

UNITED STATES DISTRICT COURT
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.

PROSPECT CHARTERCARE, LLC, et al.

Defendants.

Case No. 1:18-cv-00328-WES-LDA

**JOINT OPPOSITION OF DEFENDANTS PROSPECT MEDICAL HOLDINGS, INC.,
PROSPECT EAST HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT
CHARTERCARE SJHSRI, LLC AND PROSPECT CHARTERCARE RWMC, LLC TO
JOINT MOTION FOR SETTLEMENT CLASS CERTIFICATION, APPOINTMENT OF
CLASS COUNSEL, AND PRELIMINARY SETTLEMENT APPROVAL OF
PLAINTIFFS AND DEFENDANTS CHARTERCARE FOUNDATION, ST. JOSEPH
HEALTH SERVICES OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, AND
CHARTERCARE COMMUNITY BOARD (ECF No. 77)**

NOW COME Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, "Prospect Entities"), by and through their attorneys, and hereby oppose the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval by Plaintiffs and Defendants Chartercare Foundation ("CCF"), St. Joseph Health Services of Rhode Island, Roger Williams Hospital, and Chartercare Community Board ("CCCB") (ECF No. 77, the "Foundation Settlement Motion").

As the Prospect Entities previously argued to this Court at length in connection with the motion for approval of the Receiver's settlement with CCCB et al. (ECF No. 75-1 at 9-21), the Foundation Settlement Motion should be denied because (1) the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan") is a retirement plan subject to the Employee Retirement

Income Security Act, as amended (“ERISA”); therefore, the Pension Benefit Guaranty Corporation (“PBGC”) is a necessary party to this litigation and no settlement should be effectuated without the PBGC; (2) federal courts are vested with exclusive jurisdiction over ERISA; therefore, the receiver, Stephen Del Sesto (the “Receiver”), cannot administer the Plan in state court; and (3) the Receiver’s actions are governed by ERISA, not state law; therefore his attempted settlement under state law is wholly preempted and unlawful. Each argument is set forth more fully in the Prospect Entities’ memorandum in support of their joint opposition to the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval of St. Joseph Health Services of Rhode Island, Roger Williams Hospital, and Chartercare Community Board (ECF No. 75-1), which is incorporated herein by reference.

Furthermore, the Prospect Entities object to the Settlement Motion because there has been no showing that the amount of the settlement is a fair amount. If the Court were to decide that Rhode Island law, rather than federal law, governs this settlement, the Prospect Entities may be precluded from seeking indemnity or contribution from CCF as a result. Accordingly, since CCF will, under the terms of the proposed settlement, retain in excess of \$4 million in assets, which would not be available to any of the non-settling defendants, the Prospect Entities request limited discovery to evaluate whether the settlement is fair. In its settlement, CCCB is, essentially, liquidating itself and attempting to turn all of its assets (including its 15% interest in Prospect Chartercare) over to the Receiver. Here, CCF will retain half of its assets while handing over the other half to the Receiver. Even so, according to the Receiver, the Plan will remain underfunded by tens of millions of dollars. The Prospect Entities should be entitled to confirmatory discovery to evaluate the fairness of the proposed settlement.

Pursuant to Local Rule 7(c), the Prospect Entities request that the Court schedule a hearing for oral argument on the Settlement Motion and estimate that at least one and one half (1.5) hours will be necessary for such hearing.

[SIGNATURE PAGE TO FOLLOW]

PROSPECT MEDICAL HOLDINGS, INC.
and PROSPECT EAST HOLDINGS, INC.

By their attorneys,

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/s/ Thomas V. Reichert, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of January, 2019, I have caused the within Opposition to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Christopher J. Fragomeni, Esq.