

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

SUPERIOR COURT

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

vs. :

C.A. No.: PC - 2017-3856

ST. JOSEPH HEALTH SERVICES OF :  
RHODE ISLAND RETIREMENT PLAN, :  
As Amended :

**PROSPECT CHARTERCARE, LLC'S SUPPLEMENTAL SUBMISSION IN  
SUPPORT OF ITS OBJECTION TO RECEIVER'S MOTION TO ADJUDGE  
PCLLC IN CONTEMPT FOR WILLFUL FAILURE TO COMPLY WITH  
SUBPOENA AND DELIBERATE INTERFERENCE WITH THE RECEIVER'S  
COLLECTION OF THE ASSETS OF THE RECEIVERSHIP ESTATE**

This morning, the Court held a hearing on the Receiver's Motion to Adjudge PCLLC<sup>1</sup> in Contempt for Willful Failure to Comply with Subpoena and Deliberate Interference with the Receiver's Collection of the Assets of the Receivership Estate. At the conclusion of oral argument, the Court indicated that it would issue a ruling on Monday, November 5, 2018, and invited the parties to submit supplemental submissions today. Prospect hereby submits the following supplemental information.

For the reasons it set forth at oral argument and in its written submissions to the Court, the Motion should be denied, including that (i) PCLLC properly objected to Request No. 21 and cannot be held in contempt in the absence of an intervening order from this Court compelling further production; (ii) when Request No. 21 is strictly construed, as it must be in the context of a contempt proceeding, it does not extend to the Information; and (iii) the Receiver has no present

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<sup>1</sup> Unless otherwise noted, capitalized terms used herein shall have the same meaning as assigned in PCLLC's Memorandum in Support of its Objection to the Receiver's Motion to Adjudge PCLLC in Contempt for Willful Failure to Comply with Subpoena and Deliberate Interference with the Receiver's Collection of the Assets of the Receivership Estate.

rights in the Settlement Agreement, and thus Prospect cannot have interfered with assets of the Receivership estate.

If the Motion is to be converted to a motion to compel,<sup>2</sup> Prospect's objections to any such motion extend beyond its asserted objections to Request No. 21 of the Subpoena and those set forth to the Court today and would include all rights arising from the intervening filing of the Litigation between the time of the issuance of the Subpoena and PCLLC's service of objections and the present. It would be an incomplete analysis if the Court were to review Prospect's asserted objections, which were made prior to the Receiver's initiation of the Litigation, without considering the impact of the Litigation on the Information being requested.

First, the Motion to compel should be denied because PCLLC asserted valid objections to the Subpoena, including that the responsive documents were not relevant. Specifically, the documents sought relate to capital commitments in PCLLC, or "monitoring reports" as referred to at the hearing today. However, such information was not relevant at the time of the Subpoena. The Receiver admits that the relevance of the Information is that it is necessary to determine the value of CCCB's interest in PCLLC. Specifically, the Receiver argues that he

needs to know whether the Prospect entities have fulfilled their undertaking to contribute to [PCLLC] the \$50 million in long term capital, and the \$10,000,000 annually to fund "routine short term capital needs, to which the Prospect entities agreed in connection with the hospital conversion. *The value of CCCB's 15% interest includes its proportionate shares of these contributions.*

Receiver's Memo at 4.

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<sup>2</sup> PCLLC is entitled to procedural notice and reasonable time to substantively respond and be heard on its objection just as it would have been if the Receiver had, in actuality, filed a motion to compel.

However, in employing the “snapshot” approach referenced by the Court, the Information was not relevant because at the time of the Subpoena, the Receiver had no interest in CCCB, and thus any capital contributions were not relevant. Furthermore, the Information remains not relevant because the Receiver has *yet* to acquire any interest in CCCB until federal court approval of the Settlement Agreement. Therefore, because the Receiver did not have an interest in CCCB at the time of the Subpoena, and because the Receiver still has no interest in CCCB, the Information is not relevant and the motion should be denied. Second, the Court should deny the Motion because the Information was available from other parties. Yet, the Receiver after an extensive investigation and instituting the Litigation stated in Court this morning that he has no post-conversion reports. Again, in considering a motion to compel, the Court should consider that the Receiver is now looking for documentation evidencing compliance with the capital commitment. To that end, the Court must consider that the capital commitment was for specific capital projects outlined in the conversion process and approved by the relevant regulatory authorities. As set forth above, the Receiver’s counsel indicated today that he did not have any documents from the post-conversion monitoring process. However, the transacting parties, including PCLLC and affiliated entities, and what is now CCCB and the Heritage Hospitals, outlined and agreed to a monitoring protocol and reporting format with the Attorney General. As for capital commitments, PCLLC was required to meet with the Attorney General’s office prior to year-end 2014 to outline the strategic plan which included capital projects. In turn, PCLLC updated the capital commitment reporting with to-date capital expenditure and commitments. In turn, CCCB and the Heritage Hospitals were specifically required to report on the subject pension and/or any changes to the pension. That established, post-conversion, monitoring protocol made it clear that it was CCCB and the Heritage Hospitals that were responsible for

pension liability and not the Prospect entities. Based on this morning's argument, the Receiver has conducted an extensive investigation that has resulted in the Litigation and the proposed settlement, but the Receiver does not have any of the reports filed by CCCB and the Heritage Hospitals on the pension and/or changes to the pension. This point is emphasized, as the Receiver has access to these reports from other sources. Accordingly, PCLLC would moot this issue by providing redacted copies of the capital commitment update to the Attorney General's office and would ask the Court to instruct the Receiver to request that CCCB and the Heritage Hospitals, now apparently under the Receiver's control, to produce monitoring reports relative to reporting on the pension and/or changes to the pension.<sup>3</sup>

Prospect emphasizes this point, because it believes that the Receiver is simply using this Motion as a strategy in the Litigation brought by the Receiver. As a general matter, now that PCLLC is a defendant in the Litigation, it challenges the Receiver's authority to wield the Subpoena to gain a tactical advantage in that Litigation. The Receiver acknowledges that his request and need for the Information is derivative of the Settlement Agreement. In view of this Court's October 29, 2018 Decision, it is premature for the Receiver to assert property rights that would entitle him to the Information.

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<sup>3</sup> Furthermore, PCLLC's responses and objections to the Subpoena did not state, after reserving objections with respect to Request No. 21, that "all" responsive documents would be produced as argued by the Receiver this morning.

PROSPECT CHARTERCARE, LLC,

By its attorneys,

/s/ Joseph V. Cavanagh, III

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of November, 2018, the within document was electronically filed through the Rhode Island Superior Court Case Management System by means of the EFS and is available for downloading by all counsel of record.

/s/ Joseph V. Cavanagh, III