

Hearing date: May 22, 2020 at 11:00 a.m.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re:

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

C.A. No. PC-2019-11756

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Both the temporary and permanent orders appointing the Liquidating Receiver directed him to perform the Petitioners’ obligations under the settlement agreements. Without having assumed the settlement agreements, the Liquidating Receiver has been performing all of the Petitioners’ current obligations under them.

13. On March 11, 2019, CCCB commenced a civil action in this Court (C.A. No. PC-

2019-3654, hereafter “*CCCB v. Lee*”) against Prospect East Hospital Advisory Services, Prospect CharterCARE, LLC, the directors of Prospect CharterCARE, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., various affiliates of theirs, and a number of individual and entity John Does, seeking, among other things:

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

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

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

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

(e) Declaratory relief.

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

15. According to the applications, the current owners of the local Prospect entities’ ultimate parent company are Samuel Lee, David Topper (through a family trust), and various private equity funds and investors.² The applications seek approval of transactions that would result in Messrs. Lee and Topper owning 100% of the ultimate parent company in exchange for

² Messrs. Lee and Topper are defendants in *CCCB v. Lee*.

Prospect Medical Holdings—not Lee or Topper—paying the private equity investors almost \$12 million plus an undisclosed amount required to buy out certain options.

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

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

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

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

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

(1) According to financial statements submitted with the applications, these entities do not have sufficient current assets to fund their operations, much less the amounts described in the change in control transactions.

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

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

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

deadline for CCCB to exercise the put option. They also provide that, if the Plan Receiver requests a hearing on CCCB's March 2019 motion for temporary and permanent injunctive and equitable relief (the "Motion for Injunction"), the deadline for CCCB to exercise the put option is further extended until the earlier of 30 days after a hearing on the motion or 20 business days after the Court rules on the motion.

19. However, as of the date of this report, neither the Plan Receiver nor the Liquidating Receiver has received sufficient information and documents. Therefore, after unsuccessful efforts to obtain the information without court intervention, they requested a hearing on the Motion for Injunction, filed a joint supplemental memorandum of law in support of the motion, and filed a joint motion to compel production of documents from Prospect. The receivers and the Prospect entities have agreed to continue the May 11, 2020 hearing on these matters to June 23, 2020 and are coordinating this with chambers.

20. Except for these contested matters as to the provision of information and documents, by stipulated order, *CCCB v. Lee* had largely been stayed since April 2019. However, pursuant to the stipulated stay order, a party could terminate the stay by issuing a 20-day notice. On March 19, 2020, the Liquidating Receiver issued the notice. Since that time, counsel have agreed that the defendants in *CCCB v. Lee* may have until June 1, 2020 to answer or otherwise respond to the complaint.

21. Based on the Prospect applications to the Department of Health, the receivers' investigation thereof, and other investigations, on April 21, 2020 after the expiration of the stay in *CCCB v. Lee* the Liquidating Receiver and the Plan Receiver filed a First Amended and Supplemental Complaint in *CCCB v. Lee*. The amended and supplemental complaint adds facts and causes of action uncovered in the investigations thereof by Wistow, Sheehan & Loveley, PC and the receivers, and adds as defendants: parties to the proposed change in control transaction;

and JPMorgan Chase Bank, the administrative and collateral agent for the lenders who provided the funding for the dividends to owners of Prospect.

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

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

24. On other matters:

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

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

(c) Without assuming any pre-receivership contracts, the Liquidating Receiver continues to reimburse Beacon Mutual Insurance Company for workers compensation payments that Beacon continues to pay former employees of the hospitals who were injured at a time the hospitals were self-insured.

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

(e) The Liquidating Receiver continues to deal with subpoenas and other court process

served on SJHSRI or RWH regarding medical records requests, accounts receivable that predate the sale to Prospect and were sold to Prospect in the 2014 sale, and other matters.

(f) With Court permission, the Liquidating Receiver engaged Chace Ruttenberg & Freedman LLP and Verrill Dana LLP as special counsel. Chace Ruttenberg has assisted the Liquidating Receiver with transition matters and has consulted with the Liquidating Receiver on various matters. Verrill Dana has pursued various Medicare appeals to bring additional revenue into this receivership.

(g) With Court permission, the Liquidating Receiver engaged Kahn, Litwin, Renza & Co., Ltd. to prepare and file IRS form 990's for the Petitioners, in order to maintain their tax-exempt status.

(h) Subject to Court approval, the Liquidating Receiver and the Plan Receiver have agreed that the Plan Receiver may file a proof of claim in this receivership on behalf of all Plan participants, and that individual Plan participants not be required to file separate proofs of claim in their capacity as Plan participants.

Interim Accounting

25. From the date of the Liquidating Receiver's appointment to March 31, 2020, he has made the following collections and disbursements:

	<u>CCCB</u>	<u>SJHSRI</u>	<u>RWH</u>	<u>Aggregate</u>
Receipts	\$ 6,565.63	\$ 463,612.33	\$ 401,059.53	\$ 871,237.49
Disbursements	<u>(428.52)</u>	<u>(35,383.31)</u>	<u>(4,430.51)</u>	<u>(40,242.34)</u>
Net Cash on Hand	\$ 6,137.11	\$ 428,229.02	\$ 396,629.02	\$ 830,995.15

26. Attached hereto as Exhibit 1 is a consolidated income statement for the Petitioners from the date of the Liquidating Receiver's appointment to March 31, 2020.

Request for Interim Compensation and Reimbursement of Expenses

27. From December 16, 2019 to March 31, 2020, the Liquidating Receiver and his counsel put in a total of 239.20 hours and advanced \$308.76 for expenses.

28. The Liquidating Receiver has given this Court a detailed statement of the Liquidating

Receiver's time and expenses, and this statement (redacted for privileged and work-product information) is available to parties in interest on request.

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

Notice to Parties in Interest

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

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

WHEREFORE, the Liquidating Receiver prays that this Court:

- (a) Accept, approve and ratify this Report.
- (b) Approve and ratify the acts of the Liquidating Receiver.
- (c) Approve the Liquidating Receiver's agreement with the Plan Receiver that the Plan Receiver may file a proof of claim on behalf of all Plan participants, and that individual Plan participants are not required to file separate proofs of claim in their capacity as Plan participants.
- (d) Award to the Liquidating Receiver an interim fee for services rendered and for expenses advanced and authorize the Liquidating Receiver to pay same from cash on hand.
- (e) Award to the Liquidating Receiver such other and further relief as this Court deems appropriate.

Respectfully submitted,

Date: May 6, 2020

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

CERTIFICATE OF SERVICE

I hereby certify as follows:

- 1) On May 6, 2020, I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.
- 2) The following parties received electronic notice: any parties entered to be notified through EFS
- 3) The document was served by United States Postal Service, postage prepaid, on the following persons: N/A

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger

CharterCARE Community Board et al.
Profit & Loss Detail
 December 1, 2019 through April 27, 2020

Exhibit 1

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 04/27/20
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance
Ordinary Income/Expense							
Income							
interest Income							
Deposit	02/22/2020			Interest	St. Joseph Health Servs. - sav.	0.87	0.87
Deposit	02/29/2020			Interest	Roger Williams - SPECIAL sav.	0.35	1.22
Deposit	02/29/2020			Interest	Roger Williams Hospital - sav.	0.33	1.55
Deposit	03/31/2020			Interest	St. Joseph Health Servs. - sav.	6.78	8.33
Deposit	03/31/2020			Interest	Roger Williams - SPECIAL sav.	2.71	11.04
Deposit	03/31/2020			Interest	Roger Williams Hospital - sav.	2.54	13.58
						13.58	13.58
Total interest Income							
Pre-receivership dep. acct.							
Deposit	12/31/2019		CharterCARE Community Board	Transfer to r'ship account	CharterCARE - ckg	6,565.63	6,565.63
Deposit	12/31/2019		Roger Williams Hospital	xfer to r'ship	Roger Williams - SPECIAL ckg	160,258.84	166,824.47
Deposit	12/31/2019		Roger Williams Hospital	xfer to r'ship	Roger Williams Hospital - ckg	183,600.65	350,425.12
Deposit	12/31/2019		St. Joseph Health Services of RI	xfer to r'ship	St. Joseph Health Servs. - ckg	402,290.14	752,715.26
Check	01/16/2020		Roger Williams Hospital	Debit to zero out pre-r'ship acct	Roger Williams Hospital - ckg	-8,097.00	744,618.26
						744,618.26	744,618.26
Total Pre-receivership dep. acct.							
Trust Income							
Deposit	01/03/2020		Bank of America	Brown and Horton	Roger Williams Hospital - ckg	32,495.68	32,495.68
Deposit	02/21/2020		Bank of America	Townsend	St. Joseph Health Servs. - ckg	61,314.54	93,810.22
Deposit	02/27/2020		Bank of America	Flint & Knight	Roger Williams Hospital - ckg	8,234.00	102,044.22
Deposit	03/16/2020		Bank of America	Miriam Horton Trust	Roger Williams Hospital - ckg	24,561.43	126,605.65
						126,605.65	0.00
						871,237.49	744,631.84
Total Trust Income							
Total Income							
Expense							
Accounting Fees							
Check	03/16/2020	1006	Kahn Litwin Renza & Co., Ltd.		Roger Williams Hospital - ckg	300.00	300.00
						300.00	300.00
Total Accounting Fees							
Bank Service Charges							
Check	01/17/2020		Citizens Bank	Check order	CharterCARE - ckg	134.95	134.95
Check	01/17/2020		Citizens Bank	Check order	Roger Williams Hospital - ckg	134.95	269.90
Check	01/17/2020		Citizens Bank	check order	St. Joseph Health Servs. - ckg	134.95	404.85
Check	01/31/2020		Citizens Bank	Monthly charge	CharterCARE - ckg	25.00	429.85
Deposit	02/10/2020		Citizens Bank	Rebate	CharterCARE - ckg	-25.00	404.85
Deposit	02/16/2020			Deposit	CharterCARE - ckg	-6.00	398.85
Check	02/28/2020		Citizens Bank	stmt delivery	CharterCARE - ckg	3.00	401.85
Check	03/31/2020			Service Charge	CharterCARE - ckg	3.00	404.85
Check	03/31/2020			Service Charge	Roger Williams - SPECIAL ckg	25.00	429.85

CharterCARE Community Board et al.
Profit & Loss Detail
December 1, 2019 through April 27, 2020

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 04/27/20
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance
Total Bank Service Charges							
						429.85	429.85
Court-related Expense							
Check	02/05/2020	1003	Providence Journal	1/3 and 1/31 legal ads	Roger Williams Hospital - ckg	3,540.56	3,540.56
Total Court-related Expense							3,540.56
Filing Fees							
Check	01/21/2020	1001	RI Secretary of State	VOID: Change registered agent	Roger Williams Hospital - ckg	0.00	0.00
Check	01/21/2020	1001	RI Secretary of State	VOID: Change registered agent	St. Joseph Health Servs. - ckg	0.00	0.00
Check	02/04/2020	1001	RI Secretary of State	VOID: Change registered agent	CharterCARE - ckg	0.00	0.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	CharterCARE - ckg	10.00	10.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	Roger Williams Hospital - ckg	10.00	20.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	St. Joseph Health Servs. - ckg	10.00	30.00
Check	03/19/2020	1008	ExamWorks Clinical Solutions		St. Joseph Health Servs. - ckg	3,250.00	3,280.00
Total Filing Fees							3,280.00
Insurance Expense							
Check	01/06/2020	99	Starkweather & Shepley	Receiver's bond	CharterCARE - ckg	100.00	100.00
Check	02/05/2020	1003	Beacon Mutual Insurance Co.	Workers comp. self-insurance	St. Joseph Health Servs. - ckg	7,888.96	7,988.96
Check	02/05/2020	1004	Beacon Mutual Insurance Co.	Workers comp. self-insured	St. Joseph Health Servs. - ckg	6,826.71	14,815.67
Check	03/16/2020	1004	Starkweather & Shepley	Permanent receiver's bond	CharterCARE - ckg	100.00	14,915.67
Check	03/16/2020	1007	Beacon Mutual Insurance Co.	Workers comp. self-insurance	St. Joseph Health Servs. - ckg	14,985.19	29,900.86
Check	03/16/2020	1006	Beacon Mutual Insurance Co.	VOID: Workers comp. self-insurance	St. Joseph Health Servs. - ckg	0.00	29,900.86
Total Insurance Expense							29,900.86
Legal Fees							
Deposit	01/09/2020		Verrill Dana LLP	Reimbursement	CharterCARE - ckg	-463.50	-463.50
Check	02/26/2020	1004	Verrill Dana LLP	Invoice	Roger Williams Hospital - ckg	105.00	-358.50
Check	03/16/2020	1005	Verrill Dana LLP		Roger Williams Hospital - ckg	315.00	-43.50
Total Legal Fees							-43.50
Mailing service							
Check	01/09/2020	100	Relevant Discovery	Produce and serve notice of r'ship	CharterCARE - ckg	264.87	264.87
Check	02/04/2020	1003	Relevant Discovery	Produce and serve notice of perm	CharterCARE - ckg	282.20	547.07
Total Mailing service							547.07
Records Management							
Check	02/26/2020	1005	Xact Data Discovery	database maintenance	St. Joseph Health Servs. - ckg	2,287.50	2,287.50
Total Records Management							2,287.50
Total Expense							40,242.34
Net Ordinary Income							704,389.50

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04/27/20
Accrual Basis

CharterCARE Community Board et al.
Profit & Loss Detail
December 1, 2019 through April 27, 2020

Type	Date	Num	Name	Memo	Split	Amount	Balance
						<u>830,995.15</u>	<u>704,389.50</u>

Net Income