fair value of the discretionary vested options using a Black Scholes calculation but determined that the change in compensation expense was not material to the consolidated financial statements for the years ended September 30, 2018 and 2017.

Dividends

The Com an distributed a proximatel $457.0 million in connection with the issuance of "New Senior Secured Credit Facilities" durin the ear ended September 30 2018, which was recorded a ainst retained earnings, and was ultimately paid to the common stockholders of Ivy Holdings Inc (see Note 9).

On February 22, 2018, the Board of Directors of Ivy Holdings, Inc. ("the Board") approved special cash in the amount of approximately $33 million in bonus payments were made ("the Bonuses") to Option Holders in connection with the dividend provided that any Bonus with respect to an unvested portion of an option shall be payable upon the date such unvested portion becomes vested and exercisable, subject to the Optionee's continued employment with Prospect through such date. At September 30, 2018 approximately $2.3 million was accrued for bonuses in connection with this. To reflect the Dividend and pursuant to the terms of the Option Plan, the Board further resolved to equitably adjust the Options by reducing the per-share exercise price of the Options to an amount determined with reference to the Bonus amount payable by Prospect Medical with respect to such Option (the "Adjusted Exercise Price").