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' REPLY TO THE PROSPECT DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE FIRST AMENDED COMPLAINT

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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] (the Receiver and the Named Plaintiffs are referred to collectively as "Plaintiffs"), submit this memorandum in reply to the memorandum (ECF # 190-1) ("Prospect's Opp. Memo.") filed by Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively "Prospect") in opposition to Plaintiffs' Motion for Summary Judgment as to Count IV of the First Amended Complaint.

Prospect has also filed a cross-motion for summary judgment.[2] The period for limited discovery concerning that motion will expire October 1, 2020, and Plaintiffs' objection and memorandum in opposition to that cross-motion is not due until November 2, 2020. Accordingly, that cross motion is not addressed herein.

INTRODUCTION

"Congress enacted ERISA to 'protect ... the interests of participants in employee benefit plans and their beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and to 'provid[e] for appropriate remedies, sanctions, and

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

[2] Prospect asks the Court to enter a "finding that the Plan lost its church plan status on, and as of, December 15, 2014, but in any event no later than April 15, 2019." Prospect's Opp. Memo. at 71. In other words, Prospect seeks a declaration that the Plan retained church plan status until after Prospect acquired the assets of SJHSRI and began operating Our Lady of Fatima Hospital on June 20, 2014.

ready access to the Federal courts.'" Aetna Health, Inc. v. Davila, 542 U.S. 200, 208 (2004) (quoting 29 U.S.C. §1001(b) (2000)). "As its name implies, the Employee Retirement Income Security Act (ERISA) was the federal government's response to a perceived need to enhance the retirement income security of workers and their beneficiaries." 1 ERISA Practice and Litigation § 1:5.

Plaintiffs' motion for summary judgment involves an exemption from ERISA, for "church plans." "As *Advocate*[3] makes clear, two types of organization qualify for the church-plan exemption: churches and so-called principal-purpose organizations." Medina v. Catholic Health Initiatives, 877 F.3d 1213, 1220 (10th Cir. 2017). St. Joseph Health Services of Rhode Island ("SJHSRI") clearly was not a church. Thus, for the St. Joseph Health Services Retirement Plan ("Plan") to qualify for the church plan exemption, the Plan needed to be maintained by a "principal purpose organization." By July 2011, it was not.

Plaintiffs are entitled to summary judgment, because:

- In connection with the merger between SJHSRI and Roger Williams Hospital ("RWH"), effective 2010, and the amendment and restatement of the Plan that was effective July 1, 2011, SJHSRI eliminated the sole purpose Bishop-appointed Retirement Board that maintained and administered the Plan, and replaced it with SJHSRI itself, whose principal purpose or function was not Plan administration, and this was done in spite of and contrary to the prior advice of counsel that the sole purpose Retirement Board was essential for the Plan to qualify for the church plan exemption;

- Plaintiffs contend that no organization other than SJHSRI maintained or administered the Plan, and even if Prospect were correct that the other

[3] Referring to Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017).

organizations that Prospect contends did so,[4] they certainly did not maintain or administer the Plan as their principal purpose or function; and

- The only organizations that had responsibility for funding (or failing to fund) the Plan were SJHSRI itself and SJHSRI's Board of Trustees, both of whose principal purpose and function concerned the provision of quality medical care at Fatima Hospital and related medical facilities, not funding the Plan.

These reasons entitle Plaintiffs to summary judgment that there was no principal purpose organization, and, therefore, the Plan ceased to qualify as an exempt "church plan" as of July 1, 2011.[5]

Plaintiffs' motion for summary judgment seeks "an order declaring that by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA." The reason why Plaintiffs have focused on April 29, 2013 is that was the date of the Bishop's resolution acknowledging the effect of the amendment and restatement of the Plan in 2011. Plaintiffs seek thereby to moot any dispute over whether the changes effectuated by the 2011 amendment were effective July 1, 2011. However, Prospect makes no such argument

[4] Prospect identifies three organizations as putative "principal purpose organizations": the Board of Trustees of SJHSRI in the role of the "Retirement Board," the Finance, Audit & Compliance Committee of CharterCARE Health Partners ("CCHP") (a/k/a CharterCARE Community Board or "CCCB"), and/or the Investment Committee of CCHP. See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) at 5 – 6 ("T]he Prospect Entities, based on their investigations to date, contend that each of the following organizations, during one period or another, had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i): • The Board of Trustees of SJHSRI; • The Finance, Audit and Compliance Committee of CCHP; and • The Investment Committee of CCHP.").

[5] Because the parties have stipulated to the *prima facie* authenticity of all the documents Plaintiffs have attached to their summary judgment motion papers, see ECF # 170 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions, entered by text order dated October 29, 2019) § 3.f, it is unnecessary to authenticate these documents by affidavit.

and, indeed, affirmatively asserts that the 2011 Plan was effective July 1, 2011.[6] In other words, the parties agree that the relevant date for Plaintiffs' motion for summary judgment is July 1, 2011. Accordingly, the date of the April 29th Resolution is irrelevant.

However, the outcome is the same under either date. Plaintiffs' claim that Prospect has successor liability for the Plan under ERISA is based upon Plaintiffs' claim that the Plan was already subject to ERISA when Prospect took over Fatima Hospital on June 20, 2014, thus, it does not matter whether church plan status was lost on July 1, 2011 or April 29, 2013, since even the latter date was over a year before Prospect took over Fatima Hospital. Plaintiffs contend that under the doctrine of successor liability applicable to ERISA plans, Prospect is liable for its failure to fund the Plan from that day forward.[7]

However, Prospect seeks to get around the consequences of these facts with two legal arguments that Prospect claims open the door to disputed material facts.

Prospect's first argument is that the Plan's designation of SJHSRI as Plan administrator is not controlling, and the issue of who administered the Plan should be

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[6] See Prospect's SUF ¶¶ 9 ("During the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Bishop and served at his pleasure.") and 83 ("The Plan was amended and restated effective July 1, 2011.").

[7] See Einhorn v. M.L. Ruberton Const. Co., 632 F.3d 89, 99 (3d Cir. 2001) ("In sum, we hold that a purchaser of assets may be liable for a seller's delinquent ERISA fund contributions to vindicate important federal statutory policy where the buyer had notice of the liability prior to the sale and there exists sufficient evidence of continuity of operations between the buyer and seller."); Pension Benefit Guaranty Corporation v. Findlay Industries, Inc., 902 F.3d 597, 611-12 (6th Cir. 2018) (applying federal common law of successor liability for a single employer defined benefit plan). The fact that the Asset Purchase Agreement expressly provided Prospect would not have liability for the Plan does not shield it from the legal doctrine of successor liability if the other requirements for successor liability are satisfied. See, e.g., Sugartown Worldwide LLC v. Shanks, 150 F. Supp. 3d 470, 478 (E.D. Pa. 2015) ("As a matter of equity, we do not allow entities to succeed in this transparent attempt to avoid obligations.") (summary judgment of successor liability on guaranty where asset purchaser expressly assumed certain liabilities but expressly did not assume seller's liabilities for a guaranty to a third party).

determined based on the facts of who did what when concerning the Plan. Prospect's Opp. Memo. at 9 ("Plaintiffs assume a formalism requirement – that certain activities and decisions must be documented – that simply cannot be found within the four corners of ERISA §3(33)(C)"). Plaintiffs' response is twofold. Such designation is controlling both under ERISA and the relevant caselaw. Besides, even assuming (*arguendo*) that were not the law, plan administration or maintenance was not the principal purpose or function of any organization that was involved with the Plan, including the three organizations Prospect contends were a "principal purpose organization," i.e., SJHSRI's Board of Trustees, CCHP's Investment Committee, or CCHP's Finance, Audit & Compliance Committee.[8]

Prospect's second argument asks the Court to adopt a statutory interpretation that is completely novel, illogical, and wrong as a matter of law. Prospect's argument focuses on (and misconstrues) the phrase "the principal purpose or function" in the definition of "church plan" contained in 29 U.S.C. § 1002(33)(C)(i). Prospect contends that "principal" modifies only "purpose" and not "function," such that all the statute requires with respect to "function" is that the organization have plan administration or funding as "one of its functions," not necessarily the organization's "principal function," and regardless of how many other functions the organization may have.[9] Prospect then offers documents and two Declarations that Prospect contends establish, at least as a

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[8] "CCHP" here refers to the entity CharterCARE Health Partners, which later changed its name to CharterCARE Community Board after Prospect acquired its former trade name in connection with the 2014 Asset Sale and Prospect's continuation of the hospitals' business. For purposes of the pending summary judgment motions, the names "CCHP," "CCCB," "CharterCARE Health Partners," and "CharterCARE Community Board" all refer to the same entity (which, together with SJHSRI and RWH, has been petitioned into a Superior Court liquidating receivership).

[9] Prospect's Opp. Memo. (ECF # 190-1) at 39.

disputed fact that, for each of these three organizations, that "the handling of Plan administrative matters [was] either its principal purpose, or **one** of its functions"[10] (emphasis supplied).

However, Prospect's attempt to place the focus on "one of its functions" fails as a matter of law. Under the series qualifier canon of statutory construction (discussed *infra*), the adjective "principal" in the phrase "the principal function" modifies both "purpose" and "function." Indeed, as a matter of simple grammar and logic, "purpose or function" are coordinate or paired nouns modified by the single adjective "principal." Accordingly, a principal purpose organization must have administration or funding of the plan either as its principal purpose or as its principal function. In other words, the fact that an organization may have had Plan administration or funding as merely "one of its functions" is insufficient to withstand summary judgment.

FACTS

I. FACTS PRIOR TO JULY 11, 2011

Although strictly speaking not relevant to Plaintiffs' motion for summary judgment, which focuses on the period from July 1, 2011 until June 20, 2014, the undisputed facts[11] concerning Plan administration for the years leading up to then provide both an example of how a "principal purpose organization" should be structured, and prove that SJHSRI, RWH, CCHP, and Prospect knew or should have known that

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[10] Prospect's Opp. Memo. (ECF # 190-1) at 50.

[11] In opposing Plaintiffs' Motion for Summary Judgment, Prospect relies to an enormous extent upon its own "Statement of Undisputed Facts" (referred to herein as "Prospect's SUF"), which assert facts not raised by Plaintiffs' Statement of Undisputed Facts. This Reply Memorandum is Plaintiffs' first opportunity to address Prospect's allegedly undisputed facts, and Plaintiffs submit herewith their response (herein referred to herein as "Plaintiffs' Response to Prospect's SUF") (ECF # 196).

the Plan ceased to be a church plan when the Plan was amended and restated effective July 1, 2011.

The effective date of the 1999 Plan was July 1, 1999.[12] From then until the effective date of the 2011 Plan on July 1, 2011, the Plan was administered pursuant to the provisions of the 1999 Plan.[13] The Plan was as follows:

> ARTICLE 18
> ADMINISTRATION OF THE PLAN
>
> 18.1 Retirement Board
>
> The general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and
>
> (a) at least three members of the Board of Trustees, and
>
> (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from time to time by the Most Reverend Bishop of the
>
> Diocese of Providence to serve at the pleasure of the said Bishop. Any member of the Retirement Board may resign by delivering his written resignation to the said Bishop, and such resignation shall become effective upon delivery or at any later date specified therein.
>
> 18.2 Powers of the Retirement Board
>
> The Retirement Board will have full discretionary power to administer the Plan in all of its details subject to the satisfaction of the Most Reverend Bishop of the Diocese of Providence. For this purpose the Retirement Board's and the Bishop's discretionary power will include, but will not be limited to, the following authority:
>
> (a) to make and enforce such rules and regulations as it deems necessary or Proper for the efficient administration of the Plan or to comply with applicable law;

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[12] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 9 ("9. SJHSRI subsequently restated the Plan on three occasions. Attached hereto as Exhibit 9 is the Plan as amended and restated effective July 1, 1999 (the '1999 Plan'). Attached hereto as Exhibit 10 is the Plan as amended and restated effective July 1, 2011 (the '2011 Plan'). See also Exhibit 3 ('2016 Plan')."); Prospect's Response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 9 ("9. Undisputed.").

[13] Prospect's SUF (ECF # 191) ¶ 8 ("8. During the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Bishop and served at his pleasure. (Plaintiffs' Statement of Undisputed Facts at Para. 12; Plaintiffs' Exhibit 8 (1995 Plan) at 31; Plaintiffs' Exhibit 9 (1999 Plan) at 30.").

> (b) to interpret the Plan;
>
> (c) to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
>
> (d) to compute the amount of benefits which will be payable to any participant, former participant, or Beneficiary in accordance with the provisions of the Plan, and to determine the person or persons to whom such benefits will be paid;
>
> (e) to authorize the payment of benefits and administrative expenses;
>
> (f) to keep such records and submit such filings, elections, applications, returns or other documents or forms as may be required under the Code and applicable regulations, or under state or local law and regulations;
>
> (g) to appoint such accountants, actuaries, consultants, counsel, record keepers, and other agents as may be required to assist in administering the Plan;
>
> (h) to allocate and delegate its fiduciary responsibilities under the Plan and to designate other persons, including a committee, to carry out any of its fiduciary responsibilities under the Plan, any such allocation, delegation, or designation to be by written instrument; and
>
> (i) to do all acts necessary to carry out the provisions of the Plan.

1999 Plan (ECF # 174-9) at 30-31. This provision makes clear (and it is indisputable) that this Retirement Board had been created specifically and existed solely to administer the Plan.[14] It is also undisputed that the Bishop of Providence appointed the members of the Retirement Board.[15] Consequently, Plaintiffs concede for purposes of

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[14] Opinion letter of John H. Reid, III, dated November 12, 2008 (ECF # 174-13) at 3 ("The Retirement Board has no other function than the administration of the Plan.").

[15] See Prospect's SUF (ECF # 191) ¶ 8 ("8. During the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Bishop and served at his pleasure. (Plaintiffs' Statement of Undisputed Facts at Para. 12; Plaintiffs' Exhibit 8 (1995 Plan) at 31; Plaintiffs' Exhibit 9 (1999 Plan) at 30.").

summary judgment that the Bishop-appointed Retirement Board qualified as a principal purpose organization.[16]

In 2008, executives of Defendants SJHSRI and RWH conducted negotiations to effectuate a reorganization of those companies under the control of a common parent entity, which came to be known as CharterCARE Health Partners.[17] On October 31, 2009, there was meeting of the Board of Trustees of SJHSRI,[18] at which John Fogarty, the then-President and CEO of SJHSRI, stated that RWH was concerned that the reorganization might disqualify the Plan from its exemption from ERISA as a church plan.[19] At deposition, Kenneth Belcher[20] confirmed that was indeed RWH's concern at the time.[21]

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[16] Although not relevant to Plaintiffs' motion for summary judgment, it should be noted that, notwithstanding this concession, Plaintiffs maintain their contention that Plan did not qualify as a church plan since 2009, because ERISA also requires that the Plan sponsor be controlled by or associated with a church within the meaning of ERISA, and SJHSRI was not at least since the affiliation in 2009, when it began to be operated under the control of CCHP, a secular entity.

[17] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 14 ("14. In 2008, executives of Defendants SJHSRI and RWH conducted negotiations to effectuate a reorganization of those companies under the control of a common parent entity, which came to be known as Defendant CharterCARE Community Board…"); Prospect's response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 14 ("14. Undisputed.").

[18] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 15; Prospect's response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 15 ("15. Undisputed.").

[19] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 18; Prospect's response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 18 ("18. Undisputed.").

[20] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Deposition of Kenneth Belcher on August 6, 2020) ("Belcher Depo.") at 87.

[21] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 132 ("Q. Within that paragraph is the following sentence: 'There was concern by RWMC that the Defined Benefit Plan would be relieved of its Church Plan status upon the affiliation and thus subject to ERISA guidelines.' Have I read that sentence correctly? A. You have. Q. And that's consistent with your recollection of the due diligence that Roger Williams did: There was this concern, and the effort was made to satisfy the concern? A. That's correct."). Along with the many other roles Mr. Belcher had, which are discussed *infra*, Kenneth Belcher was the president and CEO of RWH from December 2005 through June of 2014. Id. at 87.

The minutes further state that it was determined that "[a]fter review with the Hospital's outside counsel, as long as the Bishop controls the Pension Board, the Church Plan status would remain intact."[22] The minutes reflect that "[a] formal legal opinion is pending."[23] That opinion was provided by John H. Reid, III, of Edwards Angell Palmer & Dodge LLP, by letter to Mr. Fogarty dated November 12, 2008.[24] In turn, SJHSRI and RWH provided that letter to the Rhode Island Attorney General on March 13, 2009, in connection with their application for permission to proceed with the affiliation.[25] Mr. Belcher acknowledged that he believed both that he read the letter and that counsel for RWH also read the letter, prior to the affiliation being approved in 2009.[26]

In the letter Attorney Reid stated that "Section 414(e) of the [Internal Revenue] Code and ERISA Section 3(33)(C)(i) includes in the definition of church plan a plan maintained by an organization, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or

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[22] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 19; Prospect's response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 19 ("19. Undisputed.").

[23] See Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 19; Prospect's response to Plaintiffs' Statement of Undisputed Facts (ECF # 192) ¶ 19 ("194. Undisputed.").

[24] Plaintiffs' Statement of Undisputed Facts, Ex. 13 (ECF # 174-13).

[25] See Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 28 (excerpts of the Hospital Conversion Application dated March 13, 2009). Prior to the June 20, 2014 Asset Sale, SJHSRI provided Prospect with both this letter and the 2011 Plan. See Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 29 (highlighted excerpt of list of documents uploaded to Prospect's "due diligence" data site as of August 20, 2013) (identifying the Reid opinion letter as item 23.1.3.6 and identifying the 2011 Plan document as item 13.7.1.12).

[26] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 134 ("Q. Now, do you believe that you read this opinion before the effective date of the affiliation between Roger Williams Hospital and St. Joseph's Health Services of Rhode Island? A. I don't recall it, but I believe I would have read it. Q. And are you quite certain that legal counsel for Roger Williams would have read it prior to the effective date of that affiliation? MR. WAGNER: Objection. A. I believe they would have.").

welfare benefits, or both, for the employees of a church, if such organization is controlled by or associated with a church."[27]

In his letter, Attorney Reid noted that the Plan was "administered by a Retirement Board appointed by the Bishop."[28] He also noted that "[t]he Retirement Board is an organization controlled by a church by virtue of the fact that its members include the Bishop and at least nine other members appointed by the Bishop to serve at his pleasure. The Retirement Board has no other function than the administration of the Plan."[29]

Attorney Reid's opinion was that, among the requirements necessary "[i]n order to maintain the status of the Plan as a church plan in accordance with the Code, ERISA and the interpretations of IRS and DOL", was the requirement that "the Retirement Board must continue to be appointed by the Bishop or some other representative of the Roman Catholic Church and must continue to administer the Plan. . . ."[30]

II. THE PLAN ADMINISTRATOR UNDER THE 2011 PLAN

In 2011 SJHSRI amended and restated the Plan, effective July 1, 2011.[31] The 2011 Plan provided that "[t]he Employer [SJHSRI] shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors, shall designate a person or committee of

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[27] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 21, Exhibit 13 (ECF # 174-13).

[28] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 23, Exhibit 13 (ECF # 174-13).

[29] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 23, Exhibit 13 (ECF # 174-13).

[30] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 24, Exhibit 13 (ECF # 174-13).

[31] Prospect's SUF ¶ 83 ("The Plan was amended and restated effective July 1, 2011.").

persons to be the Administrator and named fiduciary."[32] Thus, whereas the 1999 Plan had made the Bishop-appointed Retirement Board the Plan Administrator, the 2011 Plan provided that SJHSRI itself was the Plan Administrator. Moreover, that designation applied unless SJHSRI "by action of its Board of Directors" made another designation.[33]

The Bylaws of SJHSRI, amended effective January 4, 2010 and in effect through at least June 20, 2014, dictated what was required "to effect action by the Board", as follows:

> 4.11 Action by Vote. Except as otherwise provided under these Bylaws (including Sections 4.12, 4.13 and 5.6 below), the Articles of Incorporation of the Corporation, or by applicable law, when a quorum is present at any meeting, **the affirmative vote of a majority of such a quorum shall be required to effect action by the Board**. If less than a quorum is present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice.

ECF # 174-15 at 13 (emphasis supplied). None of the listed exceptions applied in the context of action of SJHSRI's Board of Trustees concerning the Plan.[34] Accordingly, all actions by SJHSRI's Board of Trustees concerning the Pan were required to be by majority vote when a quorum was present.

At deposition Kenneth Belcher acknowledged he was not aware of any resolutions of SJHSRI's Board of Trustees designating any person or organization to act

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[32] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 33, Exhibit 10 (2011 Plan) (ECF # 174-10).

[33] Id.

[34] See SJHSRI's Amended Bylaws (ECF # 174 – 15). Section 4.12 gives CCHP (as Class A member) exclusive voting control over certain "major actions". Id. Section 4.13 requires the affirmative vote of both CCHP and the Bishop on certain matters. Id. Section 5.6 concerns the withdrawal of Catholic Sponsorship. However, none of these sections refer or apply to votes of SJHSRI's Board of trustees concerning the Plan. Id.

as Plan Administrator.[35] Moreover, Plaintiffs filed their motion for summary judgment on December 17, 2019, which expressly alleged as follows:

> SJHSRI did not designate an Administrator or named fiduciary, and, thus, SJHSRI remained the Administrator and named fiduciary of the Plan until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated the Receiver as administrator of the Plan pursuant to the terms of the 2016 Plan.

Plaintiffs' Memo. (ECF # 173) at 10. Thus, when Prospect filed its opposition memorandum on June 27, 2020 (ECF # 190-1), Prospect both knew the importance of this issue and had over six months to review its files for evidence contradicting this assertion. Prospect obtained all of the records of SJHSRI's Board of Trustees prior to June 20, 2014 in connection with the 2014 Asset Sale.[36] Prospect also had many months after Plaintiffs filed their motion for summary judgment in which to conduct discovery.[37] Nevertheless, when it came time to file its opposition, Prospect did not offer any evidence that SJHSRI "by action of its Board of Directors" designated an Administrator or named fiduciary.[38]

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[35] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 83 ("Q. We've already gone through that, when the Board of Trustees of St. Joseph's Health Services of Rhode Island acted, it was pursuant to a vote of a majority of the trustees at a meeting when a quorum was present. Do you recall that? A. Yes. Q. As you sit here today, sir, do you recall any resolutions of the Board of Trustees of St. Joseph's Health Services of Rhode Island involving a vote of the Board at which there was a designation of a committee or a person that would act as administrator of the defined benefit plan? A. I don't recall.").

[36] See Asset Purchase Agreement (ECF # 147-1) § 2.1(e).

[37] After specifically obtaining a 45-day extension of discovery from this Court to conduct depositions, see ECF # 188 (order granting Prospect's motion to extend discovery), Prospect conducted zero depositions and instead simply filed declarations.

[38] Until October 20, 2017, when SJHSRI's Board of Trustees transferred SJHSRI's authority as Plan Administrator to the Receiver, in connection with the Receivership Proceedings. Prospect's Response to Plaintiffs' SUF ¶ 4 ("4. Undisputed that on or about October 20, 2017, the Board of Trustees of SJHSRI designated the Receiver as administrator of the Plan."). See Oct. 20, 2017 Resolution (ECF # 174-4).

III. CONCERNING THE ALLEGED PRINCIPAL PURPOSE ORGANIZATIONS

Prospect's opposition papers contain many different factual allegations on many different issues, but the only facts that are pertinent to Plaintiffs' motion for summary judgment are the undisputed facts concerning the organizations that Prospect contends had any responsibility for administering and/or funding the Plan.

The only organizations that Prospect contends were principal purpose organizations are SJHSRI's Board of Trustees, the Finance, Audit and Compliance Committee of CCHP, and the Investment Committee of CCHP:

> ["T]he Prospect Entities, based on their investigations to date, contend that each of the following organizations, during one period or another, had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i): • The Board of Trustees of SJHSRI; • The Finance, Audit and Compliance Committee of CCHP; and • The Investment Committee of CCHP.[39]

Accordingly, we focus on the facts concerning these organizations, as well as on the corporation SJHSRI itself.

A. The corporation St. Joseph Health Services of Rhode Island

As noted, Prospect does not claim that SJHSRI itself qualified as a principal purpose organization. No such claim could be made. It is undisputed that throughout the period from July 1, 2011 until June 20, 2014, SJHSRI owned and operated various medical facilities, including Fatima Hospital.[40] It is also undisputed that the core

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[39] Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue).

[40] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 65 ("St. Joseph's Health Services of Rhode Island, as the overall umbrella of the corporation, had within it Our Lady of Fatima Hospital, the St. Joe's Clinic, and also operated or oversaw the operation of the School of Nursing.").

purpose and function of SJHSRI during this period was the provision of quality medical services. After the affiliation, Kenneth Belcher remained President and CEO of RWH, and took on the additional positions of President and Chief Executive Officer of CCHP and SJHSRI.[41] He testified at deposition as follows:

> Q. Okay, all right. Now, I'm not sure if the last question was answered; so I'm going to ask it again. Do you agree that the principal purpose and the principal function of St. Joseph's Health Services of Rhode Island was the provision of quality medical care?
>
> MR. WAGNER: Objection.
>
> MR. SHEEHAN: Was there an answer?
>
> A. There was. I said, "I do, yes."

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 64.

B. The Board of Trustees of SJHSRI

1. *Qua* Board of Trustees

It is undisputed that following the 2009 affiliation between Roger Williams Hospital and SJHSRI, certain matters that previously were the responsibility of the SJHSRI Board of Trustees were transferred to CCHP's Board of Trustees.[42] However, SJHSRI's Board of Trustees retained primary responsibility for oversight over three things: 1) the quality of medical care at Fatima Hospital; 2) the credentialing of physicians at Fatima Hospital; and 3) the maintenance of Fatima Hospital's accreditation by the Joint Commission on Accreditation.[43] It is also undisputed that

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[41] Declaration of Kenneth Belcher (ECF # 190-2) ¶¶ 2-4.

[42] Declaration of Kenneth Belcher (ECF # 190-2) ¶ 25.

[43] SJHSRI Bylaws (ECF # 174-15) at 3 – 4; Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 61 – 62 ("Q. After that affiliation, the St. Joseph's Board retained primary responsibility

overseeing the provision of quality medical care was the Board of Trustees' principal purpose and function. Kenneth Belcher testified at deposition as follows:

> Q. All right. And do you agree that the principal purpose and principal function of the Board of Trustees of St. Joseph's Health Services of Rhode Island was overseeing the provision of quality medical care by St. Joseph's Health Services of Rhode Island and its constituent medical facilities?
>
> MR. WAGNER: Objection.
>
> A. That was the primary purpose, yes.
>
> Q. Okay. Sir, when you say -- I'm going to use the term "principal" to mean chief or primary or most important. Understanding the term in that sense, do you agree that the principal purpose and principal function of the Board of Trustees of St. Joseph's Health Services of Rhode Island was overseeing that corporation's provision of quality medical care?
>
> MR. WAGNER: Objection.
>
> A. I do.

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 64-65. Thus, there can be no dispute that, regardless of the responsibilities or actions of SJHSRI's Board of Trustees concerning the Plan, plan administration or maintenance was neither the principal purpose nor the principal function of SJHSRI's Board of Trustees.

2. *Qua* Retirement Board

On April 29, 2013, *the Bishop of Providence* issued the following resolution:

> RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with

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for quality of medical care. Do you agree with that? A. I do. Q. And, within that or separately, it retained primary responsibility for the credentialing of medical staff? A. Correct. Q. And it also received primary -- or, rather, had retained primary responsibility for ensuring that the hospital maintained its accreditation through the Joint Commission on Accreditation, correct? A. Correct.").

> respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan;

ECF # 174-22. As noted, there is no resolution by SJHSRI's Board of Trustees designating itself as the "Retirement Board" or giving the Board any special responsibilities concerning the Plan.[44] There is also no evidence that the 2011 Plan was ever amended to give the Bishop any power over the Plan, or to change the provision contained therein that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors [sic], shall designate a person or committee of persons to be the Administrator and named fiduciary."[45]

Moreover, the minutes of the meetings of the SJHSRI Board of Trustees during the period from July 1, 2010 through June of 2014 have several instances in which the Board of Trustees acted in connection with the Plan as part of their regular meetings as the Board of Trustees, without either specially convening or being referred to as the Retirement Board.[46] Prospect has identified no minutes in which SJHSRI's Board of Trustees specially convened as the Retirement Board or purported to act in that

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[44] Prospect was asked by interrogatory to identify all facts upon which its relies for the contention that SJHSRI's Board of Trustees, CCHP's Finance, Audit and Compliance Committee of CCHP, and CCHP's Investment Committee qualified as principal purpose organizations, and responded by reciting a great many facts, but did not contend that there was a resolution of SJHSRI's Board of Trustees appointing itself the Retirement Board or giving it any duties concerning the Plan. See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) at 6 – 28.

[45] Again, Prospect identified no such documents in response to Plaintiffs' Interrogatory No. 2. See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) at 6 – 28.

[46] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 43; Plaintiffs' Exhibit 23 (ECF # 174-23).

capacity.[47] Simply put, SJHSRI's same Board of Trustees *both* oversaw a hospital business *and* oversaw the Plan.

C. The Finance, Audit & Compliance Committee of CCHP

The affiliation between SJHSRI and RWH became fully effective January 4, 2010.[48] At that time, the 1999 Plan with the Bishop-appointed Retirement Board was still in effect.[49] Indeed, that was nearly eighteen months prior to the July 1, 2011 effective date of the 2011 Plan, which substituted SJHSRI as Plan Administrator for the Bishop-appointed Retirement Board.[50]

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[47] See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) at 6 – 28.

[48] See Exhibit 15 (ECF # 174-15) at 2 (Resolution of SJHSRI's Board of Trustees dated December 9, 2009 approving the changes to SJHSRI's articles and bylaws effective January 4, 2010); ECF # 174 (CCHP's bylaws dated January 4, 2010).

[49] Prospect's SUF ¶ 14 ("Under the terms of the Plan, as set forth in Article 18 of its 1999 Restatement, the Retirement Board remained responsible for the general administration of the Plan, at the commencement of the Affiliation in 2009, throughout the Transition Period that ended June 30, 2010 (the 'Transition Period'), and well into 2011 when the SJHSRI Board amended and restated the Plan, on or about August 25, 2011. (Plaintiffs' Exhibit 9 (1999 Plan) at 30; Plaintiffs' Exhibit 10 (2011 Plan).").

The Prospect Entities improperly refer to the effective date of the affiliation and to the Transition Period as ending June 30, 2010. Prospect's mistake does not constitute a disputed fact, however, since it is incontrovertible that the affiliation was actually complete on January 4, 2010. See Plaintiffs' Response to Prospect's SUF ¶ 12, Exhibit 31 (January 4, 2010 letter by Kenneth Belcher to Attorney General Patrick D. Lynch) ("I am pleased to inform you that the Affiliation by and between Roger Williams Medical Center and St. Joseph Health Services of Rhode Island was completed effective today, January 4, 2010 and CharterCARE is now operational.").

Prospect draws its mistaken conclusion from a misreading of SJHSRI's bylaws, which, in addition to referring to the Transition Period, refer to another, different period from the effective date of the Affiliation (January 4, 2010) to June 30, 2010. See Section 4.5 of SJHSRI's amended and restated bylaws provided in pertinent part that "[n]otwithstanding the foregoing, until June 30, 2010 (which time may be extended by the Trustees) the Finance and Audit Committees existing on the day immediately prior to the date these Bylaws are adopted and as then constituted shall continue to perform their duties set forth in the prior Bylaws but in an advisory capacity only, reporting to the Finance, Audit and Compliance Committee of the Class A Member [CCHP]." Id. § 4.5 (emphasis added).

[50] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶¶ 28, 33.

The bylaws of CCHP also came into effect on January 4, 2010.[51] These bylaws defined the scope of responsibility for CCHP's Finance, Audit & Compliance Committee.[52] The Finance, Audit & Compliance Committee was required to act within the scope of this authority and not outside of its scope.[53] The bylaws set the scope of the Finance, Audit & Compliance Committee's authority as follows:

> **Finance, Audit and Compliance Committee**. The Finance, Audit and Compliance Committee shall review and monitor the financial operations of the Corporation [CCHP], recommend operational and financial goals and objectives and monitor compliance with the goals and objectives, review and recommend to the Board of Trustees the annual operating and capital budget, and review and make recommendations to the Board regarding plans for financing major capital acquisitions. The Finance, Audit and Compliance Committee shall review the scope and results of the audit of the books of the Corporation and of each company of which the Corporation is the sole member or stockholder and any other Affiliate of the Corporation [e.g., SJHSRI & RWH], and review such results with the auditors, management and those responsible for internal controls. The Finance, Audit and Compliance Committee will assure that the financing, account, internal controls and financial reporting functions are in keeping with accepted accounting standards. The Finance, Audit and Compliance Committee will annually report to the Board of Trustees as to the performance of the independent auditor engaged to audit the books of the Corporation. The Finance, Audit and Compliance Committee also shall be responsible for approving compliance programs established for the Corporation, overseeing and monitoring such compliance programs, and making appropriate reports and recommendations to the Board of Trustees. The Finance, Audit and Compliance Committee shall be comprised of such Trustees as shall be appointed thereto by the Board of Trustees; provided, that any members of the Committee who are at the time employed by the Corporation shall recuse themselves from any

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[51] Exhibit 24 (ECF # 174-24) (CCHP bylaws) at 1 ("Dated: January 4, 2010").

[52] Exhibit 24 (ECF # 174-24) (CCHP bylaws) at 7-8.

[53] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 19 ("Q. And committees of the CharterCARE Health Partners Board of Trustees were expected to act within the scope of their responsibility and not outside the scope of their responsibility; correct? A. That's correct.").

> discussion and the taking of any action with respect to the audit functions of the Committee.

ECF # 174-24 (CCHP bylaws) at 7 – 8 (underlining in original). Although there is no specific reference therein to the Plan, Kenneth Belcher testified that the Committee's actions concerning the Plan were consistent with the Committee's responsibility to "review and monitor the financial operations of the Corporation."[54]

However, CCHP's Finance, Audit & Compliance Committee's responsibilities over the financial operations of CCHP also included oversight of the financial operations of Roger Williams Hospital, Fatima Hospital, and other medical facilities.[55] The financial operations of the two hospitals were quite complex.[56] As a result, the minutes of meetings of the Finance, Audit and Compliance Committee of CCHP reflect detailed and wide-ranging oversight by that committee over the financial operations of Roger Williams Hospital, Fatima Hospital, and related medical facilities.[57]

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[54] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 30-31 ("Q. All right. Do you agree that in that section 15 there is no specific reference to the St. Joseph Health Services of Rhode Island Retirement Plan? A. There is no specific reference to it. Q. Is it your understanding that at this time the Finance, Audit and Compliance Committee had certain responsibilities in connection with that plan? A. Yes. Q. And reading this description from the bylaws, is it your understanding that those responsibilities fell under the allocation of responsibility concerning financial operations set forth in the bylaws for this committee? MR. WAGNER: Objection. A. Yes.").

[55] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Deposition of Marshall Raucci on August 5, 2020) ("Raucci Depo.") at 74 ("Q. Now, the responsibilities of the Finance, Audit and Compliance Committee concerning finance included overseeing the financial operations of both St. Joseph's Hospital and Roger Williams Hospital; correct? A. Yes. ").

[56] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 74 ("Q. Now, the responsibilities of the Finance, Audit and Compliance Committee concerning finance included overseeing the financial operations of both St. Joseph's Hospital and Roger Williams Hospital; correct? A. Yes. Q. And would you agree that those financial operations were quite complex? A. Yes.").

[57] See, e.g., ECF # 190-16 (minutes of March 15, 2011 meeting); ECF # 190-17 (minutes of July 19, 2011 meeting); ECF # 190-18 (minutes of November 15, 2011 meeting); ECF # 190-23 (minutes of March 25, 2014 meeting).

Accordingly, administration of the Plan was not the principal purpose or function the Finance, Audit and Compliance Committee even within the limited sphere of that Committee's responsibilities for oversight of financial operations. In addition to serving as the President and Chief Executive Officer of CCHP, RWH and SJHSRI after the affiliation, Kenneth Belcher was a member of the Finance, Audit & Compliance Committee of CCHP from the inception of that Committee on January 4, 2010 until at least June 20, 2014.[58] Mr. Belcher testified at deposition concerning the Finance, Audit & Compliance Committee of CCHP as follows:

> Q. Now, the Finance Committee's responsibilities concerning finance included much more than responsibilities concerning the defined benefit plan; is that correct?
>
> A. Correct.
>
> Q. It included the oversight of the financial operation of two hospitals, correct?
>
> A. Correct.
>
> Q. Sir, do you agree that the responsibilities of the Finance, Audit and Compliance Committee over the Plan were not the principal purpose of even the finance component of the Finance, Audit and Compliance Committee's responsibilities?
>
> MR. WAGNER: Objection.
>
> THE WITNESS: Would you reword that please or just repeat the question?
>
> MR. SHEEHAN: I'm going to try just having the reporter read it back.

[58] Declaration of Kenneth Belcher (ECF # 190-2) ¶ 5. Prospect has identified no minutes or other documents indicating that CCHP's Finance, Audit & Compliance Committee ever met after June 20, 2014.

(Previous question referred to read by reporter.)

A. Correct.

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 31.

It is therefore *a fortiori* that administration of the Plan was not the principal purpose or function of the CCHP Finance, Audit & Compliance Committee when *all* that Committee's responsibilities are considered:

> Q. And the Finance, Audit and Compliance Committee, in addition to its responsibilities concerning finance, had, as we've already discussed, certain responsibilities concerning audit and compliance; correct?
>
> A. That's correct.
>
> Q. And do you agree that the Finance Committee's responsibilities concerning the defined benefit plan did not constitute the principal purpose of the Finance, Audit and Compliance Committee when you take into account its responsibilities involving finance, audit, and compliance?
>
> MR. WAGNER: Objection.
>
> A. That is correct.

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 32.

D. The Investment Committee of CCHP

The bylaws of CCHP also define the scope of authority of its Investment Committee.[59] The Investment Committee also was required to act within the scope of

[59] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 51-52 ("Q. Okay. This section of the bylaws concerning the Investment Committee sets forth the scope of authority of that committee, in general terms; correct? A. Yes, correct. Q. Now, this section uses the word "shall," if you look at it, in three different places. Do you see that? A. I do. Q. And this section constitutes a direction to the Investment Committee of what its scope of authority is going to be; correct? MR. WAGNER: Objection. A. Correct.").

this authority and not outside of the scope of that authority.[60] The bylaws set the scope of the Investment Committee's authority as follows:

> Investment Committee. The Investment Committee shall be responsible for overseeing investment of the funds of the Corporation and its Affiliates. The Investment Committee shall approve investment policies and procedures and shall approve the investment of outside organizations to manage investments and advise the Corporation and its Affiliates with respect to such investments.

ECF # 174-24 at 10. The bylaws refer to CCHP as the "corporation," and define the "Affiliates" as "RWMC, RWMC [sic], SJHSRI and any other entity as to which the Corporation, now or in the future, is the sole corporate member or shareholder or which is otherwise controlled directly or indirectly by the Corporation."[61]

The Investment Committee had the responsibility to oversee the investment of the assets of the following funds a) the RWH Endowment and Board Designated Funds,[62] b) the SJHSRI Endowment,[63] c) the employer contributions to the SJHSRI and RWH Defined Contribution Plan,[64] and d) the Plan's assets.[65] The Investment

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[60] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 18 – 19.

[61] ECF # 174-24 at 15.

[62] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 58 ("Q. Now, the Investment Committee, we've already discussed, had some responsibility for the Roger Williams endowment. Do you agree that the Roger Williams endowment was a valuable asset for Roger Williams Hospital? A. Yes. Q. And did you give as much importance to the Investment Committee's responsibilities, with respect to the endowment of Roger Williams, as to the Investment Committee did with respect to the defined benefit fund? A. The answer would be yes.").

[63] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 58 ("Q. Okay. Now, finally, the Investment Committee was also responsible for the endowment for St. Joseph's. Do you recall that? A. I do.").

[64] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 55 ("Q. Okay. So did the Investment Committee's responsibilities include making the investments for the employer portion of the defined contribution plan? A. Yes.").

[65] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 63 ("[Q.] Did the Investment Committee's responsibility over the defined benefit plan include responsibility concerning the investments of the defined benefit plan? A. Yes.").

Committee also had responsibility to choose the menu of funds in which participants in the RWH and SJHSRI Defined Contribution Plans[66] could choose to invest the amounts they contributed to the Plans.[67]

These funds ranged in value:

- The endowment and board-designated funds of RWH ranged in value from $22.7 million in March of 2010[68] to $25.1 million as of September 30, 2013;[69]
- The funds held by the RWH Defined Contribution Plan ranged in value from $22,941,545 in March of 2010[70] to $37,578,130 as of September 30, 2013;[71]
- The funds held by the SJHSRI Defined Contribution Plan ranged in value from $12,207,831 in September of 2011[72] to $25,669,536 as of September 30, 2013;[73]

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[66] For a description of what constitutes a defined contribution plan, see Zelinsky, The Defined Contribution Paradigm, 114 Yale L.J. 451, 457 (2004) ("By its nature, a defined contribution plan does not pool resources like a defined benefit pension but rather establishes for each participant his own individual account. Allocated to that account are the employer's contributions for the employee, the employee's own contributions (if any), and the earnings or losses generated by the investment of all those contributions.").

[67] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 43-44 ("[Q.] One of the responsibilities of the Investment Committee was to select the funds from which the participants in the two defined contribution plans could make investments; is that fair? A. Yeah, so it's not only select, but I would say it's broader: select and monitor and then make appropriate changes over time. So all of the criteria that we would use in selecting the initial is done on an ongoing basis as well.").

[68] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 39 (March 19, 2010 CCHP Investment Committee Meeting minutes).

[69] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (February 14, 2014 CCHP Investment Committee Meeting minutes).

[70] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 39 (CCHP Investment Committee minutes dated March 19, 2010).

[71] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (CCHP Investment Committee minutes dated February 14, 2014).

[72] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 40 (403(b) Investment Review & Recommendations PowerPoint slide deck dated August 26, 2011) at bates # SJHSRI-196526.

[73] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (CCHP Investment Committee minutes dated February 14, 2014).

- The endowment and board-designated funds of SJHSRI ranged in value from $1.2 million in September of 2010[74] to $1,350,583 as of December 2013;[75] and

- The funds held by the (Defined Benefit) Plan ranged in value from $88.9 million in September 30, 2010[76] to $90.6 million as of September 30, 2013.[77]

Thus, in the latter half of 2013, the total amount of funds over which the Investment Committee had authority, excluding the assets of the Plan, was $89.7 million,[78] which was roughly equal in amount to the $90.6 million in assets held by the Plan as of September 30, 2013.

In addition to his other responsibilities, Kenneth Belcher was a member of the Investment Committee of CCHP from the inception of CCHP until the summer of 2014.[79] Kenneth Belcher testified as follows:

> Q. Is it fair to say that the Investment Committee performed its duties concerning the defined contribution plan with the same degree of diligence and care as the Investment Committee performed its duties concerning the defined benefit plan?

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[74] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 41 (CCHP Investment Committee minutes dated November 19, 2010).

[75] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (CCHP Investment Committee minutes dated February 14, 2014).

[76] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 41 (CCHP Investment Committee minutes dated November 19, 2010).

[77] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 38 (CCHP Investment Committee minutes dated November 15, 2013). For testimony addressing all of these values, see also Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 38 – 44 and Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 32 – 39, 45 – 47.

[78] The actual total was $89,698,249. Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (February 14, 2014 CCHP Investment Committee Meeting minutes) (total assets in the defined contribution plans as of September 30, 2013 were $63,247,666 and the market value of SJHSRI's endowment as of December 31, 2013 was $1,350,583); Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 38 (November 15, 2013 CCHP Investment Committee Meeting minutes) (RWH's endowment as of September 30, 2013 was $25,100,000).

[79] Declaration of Kenneth Belcher (ECF # 190-2) ¶ 5. The Investment Committee did not meet after June 20, 2014.

A. Yes.

Q. The Investment Committee was no less careful with the defined contribution plan; correct?

A. That's correct.

Q. The Investment Committee did not consider that the defined contribution plan was secondary in importance to the defined benefit plans--

A. Correct.

Q. -- because of the rest of these duties; correct?

A. Yes.

* * *

Q. Sir, do you agree that Roger Williams Hospital's endowment was a valuable asset for Roger Williams Hospital?

A. Yes.

Q. And did the members of the Investment Committee consider that the Roger Williams Hospital endowment was secondary in importance to the defined benefit plan?

MR. WAGNER: Objection.

A. No.

Q. Did the members of the Investment Committee treat both the Roger Williams endowment and the defined benefit plan as having equal importance?

MR. WAGNER: Objection.

A. Yes.

* * *

Q. Did the investment committee have a responsibility to make a recommendation to the Board of Trustees of CharterCARE Health

Partners concerning the extent to which the defined benefit plan should be funded?

A. No.

Q. Is it fair to say that the decision whether or not to fund the plan was made at the level of the entire board?

A. Yes.

Q. Now, is it also fair to say that the fact that the defined benefit plan was underfunded did not make that plan more important to the members of the Investment Committee than were the defined contribution plans that were also overseen by the committee?

MR. WAGNER: Objection.

A. They were equally important.

Q. And is it fair to say that the fact that the defined benefit plan was underfunded did not make that plan more important to the Investment Committee than the Investment Committee considered its responsibilities with respect to the Roger Williams endowment?

MR. WAGNER: Objection.

A. Correct.

Q. Do you agree, sir, that the principal purpose of the Investment Committee of CharterCARE Health Partners was broader than clearly [*sic recte* merely] its responsibilities concerning the defined benefit plan?

MR. WAGNER: Objection.

A. I do.

Q. I didn't hear the answer.

A. I do.

Q. Okay. And do you agree that the principal purpose of the Investment Committee was to oversee investment of all of the funds –

MR. WAGNER: Objection.

> Q. -- for CharterCARE Health Partners –
>
> A. Correct.
>
> Q. -- and its affiliates?
>
> MR. WAGNER: Objection.
>
> A. I do.
>
> Q. And do you agree, sir, that the principal function of the Investment Committee of CharterCARE Health Partners was to oversee investment of all of the funds of CharterCARE Health Partners and its affiliates?
>
> MR. WAGNER: Objection.
>
> A. I do.

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 55 – 59.

In addition to having been a member of the Board of Trustees for CCHP from 2010 until the end of 2013,[80] Marshall Raucci was also chairman of CCHP's Investment Committee during that period.[81] He testified as follows:

> Q. Okay. Now, going back to the descriptions in the bylaws of the Investment Committee, which is Bates number 223, and that's part of Exhibit Two, do you have it in front of you?
>
> THE WITNESS: So you want me go backwards to the page 223?
>
> MR. SHEEHAN: Exhibit Number Two.
>
> THE WITNESS: I've got it now. So the Investment Committee?

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[80] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 11 ("[Q.] Now, Mr. Raucci, you were a member of the Board of Trustees of CharterCARE Health Partners for a period of years; is that correct? A. Yes. Q. And is it correct that those years were from 2010 until sometime in 2013? A. Yes."); id. at 13 ("Q. And the middle of the page indicates that you were resigning as of 12/31/13. Do you see that? A. Yes. Q. Understanding that you -- well, let me rephrase it. Do you have any reason to doubt that that was the effective date of your resignation? A. No reason to doubt it.").

[81] Marshall Raucci Decl. (ECF # 190-3) ¶ 8.

> Q. Now, the first sentence states, "The Investment Committee shall be responsible for overseeing investment of the funds of the Corporation and its affiliates." I've read that correctly?
>
> A. Yes.
>
> Q. That sentence does not identify any particular funds as more or less important. Do you agree?
>
> A. It does not identify any particular funds. It revolves -- yeah. The investment fund, yep, for overseeing investment funds.
>
> Q. Right. And it doesn't provide that some funds have more importance than others; correct?
>
> A. Well, I would believe that, when we as a committee function, we looked at every pocket of assets as being equally as important.

Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 53 – 54. He further stated:

> Q. Okay. Now, I had asked you about the -- I'm not sure if I did. I'm going to try to be clear. Earlier, when I asked you about did you agree that the funds in the defined contribution plans were very important to the participants, that would be true both for the participants in the Roger Williams fund and in the St. Joseph's fund; correct?
>
> A. I think every dollar in every retirement program is important to the participant.
>
> Q. Okay. Now, is it fair to say that the Investment Committee, in performing its duties concerning the defined contribution plan, exercised the same degree of diligence and care as it performed the duties it had concerning the defined benefit plan?
>
> A. So were we -- were we as focused -- so was our process and our attention and our focus as rigorous on the defined benefit plan as it was on the defined contribution? I would say yes.
>
> Q. You certainly were no less careful in managing the defined contribution fund than you were in managing the defined benefit fund; is that fair?
>
> A. We tried to execute to our best ability in both cases.

Q. Right. And you earlier said that no one of the funds was secondary in importance to any of the others. Did I hear that correctly?

A. Correct.

Q. Now, the Investment Committee, we've already discussed, had some responsibility for the Roger Williams endowment. Do you agree that the Roger Williams endowment was a valuable asset for Roger Williams hospital?

A. Yes.

Q. And did you give as much importance to the Investment Committee's responsibilities, with respect to the endowment of Roger Williams, as to the Investment Committee did with respect to the defined benefit fund?

A. The answer would be yes. We engaged a consultant who then gave us meticulous reports both on cash flows, performance, and manager performance; and we did that for all of the funds under our stewardship.

Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 57 – 58. The following examination is also significant:

[MR. SHEEHAN] Anyways, gentlemen and Stephanie, do you now see on the screen the dictionary definition from Black's of the word "principal"?

MR. INDEGLIA: I do.

Q. Yeah, it says, "Chief; primary; most important"; correct?

A. Yes.

Q. And, just for the record, this is the 11th Edition, 2019, of Black's. Do you agree that, for the Investment Committee, all of the funds that it had responsibility over were equally important?

A. Yes.

Q. Okay. And, therefore, you would agree that no one of the funds was the most important or the chief or the primary responsibility of the Committee?

A. They were all important.

Q. And, since they were all important, no one of them was the most important; is that fair?

A. Yes.

Q. Okay. Now, was it the responsibility of the Investment Committee to make recommendations to the Board of Trustees of CharterCARE Health Partners with respect to whether St. Joseph's should make a contribution to the plan?

A. It was not -- no, I -- no, the answer is I don't believe it was our responsibility to make that recommendation.

Q. Okay. Now, is it your recollection that the decision whether or not to make the contribution to the plan would be made at the level of the Board of Trustees itself as opposed to any particular committee?

A. That's correct. I believe it would be a management recommendation to the board.

* * *

Q. Now, earlier we talked about, to the Investment Committee, all of the funds were equally important. Do you recall that?

A. Yes.

Q. Do you agree that the fact that the defined benefit plan was underfunded did not make that plan more important to the purpose and function of the Investment Committee than the defined contribution plans that were also being managed by the Investment Committee?

THE WITNESS: So, if I -- if I understand your question, because it was

underfunded, should it have been more important?

MR. SHEEHAN: That's the question, I guess.

A. No, I mean, it's -- we're trying to do the very, very best for every -- for every asset all of the time; so the funding status -- I mean, the success that we would have -- so the answer would be no. So they were all equally as important.

Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 62 – 68.

IV. PLAN ADMINISTRATION AFTER JUNE 20, 2014

While the facts concerning the administration of the Plan since June 20, 2014 may be relevant to Prospect's cross-motion for summary judgment, Plaintiffs contend that they are not relevant to Plaintiff's motion for summary judgment. However, neither are they in any way harmful. Accordingly, in order to avoid an unnecessary dispute over relevancy, Plaintiffs refer to them herein and demonstrate how they only reinforce Plaintiffs' basic contention that the Plan was not administered or funded by a principal purpose organization during the period from July 1, 2011 through June 20, 2014.

Beginning June 20, 2014 and continuing for at least six months, until at least December 20, 2014, the Department of Human Resources for Prospect (in its fictious name "CharterCARE Health Partners"[82]) took over administration of the Plan, under a Transition Services Agreement, and Prospect was paid a fee for administering the Plan.[83]

On December 15, 2014, CCHP, by written consent in its capacity as the Class A member of SJHSRI, turned administration of the Plan over to SJHSRI's lay President Daniel Ryan and an outside attorney, Richard Land.[84]

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[82] See Plaintiffs' First Amended Complaint ¶¶ 414 & 415 ("414. At 10:17 a.m. on June 20, 2014, which was the day that the 2014 Asset Sale closed, CharterCARE Health Partners filed articles of amendment with the Rhode Island Secretary of State, changing its name from CharterCARE Health Partners to Chartercare Community Board. 415. One minute later, at 10:18 a.m. on June 20, 2014, Prospect Chartercare filed a 'fictitious business name statement' with the Rhode Island Secretary of State, stating that it would operate under the 'fictitious name' of CharterCARE Health Partners, which was the same name under which SJHSRI, RWH, and CCCB had operated Old Fatima Hospital and Old Roger Williams Hospital from 2009 right up to the day of the closing of the 2014 Asset Sale.").

[83] Plaintiffs' Response to Prospect's SUF ¶ 109, Exhibit 45 (June 19, 2014 Transition Services Agreement) at 9 (listing services Prospect provided, including "Administration of St. Joseph Health Services of Rhode Island Pension Plan; coordination with Angell Pension for benefit calculations and general plan activity.").

[84] Prospect's SUF ¶¶ 107-108

The Plan was again amended January 30, 2017, effective July 1, 2016, and again stated that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary."[85]

SJHSRI caused the Plan to be placed into receivership with the Rhode Island Superior Court on August 17, 2017.[86]

On October 20, 2017, SJHSRI's Board of Trustees by unanimous vote vested in the Receiver Stephen Del Sesto "all rights and powers of the Corporation as sponsor and administrator of the Plan, including but not limited to the operations, management, oversight, administration and all aspects of the Plan…."[87] Such resolution was "irrevocable except upon order of the Rhode Island Superior Court divesting the receiver of control over the Plan."[88]

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[85] ECF # 174-3 at 41.

[86] Plaintiffs' Statement of Undisputed Facts ¶ 1 ("1. On August 18, 2017, Defendant St. Joseph Health Services of Rhode Island ("SJHSRI") filed a Petition for Appointment of Temporary Receiver ("Petition") in the Rhode Island Superior Court, 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 Proceeding"). The Petition (without exhibits) is attached hereto as Exhibit 1.") and Prospect's Response ¶ 1 ("2. Undisputed.").

[87] Plaintiffs' Statement of Undisputed Facts ¶ 4 ("4. On October 20, 2017, the Board of Trustees of SJHSRI irrevocably designated the Receiver as administrator of the Plan. The Resolution attached hereto as Exhibit 4 is the resolution of SJHSRI's Board of Trustees on October 20, 2017, certified on November 2, 2017.") and Prospect's Response ¶ 4 ("4. Undisputed that on or about October 20, 2017, the Board of Trustees of SJHSRI designated the Receiver as administrator of the Plan. Disputed, however, that such designation was irrevocable because the Resolution states that "the Resolutions contained herein shall be irrevocable except upon entry of an Order in the Rhode Island Superior Court divesting the Receiver of control over the Plan." *See* Oct. 20, 2017 Resolution (ECF No. 174-4).").

[88] See Oct. 20, 2017 Resolution (ECF # 174-4).

ARGUMENT

I. Plaintiffs have standing

In connection with approving prior settlements in this case, the Court has already found that all the Plaintiffs have standing to assert claims under ERISA. Memorandum and Decision (ECF # 164) at 6. The Court found that Plaintiffs have standing based upon Plaintiffs' claims that "[a]s a result of SJHSRI's failure to fund the Plan in accordance with ERISA's minimum funding standards, Plaintiffs pensions will be lost or at least severely reduced." Id.

However, in their opposition memorandum, Prospect again raises the standing issue, this time in a footnote, while at the same time claiming they "choose to not challenge the individual Plan participants' standing[89] to join in this litigation…"[90]

Prospect relies on Thole v. U.S. Bank N.A., 140 S. Ct. 1615 (June 1, 2020). However, for at least two reasons, Thole v. U.S. Bank N.A. is not grounds for the Court to revisit its earlier finding that all the Plaintiffs (including the individual Plan participants) have standing. First, the Court in Thole expressly noted that the plaintiffs in that case were *not* making the argument that the defendants' misconduct "substantially increased the risk that the plan and the employer would fail and be unable to pay the participants' future pension benefits." Id., 140 S. Ct. at 1621-22. In contrast, this Court's decision that the individual Plan participants have standing was based on exactly that allegation.

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[89] Prospect does not dispute that the Receiver has standing.

[90] See Prospect's Opp. Memo. (ECF # 193-1) at 7 n.2 ("In this Opposition and Cross Motion, the Prospect Defendants choose to not challenge the individual Plan participants' standing to join in this litigation -- but the issue certainly is not conceded. Rather, we reserve the right to challenge the individual participants' standing in the future, particularly in light of the U.S. Supreme Court's ruling in *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615 (June 1, 2020).").

Second, the defined benefit plan in Thole was sponsored by U.S. Bank and there was no dispute that it was an ERISA plan covered by Pension Benefit Guaranty Corporation insurance, which is certainly not undisputed here. Moreover, the Supreme Court's reference in dictum to the effect of coverage by PBGC was not as "strongly suggestive" as Prospect claims. Prospect's Opp. Memo. at 7 n.2. See Thole, *supra*, 140 S. Ct. at 1622 n.2 ("Any increased-risk-of-harm theory of standing therefore **might not** be available for plan participants whose benefits are guaranteed in full by the PBGC. **But we need not decide that question in this case**.") (emphasis supplied).

In addition, the dissenting opinion of Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, took strong issue with the majority decision's dictum concerning the effect of the availability of insurance coverage on standing. Thole v. U.S. Bank N.A., *supra*, 140 S. Ct. at 1627 ("The Court appears to conclude that insurance (or other protections to remedy trust losses) would deprive beneficiaries of their equitable interests in their trusts. But the Court cites nothing supporting that proposition. To the contrary, it is well settled that beneficiaries retain equitable interests in trust assets even when those assets are insured or replenished.") (citation omitted). The dissent was equally critical of the majority decision's reference in dicta to the role of the Pension Benefit Guaranty Corporation in that case. Thole v. U.S. Bank N.A., *supra*, 140 S. Ct. at 1635 ("Exchanging ERISA's fiduciary duties for Government insurance would only add to the PBGC's plight and require taxpayers to bail out pension plans.").

II. The Plan was subject to ERISA unless it qualified for an express statutory exemption

A. Under the plain statutory language, the Plan was covered by ERISA unless it qualified for certain statutory exemptions

ERISA states the general rule as follows:

> (a) **In general**. Except as provided in subsection (b) or (c) and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—
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> (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or
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> (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) by both.

29 U.S.C. § 1003(a). Thus, the Plan was covered by ERISA unless there is a statutory exception that is "provided in subsection (b) or (c) and in sections 1051, 1081, and 1101 of this title." The only exception conceivably applicable to the Plan is 29 U.S.C. § 1003(b)(2), which applies if "such plan is a church plan (**as defined in section 1002(33) of this title**) with respect to which no election has been made under section 410(d) of Title 26…" (emphasis supplied).

B. The exemption from ERISA for church plans is subject to the rule of narrow construction for statutory exceptions from ERISA

Plaintiffs are entitled to summary judgment in this case under the plain meaning of 29 U.S.C. § 1002(33)(C)(i), including that the term "principal" in the phrase "the principal purpose or function" modifies both "principal" and "function." That is true whether the church plan exemption from the coverage of ERISA is construed liberally or

strictly. In other words, this is not the close case in which that canon of statutory construction might be determinative.

Nevertheless, the law is clear that exceptions from ERISA are to be construed narrowly. John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, supra, 510 U.S. at 97 (1993) (requiring strict compliance with ERISA exemption for certain group annuity contracts) ("[W]hen a general policy is qualified by an exception, the Court 'usually read[s] the exception narrowly in order to preserve the primary operation of the [policy]'") (quoting A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493 (1945) (which the Court in John Hancock characterized as "cautioning against extending exemptions 'to other than those plainly and unmistakably within its terms'")).

That is merely a concomitant to the fact that ERISA is a remedial statute and, therefore, is to be construed liberally in favor of coverage. Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund, 943 F.3d 49, 55 (1st Cir 2019) ("ERISA, of which the MPPAA[91] is a part, as a remedial statute, is to be construed liberally."). The amendment to ERISA which required that church plans be administered or funded by principal plan organizations was the MPPAA. Overall v. Ascension, 23 F. Supp. 3d 816, 826 (D. Mich. 2019) ("Congress retroactively amended and expanded the church plan exemption in § 407 of the Multiemployer Pension Plan Amendments Act of 1980 ('MPPAA'). *See* Pub.L. No. 96–364, § 407, 94 Stat. 1208 (1980).")). Thus, the First Circuit's directive for liberal construction in Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund applies to

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[91] The Multiemployer Pension Plan Amendments Act of 1980.

require a narrow construction for exceptions to ERISA, including the church plan requirements.

Prospect seeks to distinguish John Hancock on the basis that, although that case also involved an exemption from ERISA, it did not involve the church plan exemption. Prospect's Opp. Memo. at 32. Similarly, Prospect seeks to distinguish A.H. Phillips as a Fair Labor Standards Act case. Prospect's Opp. Memo. at 33. However, the canon of statutory construction that exceptions to remedial statutes are to be construed narrowly is a general principle. Prospect has not and cannot dispute that ERISA is a remedial statute. Prospect has the burden of providing authority for the proposition that this canon nevertheless should not be applied to the church plan exemption. Yet Prospect cites absolutely no authority for the proposition that these principles of statutory construction do not apply when the exemption from ERISA is for church plans.

To the contrary, the legislative history is that *all* exemptions from ERISA are to be construed narrowly, such as the following legislative history for the initial enactment of ERISA in which the Senate Report noted the general rule of statutory construction:

> It is intended that coverage under the Act be construed liberally to provide the maximum degree of protection to working men and women covered by private retirement programs. Conversely, exemptions should be confined to their narrow purpose.

S.Rep. No. 93–127, 93d Cong., 1st Sess. 18 (1973) (emphasis supplied), reprinted in 1974 U.S.Code Cong. & Ad. News 4639, 4838, 4854.

In Garcia v. Am. United Life Ins. Co., No. 5:07CV63, 2009 WL 6327459 (E.D. Tex. Dec. 9, 2009) the court discussed this canon of statutory construction as applicable to *all* exemptions from ERISA, including specifically church plans:

> The exemptions from ERISA's coverage are also spelled out in detail. See 29 U.S.C. § 1003(b) (excluding governmental plans, church plans, workers compensations plans, extraterritorial nonresident alien plans, and unfunded excess benefit plans). The Act's legislative history indicates ERISA should be construed liberally. *See* S.Rep. No. 93–127, 93d Cong., 1st Sess. 18 (1973), reprinted in 1974 U.S.Code Cong. & Ad. News 4639, 4838, 4854 (coverage under ERISA should be construed "liberally" to provide "maximum" protections for workers, and the "exemptions should be confined to their narrow purpose.").

Garcia, 2009 WL 6327459, at *10.

Indeed, Justice Sotomayor's concurrence in Stapleton focused particularly on future courts' adjudication of the requirements for "principal purpose organizations" and directed courts to construe those provision "with a view toward effecting ERISA's broad remedial purposes":

> In the end, I agree with the majority that the statutory text compels today's result. Other provisions also impact the scope of the "church plan" exemption. Those provisions—including the provisions governing which organizations qualify as principal purpose organizations permitted to establish and maintain "church plans," *see, e.g.*, *ante*, at 1658, n. 3—need also be construed in line with their text and with a view toward effecting ERISA's broad remedial purposes.

Stapleton, *supra*, 137 S. Ct. at 1663-64. In other words, "the provisions governing which organizations qualify as principal purpose organizations permitted to establish and maintain 'church plans,'" must construed with a view toward *narrowing* and *limiting* the church plan exemption from ERISA.

Prospect contends that the rule that exceptions to ERISA are strictly and narrowly construed does not apply to the church plan exception because of the First Amendment's protection for the free exercise of religion. Prospect's Opp. Memo. at 34-35. That is a complete red herring, on several levels.

First, Prospect cites no authority (because there is none) that the First Amendment's protections for religious freedom should broaden the statutory construction of *any* of the requirements for the church plan exemption, much less the requirement that a principal purpose organization have plan administration of funding as its principal purpose or function, which has no relationship whatsoever to religion.

Certainly, the First Amendment does not prohibit federal regulation of pension plans established by churches or organizations associated with churches. See Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 304 (1985) (minimum wage and recordkeeping requirements do not violate the right of associates of a nonprofit religious organization to freely exercise their religion); Lemon v. Kurtzman, 403 U.S. 602, 614 (1971) (permissible legal restrictions on churches include "[f]ire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws…").[92]

Moreover, although Plaintiffs' claims against Prospect would probably suffer on the merits if ERISA were found to be inapplicable to the Plan, that would not protect Prospect and the other Defendants from liability altogether. To the contrary, they would face potential liability under state law. 2 Religious Organizations and the Law § 14:48 ("Insofar as church plans are exempt from ERISA, they involve no federal question for

[92] That is also shown by the fact that even church plans that are not subject to ERISA are subject to the Internal Revenue Code's qualified plan provisions. 26 U.S.C. §410(a)(1). These include minimum participation rules, prohibition against top-heavy plans, minimum vesting requirements, and a host of other requirements. See Internal Revenue service, A Guide to Common Qualified Plan Requirements, at https://www.irs.gov/retirement-plans/a-guide-to-common-qualified-plan-requirements (accessed August 25, 2020) (setting forth 21 different requirements in "a list of some of the more important retirement plan requirements to help employers in implementing practices, procedures and internal controls to monitor plan operations").

purposes of jurisdiction. Thus, state courts have jurisdiction over issues brought by members under church plans."). See, e.g., Hartshorne v. Roman Catholic Diocese of Albany, No. 2019-1989, 2020 WL 4198676 (N.Y. Sup. Ct. 2020) (denying motion to dismiss state law claims by plan participants against sponsor of ERISA-exempted church plan that operated a religiously affiliated hospital).

In any event, no person's (or institution's) free exercise of religion is affected by the determination of whether SJHSRI's Board of Trustees, CCHP's Finance, Investment & Audit Committee, or CCHP's Investment Committee qualified as principal purpose organizations. The Free Exercise Clause is not implicated in suits that involve "neutral principles of law," Jones v. Wolf, 443 U.S. 596, 602–05 (1979), without "extensive inquiry by civil courts into religious law and polity." Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 709 (1976). See, e.g,. Bacon v. Bd. of Pensions of Evangelical Lutheran Church in Am., No. A15-1999, 2016 WL 3961960 (Minn. Ct. App. July 25, 2016) (suit by defined benefit plan participants against Lutheran Pension Board for charging unreasonable expenses did not violate Free Exercise Clause, inasmuch as "[m]any issues in the present case can be resolved by an application of a neutral law, the MPIA [Minnesota Prudent Investor Act]" which "does not exempt church plans," and the case "does not require a court to adjudicate the validity of a doctrinal question.").

III. SJHSRI, SJHSRI's Board of Trustees, CCHP's Finance Audit & Compliance Committee, and/or CCHP's Investment Committee Were Not "Principal Purpose Organizations"

A. Introduction

As noted *supra*, the only organizations that Prospect even contends qualified as "principal purpose organizations" during the period from the effective date of the 2011 Plan on July 1, 2011 through the closing of the asset sale on June 20, 2014 are SJHSRI's Board of Trustees, CCHP's Finance, Audit & Compliance Committee, and/or CCHP's Investment Committee.[93] The determination of whether one or more of these entities qualified as a "principal purpose organization" during that time is, of course, a mixed question of fact and law. However, once the disputed legal issues raised by Prospect are settled, the material facts are undisputed.

The first issue is the proper construction to be given to the statutory phrase "the principal purpose or function." Two questions are involved in that issue: does the adjective "principal" modify both "purpose" and "function", and does "principal purpose or function" mean "main job" (or similar terms such as "primary role," "chief task", etc.), or something else?

In addition to that issue, the parties dispute whether the terms of the Plan concerning what organization is responsible for maintaining and administering the Plan are controlling, or should the Court also consider the facts concerning who did what

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[93] See Prospect's Opp. Memo. at 10-11; Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) at 5 – 6 (Second Supplemental Answer No. 1) ("[T]he Prospect Entities, based on their investigations to date, contend that each of the following organizations, during one period or another, had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i): • The Board of Trustees of SJHSRI; • The Finance, Audit and Compliance Committee of CCHP; and • The Investment Committee of CCHP.").

when. Plaintiffs contend that the designation of SJHSRI as Plan administrator in the 2011 Plan and the powers given SJHSRI in that capacity are controlling, regardless of any evidence of what was done in administration of the Plan. However, Plaintiffs also argue that, assuming *arguendo* that evidence of what actually was done in the *ad hoc* administration of the Plan is relevant, Plaintiffs are entitled to summary judgment based on the indisputable fact that none of the possible organizations responsible for maintaining and administering the Plan had that responsibility or maintained or administered the Plan as their principal purpose or function.

B. The adjective "principal" modifies both "purpose or function" in the phrase "principal purpose or function"

1. The statutory language

Plaintiffs' motion for summary judgment is based upon the highlighted language in the following excerpt from 29 U.S.C. § 1002(33):

> (33) (A)The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.
>
> (B)The term "church plan" does not include a plan—
>
> > (i)which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of title 26), or
> >
> > (ii)if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).
>
> (C)For purposes of this paragraph—

> (i)A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches **includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits,** or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

It is crucial to note at the outset that Prospect does not dispute that the Plan had to satisfy the highlighted language to qualify for exemption from ERISA for "church plans." In other words, Prospect does not even argue that the Plan can qualify as a church plan other than by having a principal purpose organization.[94]

Prospect does, however, repeatedly seek to make Plaintiffs' claims concerning 29 U.S.C. § 1002(33)(C)(i) more complicated and more confusing than they are. For example, Prospect devotes pages of its memorandum to listing the various scenarios that might satisfy the statute, claiming "that as many as 24 different types of organizations could qualify as a 'principal-purpose organization,' depending on how they have been organized and what activities they have been tasked with performing." Prospect's Opp. Memo. at 37. Prospect then lists "eight different ways an organization could satisfy §3(33)(C)'s operational requirements" even if the inquiry is limited to "those organizations involved with 'plans' that exclusively provide 'retirement benefits'…" Prospect's Opp. Memo. at 37. Prospect implies that Plaintiffs have failed to take

[94] As noted, only "two types of organization qualify for the church-plan exemption: churches and so-called principal-purpose organizations." Medina v. Catholic Health Initiatives, *supra*, 877 F.3d at 1220.

account of this complexity, stating that "Plaintiffs' Motion limits itself to just one of these eight possibilities." Prospect's Opp. Memo. at 37.

These arguments are incorrect and misleading. Plaintiffs' claims concerning 29 U.S.C. § 1002(33)(C)(i) are not nearly so complicated or confusing. Four of Prospect's "eight different ways" are based on the possibility that a "principal purpose organization" can be either a civil law corporation or a noncorporate organization. Prospect's Opp. Memo. at 37. Whether the organizations involved in this case were civil law corporations or noncorporate organizations is irrelevant to Plaintiffs' motion for summary judgment. Plaintiffs' motion for summary judgment is based upon the fact that *no organization* (either civil law corporation or noncorporate organization) had either plan administration or funding as its principal purpose or function. Accordingly, those four alternatives can be immediately eliminated. That leaves only four others, based on mixing and matching of 1) plan administration or 2) plan funding, with 3) principal purpose or 4) principal function. In fact, it is undisputed that there was no organization at any time whose principal purpose or principal function was funding the Plan.[95] Accordingly, the case boils down to two alternatives: was there an organization that had plan administration as 1) the principal purpose or 2) the principal function?

Prospect describes the "one possibility" [96] upon which Plaintiffs allegedly focus as "whether the SJHSRI Board (a noncorporate organization) could qualify as a 'principal-purpose organization' in 2011 or 2013 when it appeared to have been tasked with

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[95] It is undisputed that SJHSRI itself was the only entity that funded the Plan or had responsibility to fund the Plan. It is undisputed that SJHSRI itself was not a "principal purpose organization."

[96] In fact, Plaintiffs focus on "two possibilities"; is there an organization that maintained the Plan that had plan administration as 1) its principal purpose or 2) its principal function.

serving as the Plan's 'administrator.'" Prospect's Opp. Memo. at 37. In fact, although Plaintiffs' memorandum focused primarily on SJHSRI, Plaintiffs also addressed why SJHSRI's Board of Trustees and CCHP's Finance, Audit & Compliance Committee were not principal purpose organizations.[97]

2. Prospect's construction of the statute

Prospect contends that because "principal" immediately precedes "purpose," therefore, "an organization can qualify simply by having plan 'administration' or plan 'funding' be one of its 'function[s]' without necessarily requiring that responsibility to constitute its principal function." Prospect's Opp. Memo. at 39 (emphasis in original). Prospect elaborates its argument in an accompanying footnote which states as follows:

> Drawing upon *Stapleton's*[98] "every clause and word" teaching, it is logical to conclude that, had Congress wanted to require an organization to make plan administration or plan funding its principal "function" (as opposed to simply one of its "functions") the operative language in ERISA §3(33)(C)(i) would have read, "principal purpose or principal function."

Prospect's Opp. Memo at 39 n.52.

Prospect itself realizes that its effort to avoid summary judgment entirely depends on the Court's accepting this strained argument, as demonstrated by the final paragraph

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[97] See, e.g., Plaintiffs' Memo. at 25 ("It is also indisputable that neither SJHSRI itself, nor SJHSRI's Board of Trustees, nor the Finance Committee of CCCB's Board of Trustees, was maintaining the Plan since July 1, 2011 as its "main job."). It was not until June 27, 2020, when Prospect served its supplemental interrogatory answers and filed its opposition memorandum, that Plaintiffs became aware that Prospect also contended that CCHP's Investment Committee was a principal purpose organization. That was six months after Plaintiffs filed their motion for summary judgment. Plaintiffs were not required in their motion for summary judgment to anticipate that ill-founded argument and address that organization. Instead, when Prospect chose to go down that dubious path, Plaintiffs were entitled to deal with it in this reply memorandum.

[98] Referring to Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017), discussed below.

of each of the two declarations[99] that Prospect has filed with its opposition papers. The final paragraph of the Declaration of Kenneth Belcher states as follows:

> 31. It was my understanding that the various organizations that had a role in maintaining or administering the Plan, including the CCHP Finance Committee and the CCHP Investment Committee once they became involved after the transition period ended, had as one of their principal purposes,[100] **or as one of their functions**, the administration or funding of the Plan.

Declaration of Kenneth Belcher (ECF # 190-2) ¶ 31(emphasis supplied).

The final paragraph of the declaration of Marshall Raucci states as follows:

> 30. At all times, both before and after the Affiliation, it was my understanding that the organizations responsible for maintaining and administering the Plan were controlled by or associated with the Catholic Church and had as one of their principal purposes, [101] **or as one of their functions**, the administration or funding of the Plan.

Declaration of Marshall Raucci (ECF # 190-3) ¶ 30 (emphasis supplied).

These statements in the Belcher and Raucci Declarations are utterly conclusory. More importantly, as discussed below, the focus on "one of their principal purposes" and "one of their functions" is wrong as a matter of law.[102]

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[99] After specifically obtaining a 45-day extension of discovery from this Court to conduct depositions, Prospect conducted zero depositions and instead simply filed declarations. As discussed *infra*, Plaintiffs later took depositions of the two declarants.

[100] The reference to "one of their principal purposes" in the Belcher Declaration (which is repeated in the Raucci Declaration) would suggest that Prospect is contending that a "principal purpose organization" may have multiple "principal purposes." However, even Prospect makes no such argument, and, indeed, Prospect accepts (as it must) a definition of "principal" as "most important, consequential or influential." Prospect's Opp. Memo. at 43 (quoting www.merriam-webster.com/dictionary/principal).

[101] See note 100 *supra*.

[102] Mr. Belcher's and Mr. Raucci's purported (and very artfully worded) "understanding" boils down to the legally insufficient contention that "administration or funding" of the Plan was "one of their principal purposes, or...one of their functions."

3. Plaintiffs' construction of the statute

Plaintiffs' construction of the statute is that "principal" modifies both "purpose" and "function."[103] Plaintiffs base their argument on the plain meaning of the statute, which is dispositive. However, Plaintiffs' argument is also dictated by basic rules of statutory construction, the caselaw, and simple logic.

a. Plain meaning of the statute

The plain meaning of the statute is that it refers to "the principal purpose" or "the principal function." The rules of grammar govern statutory construction. Nielsen v. Preap, 139 S. Ct. 954, 965, 203 L.Ed.2d 333 (2019) ("Because '[w]ords are to be given the meaning that proper grammar and usage would assign them,' A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 140 (2012), the 'rules of grammar govern' statutory interpretation 'unless they contradict legislative intent or purpose,' ibid.") (internal citation omitted).

"Principal" modifies both "purpose" and "function" because "[u]nder generally accepted rules of syntax, an initial modifier 'will tend to govern all elements in the series unless it is repeated for each element.'" Washington Educ. Ass'n v. National Right to Work Legal Defense Foundation, Inc., 187 F. App'x . 681, 682 (9th Cir. 2006) (quoting The American Heritage Book of English Usage chapter 2, ¶ 10 (Houghton Mifflin, 1996)) (other citations omitted). See Ryder v. USAA Gen. Indem. Co., 938 A.2d 4, 8 (Me. 2007) (noting "the standard grammatical rule that when an adjective modifies the first of

[103] Plaintiffs also contend that "principal purpose or function" means "main job." See *infra* at 55 – 61.

a series of nouns, a reader will expect the adjective to modify the rest of the series as well (i.e. 'bodily injury, (bodily) sickness, or (bodily) disease').").

In plain English:

> Most readers expect the first adjective in a series of nouns or phrases to modify each noun or phrase in the following series unless another adjective appears. For example, if a writer were to say, "The orphanage relies on donors in the community to supply the children with used shirts, pants, dresses, and shoes," the reader expects the adjective "used" to modify each element in the series of nouns, "shirts," "pants," "dresses," and "shoes." The reader does not expect the writer to have meant that donors supply "used shirts," but supply "new" articles of the other types of clothing.

Ward Gen. Ins. Servs., Inc. v. Employers Fire Ins. Co., 7 Cal. Rptr. 3d 844, 849 (Cal. App. 2003).

> Consider a recent article in Mississippi's leading newspaper. The article uses a series modifier twice in three sentences when discussing how Mississippi colleges are preparing for football season in the wake of the COVID-19 pandemic. It first refers to "testing all symptomatic athletes and staffers" and then "educat[ing] returning students and employees on new protocols." Any reader would understand that the modifiers—symptomatic and returning—apply to both of the nouns that follow them.

Thomas v. Reeves, 961 F.3d 800, 803 (5th Cir. 2020).

The statutory phrase "the principal purpose or function" contains paired nouns.[104] The grammatical rule is that an adjective followed by paired nouns modifies both nouns. See The Editor's Blog, https://theeditorsblog.net/2015/08/08/one-adjective-paired-with-multiple-nouns-a-readers-question/ (accessed Sept. 1, 2020) ("If you don't want to imply

[104] The fact that the phrase "purpose or function" contains paired nouns is clear. Indeed, they are paired precisely that way throughout the Internal Revenue Code. See, e.g., 26 U.S.C. § 501(r)(2)(A)(ii) ("principal function or purpose"); 26 U.S.C. § 414 ("principal purpose or function").

that two nouns are modified by the same adjective, you can either change the word order, pairing the noun with the adjective last in the list, or you can give the second noun a different modifier, even if it's just a determiner. A different modifier for the second noun or pronoun breaks the pattern—readers understand that the first adjective belongs only to the first noun and that the nouns that follow will have their own modifiers.").

Even Prospect does not contend that a "principal purpose organization" may have more than one "principal purpose." It cannot. "Principal" means chief, primary, or most important. Black's Law Dictionary (11th ed. 2019) ("PRINCIPAL, principal adj. (13c) Chief; primary; most important."). Thus, there cannot be multiple principal purposes. Moreover, the statute refers to "purpose" and "function", not "purposes" and "functions." That is certainly not consistent with the concept that there can be multiple "principal purposes." Finally, the statute refers to "**the** principal purpose or function" (emphasis supplied), not "**a** principal purpose or function" or "**any** principal purpose or function." That suggests there can only be one "principal purpose" or "principal function." See Rumsfeld v. Padilla, 542 U.S. 426, 434 (2004) (stating that statutory use of the definite article "indicates that there is generally only one" of the referenced noun); TD Bank N.A. v. Hill, 928 F.3d 259, 275 (3d Cir. 2019) ("The use of the definite article 'the' in '[Commerce Bank] is the owner of copyright' also implies that Commerce Bank is the sole owner of the copyright."); Main Street Legal Services, Inc. v. National Sec., 811 F.3d 542, 549 (2d Cir. 2016) ("Such use of the definite article to describe 'the function' of the Council in the legislation's first subsection makes clear that the sole function

statutorily conferred on the Council is advisory to, and not independent of, the President.") (citing Rumsfeld v. Padilla, *supra*, 542 U.S. at 434).

b. Applying basic rules of statutory construction

The analogous canon of statutory construction to the rule of grammar discussed above is the series qualifier canon. See Black's Law Dictionary (11th ed. 2019) (defining "series qualifier canon" as "[t]he presumption that when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.").

"When there is a series of words or a phrase with an adjective at the beginning, '[m]ost readers expect the first adjective in a series of nouns or phrases to modify each noun or phrase in the following series unless another adjective appears.'" People v. Lovato, 357 P.3d 212 (Colo. App. 2014) (quoting Ward Gen. Ins. Servs., Inc. v. Emp'rs Fire Ins. Co., 7 Cal.Rptr.3d 844, 849 (Cal. App. 2003)). "When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012). See also Kalakowski v. John A. Russell Corp., 401 A.2d 906, 909 (Vt. 1979) ("When words of a statute bearing a specific description are followed by words of more general import, the sense of the adjective first used is applied to the words that follow. . . . The superior court, acting under this principle, properly concluded that the word "retail" modifies all the succeeding words in the sentence.") (construing "retail store, stand, sales and salesrooms" to mean retail store, retail stand, retail sale, and retail salesrooms); United States v. Jeffers, 342 U.S. 48, 51 (1951) ("The Fourth Amendment prohibits both

unreasonable searches and unreasonable seizures. . . .") (construing the Fourth Amendment right to be secure "against unreasonable searches and seizures").[105]

The series qualifier canon applies equally when the final item in the series is preceded by "or", i.e., when "or" is used to signify that *any* item (and not *all* items) in the series is sufficient to trigger the statute. See, e.g., People v. Lovato, *supra*, 357 P.3d at 220 ("sexual" in the statutory phrase "sexual arousal, gratification or abuse" modifies both arousal and abuse) ("Defendant's contention requires us first to determine whether the adjective 'sexual' in section 18–3–401(4) modifies not only 'arousal,' but also 'abuse.' We conclude that it does."). The same rule applies to the interpretation of insurance contracts. See Oscar W. Larson Co. v. United Capitol Ins. Co., 64 F.3d 1010, 1012–13 (6th Cir. 1995) (construing the phrase "governmental direction or request" in a policy exclusion to mean governmental direction or *governmental* request, rejecting the defendant's argument that "while a 'direction' must come from the government, a 'request' can come from anyone"); U.S. Fidelity and Guar. Co. v. Fireman's Fund Ins. Co., 896 F.2d 200 (6th Cir. 1990) (the term "negligent" in the phrase "negligent act, error, or omission" modifies act, error and omission).

Thus, under the series qualifier canon of statutory construction, the word "principal" in the phrase from 29 U.S.C. 1002 (33)(c)(i) of "the principal purpose or function" modifies both "purpose" and "function."

The second relevant canon of construction is that statutes are to be construed as a whole and consistent with their purpose. 2A Sutherland Statutory Construction § 46:5

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[105] Prospect's misreading, if applied to the Fourth Amendment context, would lead to the absurd result of prohibiting **all** seizures regardless of their reasonableness.

(7th ed.) ("A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole."). There is no conceivable statutory purpose for requiring that administration or funding of a plan be the "principal purpose" of the organization, while at the same time holding that an organization may also qualify if those activities are merely one of many "functions." Indeed, the phrase "the principal purpose" is essentially superfluous under such a construction. In other words, if an organization would qualify if any one of its "functions" involved Plan administration, it makes no sense for Congress to have provided an alternative method of qualification that requires that Plan administration be the organization's "principal purpose."

Such a result would be so anomalous as to be unreasonable, in violation of the "golden rule of statutory interpretation [which] instructs that, when one of several possible interpretations of an ambiguous statute produces an unreasonable result, that interpretation should be rejected in favor of another which produces a reasonable result." 2A Sutherland Statutory Construction § 45:12 (7th ed.). Plaintiffs by no means suggest that the statute is ambiguous. If it were ambiguous, however, the resolution of that ambiguity is controlled by giving meaning to the phrase "the principal purpose", rather than essentially disregarding it as surplusage.

Indeed, construing the statute to qualify an organization if *any* function includes plan administration or funding, while requiring that plan administration or funding be the "principal purpose" would violate the canon that "a statute should never be construed in

a way that produces an absurd result." Cahoon v. Shelton, 647 F.3d 18, 22 (1st Cir. 2011).

c. Legislative history

Given the clear meaning of the phrase "the principal purpose or function," there is no need to even consider legislative history. In the words of the Supreme Court:

> In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. Where, as here, that examination yields a clear answer, judges must stop. Even those of us who sometimes consult legislative history will never allow it to be used to "muddy" the meaning of "clear statutory language."

Food Marketing Institute v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (quoting Milner v. Department of Navy, 562 U.S. 562, 572, 131 S. Ct. 1259 (2011) and citing Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401, 407 (2011) and Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999)).

Nevertheless, the legislative history of the relevant sections of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. No. 96-364, 94 Stat. 1303 (1980), demonstrates that the original concept was that the organization maintaining the plan must have that responsibility as "the principal purpose":

> Mr. Talmadge. Mr. President, I understand that many church plans are maintained by separate incorporated organizations called pension boards. These boards have historically been considered by church denominations as part of their church. May I ask whether the bill would enable a church pension board to maintain a church plan?
>
> Mr. Long. Yes. I concur that a pension board that provides pension or welfare benefits for persons carrying out the work of the church and without whom the church could not function is an integral part of the church and is engaged in the function of the church even though separately incorporated. The bill recognizes the status of a church plan maintained by a pension board by providing that a plan maintained by an

> organization, whether separately incorporated or not, **the principal purpose** of which is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church, is a church plan provided that such organization is controlled by or associated with the church.

11126 CONG. REC 20245 (July 29, 1980) (statement of Sen. Herman Talmadge). (emphasis added). The statutory phrase "the principal purpose of function" built on that concept, such that "principal" also modifies "function."

d. The caselaw

As Prospect recognizes, the discussion of the case law concerning "principal purpose organizations" must start with the Supreme Court's decision in Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017). However, rather than supporting Prospect's argument, that case disposes of it.

For a number of years it was unsettled whether 29 U.S.C. §1002(33) limited the "church plan" exemption to retirement plans established by a church, or whether it also covered retirement plans established and maintained by an organization that was legally separate from a church. That was resolved in Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017), in which the Supreme Court held that the exemption applied regardless of what entity established the plan, provided that the plan was maintained by a "principal purpose organization."[106] Stapleton, 137 S. Ct. at 1663 ("ERISA provides (1) that a 'church plan' means a 'plan established and maintained ... by a church' and (2) that a "plan established and maintained ... by a church" is to

[106] And other requirements, such as that the "principal purpose organization" must also be "controlled by or associated with a church or a convention or association of churches."

'include[ ] a plan maintained by' a principal-purpose organization. Under the best reading of the statute, a plan maintained by a principal-purpose organization therefore qualifies as a 'church plan,' regardless of who established it.").

The Supreme Court in Stapleton noted that the case before the lower courts also involved the issue whether the *particular* entity in question qualified as a "principal purpose organization," and the Supreme Court expressly chose not to decide that issue. However, the Supreme Court did state that to be a "principal purpose organization," the entity must have plan administration or funding as "the principal purpose or function." The Supreme Court stated as follows:

> The statutory definition of "church plan" came in two distinct phases. From the beginning, ERISA provided that "[t]he term 'church plan' means a plan established and maintained ... for its employees ... by a church or by a convention or association of churches." § 1002(33)(A). Then, in 1980, Congress amended the statute to expand that definition by deeming additional plans to fall within it. The amendment specified that for purposes of the church-plan definition, an "employee of a church" would include an employee of a church-affiliated organization (like the hospitals here). § 1002(33)(C)(ii)(II). And it added the provision whose effect is at issue in these cases:
>
> > "A plan established and maintained for its employees ... by a church or by a convention or association of churches includes a plan maintained by an organization ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." § 1002(33)(C)(i).
>
> **That is a mouthful, for lawyers and non-lawyers alike; to digest it more easily, note that everything after the word "organization" in the third line is just a (long-winded) description of a particular kind of church-associated entity—which this opinion will call a "principal-**

> **purpose organization." The main job of such an entity, as the statute explains, is to fund or manage a benefit plan for the employees of churches or (per the 1980 amendment's other part) of church affiliates.**

Stapleton, 137 S. Ct. at 1656-1657 (emphasis supplied).

The Supreme Court's choice to label the "kind of church-associated entity" described in the statute as a "principal purpose organization" certainly makes it clear that "principal" modifies both "purpose or function."[107] Moreover, the Supreme Court's statement that funding or managing the plan must be the "main job of such an entity" also supports the conclusion that "principal" modifies both "purpose" and "function," since if plan administration were only one of an organization's many functions, and less important than some, it would hardly qualify as the organization's "main job."

Prospect asks the Court to disregard Stapleton's discussion of "principal purpose organizations" as dicta. Prospect's Opp. Memo. at 42. Given that the case was remanded, it would seem to be something more than that. The trial court on remand would be expected to consider the reference to the organization as a "principal purpose organization" as binding, and, therefore, such an organization must have funding or administration of the plan as "the principal purpose" or "the principal function." But even if the discussion in Stapleton of the meaning of "principal purpose organization" were dicta, that does not mean it can be disregarded by the Court. To the contrary, "[c]arefully considered Supreme Court dicta, though not binding, 'must be accorded

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[107] It is unwieldy to articulate a descriptive label in place of "principal purpose organizations" if "principal" does not modify "function." The phrase "Principal Purpose Organization or Any Function Organization" would accurately embody Prospect's position and demonstrate the inherent absurdity of Prospect's statutory construction.

great weight and should be treated as authoritative.'" Igartua v. United States, 626 F.3d 592, 605 n.15 (1st Cir. 2010) (quoting Crowe v. Bolduc, 365 F.3d 86, 92 (1st Cir. 2004)) (internal citations omitted).

As the First Circuit has held, "[a]lthough the Supreme Court may ignore its own dicta, we are a lower court bound by the Supreme Court." Id. See also McCoy v. Mass. Inst. of Tech., 950 F.2d 13, 19 (1st Cir. 1991) (concluding that "federal appellate courts are bound by the Supreme Court's considered dicta almost as firmly as by the Court's outright holdings, particularly when, as here, a dictum is of recent vintage and not enfeebled by any subsequent statement. If lower courts felt free to limit Supreme Court opinions precisely to the facts of each case, then our system of jurisprudence would be in shambles, with litigants, lawyers, and legislatures left to grope aimlessly for some semblance of reliable guidance.").

There can no dispute that such discussion was both "carefully considered" and intended to be both informative and authoritative. Justice Kagan's majority opinion was joined by five other justices, and there was no dissent. [108] The Court expressly directed the reader what to "note" to "digest" the statute "more easily". Id. It is absurd to suggest that this statement was not "carefully considered" by the Supreme Court, or, in the words of the First Circuit, is not intended to provide "reliable guidance"[109] to the lower courts concerning the meaning of the statute.

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[108] Justice Sotomayor concurred and Justice Gorsuch did not participate. See Stapleton, *supra*, 137 S. Ct. at 1652.

[109] McCoy v. Mass. Inst. of Tech., *supra*, 950 F.2d at 19.

Prospect makes exactly that absurd argument, however, contending that the reference to "main job" was "written in a conversational tone designed to make the opinion approachable and that it would be wrong to take *dicta* as black-letter law." Prospect's Opp. Memo. at 42. The suggestion that the Supreme Court used a "conversational tone to make its opinion approachable" and, therefore, did not mean what it said, trivializes the Supreme Court and is either silly or disingenuous.

Prospect apparently assumes that the Supreme Court's discussion in Stapleton of the meaning of "principal purpose organization" is dicta because the Court expressly refrained from deciding whether the plan involved in Stapleton qualified as a "principal purpose organization". Although it is correct that the Supreme Court in Stapleton expressly refrained from applying the statute to the particular plan involved in that case, that does not mean that the Supreme Court did not intend its discussion of what constitutes a "principal purpose organization" to be binding, both to the lower courts on remand and in general. In other words, the Supreme Court was expressing no opinion on the issue of whether the specific entity in the case before it was in fact a "principal purpose organization," but in defining the required entity as a "principal purpose organization," the Court made clear that "principal" applied to *both* purpose and function.

The only caselaw or other support Prospect cites for its argument that the adjective "principal" does not modify "function" is Boden, et al. v. St. Elizabeth Medical Ctr., 404 F. Supp. 3d 1076 (E.D. Ky. 2019). See Prospect's Opp. Memo. at 39 ("The district court's opinion in Boden thus shines a light on one of the comparatively unexamined aspects of Section 3(33)(C)(i)'s text: that an organization can qualify simply

by having plan 'administration" or plan 'funding' be one of its 'function[s]' without necessarily requiring that responsibility to constitute its principal function."). To support that claim, Prospect quotes the following language from Boden:

> While the Supreme Court has summarized the exemption language with the term "principal-purpose organization," it is important to note that the statutory language is broad and allows an exemption for an organization with the "principal purpose" *or* "function" of "administering" *or* "funding." 29 U.S.C. §1002(33)(C)(i). In other words, either the "objective, goal, or end" of the organization *or* the "activit[ies] that [are] appropriate" for the organization, must be "administration" or "funding."

Prospect's Opp. Memo. (ECF # 193-1) at 39-40 (quoting Boden, 404 F. Supp. 3d at 1092 (brackets in text)). Prospect contends that the Boden court's reference to "'principal purpose' **or** 'function'" (emphasis in Boden) offers support for Prospect's argument that "function" need not be a "principal function."

That certainly is not the meaning of the sentence on which Prospect relies. Indeed, the very next sentence after the section of Boden quoted by Prospect makes clear that the Boden court parsed the statute to make the point that *either* "purpose" *or* "function" is sufficient, and was *not* addressing the applicability of the adjective "principal":

> In other words, either the "objective, goal, or end" of the organization *or* the "activit[ies] that [are] appropriate" for the organization, must be "administration" or "funding." *Purpose, Function*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "purpose" as "[a]n objective, goal, or end; specif., the business activity that a corporation is chartered to engage in" and "function" as an "[a]ctivity that is appropriate to a particular business or profession").

Boden, *supra*, 404 F. Supp. 3d at 1092.

Any doubt on that score is eliminated by the following conclusion of the Boden court, concerning the committee[110] charged with administering the plan in that case:

> As the purpose of the Committee, according to the documents, is "administration," and the Committee is "maintaining" the Plan, see supra, the Committee clearly falls within the definition of a principal-purpose organization. While Plaintiffs argue that the Committee does not actually undertake administrative activities—as those activities have been delegated to Transamerica and others—this does not change the Court's conclusion. **While the day-to-day activities of the Committee may go toward the Committee's principal function, it is undisputable that the principal purpose of the Committee is administration**. Accordingly, the Court finds that the Committee is a principal-purpose organization that is maintaining the Committee, and there is no genuine dispute of material fact that the second prong of the *Medina*[111] test is satisfied.

Boden, 404 F. Supp. 3d at 1093 (bold emphasis supplied). The Boden court would not have referred to both Committee's "principal function" and "principal purpose" if "principal" did not modify "function" as well as "purpose."[112]

C. "Principal" means "main job"

Just as Stapleton stands for the proposition that "principal" modifies both "purpose" and "function," so also it establishes that "principal" means "main job." Stapleton, 137 S. Ct. at 1656-1657 ("The **main job** of such an entity, as the statute

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[110] The "committee" referred to in Boden was the "St. Elizabeth Medical Center Employees' Pension Plan Administrative Committee", which the court found was created specially and solely to administer the church plan. Boden, 404 F. Supp. 3d at 1088-1089.

[111] Referring to Medina v. Catholic Health Initiatives, 877 F.3d 1213 (10th Cir. 2017).

[112] Other courts also have referred to the requirement as "principal function," not merely "function." See, e.g., Medina v. Catholic Health Initiatives, 147 F. Supp. 3d 1190, 1201 (D. Colo. 2015) ("'Thus, the church plan exemption includes plans sponsored by church-affiliated organizations, such as hospitals or schools, if these plans are administered by plan committees (1) whose principal function is to administer the plan, (2) if the plan committee is controlled by or associated with a church.'") (quoting Overall v. Ascension, 23 F. Supp. 3d 816, 829 (E.D. Mich. 2014)) (emphasis in original).

explains, is to fund or manage a benefit plan for the employees of churches or (per the 1980 amendment's other part) of church affiliates.") (emphasis supplied). See also Black's Law Dictionary (11th ed. 2019), "PRINCIPAL, principal adj. (13c) Chief; primary; most important.").

As previously observed, although the Supreme Court in Stapleton expressly refrained from applying the statute to the plan involved in that case, it is absurd to contend that the Court did not intend this discussion to be instructive if not binding, both to the lower courts on remand and in general. In other words, the Supreme Court was expressing no opinion on the issue of whether the plan's entity was in fact a "principal purpose organization," but the trial court on remand would be required to find that plan administration or funding was the "main job" of that organization for the trial court to conclude the organization in question qualified as a principal purpose organization.

D. Administration or funding of the Plan was not the principal purpose or function of SJHSRI, SJHSRI's Board of Trustees, CCHP's Finance Audit & Compliance Committee, or CCHP's Investment Committee

1. The Plan was maintained by SJHSRI itself, and Plan administration or funding of the Plan was not the principal purpose or function of SJHSRI

In pertinent part, the statutory requirements for church plans refer to "a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan…." 29 U.S.C. § 1002(33)(C)(i).

Thus, the threshold question is who "maintained" the Plan. "[I]n determining whether an organization is the one 'maintaining' a plan, courts look to the documents governing the pension plans for guidance and focus on the responsibilities designated

to the organization rather than the day-to-day functions of the organization." Boden v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1087.

The 2011 Plan states as follows:

> 8.1 PLAN ADMINISTRATOR.
>
> (a) The Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors, shall designate a person or committee of persons to be the Administrator and named fiduciary. The administration of the Plan, as provided herein, including the determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator. The Administrator shall conduct its business and may hold meetings, as determined by it, from time to time. The Administrator shall have the right to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any distributions under the Plan to the fullest extent provided by law and in its sole discretion; and interpretations or decisions made by the Administrator will be conclusive and binding on all persons having an interest in the Plan. In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.

2011 Plan (ECF # 174-10) at 38. The 2011 Plan does not refer to any other person or organization as having any responsibilities concerning the Plan. Specifically, it does not refer to any sub-committees of SJHSRI's Board of Trustees; it does not refer to CCHP at all; and, notwithstanding that both committees had been in operation for over eighteen months when the 2011 Plan became effective, it certainly does not refer to CCHP's Finance, Audit & Compliance Committee or to CCHP's Investment Committee.

There are several cases addressing the issue of what organization "maintained" a retirement plan that merit detailed consideration. The most recent decision is that of the Eighth Circuit in Sanzone v. Mercy Health, 954 F.3d 1031 (8th Cir. 2020), in which the court needed to determine whether the Mercy Health Benefits Committee (the "Committee") maintained the plan. The court addressed the "ordinary meaning" of "maintained" as follows:

> We begin our ordinary meaning inquiry with the simple dictionary definition from the time of the statute's enactment. See, e.g., *Wis. Cent.*, 138 S. Ct. at 2070–71 (using dictionaries from 1942 and 1933 to interpret "money" in an act adopted in 1937). The relevant time period here is 1980, when the church-plan exemption was amended to its current form. One dictionary from that period defines maintain as follows: "10.a. To cause to continue in a specified state, relation, or position." *Maintain*, Oxford English Dictionary (2d ed. 1989). A more recent dictionary provides similar definitions: "1. To continue (something)" or "4. To care for (property) for purposes of operational productivity." *Maintain*, Black's Law Dictionary (10th ed. 2009). The Tenth Circuit, which recently decided the same issue, applied a similar definition. See *Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1226 (10th Cir. 2017) ("[W]hen ERISA says that a church plan includes a plan 'maintained' by a principal-purpose organization, 29 U.S.C. § 1002(33)(C), it simply means the principal-purpose organization, as Black's says, 'cares for the plan for purposes of operational productivity.'").

Sanzone v. Mercy Health, *supra*, 954 F.3d at 1041.

The court concluded that the Mercy Health Benefits Committee indeed maintained the plan, based upon the following analysis:

> The complaint states that "Mercy is required to designate the Committee which has sole responsibility for administration of the Plan." Consolidated Second Am. Class Action Compl. ¶ 118, *Sanzone v. Mercy Health*, No. 4:16-cv-923, 2017 WL 8233925 (E.D. Mo. Aug. 23, 2017), ECF No. 145 (hereinafter "Compl."). It also states that the Committee has a laundry list of other powers:

> The ... Committee's responsibilities include plan administration, interpreting the Plan to determine all questions arising in the administration, interpretation and application of the Plan, adopting rules for the Plan, employing accountants, actuaries, counsel, specialists and other persons necessary to help carry out the Committee's duties and responsibilities under the Plan, issuing directions to the Trustee concerning all benefits which are to be paid from the Trust Fund pursuant to provisions of the Plan, directing the Trustee's exercise of its powers in the administration and investment of the Trust Fund, making all decisions and determinations concerning the right of any person to a benefit under the Plan, requiring each Participating Employer to keep such books, records, and other data as it deems necessary for the proper administration of the Plan, exercising discretion to determine that the Participating Employers pay or reimburse any reasonable costs and expenses of the Plan, and monitoring other fiduciaries.

Id. ¶ 137. Perhaps most damaging, the complaint states that "[t]he Benefits Committee has all discretionary powers and authority necessary to carry out the provisions of the Plan." *Id.* ¶¶ 136, 158(A).

And so the powers referred to in the complaint include interpreting and applying the Plan, the monitoring of fiduciaries, and all powers necessary to carry out the Plan. Those are more than managerial tasks. These allegations indicate that the Committee "cares for the [P]lan for purposes of operational productivity," *Medina*, 877 F.3d at 1226 (quoting *Maintain*, Black's Law Dictionary (9th ed. 2009)), that the Committee "continue[s]" or "care[s] for" the Plan, *Maintain*, Black's Law Dictionary (10th ed. 2009), and that the Committee "cause[s] [the Plan] to continue" and "secure[s] the continuance of" the Plan. *Maintain*, Oxford English Dictionary (2d ed. 1989). Thus, under *maintain*'s ordinary meaning, the Committee maintains the Plan.

Sanzone v. Mercy Health, supra, 954 F.3d at 1041-42.

Similarly, in Medina v. Catholic Health Initiatives, 877 F.3d 1213 (10th Cir. 2017), the Tenth Circuit considered whether the CHI and Affiliates Defined Benefit Plan Subcommittee (the "Subcommittee") maintained the plan. The CHI and Affiliates

Defined Benefit Plan Subcommittee's authority to maintain and administer the plan derived directly from the plan, and included the power to amend the plan:

> In fact, the CHI plan expressly delegates the power to "maintain" the plan to the Subcommittee. *See* App., Vol. IV, at 934 ("The HR Committee of the Board of Stewardship Trustees of [CHI] has primary responsibility for the maintenance and compliance under the Plan and has fully and completely delegated those responsibilities to [the Subcommittee] ...") (emphasis added), *id.* ("[T]he purpose of the [Subcommittee] shall be to provide for the proper operation, administration and maintenance of the Plan ...") (emphasis added). And the Subcommittee has used that power, for example, to amend the plan. *See, e.g.*, App., Vol. IV at 1067 (explaining that CHI has delegated power to amend the plan to the Subcommittee, and amending the definition of "spouse" in the plan to include spouses of the same sex as the plan participant).

Medina, 877 F.3d at 1226. The court concluded that the CHI and Affiliates Defined Benefit Plan Subcommittee "maintained" the plan. Id.

Similarly in Boden v. St. Elizabeth Med. Ctr., Inc., *supra*, 404 F. Supp. 3d 1076 (E.D. Ky. 2019), the court considered whether St. Elizabeth Medical Center Employees' Pension Plan Administrative Committee maintained the plan. The court concluded that it did, based upon the following facts:

> It is undisputed that the Committee was created through a Resolution by the Board of St. Elizabeth. (Doc. # 129-2). Section VII of the Plan document indicates that the purpose of the Committee shall be "to manage and administer the Plan ... [as] the plan administrator and the named fiduciary." (Doc. # 132-3 at 41). As part of its role, the Committee has "the power and duty to do all things necessary or convenient *1089 to effect the intent and purposes of this Plan." *Id.* Specifically, the Committee is responsible for claims administration (including appeals), developing rules and regulations for Plan administration, interpreting the Plan, correcting the Plan as necessary, answering questions about the Plan, and establishing a policy to fund the Plan. *Id.* at 41-43. In other words, the Committee has responsibilities which ensure continuation of the Plan. See *Maintain*, BLACK'S LAW DICTIONARY (11th ed. 2019). The Committee is also permitted to delegate authority to other parties and act through

> agents or representatives; further, according to the Plan, any actions and determinations made by the Committee "shall be final and conclusive for all purposes of the Plan and Trust Agreement." (Doc. # 132-3 at 42-43).

Boden, et al. v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1088-89.

In Boden the Plaintiffs argued that, in actual operation, the St. Elizabeth Medical Center Employees' Pension Plan Administrative Committee had merely a "nominal" role in connection with the Plan, and, therefore, did not qualify as a "principal purpose organization." Boden, et al. v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1088. The court noted the following, attesting to the limited day-to-day involvement of the Committee:

> In reviewing the record before the Court, however, it is clear that the Committee does not undertake on its own all of the responsibilities included in the Plan document. For example, claims administration is handled by Transamerica, a third party, see (Doc. # 128 at 72:1-9) (Marianne Tait, the System Director of Total Rewards at St. Elizabeth, indicating during her deposition that employees ready to retire work with Transamerica to complete the necessary paperwork), and the Committee meets only a few times per year for a couple of hours. See, e.g., (Doc. # 129-7) (list of Committee meeting minutes and minutes from August 22, 2018 indicating the meeting lasted from 6:00 p.m. to 7:05 p.m.); (Doc. # 129-8) (meeting minutes from July 23, 2013 indicating the meeting lasted from 6:00 p.m. to 8:04 p.m.).

Boden, et al. v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1088-89. The court held that "[t]hese undisputed facts, however, do not change the Court's conclusion that the Committee continues to "maintain" the Plan." Boden, et al. v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1090.

The relationships in these three cases of these pension organizations to their retirement plans have many, many parallels with the relationship of SJHSRI to the Plan. Like those organizations, SJHSRI was named Plan Administrator in the Plan, SJHSRI

had discretionary authority to construe and interpret the Plan, SJHSRI had the power to amend the Plan, and SJHSRI's determinations concerning the Plan were "final and conclusive." Indeed, SJHSRI had virtually the same "laundry list" of powers as the organizations in those cases.

Thus, it is clear that SJHSRI itself "maintained" and "administered" the Plan. However, it is undisputed that administration or funding of the Plan was neither the principal purpose nor principal function of SJHSRI during the period from July 1, 2011 until June 20, 2014. To the contrary, the principal purpose and function of SJHSRI during this period was the provision of quality medical care.[113]

That should also establish that the Plan was not maintained or administered by *any* "principal purpose organization," because it is clear that SJHSRI directly and through its Board of Trustees had sole responsibility for maintaining and administering the Plan during the period from July 1, 2011 until the Asset Sale closed on June 20, 2014. As noted, the 2011 Plan states:

> The Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, **by action of its Board of Directors**, shall designate a person or committee of persons to be the Administrator and named fiduciary.

2011 Plan (ECF # 174-10) at 38 (emphasis supplied). As noted, under the Bylaws of SJHSRI, "the affirmative vote of a majority of such a quorum shall be required to effect action by the Board." ECF # 174-15. Kenneth Belcher also testified at deposition that

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[113] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 64 ("Do you agree that the principal purpose and the principal function of St. Joseph's Health Services of Rhode Island was the provision of quality medical care? MR. WAGNER: Objection. MR. SHEEHAN: Was there an answer? A. There was. I said, 'I do, yes.'").

"when the Board of Trustees of St. Joseph's Health Services of Rhode Island acted, it was pursuant to a vote of a majority of the Trustees at a meeting when a quorum was present."[114]

Moreover, Prospect has failed to produce any resolution of the Board of SJHSRI designating a person or committee of persons to be the Administrator of the Plan.[115] Mr. Belcher testified that he did not recall the Board ever having passed such a resolution.[116] Thus, the only evidence in the record is that SJHSRI retained full responsibility as Plan administrator as a matter of law. Any administrative tasks performed by SJHSRI's Board of Trustees, CCHP's Finance, Audit & Compliance Committee, or CCHP's Investment Committee were not authorized by the Plan and did not constitute administration or maintenance of the Plan within the meaning of the statute.

Because SJHSRI had sole responsibility for maintaining and administering the Plan, it should not be necessary to even consider the role of SJHSRI's Board of Trustees, CCHP's Finance, Audit & Compliance Committee, or CCHP's Investment Committee. Accordingly, the following discussion is offered, assuming (*arguendo*) that it is relevant to Plaintiffs' motion for summary judgment.

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[114] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 83 ("Q. We've already gone through that, when the Board of Trustees of St. Joseph's Health Services of Rhode Island acted, it was pursuant to a vote of a majority of the trustees at a meeting when a quorum was present. Do you recall that? A. Yes.").

[115] Prior to October 20, 2017, when SJHSRI by resolution of its Board of Trustees transferred its authority as Plan Administrator to the Receiver.

[116] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 83 ("Q. As you sit here today, sir, do you recall any resolutions of the Board of Trustees of St. Joseph's Health Services of Rhode Island involving a vote of the Board at which there was a designation of a committee or a person that would act as administrator of the defined benefit plan? A. I don't recall.").

2. Administration or funding of the Plan was not the principal purpose or function of SJHSRI's Board of Trustees

It is also undisputed that overseeing the provision of quality medical care was the Board of Trustees' principal purpose and function. Kenneth Belcher testified at deposition as follows:

> Q. All right. And do you agree that the principal purpose and principal function of the Board of Trustees of St. Joseph's Health Services of Rhode Island was overseeing the provision of quality medical care by St. Joseph's Health Services of Rhode Island and its constituent medical facilities?
>
> MR. WAGNER: Objection.
>
> A. That was the primary purpose, yes.
>
> Q. Okay. Sir, when you say -- I'm going to use the term "principal" to mean chief or primary or most important. Understanding the term in that sense, do you agree that the principal purpose and principal function of the Board of Trustees of St. Joseph's Health Services of Rhode Island was overseeing that corporation's provision of quality medical care?
>
> MR. WAGNER: Objection.
>
> A. I do.

Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 64-65. Accordingly, it is clear that administration of the Plan was not the principal purpose or function of SJHSRI's Board of Trustees.

Prospect seeks to get around that fact with the contention that SJHSRI's Board of Trustees "had a dual role, both as a hospital board of trustees and as the Plan's Retirement Board." Prospect's Opp. Memo. at 10. There are several flaws in that argument, each of which alone would be fatal.

First, Prospect mischaracterizes the facts, referring to "the Retirement Board (as populated by members of the SJHSRI Board of Trustees)." Prospect's Opp. Memo. at 29. The April 29th Resolution and the other documents upon which Prospect relies refer to SJHSRI's Board of Trustees as the Retirement Board, not to the members of the Board.

Second, and most importantly, even if it were assumed, *arguendo*, that SJHSRI's Board of Trustees had a "dual role" as the "Retirement Board," that certainly would not create a "Retirement Board" that was independent of the Board of Trustees. To the contrary, that would merely add another purpose or function to SJHSRI's Board of Trustees, but that additional role as "Retirement Board" would not have been the principal purpose or function of SJHSRI's Board of Trustees. Accordingly, Prospect's claim that SJHSRI's Board of Trustees had a dual role as the Retirement Board is irrelevant.

Second, there is no evidence that the Board of Trustees itself ever complied with the formal requirements of the Plan if it wished to make itself the "Retirement Board." The Plan itself identifies SJHSRI as the "Employer" and designates SJHSRI as "Plan administrator…unless the Employer, by action of its Board of Directors [sic], shall designate a person or committee of persons to be the Administrator and named fiduciary." That provision does not merely provide one means for SJHSRI to delegate its responsibilities as Plan Administrator. It states that SJHSRI is the Plan Administrator "unless" it takes the specific means provided for delegating authority. Thus, according to the terms of the Plan, if SJHSRI were going to designate anyone other than itself to act as Plan Administrator, it had to do so by action of SJHSRI's Board of Trustees, i.e.,

by vote of a majority of the members of the board with a quorum present. Accordingly, if SJHSRI's Board of Trustees wanted to act as the Plan administrator and the "Retirement Board" for the Plan, SJHSRI's Board of Trustees were required to pass such a resolution. Otherwise SJHSRI was the Plan Administrator.

Prospect argues that "Plaintiffs assume a formalism requirement – that certain activities and decisions must be documented – that simply cannot be found within the four corners of ERISA §3(33)(C)." Prospect's Opp. Memo. at 9. In fact, Prospect is guilty of both formalism and metaphysical speculation in its contention that SJHSRI's Board of Trustees, in its alleged "dual role" as the Retirement Board, should be considered as a completely separate entity from itself in its role as the Board of Trustees. Moreover, nothing in the "four corners of ERISA §3(33)(C)" provides that a court may disregard the terms of the Plan.

To the contrary, Plaintiffs' alleged formalism in focusing on the Plan's designation of SJHSRI as Plan administer, and the Plan provisions that gave SJHSRI the sole right and power to maintain the Plan, is grounded in ERISA and the relevant caselaw. ERISA requires that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan." 29 U.S.C. §1102(A)(1). "ERISA plans must be in writing and cannot be modified orally." Livick v. The Gillette Co., 524 F.3d 24, 31 (1st Cir. 2008) (citations omitted). "This focus on the written terms of the plan is the linchpin of 'a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.'"

Heimeshoff v. Hartford Life & Acc. Ins. Co., 571 U.S. 99, 108 (2013) (quoting Varity Corp. v. Howe, 516 U.S. 489, 497 (1996)).

The writing requirement is of central importance:

> The writing requirement is a central feature of ERISA, not a mere technicality. It secures to the plan's participants and administrators a clear understanding of their rights and obligations. It protects the plan's actuarial viability by setting forth the terms under which benefits may be paid. See *Cummings v. Briggs & Stratton Retirement Plan*, 797 F.2d 383, 388 (7th Cir.1986). More generally, the writing requirement protects ERISA plans from the sort of corruption fostered by private verbal agreements.

Saret v. Triform Corp., 662 F. Supp. 312, 316 (N.D. Ill. 1986) (citing Cummings v. Briggs & Stratton Retirement Plan, 797 F.2d 383, 388 (7th Cir. 1986)) (refusing to consider claims of promissory estoppel or waiver that contradict the terms of the plan).

Prospect misleadingly obscures ERISA's deference to written plan provisions, by its paraphrase of 29 U.S.C. § 1002(16)(A) as "indicating that the 'administrator' **typically** is "the person specifically so designated by the terms of the instrument under which the plan is operated")." Prospect's Opp. Memo at 9, n. 5 (citing and quoting 29 U.S.C. § 1002(16)(A)) (emphasis supplied). That is not merely the "typical" result. Under that statute, the person so designated in the Plan is *always* the Plan administrator, not merely "typically." That statute establishes a hierarchy of means to identify the plan administrator, as follows:

> (16) (A) The term "administrator" means—
>
> (i) the person specifically so designated by the terms of the instrument under which the plan is operated;
>
> (ii) if an administrator is not so designated, the plan sponsor; or

> (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

29 U.S.C. § 1002(16)(A). The first definition, of "the person specifically so designated by the terms of the instrument under which the plan is operated," has primacy. Only "if an administrator is not so designated" is the second definition of "the plan sponsor" applicable. Here, SJHSRI is *both* named Plan Administrator in the Plan *and* was the Plan sponsor.

Given the importance under ERISA for the terms of the Plan, it is not surprising that "in determining whether an organization is the one 'maintaining' a plan, courts look to the documents governing the pension plans for guidance and focus on the responsibilities designated to the organization rather than the day-to-day functions of the organization." Boden v. St. Elizabeth Medical Ctr., *supra*, 404 F. Supp. 3d at 1087 (granting summary judgment that plan was a church plan because the committee identified in the plan as the plan administrator qualified as a "principal purpose organization," and refusing to even consider day-to-day facts considering by whom how the plan was actually administered). Boden explains what evidence is relevant to determine the entity that "maintained" the Plan as a principal purpose or function. The court first collected and analyzed the "limited relevant case law" concerning that issue. Boden, *supra*, 404 F. Supp. 3d at 1087-89.[117] Based on that analysis, the court in

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[117] The court noted that the organization found in Medina v. Catholic Health Initiatives, 877 F.3d 1213 (10th Cir. 2017) to have maintained the Plan was named plan administrator in the plan document. Boden, *supra*, 404 F. Supp. 3d at 1087 ("[T]his Court's review of the plan document for the Catholic Health Initiatives plan at issue in *Medina* indicates that the Retirement Committee, referred to in the document as the Plan Administrator and presumably the "subcommittee" referred to by the Tenth Circuit, has many powers and duties, including: making rules for the plan, interpreting the plan, determining benefits under the plan, and delegating "any of its responsibilities to other persons," among other

Boden concluded that "[a]s the courts before this one have done, this Court will focus on the structure, purpose, and responsibilities of the Committee **as set out by the Plan document** rather than dive into the ocean of disputed facts about what the Committee actually does." Boden, *supra*, 404 F. Supp. 3d at 1089 (emphasis supplied).

Although Prospect (erroneously) relies on Boden as support for its claim that "principal" does not modify "function," Prospect would have the Court reject Boden's actual holding that courts should focus on the terms of the Plan. Contrary to that holding, Prospect would have the Court "dive into the ocean of disputed facts about what" various organizations affiliated with SJHSRI and CCHP actually did. That is neither necessary nor appropriate. Prospect cites no authority for the proposition that the terms of the Plan concerning what organization administers the Plan should be disregarded. The Plan instrument must be given primacy, and the Plan is clear that SJHSRI both maintained and administered the Plan.

Given the absence of a resolution of the SJHSRI Board of Trustees designating itself as the "Retirement Board," Prospect turns instead to the Bishop's resolution on April 29, 2013 ("April 29th Resolution") in which the Bishop adopts the following resolution: "RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan…" Prospect argues:

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things."). The court then noted that "[i]n Sanzone, the court also looked to the plan documents to determine whether the relevant committee 'maintained' the hospital's employee-benefits plan." Boden, supra, 404 F. Supp. 3d at 1087 (citing Sanzone v. Mercy Health, 326 F. Supp. 3d 795, 804 (E.D. Mo. 2018)). These cases direct the Court to rely on the terms of the Plan as determining what organization administered the Plan.

> Thus, pursuant to the above action taken by the Bishop (and pursuant to the 2011 Plan), the SJHSRI Board was recognized and designated as the Retirement Board, acting on behalf of SJHSRI and the SJHSRI Board as its designate, and the Retirement Board came to be recognized as having deputized and appointed the CCHP Finance Committee to act on its behalf with respect to administrative matters related to the Plan.

Prospect's Opp. Memo. at 25. However, the resolution of the *Bishop of Providence* concerning the authority and actions of the SJHSRI Board of Trustees over the Plan does not even purport to be, much less constitute, a substitute for a resolution of the *Board of Trustees of SJHSRI* binding SJHSRI, which is what both the Plan and SJHSRI's bylaws required.[118] The 2011 Plan identifies SJHSRI as the "Employer" and states that "[t]he Employer shall be the Plan Administrator…unless the Employer, **by action of its Board of Directors**, shall designate a person or committee of persons to be the Administrator and named fiduciary." ECF # 174-10 at 38 (emphasis supplied). Moreover, only the "Employer" has power to amend the Plan. ECF # 174-10 at 53. Whatever effect the Bishop's resolution had was on the Bishop, and was not a substitute for action by SJHSRI's Board of Trustees.

To prove that the Board of Trustees was the Retirement Board, Prospect relies on the April 29th Resolution and other documents, such as emails and minutes from meetings of sub-committees of CCHP's Board of Trustees, which claim that SJHSRI's Board of Trustees was the "Retirement Board." However, none of those documents were authored, adopted, or even acknowledged by SJHSRI's Board of Trustees. There certainly is no evidence that SJHSRI's Board of Trustees ever voted itself the role of

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[118] It should be noted that CCHP appointed all of the elected members of SJHSRI's Board of Trustees. See SJHSRI Amended Bylaws (ECF # 174-15) § 4.2.

"Retirement Board." Accordingly, those emails and other documents do not raise an issue of fact.

Moreover, there is no evidence that SJHSRI's Board of Trustees ever specially convened or formally acted in the capacity of a "Retirement Board." In connection with the 2014 Asset Sale, Prospect obtained all of the records of the SJHSRI Board of Trustees,[119] but Prospect has not identified or produced a single document in support of its claim that the SJHSRI Board of Trustees acted as a principal purpose organization in their capacity as the "Retirement Board" that even suggests that SJHSRI's Board of Trustees ever specially convened or specially acted in their capacity as the "Retirement Board"[120] Instead, as noted, Prospect relies on documents neither authored nor adopted by the Board of Trustees which claim that the Board of Trustees was the "Retirement Board." Those documents do not even refer to the Board of Trustees specially convening in that capacity. Accordingly, they do not raise an issue of fact on that issue.

In addition to failing to identify any documents, Prospect made the following answer to Plaintiffs' 65th request for admission concerning the function of SJHSRI's Board of Trustees as the Retirement Board for the Plan:

> **REQUEST NO. 65**: SJHSRI's Board of Trustees did not hold separate meetings in their capacity as the Retirement Board, devote any specific part of their regular meetings to their function as the Retirement Board, or proceed by an agenda specific to their function as the Retirement Board.

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[119] Asset Purchase Agreement (ECF # 67-12) § 2.1(e).

[120] See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 43 (Prospect's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories in Connection with the Principal Purpose Organization Issue) (Answer No. 2) (identifying no documents evidencing that SJHSRI's Board of Trustees ever specially convened or acted in the capacity of the Retirement Board).

> **[PROSPECT] RESPONSE NO. 65**: The Prospect Entities lack sufficient knowledge as to whether SJHSRI's Board of Trustees did, or did not, conduct separate meetings in their capacity as the Retirement Board, devote any specific part of their regular meetings to their function as the Retirement Board, or proceed by an agenda specific to their function as the Retirement Board.
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> **[PROSPECT] SUPPLEMENTAL RESPONSE NO. 65**: Upon reasonable inquiry into the information known or readily available to the Prospect Entities, the Prospect Entities lack sufficient knowledge as to whether SJHSRI's Board of Trustees did, or did not, conduct separate meetings in their capacity as the Retirement Board, devote any specific part of their regular meetings to their function as the Retirement Board, or proceed by an agenda specific to their function as the Retirement Board because the Prospect Entities were neither involved nor responsible for meetings that were or were not held by SJHSRI's Board of Trustees.
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> **[PROSPECT] SECOND SUPPLEMENTAL RESPONSE NO. 65**: Upon information and belief, denied. It is unclear based upon the documents reviewed whether the SJHSRI Board of Trustees (or a subcommittee of the SJHSRI Board, or another organization whose principal purpose or function was to maintain, administer or fund the Plan) held separate meetings in their capacity as the "Retirement Board," devoted any specific part of their regular meetings to their function as the Retirement Board, or proceeded by an agenda specific to their function as the Retirement Board. The existence of recorded meeting minutes which appear to conflate the activities of SJHSRI Board of Trustees, yet do not seem to ever denote when specific guests either enter or exit such meetings, does not compel the conclusion that there were no separate meetings or periods during which separate attention was given to the administration or the funding of the Plan.

Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 42 (Prospect's Second Supplemental Responses to Plaintiffs' First Request for Admission in Connection with the Principal Purpose Organization Issue).

The first two responses deny sufficient knowledge to admit or deny "whether SJHSRI's Board of Trustees did, or did not, conduct separate meetings in their capacity as the Retirement Board, devote any specific part of their regular meetings to their

function as the Retirement Board, or proceed by an agenda specific to their function as the Retirement Board." That certainly does not satisfy Prospect's burden to identify disputed material facts.

Unlike Prospect's first two responses, which simply denied knowledge or information sufficient to admit or deny the factual statement set forth in the request for admission, Prospect's third response (labelled its "Second Supplemental Response") purports to *deny* the statement. However, Prospect does so solely based on the contention that "[t]he existence of recorded meeting minutes which appear to conflate the activities of SJHSRI Board of Trustees, yet do not seem to ever denote when specific guests either enter or exit such meetings, does not **compel the conclusion** that there were no separate meetings or periods during which separate attention was given to the administration or the funding of the Plan."[121] Plaintiffs' request for admission did not ask Prospect whether certain documents or events "compel the conclusion" that the SJHSRI Board of Trustees never separately convened as the Retirement Board. Plaintiffs asked Prospect to admit or deny that the SJHSRI Board of Trustees never separately convened as the Retirement Board. Prospect's contention that certain documents or events do not "compel that conclusion" provides no basis upon which Prospect can deny the Request for Admission. It does, however, show Prospect's inability to marshal evidence to justify such a denial.

"The nonmoving party 'must adduce specific, provable facts demonstrating that there is a triable issue,' as a moving party is not required 'to effectively 'prove a

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[121] See Plaintiffs' Response to Prospect's SUF ¶ 91, Exhibit 42 (Prospect's Second Supplemental Responses to Plaintiffs' First Request for Admission in Connection with the Principal Purpose Organization Issue) (quoted *supra* and emphasis supplied).

negative' in order to avoid trial on a specious claim.'" Yanovsky v. JPMorgan Chase, No. CIV.A. 13-11426-RGS, 2014 WL 2986655, at *2 (D. Mass. July 2, 2014) (quoting Rogers v. Fair, 902 F.2d 140, 143 (1st Cir. 1990) and Carmona v. Toledo, 215 F.3d 124, 133 (1st Cir. 2000)). Plaintiffs' affirmative showing, and Prospect's failure to come forward with any evidence that the Board of Trustees voted to make itself the Retirement Board, devoted any specific part of their regular meetings to their function as the Retirement Board, or proceeded by an agenda specific to their function as the Retirement Board,[122] means that there is no competent evidence to support those claims.

In any event, as noted, even if there were competent evidence that the SJHSRI Board of Trustees had appointed itself to act as the "Retirement Board," such evidence would only tend to prove that acting as the Plan's Retirement Board was *one of the purposes or functions* of SJHSRI's Board of Trustees. As also noted above, that would not have been the principal purpose or function of SJHSRI's Board of Trustees.

3. CCHP's Finance, Audit & Compliance Committee did not Maintain the Plan, and Administration or funding of the Plan was not its principal purpose or function

Prospect relies on several documents and the Declarations of Messrs. Raucci[123] and Belcher to raise a disputed issue of fact concerning whether CCHP's Finance, Audit

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[122] Such as in the Declaration of SJHSRI's CEO and President Kenneth Belcher.

[123] At deposition, however, Mr. Raucci acknowledged he had no opinion whether Plan administration was the principal purpose or function of CCHP's Finance, Audit and Compliance Committee:

> Q. Well, Mr. Raucci, you believe that the responsibility that the Finance, Audit and Compliance Committee had with respect to the defined benefit plan was the most important purpose or function of the Finance, Audit, and Compliance Committee?
>
> A. Not being a member of that committee, I don't -- I don't have an answer to that.

& Compliance Committee was given or assumed authority over Plan administration, notwithstanding that SJHSRI's Board of Trustees never delegated such authority. Prospect's Opp. Memo. at 59-61. Plaintiffs' response is twofold.[124]

First, this argument improperly asks the Court to completely disregard the terms of the Plan and find that an entity that is not even mentioned in the Plan was the entity that was responsible to maintain and administer the Plan. That is even more extreme that Prospect's claim that SJHSRI's Board of Trustees was the Retirement Board, since at least SJHSRI's Board of Trustees is identified in the Plan provision identifying SJHSRI as Plan administrator "unless the Employer [SJHSRI], **by action of its Board of Directors**, shall designate a person or committee of persons to be the Administrator and named fiduciary." ECF # 174-10 at 38 (emphasis supplied). CCHP's Finance,

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> Q. Sir, based on your knowledge of the committee insofar as the committee reported to the Board of Trustees, based on the knowledge you derived in that capacity, is it your belief that the Finance Committee's responsibilities, with respect to the defined benefit plan, were the most important purpose and most important function of the Finance, Audit and Compliance Committee?
>
> MR. WAGNER: Objection.
>
> A. I believe the responsibilities were important to the defined benefit -- to the defined benefit plan, but I believe they had many important responsibilities.
>
> Q. Is it fair to say that you do not have an opinion that the responsibilities of the Finance, Audit and Compliance Committee, with respect to the defined benefit plan, were the most important purpose or was the most important purpose of the Finance, Audit and Compliance Committee?
>
> MR. WAGNER: Objection.
>
> A. I think that's a fair -- yes, I agree with that statement. I don't have an opinion.

Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 76 – 77.

[124] For purposes of Plaintiffs' motion for summary judgment, Plaintiffs concede that a sub-committee of a Board of Directors can be a "principal purpose organization." However, there is law to the contrary. See, e.g., Rollins v. Dignity Health, 19 F. Supp. 3d 909, 914 (N.D. Cal. 2014) ("Dignity is a healthcare organization; its mission is the provision of healthcare, not the administration of a benefits plan. While its Retirement Plans Sub–Committee's purpose is plan administration, the statute does not say that the organization may have a subcommittee who deals with plan administration. Rather, the statute dictates that organization itself must have benefits plan administration as its 'principal purpose,' which Dignity plainly does not.").

Audit & Compliance Committee is not even mentioned in the Plan, though it easily could have been since it had been in existence and operating for eighteen months when the 2011 Plan was adopted.

Accordingly, CCHP's Finance, Audit & Compliance Committee's actual conduct in connection with the Plan does not constitute maintenance of the Plan or Plan administration under 29 U.S.C. §1002(33)(C)(i). This especially true given the principle that exceptions to ERISA are to be construed narrowly, so as not to unduly limit the remedial scope of ERISA. See John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, *supra*, 510 U.S. at 97 (1993); Stapleton, *supra*, 137 S. Ct. at 1663-64 (" [T]he provisions governing which organizations qualify as principal purpose organizations permitted to establish and maintain "church plans," need also be construed in line with their text and with a view toward effecting ERISA's broad remedial purposes.")(omitting internal citation).

Prospect seeks to deemphasize the significance of CCHP's Finance, Audit & Compliance Committee's very limited involvement with the Plan, by arguing that

> Just because a given organization does not spend much time on a given matter, or project, does not mean that its principal purpose is to spend time and effort on some other matter, or project. The world is full of examples where a service organization's "purpose" is frustrated by, e.g., the lack of demand, or a need, for those services.

Prospect's Opp. Memo. (ECF # 190-1) at 44. However, CCHP's Finance, Audit & Compliance Committee was not idle. To the contrary, it was extremely busy, with matters that affected the core functions of CCHP, SJHSRI, and RWH, i.e., their financial operations, audit, and compliance.

Certainly, and unlike the Bishop-appointed Retirement Board, CCHP's Finance, Audit & Compliance Committee is not the type of organization that courts have found to be a "principal purpose" organization. It is completely unlike the three pension committees analyzed in Sanzone v. Mercy Health, *supra*, Medina v. Catholic Health Initiatives, *supra*, or Boden v. St. Elizabeth Medical Ctr., *supra*. See also Thorkelson v. Publishing House of Evangelical Lutheran Church in America, 764 F. Supp. 2d 1119, 1127 (D. Minn. 2011) (holding that Pension Committee was a principal purpose organization because, inter alia, "Plaintiffs do not dispute that the Pension Committee's sole purpose is to administer the Plan.").

Similarly, and again unlike the Bishop-appointed Retirement Board and the pension committees analyzed in those cases, CCHP's Finance, Audit & Compliance Committee was not created specifically to administer the Plan. In fact, CCHP's Finance, Audit & Compliance Committee was created nearly eighteen months before SJHSRI even had the power to delegate Plan administration to that Committee or any other person or entity.

Second, even if were assumed, *arguendo*, that CCHP's Finance, Audit & Compliance Committee's conduct constituted Plan administration under 29 U.S.C. § 1002(33)(C)(i), and that CCHP's Finance, Audit & Compliance Committee "maintained" the Plan, either because there was evidence (which there is not) that the SJHSRI Board of Trustees properly delegated such authority to CCHP's Finance, Audit & Compliance Committee, or because improperly assumed authority is sufficient, the fact remains that neither Plan administration nor maintenance of the Plan was ever CCHP's Finance, Audit & Compliance Committee's principal purpose or principal

function. That is apparent from the Committee's scope of responsibility and the minutes of Committee meetings.[125] Indeed, Kenneth Belcher admitted that fact at his deposition.[126] It is equally clear that neither plan administration nor plan funding was the "main job" of CCHP's Finance, Audit & Compliance Committee. Accordingly, the Court need not even decide whether any portion of the CCHP's Finance, Audit & Compliance Committee's conduct constituted Plan administration or maintenance under 29 U.S.C. §1002(33)(C)(i).

4. CCHP's Investment Committee Did Not Maintain the Plan, and Administration or Funding of the Plan was Not Its Principal Purpose or Function

Just as it did in its argument concerning CCHP's Finance, Audit & Compliance Committee, Prospect relies on several documents and the Declarations of Messrs. Raucci and Belcher in an attempt to raise a disputed issue of fact concerning whether CCHP's Investment Committee was given or assumed authority over Plan administration and maintenance, notwithstanding that SJHSRI's Board of Trustees never properly delegated such authority, either directly to the Investment Committee or

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[125] See, e.g., ECF # 190-16 (minutes of March 15, 2011 meeting); ECF # 190-17 (minutes of July 19, 2011 meeting); ECF # 190-18 (minutes of November 15, 2011 meeting); ECF # 190-23 (minutes of March 25, 2014 meeting).

[126] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 32 ("Q. And do you agree that the Finance Committee's responsibilities concerning the defined benefit plan did not constitute the principal purpose of the Finance, Audit and Compliance Committee when you take into account its responsibilities involving finance, audit, and compliance? MR. WAGNER: Objection. A. That is correct."). Mr. Belcher's purported (and very artfully worded) "understanding" as stated in his Declaration boils down to the legally insufficient contention that "administration or funding" of the Plan was "one of their principal purposes, or .one of their functions." The fact that Prospect relies on such as weak statement is further evidence that the facts do not support their claim that any of the organizations Prospect identifies was a "principal purpose organization."

indirectly to CCHP's Finance, Audit & Compliance Committee which in turn delegated that authority to the Investment Committee. Prospect's Opp. Memo. at 61 – 62.

This argument again asks the Court to completely disregard the terms of the Plan and find that an entity that is not even mentioned in the Plan was the entity that administered the Plan. Plaintiffs' response is the same: conduct under irregularly assumed authority does not constitute Plan administration or maintenance, and, even if it did, CCHP's Investment Committee's responsibilities for Plan administration or maintenance were not the Investment Committee's principal purpose or function.

Indeed, both Messrs. Raucci and Belcher expressly acknowledged that administration or funding of the Plan was not the principal purpose or function of CCHP's Investment Committee.[127] To the contrary, the Investment Committee treated all of the funds over which it had responsibility as having equal importance.[128]

Prospect seeks to minimize the Investment Committee's other responsibilities by asserting that "[t]he Plan's investment portfolio dwarfed the other portfolios under the CCHP Investment Committee's stewardship, making the Plan's financial well-being a

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[127] Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 58-59 ("Q. Do you agree, sir, that the principal purpose of the Investment Committee of CharterCARE Health Partners was broader than clearly its responsibilities concerning the defined benefit plan? MR. WAGNER: Objection. A. I do. . . . Q. And do you agree, sir, that the principal function of the Investment Committee of CharterCARE Health Partners was to oversee investment of all of the funds of CharterCARE Health Partners and its affiliates? MR. WAGNER: Objection. A. I do.").

[128] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 67 – 68("Q. Do you agree that the fact that the defined benefit plan was underfunded did not make that plan more important to the purpose and function of the Investment Committee than the defined contribution plans that were also being managed by the Investment Committee? THE WITNESS: So, if I -- if I understand your question, because it was underfunded, should it have been more important? MR. SHEEHAN: That's the question, I guess. A. No, I mean, it's -- we're trying to do the very, very best for every -- for every asset all of the time; so the funding status -- I mean, the success that we would have -- so the answer would be no. So they were all equally as important.").

principal concern of that Committee." Prospect's Opp. Memo. at 25. There are three reasons why that statement should be rejected.

First, the statement is simply false. From the outset, the Investment Committee's portfolio included over $45 million just in RWH's endowment and defined contribution plan alone (not even considering *SJHSRI's* defined contribution plan or endowment).[129] The total assets managed by the Investment Committee *excluding the assets of the Plan* totaled $89.7 million in the latter half of 2013.[130] As of September 30, 2013 the Plan's assets were $90.6 million.[131] Thus, the assets in the other funds were essentially equal to, and certainly were not "dwarfed" by, the Plan assets.

Second, the Investment Committee did not accord less importance to funds with less dollars and more importance to funds with more dollars.[132] The members of the

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[129] The actual total was $45,641,545. Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 39 (March 19, 2010 CCHP Investment Committee Meeting minutes) (RWH's endowment was $22.7 million, and RWH's defined contribution plan was $11,776,636 for the employee portion and $11,164,909 for the employer portion). These totals do not include the value of SJHSRI's endowment or defined contribution plan, both of which were also managed by the Investment Committee. Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 58 ("Q. Okay. Now, finally, the Investment Committee was also responsible for the endowment for St. Joseph's. Do you recall that? A. I do."); id. at 62 – 63("Q. Okay. Now, the Investment Committee had responsibility for or over certain aspects of the defined benefit plan for St. Joseph's; is that right? A. Yes."); id. at 63 ("Did the Investment Committee's responsibility over the defined benefit plan include responsibility concerning the investments of the defined benefit plan? A. Yes.").

[130] The actual total was $89,698,249. Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 37 (Raucci Ex. 8) (total assets in the defined contribution plans as of September 30, 2013 were $63,247,666 and the market value of SJHSRI's endowment as of December 31, 2013 was $1,350,583) and Exhibit 38 (Raucci Ex. 9) (RWH's endowment as of September 30, 2013 was $25,100,000).

[131] Plaintiffs' Response to Prospect's SUF ¶ 75, Exhibit 38 (November 15, 2013 CCHP Investment Committee minutes) (as of September 30, 2013 the Plan had a market value of $90.6 million).

[132] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 59 ("Q. Do you agree that the size of the St. Joseph's endowment did not make it any less important to the Investment Committee than the Roger Williams endowment? A. Again, every dollar of every fund was important to the Investment Committee. Q. Okay. Not only important, but equally important? A. Correct."); Plaintiffs' Response to Prospect's SUF ¶ 6, Exhibit 27 (Belcher Depo.) at 58 ("Q. Now, is it also fair to say that the fact that the defined benefit plan was underfunded did not make that plan more important to the members of the Investment Committee than were the defined contribution plans that were also overseen by the committee? MR. WAGNER: Objection. A. They were equally important.").

Investment Committee owed fiduciary duties to the owners and participants in each of the funds they managed from an investment point of view, to act in their best interests and not to subordinate their interests to the interests of owners and participants in the other funds managed by the Investment Committee. To the Investment Committee, the fact that SJHSRI's Defined Plan assets were more than RWH's endowment did not make SJHSRI's Defined Plan more important.[133] To RWH's employees, whose retirement security depended on RWH's defined contribution plan, the fact that SJHSRI's Defined Plan assets were more than the total value of RWH's defined contribution plans did not make SJHSRI's Defined Plan more important.[134] In fact, RWH's employees had no interest whatsoever in the assets of the Plan, since they could not participate in SJHSRI's Defined Benefit Plan.

Third, Prospect makes much of the fact that the Investment Committee was especially concerned about the Defined Benefit Plan, but that was due to the Plan's underfunded status, which was something over which it is undisputed that the Investment Committee had no responsibility.[135] Moreover, that concern did not make

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[133] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 57 ("Q. Did the members of the Investment Committee treat both the Roger Williams endowment and the defined benefit plan as having equal importance? MR. WAGNER: Objection. A. Yes.").

[134] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 53 ("Q. Do you agree that the defined contribution plan was just as important to the employees of Roger Williams Hospital who participated in that plan as the defined benefit plan was to the employees of St. Joseph's Hospital who participated in that plan? MR. WAGNER: Objection. A. I can't speak for them, but I suspect that it is equally important.").

[135] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 57 – 58 ("Q. Did the Investment Committee have a responsibility to make a recommendation to the Board of Trustees of CharterCARE Health Partners concerning the extent to which the defined benefit plan should be funded? A. No. Q. Is it fair to say that the decision whether or not to fund the plan was made at the level of the entire Board? A. Yes.").

the assets of the Plan more important than the assets of the other funds managed by the Committee.[136]

Fourth, the funds over which the Investment Committee had responsibility were not all retirement plans, but, rather, also included RWH's and SJHSRI's endowments. Prospect cites no authority for the proposition that an investment committee's "principal purpose or function" could be maintaining or administering a pension plan when the investment committee is also responsible for investing property that was not part of any retirement plan, such as the endowments of the Plan sponsor and an affiliate. In other words, the principal purpose or function of the Investment Committee was not even to manage assets of retirement plans, much less specifically the Plan.

Finally, like CCHP's Finance, Audit & Compliance Committee (and unlike the prior Bishop-appointed Retirement Board), CCHP's Investment Committee was neither specially created to maintain or administer the Plan nor had that as its sole responsibility. CCHP's Investment Committee was also created on January 4, 2010, nearly eighteen months before SJHSRI been had the power to administer the Plan or delegate administration "by action of its Board of Trustees." Thus, it is completely unlike the organizations found to be "principal purpose organizations in Sanzone v. Mercy

[136] Plaintiffs' Response to Prospect's SUF ¶ 62, Exhibit 36 (Raucci Depo.) at 58 ("Q. Right. And you earlier said that no one of the funds was secondary in importance to any of the others. Did I hear that correctly? A. Correct."); id. at 62 ("[Q.] Do you agree that, for the Investment Committee, all of the funds that it had responsibility over were equally important? A. Yes."); id. at 67 – 68 ("Q. Do you agree that the fact that the defined benefit plan was underfunded did not make that plan more important to the purpose and function of the Investment Committee than the defined contribution plans that were also being managed by the Investment Committee? THE WITNESS: So, if I -- if I understand your question, because it was underfunded, should it have been more important? MR. SHEEHAN: That's the question, I guess. A. No, I mean, it's -- we're trying to do the very, very best for every -- for every asset all of the time; so the funding status -- I mean, the success that we would have -- so the answer would be no. So they were all equally as important.").

Health, *supra*, Medina v. Catholic Health Initiatives, supra, or Boden, et al. v. St. Elizabeth Medical Ctr., *supra*, and Thorkelson v. Publishing House of Evangelical Lutheran Church in America, *supra*.

IV. The unexercised power to cure is irrelevant

Prospect makes two separate and entirely different arguments based upon the following "cure" provisions of 29 U.S.C. §1002(33)(D):

> (D)
>
> (i)If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.
>
> (ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.
>
> (iii) For purposes of this subparagraph, the term "correction period" means—
>
> > (I)the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or
> >
> > (II)any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

> (III)any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default,
>
> whichever has the latest ending date.

29 U.S.C. §1002(33)(D).

Prospect's first argument focuses on the period of the process of affiliation between SJHSRI and RWH, from 2009 until the CCHP Finance Committee and the CCHP Investment Committee came into existence. Prospect's Opp. Memo. at 39-44.[137]

Prospect's argument is that any absence of a "principal purpose organization" during the transition period in 2009-2010 was cured by the CCHP Finance Committee and the CCHP Investment Committee:

> Even if, for some reason, the Affiliation process caused some lapse to occur while the administration, and the funding, of the Plan were transferring from the Bishop's Retirement Board to the CCHP Finance Committee and the CCHP Investment Committee, the actions taken to put in place and empower the CCHP Finance Committee and the CCHP Investment Committee and the actions those Committee then took to provide for the administration of the Plan and deal with its funding problems from 2011 through 2014 corrected those defects retroactive to when such lapses occurred (if any did occur), by operation of ERISA §3(33)(D) (codified at 29 U.S.C. §1002(33)(D)).

Prospect's Opp. Memo. at 64.

This argument is based on the actual operation of 29 U.S.C. §1002(33)(D) retroactively curing a plan. However, it is irrelevant because it mischaracterizes Plaintiffs' argument as being focused on the transition period before the 2011 Plan

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[137] Prospect mistakenly claims the effective date was June 30, 2010 instead of January 4, 2010. See *supra* at 18 n.49 (explaining Prospect's mistake).

came into effect on July 1, 2011. That is not Plaintiffs' argument.[138] Plaintiffs contend that as of July 1, 2011, SJHSRI's Board of Trustees and CCHP's Finance, Audit & Compliance Committee, and CCHP's Investment Committee did not qualify as a "principal purpose organization," because their principal purpose or principal function was never administration of the Plan.

Prospect's second argument focuses on the entire period from 2009 until the Receiver's irrevocable election effective for ERISA coverage as of April 15, 2019.[139] Unlike its first argument, however, Prospect does not contend that the Plan may have been out of compliance at some earlier point in this period but was "cured" by a later development. Instead of arguing that the Plan deficiencies in fact were cured, Prospect contends that it is *possible* that the Plan *hypothetically could have been cured*, if certain unspecified corrective measures had been taken that in fact were never taken. In other words, Prospect's focus is counter-factual, on what possibly could have happened, not on what actually happened:

> Plaintiffs make no effort to show in this case that SJHSRI failed or refused to fix any structural or organizational problems that the Plan may have had. Indeed, had Del Sesto not made an irrevocable election subjecting the Plan to ERISA at least as of April 15, 2019 (which is, in part, the subject of the Prospect Defendants' cross-motion), **even he could have**

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[138] Plaintiffs do not concede that the Plan qualified as a church plan in 2009-2010, or, for that matter, at any time. The issue simply is not relevant to Plaintiffs' motion for summary judgment except during the period from 2011 to 2014. Although Plaintiffs also address the Plan's failure to qualify as a church plan from 2014 to the present, that is to solely to rebut Prospect's argument concerning "cure."

[139] See ECF # 127-1 (Election Statement) ¶ 3 ("This 410(d) Election is made without prejudice to the position taken by the Plan Administrator in the litigation styled *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.*, Civil Action No. 1:18-cv-00328-WES-LDA, pending in the U.S. District Court for the District of Rhode Island, that the Plan ceased to qualify as a Church Plan (and became subject to ERISA) on or prior to the Effective Date, possibly as of 2009 or earlier.").

> **rescued the Plan's status as a non-electing church plan**. But he chose not to.

Prospect's Opp. Memo. at 41 (emphasis supplied). Prospect returns to this argument in the portion of its memorandum filed in support of its motion for summary judgment:

> The importance of ERISA §3(33)(D), to church plans in general and to a church plan in the circumstances present here, cannot be overstated. Here, the Plan traversed a period of eight tumultuous years. It began with the Affiliation in February 2009, and continued through its amendment and restatement in July 2011 as the Affiliation took full effect, and through the sale and disposition in 2014 by SJHSRI and RWH of their respective hospital facilities. And it ended with the winding up by both SJHSRI and RWH and CCHP (now, CCCB) of their remaining activities, the settlement of their non-Plan obligations, and finally the petitioning of the Plan into receivership on August 17, 2017.
>
> At any point in that eight-year period, if the Plan had (or, had been found to have) structural or operational defects or compliance problems, such as the failure of an administering organization or a funding organization to qualify as a principal-purpose organization, **those then in charge of the Plan, or SJHSRI, had the opportunity to correct that failure**. Had they done so, the Plan would have been considered retroactively corrected, and would have remained a non-electing church plan.

Prospect's Opp. Memo. at 67-68 (emphasis supplied).[140]

The first problem with this argument is that it lacks a conclusion, and, therefore, is not an argument at all. Prospect perhaps may be implying, but does not come out and say, that plans that fail to comply with the definition for church plans, because they are maintained by organizations that are not "principal purpose organizations," nevertheless should be treated as church plans if it is may be *possible* that the Plan

[140] However, pages 48-71 of Prospect's memorandum deal exclusively with Prospect's cross-motion for summary judgment. Although Plaintiff's opposition to that motion is not due until November 2, 2020, Plaintiffs have no choice but to deal with at least this issue here.

deficiencies could have been corrected, even though they were never corrected and even though they no longer can be corrected. Perhaps Prospect's reticence concerning the conclusion of its argument is due to the fact that merely articulating the argument is sufficient to refute it.

In any event, Prospect cites absolutely no authority whatsoever for the proposition that the theoretical possibility that such failures could have been corrected can and should lead the Court to disregard those failures and conclude that the Plan satisfied the requirements for church plans, even though the Plan clearly did not satisfy those requirements. The plain meaning of 29 U.S.C. §1002(33)(D) is that it does not apply counter-factually. The deficiency has to be corrected for the plan to qualify retroactively as a church plan. In other words, Prospect's argument is not based on the actual function of 29 U.S.C. § 1002(33)(D) to retroactively cure a plan. We are unaware of any authority within or outside of ERISA that places such significance on events that did not occur and no longer could occur.

Moreover, Prospect cites no caselaw involving a Plan and Plan participants in which a retirement plan's non-compliance with the definition of church plans was excused because the deficiency could have been (but was not) cured at a later date.[141] In fact, in none of the cases discussing whether a putative church plan was administered by a principal purpose organization did any of the parties argue, or any court even discuss, the possibility that the cure provisions of ERISA could have been or could be applied to rectify the problem and retroactively re-instate the church plan

[141] Prospect cites two IRS private letter rulings for the proposition that 29 U.S.C. §1002(33)(D) sets forth a means for a plan sponsor to retroactively correct the plan's failure to be maintained by a "principal-purpose organization." Prospect's Opp. Memo. (ECF # 190-1) at 40-41. That is not in dispute.

exemption. See Boden, *supra*, 404 F. Supp. 3d at 1087-89; Medina, *supra*, 877 F.3d 1213; Sanzone v. Mercy Health, *supra*, 326 F. Supp. 3d at 804. In none of those cases did the Plan sponsors argue that the failure to comply with the requirement for a principal purpose organization should be ignored since that failure could be cured.

That should dispose of Prospect's argument concerning the effect of an unexercised right of cure, but Prospect makes certain unfair and outlandish arguments that should be addressed, even if Prospect's "cure" argument is a *reductio ad absurdum*.

First, Prospect bases its argument in part on SJHSRI's failure to fix the Plan, which Prospect implies was due to SJHSRI's alleged ignorance that its Plan was not administered by a principal purpose organization, claiming that "Plaintiffs make no effort to show in this case that SJHSRI failed or refused to fix any structural or organizational problems that the Plan may have had." Prospect's Opp. Memo. at 41. That argument is an attempt to introduce an element of subjective intent that is inapplicable. See Plaintiff's Memo. at 19-20.[142]

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[142] "SJHSRI's ostensible intent to exclude the Plan from ERISA is irrelevant: either the Plan met the statutory requirements for the church plan exemption from ERISA or it did not. See Anderson v. UNUM Provident Corp., 369 F.3d 1257, 1264 (11th Cir. 2004) ("If the UNUM Plan satisfies the statutory definition of an employee welfare benefit plan, then ERISA applies regardless of the intent of the plan administrators and fiduciaries."); Meredith v. Time Ins. Co., 980 F.2d 352, 354 (5th Cir. 1993) ("We are not here concerned with whether the entity that established and maintained the plan intended ERISA to govern the MEWA. For our guidon we note that ERISA protection and coverage turns on whether the plan satisfies the statutory definition.") (internal quotation marks omitted); Peckham v. Gem State Mut. of Utah, 964 F.2d 1043, 1049 n.11 (10th Cir. 1992) ("If a plan meets the five criteria outlined in Donovan it is governed by ERISA whether or not the parties wish to be subject to ERISA.") (referring to Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982)); Zanaty v. Harris, 2:07-CV-1089-RDP, 2008 WL 11423847, at *2 (N.D. Ala. Aug. 29, 2008) ("Plaintiff argues that the court should have found Charles Zanaty's subjective intent controlling on the issue of whether ERISA applies to this insurance arrangement involving himself, his company, and his children. This is a legal argument, not a factual dispute. As discussed in the court's opinion, the employer's subjective intent is not controlling in determining the application of ERISA.") (citation to docket omitted).

Moreover, there can be no dispute that SJHSRI knew or at least *should have known* that the 2011 Plan failed to create a principal purpose organization. SJHSRI obtained a legal opinion in 2008 that noted that under the 1999 Plan, the Retirement Board's sole function was to administer the Plan, and that, among the requirements necessary "[i]n order to maintain the status of the Plan as a church plan in accordance with the Code, ERISA and the interpretations of IRS and DOL", was that "the Retirement Board must continue to be appointed by the Bishop or some other representative of the Roman Catholic Church and must continue to administer the Plan..."[143] Notwithstanding this opinion, SJHSRI amended and restated the Plan in 2011, to substitute SJHSRI for the Bishop-appointed Retirement Board that was required to maintain church plan status.

Prospect also knew or at least *should have known* that the 2011 Plan failed to create a principal purpose organization. SJHSRI shared that legal opinion and the 2011 Plan with Prospect.[144] Prospect (under its fictious name "CharterCARE Health Partners") took over administration of the Plan on June 20, 2014 and administered the Plan until at least December 20, 2014.[145] On August 26, 2014, when Prospect was administering the Plan, the head of Human Resources for "CharterCARE Health Partners" informed the President of "CharterCARE Health Partners" that "…a new

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[143] Plaintiffs' Statement of Undisputed Facts (ECF # 174) ¶ 24.

[144] See *supra* at 10 n.25.

[145] See *supra* at 32 n.83 (listing transition services Prospect provided, including "Administration of St. Joseph Health Services of Rhode Island Pension Plan; coordination with Angell Pension for benefit calculations and general plan activity.").

pension board needs to be establish[ed] and appointed by the Bishop as the Pension Board was formerly the Finance Committee of CCHP."[146] That was never done.

Now, Prospect asks the Court to punish the Plan participants for the failures of both SJHSRI and Prospect to do what was required to be done in order to qualify the Plan for the church plan exemption from ERISA, notwithstanding that the Plan participants had no such responsibility, and that both Prospect and SJHSRI knew or should have known of the deficiencies.

Prospect goes one step further and argues that the burden is on Plaintiffs to prove that the plan deficiencies could not have been cured. Prospect's Opp. Memo. at 31 ("And in light of ERISA's "cure" provision, it is not enough to make a showing that there was no "principal purpose organization" as of a particular date; Plaintiffs must also – and have not – show that no subsequent action cured the alleged lapse as of the date in question."). That burden shifting is wrong. Prospect makes that argument as a defense to Plaintiffs' motion for summary judgment, and, therefore, has the burden of coming forward with evidence. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In any event, it is indisputable that if the Court agrees with Plaintiffs that the Plan lacked a "principal purpose organization" between July 1, 2011 and June 20, 2014, that deficiency was not corrected. Prospect does not contend, because it cannot, that either CCHP's Finance, Audit, & Compliance Committee or CCHP's Investment Committee ever met again after June 20, 2014. Beginning June 20, 2014 and continuing for at

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[146] Plaintiffs' Response to Prospect's SUF ¶ 109, Exhibit 46. See Prospect's Memo. (ECF # 193-1) at 27 n.46 (quoting from this exhibit).

least six months, until at least December 20, 2014, the Department of Human Resources for Prospect (in its fictious name "CharterCARE Health Partners"[147]) took over administration of the Plan, under a Transition Services Agreement, and Prospect was paid a fee for administering the Plan.[148] Prospect was unqualified to be a "principal purpose organization" for two reasons: it was not controlled by nor associated with a church, and Plan maintenance and funding was not its principal purpose or function. To the contrary, over those six months Prospect was responsible for the operation of both Fatima and Roger Williams Hospital.

Prospect itself contends that there was no principal purpose organization as of December 15, 2014, when administration of the Plan was turned over to SJHSRI's lay President Daniel Ryan and an outside attorney, Richard Land.[149]

> After that date, no apparent efforts were made to put any organization (much less a PPO) in charge of the Plan's administration or the Plan's funding until the Plan was petitioned into receivership on August 17, 2017, and Del Sesto was put in charge of it.

Prospect's Opp. Memo. at 49. Prospect's conclusion is unequivocal:

> With no principal purpose organization in place, and no steps to correct the problems that this caused, the law and facts compel the conclusion

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[147] See Plaintiffs' First Amended Complaint ¶¶ 414 & 415 ("414. At 10:17 a.m. on June 20, 2014, which was the day that the 2014 Asset Sale closed, CharterCARE Health Partners filed articles of amendment with the Rhode Island Secretary of State, changing its name from CharterCARE Health Partners to Chartercare Community Board. 415. One minute later, at 10:18 a.m. on June 20, 2014, Prospect Chartercare filed a "fictitious business name statement" with the Rhode Island Secretary of State, stating that it would operate under the "fictitious name" of CharterCARE Health Partners, which had been the same name under which SJHSRI, RWH, and CCCB had operated Old Fatima Hospital and Old Roger Williams Hospital from 2009 right up to the day of the closing of the 2014 Asset Sale.").

[148] See *supra* at 32 n.83 (listing transition services Prospect provided, including "Administration of St. Joseph Health Services of Rhode Island Pension Plan; coordination with Angell Pension for benefit calculations and general plan activity.").

[149] Prospect's SUF ¶¶ 107 – 108.

> that the Plan's status as a non-electing church plan came to an end on or about December 15, 2014.

Prospect's Opp. Memo. at 68.

The 2011 Plan was followed by the 2016 Plan, and again stated that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary."[150] There is no evidence that a separate Retirement Board was established by SJHSRI's Board of Trustees under this 2016 Plan, until October 20, 2017 when the SJHSRI Board of Trustees designated the Receiver as Plan Administrator.[151] The Receiver certainly did not qualify as a principal purpose organization, for several reasons including that he is not controlled by or associated with a church.

In short, there was no principal purpose organization maintaining or administering the Plan from July 1, 2011 to the present.

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[150] ECF # 174-3 at 41.

[151] Prospect's Response ¶ 4 ("4. Undisputed that on or about October 20, 2017, the Board of Trustees of SJHSRI designated the Receiver as administrator of the Plan."). See Oct. 20, 2017 Resolution (ECF # 174-4).

CONCLUSION

Plaintiffs' motion for summary judgment should be granted.

Respectfully submitted,

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Dated: September 1, 2020

LR Cv 7(c) Request for Oral Argument

Pursuant to LR Cv 7(c), Plaintiffs respectfully request oral argument and estimate that two hours will be required.

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 1st day of September, 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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