Case Number: PC-2019-3654
Filed in Providence/Bristol County Superior Court
Submitted: 6/18/2020 2:28 PM
Envelope: 2631021
Reviewer: Rachel L.

STATE OF RHODE ISLAND SUPERIOR COURT

PROVIDENCE, SC

CHARTERCARE COMMUNITY BOARD, et al.	:	
	:	
	:	
v.	:	C.A. No.: PC-2019-3654
	:	
	:	Hearing Date: June 23, 2020
SAMUEL LEE, et al.	:	@ 10:00 a.m.

PLAN RECEIVER AND LIQUIDATING RECEIVER'S REPLY TO THE MEMORANDUM OF THE PROSPECT DEFENDANTS IN SUPPORT OF THEIR OBJECTIONS TO THE PLAN RECEIVER AND LIQUIDATING RECEIVER'S MOTIONS FOR INJUNCTIVE RELIEF AND TO COMPEL PRODUCTION

Stephen Del Sesto, as Receiver ("Plan Receiver") for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), and Thomas Hemmendinger, as Liquidating Receiver ("Liquidating Receiver") of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH"), submit this memorandum in reply to the memorandum of Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively the "Prospect Defendants") in support of their objections to the motions of the Plan Receiver and the Liquidating Receiver for injunctive relief and to compel production.

HISTORY AND TRAVEL

The history and travel relevant to these motions is set forth in the two memoranda filed by the Plan Receiver and the Liquidating Receiver, first on February 7,

2020 in support of their joint motion for injunctive relief, and then on February 20,2020 in support of their joint motion to compel production of documents.

ARGUMENT

I. Introduction

The Prospect Defendants' opposition to the motions of the Plan Receiver and the Liquidating Receiver for injunctive relief and to compel production seeks to deprive the Plan Receiver and the Liquidating Receiver both of essential contractual rights and of rights obtained pursuant to carefully drafted and heavily negotiated stipulations that were entered as orders of the Court. Indeed, they ask the Court to preclude the Plan Receiver and the Liquidating Receiver from exercising their rights, based on incomplete and often misleading characterizations of communications, which are contradicted by the record in this case.

The Prospect Defendants thereby seek to force the Plan Receiver and the Liquidating Receiver into the position of having to choose between either blindly exercising the Put option in ignorance of the value thereof, or waiving the right to exercise the option and instead retaining CCCB's interest in Prospect Chartercare, LLC, notwithstanding that the Receivers lack the information necessary to determine the value of that retained interest. They also seek thereby to block the Receivers' undisputed contractual right to direct access to Prospect Chartercare, LLC's books and records, so that the facts crucial to the evaluation of the Put option and the enforcement of CCCB's rights as a member in Prospect Chartercare, LLC may continue to be kept from the Receivers.

In addition to violating the Plan Receiver and the Liquidating Receiver's essential contractual rights and their rights pursuant to stipulations and court orders, the result

sought by the Prospect Defendants would be completely inequitable to the Plan participants and to CCCB's receivership estate, and would reward the Prospect Defendants for withholding information in violation of their breach of their duty of good faith and fair dealing in connection with the Put option.

II. The Prospect Defendants improperly conflate the Plan Receiver and the Liquidating Receiver's joint motions for injunctive relief with their joint motions to compel production of documents

The Prospect Defendants have chosen to file a single memorandum in support of their objections to the two joint motions of the Plan Receiver and the Liquidating Receiver for injunctive relief and to compel production. However, those motions raise separate issues.

On March 13, 2019, more than one year ago, CCCB filed its motion for injunctive relief, to pursue CCCB's contractual right to direct access to Prospect Chartercare, LLC's books and records. The Stipulation of April 25, 2019 ("the April 25th Stipulation and Consent Order") was entered into after CCCB's motion for injunctive relief had been filed but before the Prospect Defendants filed any opposition thereto. It postponed the proceedings for injunctive relief, extended the time for exercising the Put option, and conferred two separate and independent rights upon the Plan Receiver and the Liquidating Receiver, and two separate and independent obligations upon the Prospect Defendants corresponding to those rights. The two motions of the Receivers are addressed to those separate and independent rights.

First, CCCB (and now the Liquidating Receiver) were afforded the right to obtain information and documents from the Prospect Defendants, and the Prospect Defendants were obligated to provide that information and documents, as follows:

> On or before May 15, 2019, PCC will provide CCCB with financial information in connection with CCCB's evaluation of the "put option" as requested by CCCB in correspondence dated September 20, 2018, October 2, 2018, October 3, 2018, and November 6, 2018. **Thereafter, CCCB may by email request such additional information as CCCB reasonably requires in connection with the evaluation of the "put option" under the Prospect Chartercare, LLC Agreement (the "LLC Agreement"), and PCC will provide such information within fifteen (15) days of such email(s), provided the information is available.**

April 25th Stipulation and Consent Order ¶ 2 (emphasis supplied). Moreover, the Plan Receiver was a signatory to the April 25th Stipulation and Consent Order and was expressly identified therein as the beneficiary of such rights:

> CCCB shall be authorized to share information produced by PCC with Stephen Del Sesto, the Receiver for St. Joseph's Health Services of Rhode Island Retirement Plan ("the Receiver"), and each of their respective attorneys, accountants and experts solely for the purpose of evaluating the "put option" so that the Receiver may participate fully and without restriction in the valuation and exercise of the "put option".

April 25th Stipulation and Consent Order ¶ 2.

Second, initially CCCB and the Plan Receiver, and then the Plan Receiver acting alone after the federal court approved Settlement A,[1] were entitled to activate CCCB's motion for injunctive relief, to pursue CCCB's contractual right to direct access to Prospect Chartercare, LLC's books and records:

> The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety (90)

[1] The federal court gave final approval to Settlement A on October 9, 2019, after this Court gave preliminary approval on November 16, 2018.

> day period commencing September 21, 2019 and ending on December 20, 2019. **If in the judgment of CCCB and the Receiver (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) the option cannot in good faith be appraised and exercised by December 20, 2019 based on the information received, then, prior to the expiration of the period, CCCB (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) reserves the right to seek a hearing on the already pending injunctive relief motion** (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request.[2] The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.

April 25th Stipulation and Consent Order ¶ 3 (emphasis supplied).

Most importantly, the Plan Receiver's right to proceed with the motion for injunctive relief was conditioned only upon his concluding in his sole judgment that "the option cannot in good faith be appraised and exercised by December 20, 2019 based on the information received…" The Plan Receiver was not required to prove that the Prospect Defendants failed to provide CCCB with all of the documents and information that CCCB requested.

[2] Movants are asking the Court to extend the date for exercise of the Put option to ninety (90) days after there is compliance with the requested Order granting injunctive relief and compelling production, as discussed in their initial and supplemental memoranda in support of their motions.

In other words, at no time did CCCB or the Plan Receiver waive the right to direct access to Prospect Chartercare, LLC's books and records in return for document production by the Prospect Defendants.

Accordingly, CCCB and the Plan Receiver's right of direct access to Prospect Chartercare, LLC's books and records was not dependent upon a showing that Prospect Chartercare, LLC failed to produce requested documents. Similarly, CCCB and the Plan Receiver's right to obtain previously requested documents from the Prospect Defendants was not dependent or conditioned upon proof that CCCB and the Plan Receiver were entitled to direct access to Prospect Chartercare, LLC's books and records. Each of these rights is separate and independent.

III. The Plan Receiver and the Liquidating Receiver were entitled to request documents and information on January 21, 2020 and January 30, 2020 and to re-institute CCCB's motion for injunctive relief up to February 10, 2020

The April 25th Stipulation and Consent Order was twice extended by stipulation and order, first on October 3, 2019, and second on November 22, 2019, and those extensions expressly preserved CCCB's right to request additional information and documents.

The October 3, 2019 Stipulation and Consent Order states as follows:

> 1. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety-two (92) day period commencing October 21, 2019 and ending on January 21, 2020. If in the judgment of CCCB and the Receiver (or solely the Receiver if the settlement is approved by the Federal Court prior to such date) the option cannot in good faith be appraised and exercised by January 21, 2020 based on the information received, then, prior to the expiration of the period, CCCB (or solely the Receiver if the settlement is approved by the Federal Court prior to such

> date) reserves the right to seek a hearing on the already pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.
>
> 2. All other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect.

October 3, 2019 Stipulation and Consent Order ¶¶ 1-2. The second paragraph stating that "[a]ll other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect" preserved CCCB's right pursuant to the April 25, 2019 Stipulation and Consent Order to obtain information and documents from the Prospect Defendants, and the obligation of the Prospect Defendants to provide such information and documents within 15 days of the request.

The November 22, 2019 Stipulation and Consent Order is essentially identical to the October 3, 2019 Stipulation and Consent Order except that it further extends the time, and states as follows:

> 1. The parties to the LLC Agreement agree to modify the ninety (90) day period within which the put option created in Section 14.5 of the LLC Agreement can be exercised to the ninety-one (91) day period commencing November 11, 2019 and ending on February 10, 2020. If in the judgment of the Receiver the option cannot in good faith be appraised and exercised by February 10, 2020 based on the information received, then, prior to the expiration of the period, the Receiver reserves the right to seek a hearing on the already

> pending injunctive relief motion (filed on March 18, 2019) heard by the Court as soon as reasonably practical; and to ensure the exercise period does not expire while that motion is pending, the option exercise period shall be extended for an additional period extending for twenty (20) business days following the entry of an order by the Court on the request for a further extension of the option exercise period, provided, however that the extension during the pendency of the motion shall not exceed thirty (30) days from the date of the hearing on the request. The provisions of Section 14.6 of the LLC Agreement regarding the valuation process are not affected by this agreement except as expressly provided herein.
>
> 2. All other provisions of the Stipulation and Consent Order entered on April 25, 2019 remain in full force and effect.

November 22, 2019 Stipulation and Consent Order ¶¶ 1-2. Again, the second paragraph stating that "[a]ll other provisions of the Stipulation and Consent entered on April 25, 2019 remain in full force and effect" preserved CCCB's right pursuant to the April 25th Stipulation and Consent Order to obtain information and documents from the Prospect Defendants, and the obligation of the Prospect Defendants to provide such information and documents within 15 days of each request.

Accordingly, CCCB retained the right through February 10, 2020 to request additional documents and information, and the Prospect Defendants remained obligated to provide that information.

Similarly, the Plan Receiver retained the right at any time up to and including February 10, 2020 to activate CCCB's motion for injunctive relief, if, in the Plan Receiver's sole judgment, "the option cannot in good faith be appraised and exercised by February 10, 2020 based on the information received."

IV. The requested documents have not been produced

The documents requested in the joint letters of the Plan Receiver and the Liquidating Receiver on January 21, 2020 and January 30, 2020 are necessary and, contrary to Defendants' representations, have not already been produced. In fact, the list of documents attached to the January 21, 2020 request was prepared by the Plan Receiver's consultant ECG (who will be the Receiver's appraiser if the option is exercised), who has already reviewed all of the documents that have been produced. The list is of documents Movants do not already have but need to evaluate the Put option.

The claim by the Prospect Defendants that there has been complete production is simply false. An example that demonstrates the falsity of that claim is Prospect's contention that it has provided "detailed records of the $50 million in capital contributed to PCC." Prospect's Memo. ¶ 24. That is a key issue because CCCB's interest in Prospect Chartercare, LLC is more valuable to the extent of that contribution. For example, if CCCB has a 15% interest in Prospect Chartercare, LLC, the $50 million capital contribution arguably would likely increase the value of that interest by $7.5 million as a matter of simple math.

To appreciate the falsity of the Prospect Defendants' claim that they produced all of the relevant documents, it is necessary to define what the obligation to make the $50 million capital contribution entails. The LLC Agreement provisions concerning the Long-Term Capital Contribution define that term as requiring payment by Prospect East or Prospect Medical Holdings to Prospect Chartercare, LLC of $50 million under specific terms and conditions, as follows:

> The Prospect Member hereby commits to make additional Capital Contributions to the Company in an aggregate amount of the Long-Term Capital Commitment, to be made within four (4) years of the date of this Agreement at such times and in such increments as the Board of Directors causes the Manager to request. With respect to each request for a Capital Contribution from the Prospect Member pursuant to the Long-Term Capital Commitment: (i) such request shall be supported by a return on investment calculation or a material needs assessment (in each case, acceptable to both Members); and (ii) the Capital Contribution shall neither reduce CCHP's interest or Units in the Company nor increase the Prospect Member's interest or Units in the Company.

Verified Complaint Ex. 1 (LLC Agreement) § V 4.2 (b). Thus, to qualify as a Long-Term Capital Contribution, the Prospect Defendants must document that the payment was made:

1. within 4 years of June 20, 2014;
2. at the request of the Manager of Prospect Chartercare**,** LLC; and
3. pursuant to either a return-on-investment analysis of a capital needs assessment that was
4. acceptable to (i.e. approved by) both CCCB and Prospect East.

However, the Prospect Defendants have not produced a single request for a capital contribution, return on investment calculation, or material needs assessment. They also have not provided a single document evidencing that CCCB was ever given the opportunity to accept a capital contribution, much less that CCCB ever actually accepted any proposed capital contribution.

Moreover, the documents that the Prospect Defendants have produced concerning their alleged long-term capital contributions show nothing of the sort. For example, the Prospect Defendants have produced a number of sale-leaseback agreements for medical equipment, which they apparently contend evidence long-term

capital contributions. However, there are no return on investment calculations or material needs assessments for those transactions, and no evidence that CCCB was ever given the opportunity to approve these as a capital contribution, much less that CCCB even accepted any proposed capital contribution.

Moreover, the sale-leaseback transactions are between Prospect Medical Holdings as lessee and a financing bank as lessor, and the Prospect Defendants have produced no documents whatsoever showing that Prospect Chartercare, LLC has any rights whatsoever in that equipment. Indeed, the sale-leaseback agreements provide that *Prospect Medical Holdings* (and not Prospect Chartercare, LLC) can buy the equipment for $1 after the lease payments have been made, which is further evidence that this arrangement is not a capital contribution to Prospect Chartercare, LLC. If it is a capital asset of anyone, it belongs to Prospect Medical Holdings. The Prospect Defendants have not produced to the Plan Receiver and Liquidating Receiver the current financial statements for Prospect Chartercare, LLC, but the financial statements they have produced do not show the equipment covered by these sale-leaseback transactions as assets of Prospect Chartercare, LLC, which conclusively proves that they are not capital contributions to Prospect Chartercare, LLC.

Similarly, although the Prospect Defendants have produced documents claiming that losses experienced by medical practices *after* they were acquired by Prospect Chartercare, LLC are long-term capital contributions by Prospect Medical Holdings, such losses would not be capital contributions even if Prospect Medical Holdings was liable for them. Moreover, in fact, the Prospect Defendants have produced no documents suggesting that Prospect Medical Holdings paid or is liable for such losses.

In short, the only documents that the Prospect Defendants have produced concerning alleged long-term capital contributions raise more questions than they answer, and suggest that the Prospect Defendants are attempting to mislead CCCB by now falsely claiming that certain transactions were capital contributions, when they were nothing of the sort. That would explain why the Prospect Defendants have failed to produce proper documentation for the long-term capital contributions, and why they oppose the motions of the Plan Receiver and the Liquidating Receiver to compel production of those documents and for an injunction giving them direct access to the books and records of Prospect Chartercare, LLC.

V. The Receivers require direct access to Prospect Chartercare, LLC's books and records

The Prospect Defendants claim that the Receivers' request "for an injunction requiring PCC to make 'books and records' available…is of little consequence since PCC has already produced extensive financial records including…detailed records of the $50 million dollars in capital contributed to PCC." Prospect's Memo. ¶ 24.

To the contrary, the right to direct access is of enormous consequence. Indeed, it is the only way the Receivers can get to the truth. The process of the Prospect Defendants making selective production of documents has served only to conceal Prospect Chartercare, LLC's true financial condition from the Receivers. Moreover, even the Prospect Defendants do not dispute that the Receivers have a clear contractual right to such direct access. Accordingly, the Receivers are not only entitled to exercise that right, but in fact have a duty to enforce that right. Much more likely, however, such direct access will prove that the Prospect Defendants have used their control over the document production to conceal the truth.

VI. CCCB's prior motion to compel production is irrelevant

As detailed in the Plan Receiver and Liquidating Receiver's supplemental memorandum in support of CCCB's motion for injunctive relief, the Prospect Defendants on October 3, 2019 and again on November 22, 2019 agreed to extend the time for CCCB to obtain documents and information concerning the Put, and for the Plan Receiver to re-institute the motion for injunctive relief.

Nevertheless, the Prospect Defendants now argue that the Court's order on October 3, 2019 in connection with a motion to compel production filed by CCCB on August 13, 2019 somehow deprived the Plan Receiver and the Liquidating Receiver of rights that were extended on October 3, 2019 and again on November 22, 2019. That argument is chronologically impossible.

That argument both is illogical and requires the Prospect Defendants to mischaracterize the Court's order in connection with CCCB's motion to compel.

On August 19, 2019, CCCB filed an Expedited Motion to Compel Production of Documents from Prospect Chartercare, LLC and the other Prospect Defendants in response to CCCB's August 1, 2019 request for information, which the Prospect Defendants had obstinately ignored in violation of their obligations under the April 25th Stipulation and Consent Order. That motion stated in its entirety:

> Now comes CharterCARE Community Board ("CCCB") and hereby moves for an Order compelling production of documents from Prospect Chartercare, LLC, and related entities.
>
> Pursuant to prior Order of this Court, entered April 25, 2019, the parties stipulated that Prospect Chartercare, LLC ("PCC") would supply financial information in connection with CCCB's evaluation of the "put option" owned by CCCB. The Stipulation and Consent Order further provided that CCCB could by email

> request additional information as reasonably required in connection with the evaluation and that PCC "will provide such information within fifteen (15) days of such emails, provided the information is available." CCCB has engaged ECG Management Consultants in regard to the evaluation. By email dated August 1, 2019, CCCB, through its counsel, submitted a request for information to counsel for PCC. A copy of that email and attached request for information are attached to this motion, along with a copy of the Stipulation and Consent Order.
>
> CCCB received no response to the initial August 1, 2019, request and no response to its renewed request by email dated August 13, 2019.
>
> CCCB is entitled to the information requested and, furthermore, needs that information so that its expert can evaluate the "put option."
>
> The Stipulation and Consent Order envisioned a resolution of any dispute as to relevance of any request and information to be decided by this Court "on an expedited basis from Judge Stern." What was not anticipated by CCCB was total silence from PCC, but it is entitled to immediate relief.
>
> CCCB seeks an order compelling immediate compliance with the August 1, 2019, request for information.
>
> WHEREFORE, CCCB prays that its motion to compel be granted and for such other relief as the Court deems just.

CharterCARE Community Board's Expedited Motion to Compel Production at 1-3.

The Prospect Defendants contend that the Court has already ruled on the August 19, 2019 motion to compel, and, therefore, movants cannot seek the instant relief. That is incorrect. The Order dated October 3, 2019 to which the Prospect Defendants point stated that the motion "may be continued nisi and will pass upon compliance set forth herein." Prospect Defendants' Exhibit D at 1. That motion remains (at most) passed, i.e. neither granted nor denied.

The Plan Receiver and the Liquidating Receiver filed their own joint motion to compel production on February 20, 2020, and to the extent there is any overlap in the description of the documents they are seeking and the description of the documents initially requested by CCCB in connection with its motion to compel production filed on August 13, 3019, it is because those documents were not produced. It should be emphasized that the Prospect Defendants have not and cannot offer any evidence demonstrating they have already produced any of the documents sought by the Plan Receiver and the Liquidating Receiver in their requests made on January 21, 2020 and January 30, 2020.

Astoundingly, even today, the Prospect Defendants have not produced any documents demonstrating once and for all whether they have actually fulfilled their obligations to make the $50 million Long Term Capital Contributions to the hospitals, as required by both the LLC Agreement and the Hospital Conversion Act approvals in 2014. The only documents the Prospect Defendants have produced actually demonstrate the opposite.

In any event, nothing in the Court's Order of October 3, 2019 derogates from the Prospect Defendants' obligations under the April 25th Stipulation and Consent Order, as extended on October 3, 2019 and again on November 22, 2019, to produce responsive documents and information within fifteen days of CCCB and the Plan Receiver's emails.

VII. There was no agreement to waive rights

The Prospect Defendants, through the Affidavit of Preston W. Halperin attached to the their opposition papers, focus on discussions between counsel concerning what procedure would be followed if the Put option were exercised, to ensure that the

appraisers tasked with valuing CCCB's interests had the necessary documents. See id. at ¶ 13.

The Prospect Defendants do not allege, however, any agreement oral or written waiving the rights of the Plan Receiver and Liquidating Receiver to obtain the documents they need to make an informed decision whether to exercise the Put option, or, instead, allow the option to expire and have CCCB stay on a minority shareholder. It is the Plan Receiver and Liquidating Receiver's rights to those documents and information that are the subject of the Motion for Injunctive Relief and the Motion to Compel Production of documents.

The Prospect Defendants do not even allege that the Liquidating Receiver and Plan Receiver ever agreed that they had all the necessary documents to make the decision whether or not to exercise the Put option. To the contrary, the Halperin Affidavit notes that Attorney Halperin told the Liquidating Receiver that all necessary documents had been produced, and the Liquidating Receiver disagreed. See id. at ¶ 7. The Halperin Affidavit alleges that in a phone call with the Plan Receiver that apparently took place on or before January 9, 2020, Attorney Halperin stated "that PCC had fully complied with the prior orders to produce financial records" and that "Attorney Del Sesto did not disagree." See id. at ¶ 8. That hardly constitutes an agreement!

Moreover, the April 25th Stipulation and Order (to which the Prospect Defendants expressly agreed) gave the Liquidating Receiver and the Plan Receiver the prospective right to request documents at any time up to the exercise of the Put option, and obligated the Prospect Defendants to comply with such requests. That is exactly what happened, when the Plan Receiver and Liquidating Receiver requested additional documents on January 21, 2020. The Prospect Defendants breached their obligations

under the April 25th Stipulation and Order when they failed to comply with those requests. Thus, it is irrelevant to either the Motion for Injunctive relief or the Motion to Compel whether on January 9, 2020 the Prospect Defendants were in full compliance with all prior orders.

There certainly was no agreement between the parties that the Plan Receiver and Liquidating Receiver were bound to exercise the Put option. That much is clear from counsels' statements on the record in open hearing, at hearings on January 9, 2020 and January 13, 2020.

On January 9, 2020, the Plan Receiver informed the Court on the record, and in the presence of the Prospect Defendants' counsel, that:

> I did have a discussion with Attorney Halperin last night, which I will say was left open, on the exercise of the put. The result of that discussion or the last communication I had back from Attorney Halperin was that he stated his - I'm not sure if it was his preference. I'll take it as that it was his preference - that the plan Receiver, me, along with Attorney He[m]mendinger, as the liquidating Receiver, whoever has to do it or both of us, exercise the put option and then the parties will stipulate that the formal appraisal period will not begin to run until we have the appraisers that we all agree to and we have identified the universe of information that those appraisers will look at to do the valuation. That is subject to him actually engaging in a discussion with the appraiser that his client has recently told him to engage in discussion. He has not been able to do so yet.
>
> So I'm letting your Honor know this because we are running up to the February 10th timeframe. I am not adverse to Attorney Halperin's suggestion because as long as we do have that time where the parties can deliberately identify these appraisers and that information. I, obviously, do have concerns about what happens if we can't agree or how much time goes by. I guess I'm asking the Court to schedule a status conference maybe as soon as Monday or subject to your

> Honor's schedule as soon as your Honor can do it and thinks it's reasonable so Attorney Halperin can report back either to me or to the Court for status of their search for an appraiser so we can identify where we are in that process and maybe formalize a stipulation in line with what he communicated with me last night. Of course, I'm not sure if his client has given him authorization for that. That was text messages between he and I and phone calls. I believe it' s appropriate because we are running very close. We're on the 9th day of January now. So we' re just outside of 30 days where the put would have to be exercised.

January 9, 2020 Hearing Tr. at 10-11. The Court responded:

> I am happy to hear that if there is a put, the parties are already talking about how that process will proceed forward.

January 9, 2020 Hearing Tr. at 15.

At the hearing on January 13, 2020, there was still no agreement as to whether (vel non) the put option would indeed be exercised:

> MR. DEL SESTO: Your Honor, I do want to place on the record that **while all of these discussions are moving towards whether or not the put will be exercised, it is likely that that will happen but we have not definitively exercised that** but I just want to make that clear for the record.
>
> MR. FRAGOMENI: Good afternoon, your Honor. Chris Fragomeni for the Prospect entities. **I appreciate that clarification by Mr. Del Sesto because I was going to say just for the record I don't believe anything has been formally been initiated yet so I do appreciate that clarification.** I can confirm Mr. Del Sesto's representations that ECG is acceptable to Prospect with the caveat as Mr. Del Sesto indicated that ECG satisfies Section 14.6(c) of the agreement which requires they have substantial experience in the area and have conducted three hospital valuations within a 24-month period. So long as those criteria are met, ECG is acceptable to Prospect. Thank you, your Honor.

January 13, 2020 Hearing Transcript at 4 (emphasis supplied).

Then on January 28, 2020, counsel for the Prospect Defendants sent the Plan Receiver's counsel the following email, which is attached hereto at Tab1:

> All –
>
> Prospect has selected Healthcare Appraisers as its Qualified Appraiser under the LLC Agreement, although **Prospect does not concede that any process has been initiated relative to Section 14.5 or 14.6 of the LLC Agreement.** Please confirm that Healthcare Appraisers is acceptable under our agreement.
>
> For purposes of efficiency, would you consent to ECG and Healthcare Appraisers collaborating to identify a scope of documents necessary for their value determination?
>
> Thanks,
>
> Chris
>
> Christopher Fragomeni, Esq.

Tab 1 (emphasis supplied). The "process relative to Section 14.5 or 14.6 of the LLC Agreement" is the process for exercising the Put option.

That lack of agreement concerning whether or not to exercise the Put option is also reflected in the Court's Order entered on January 31, 2020 in the Plan Receivership, clarifying the Court's prior Order of November 16, 2018:

> The notice requirement contained in the Order entered on November 16, 2018 does not apply to the Plan Receiver's direction of CharterCARE Community Board or the Liquidating Receiver **to exercise the Put Option at such time (if any)** as the Plan Receiver may select.

Order entered January 31, 2020 (emphasis supplied). That Order was circulated to all counsel, including counsel for the Prospect Defendants, and there was no objection.

VIII. Plaintiffs are entitled to information and documents concerning Prospect Chartercare's liability for the debts of others, including Prospect Medical Holdings, as well as concerning pending transactions that are or may be in any way contingent upon or possibly affected by whether or not the Put option is exercised

Prospect Chartercare objects to being required to produce documents and information in response to the following joint request to the Prospect Defendants by the Plan Receiver and the Liquidating Receiver on January 30, 2020 for documents concerning the following:

1. The extent to which the real and/or personal property of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC is securing any obligations of any other entity or individual;

2. The assets and liabilities of those entities or individuals whose obligations are secured by the assets of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC, and the ability of those entities and individuals to repay the secured debt; and

3. Any pending or contemplated transactions involving or affecting Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and/or Prospect Chartercare RWMC, LLC that are or may be in any way contingent upon or possibly affected by whether or not the Put option is exercised.

4. The following financial statements for each of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC for the 2016, 2017, 2018 and 2019 fiscal years and the most recent fiscal year-to-date statements for 2020:

> income statements; year-end balance sheets; and statements of cash flows. If any of these statements were CPA-prepared or audited, even in draft form, we request those versions.

Joint Motion of Plan Receiver and Liquidating Receiver to Compel Documents Ex. 2.

The Prospect Defendants claim that information is irrelevant. However, the April 25th Stipulation and Consent Order gave CCCB and the Plan Receiver the right to "such additional information as CCCB reasonably requires in connection with the evaluation of the 'put option' under the Prospect Chartercare, LLC Agreement…" The January 30, 2020 request was explained as follows:

> This information is essential for the Receiver to make an informed decision whether to exercise the Put option. We are especially concerned that it appears that such security interests may have been given to enable corporate insiders to improperly siphon off at least 457 million dollars. In that case, rather than exercising the Put option, it may make more economic sense for the Receiver to retain CharterCARE Community Board's interest in Prospect Chartercare, LLC, and to pursue the lawsuit already commenced by CharterCARE Community Board against Samuel Lee, David Topper, and others for breach of contract, breach of fiduciary duty, fraudulent transfers and other corporate wrongdoing.
>
> The Consent Order and Stipulation entered on April 25, 2019 expressly obligates your clients to provide "such additional information as CCCB reasonably requires in connection with the evaluation of the 'put option' under the Prospect Chartercare, LLC Agreement…" Accordingly, that Consent Order and Stipulation obligates your clients to comply with this and the earlier request for information.

Joint Motion of Plan Receiver and Liquidating Receiver to Compel Documents Ex. 2.

There was no response whatsoever to this request until the Prospect Defendants filed their memorandum on March 3, 2020.

"[T]he evaluation of the 'put option'" necessarily encompasses the evaluation of whether Prospect Chartercare, LLC is liable for the debts of Prospect Medical Holdings, and whether Prospect Medical Holdings is unable to pay its debts because it has been stripped of assets by its shareholders, such that the assets of Prospect Chartercare reasonably can be expected to be used to pay the debts of Prospect Medical Holdings. In that event, rather than exercising the Put option, it would likely make more sense to remain a minority shareholder in Prospect Chartercare, LLC and pursue the derivative action against Prospect Chartercare, LLC's officers and directors who exposed Prospect Chartercare, LLC to that liability in order to benefit Prospect Medical Holdings. That analysis is surely relevant to "the evaluation of the 'put option'."

"[T]he evaluation of the 'put option'" also necessarily encompasses the evaluation of any pending transactions that do or may in any way affect the value of CCCB's interests in Prospect CharterCARE, LLC. In fact, since the Prospect Defendants' filed their objection to the motion of the Plan Receiver and the Liquidating Receiver for injunctive relief, movants learned fortuitously[3] that the Prospect Defendants are seeking regulatory approval from the Rhode Island Department of Health for Prospect Medical Holdings to transfer at least $11,940,992 (plus an unspecified amount required to buy-out an unspecified number of options at an unspecified price per option to unspecified recipients), to investment vehicles of a private equity firm (Leonard Green) that is the majority shareholder in an entity that ultimately owns the parent company of Prospect Medical Holdings. That application for regulatory approval is

[3] It was inexcusable for the Prospect Entities not to give advance notice of this application to CCCB, who owns 15% at a minimum of Prospect Chartercare, LLC, and is the beneficiary of Prospect Medical Holdings's guarantee of Prospect East Holdings's payment of the $50 million capital contribution.

obtainable on the Department of Health's website at https://health.ri.gov/systems/about/requests/. The objection of the Plan Receiver and the Liquidating Receiver to that application is attached hereto at Tab 2.

If allowed, that transfer would materially affect the value of CCCB's interest in Prospect Chartercare, LLC by depriving CCCB of any meaningful recovery from Prospect Medical Holdings based upon Prospect Medical Holdings's guaranty of Prospect East Holdings's obligation to make the $50 million long term capital contributions. That would be a significant factor in determining whether then Plan Receiver and Liquidating Receiver should exercise the Put option.

In fact, the proposed transfer would strip substantial assets from Prospect Medical Holdings, leaving it hopelessly insolvent. That point is discussed in a letter dated June 4, 2020, which is attached hereto at Tab 3, from four Members of the U.S. Congress to Leonard Green demanding that Leonard Green return $453 million in debt-funded dividends that it was paid by Prospect Medical Holdings. The Plan Receiver and the Liquidating Receiver need to fully understand the proposed transfer and the broader pattern of fraudulent transfers by Prospect Medical Holdings.

CONCLUSION

The Court should enter an order overruling the Prospect Defendants' objections and granting the Plan Receiver and the Liquidating Receiver the relief requested in their joint motions for injunctive relief and to compel production of documents.

Respectfully submitted,

Stephen Del Sesto as Plan Receiver,
By his Attorney,

/s/ Max Wistow
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Stephen P. Sheehan, Esq. (#4030)
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CharterCARE Community Board,
by its Attorneys

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger (#3122)
Permanent Liquidating Receiver of CharterCARE Community Board, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island
Ronald F. Cascione (#2277)
Lisa M. Kresge (#8707)
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Dated: June 18, 2020

Case Number: PC-2019-3654
Filed in Providence/Bristol County Superior Court
Submitted: 6/18/2020 2:28 PM
Envelope: 2631021
Reviewer: Rachel L.

CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of June, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

Tab 1

From: Christopher J. Fragomeni
To: sdelsesto@pierceatwood.com; themmendinger@brcsm.com
Cc: Stephen P. Sheehan; Max Wistow; Benjamin Ledsham; Preston Halperin; Dean Wagner; Edward D. Pare; Jeremy B. Savage
Subject: Prospect Valuation Expert
Date: Tuesday, January 28, 2020 9:42:49 PM

All –

Prospect has selected Healthcare Appraisers as its Qualified Appraiser under the LLC Agreement, although Prospect does not concede that any process has been initiated relative to Section 14.5 or 14.6 of the LLC Agreement. Please confirm that Healthcare Appraisers is acceptable under our agreement.

For purposes of efficiency, would you consent to ECG and Healthcare Appraisers collaborating to identify a scope of documents necessary for their value determination?

Thanks,
Chris

Christopher Fragomeni, Esq.
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Tab 2

Case Number: PC-2019-3654
Filed in Providence/Bristol County Superior Court
Submitted: 6/18/2020 2:28 PM
Envelope: 2631021
Reviewer: Rachel L.

Center for Health Systems Policy and Regulation

Rhode Island Department of Health
x----------
In re: Change in Effective Control Applications
by Prospect Chartercare RWMC, LLC and
Prospect Chartercare SJHSRI, LLC, et al.

x----------

OBJECTION BY THOMAS HEMMENDINGER AS LIQUIDATING RECEIVER FOR CHARTERCARE COMMUNITY BOARD AND STEPHEN DEL SESTO AS RECEIVER FOR ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN TO THE CHANGE IN EFFECTIVE CONTROL APPLICATIONS FILED PURPORTEDLY[1] BY PROSPECT CHARTERCARE RWMC, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, AND OTHER PROSPECT ENTITIES

This is a time when the importance of hospitals to our communities and our society as a whole needs no discussion. Common sense dictates that anything that can help hospitals and other health care facilities—whether for-profit or non-profit—in fulfilling their roles must be encouraged.

However, the principal purpose of the change in effective control applications ("CECAs") is nothing other than to benefit two individuals, Samuel Lee and David Topper, and private equity investors, who have already taken hundreds of millions of dollars in "dividends"[2] through the operation of for-profit hospitals they control. Lee and Topper seek by this CECA to become the 100% owners of the entity at the top of the ownership chain. Lee and Topper alone have withdrawn more than $155 million in dividends after assurances were made to the Rhode Island Department of Health and the Rhode Island Attorney General that no such further dividends would be taken, after

[1] In fact, the sole applicant is Chamber, Inc., as discussed below.

[2] Whether these payments were improper and not properly characterized as dividends is not addressed herein, but we reserve all rights to address those issues at the appropriate time.

questions had been raised about $33 million in dividends taken in 2013 by those individuals.

Thomas Hemmendinger, as the court-appointed permanent liquidating receiver ("Liquidating Receiver") of CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Roger Williams Hospital, and Stephen Del Sesto, as the court-appointed permanent receiver ("Plan Receiver") for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby object to the CECAs purportedly[3] filed by or on behalf of Prospect Chartercare RWMC, LLC ("Prospect RWMC"), Prospect Chartercare SJHSRI, LLC ("Prospect SJHSRI"), Prospect Blackstone Valley Surgicare, LLC, and Prospect CharterCARE Home Health Care and Hospice LLC.

The proposed change in effective control will only worsen the financial condition of the licensed hospitals and medical facilities and should be denied.

BACKGROUND

CharterCARE Community Board ("CCCB") is a non-profit corporation and the sole member in the non-profit corporation Roger Williams Hospital ("RWH") and the controlling[4] member in the non-profit corporation St. Joseph Health Services of Rhode Island ("SJHSRI"). CCCB until June 20, 2014 owned Our Lady of Fatima Hospital, Roger Williams Medical Center, and the other licensed medical facilities covered by the CECAs. These facilities (collectively the "Licensed Hospitals and Medical Facilities") were the subject of a 2014 CECA transferring ownership to Prospect Chartercare, LLC ("Prospect CharterCARE") and its newly created subsidiaries. As discussed below,

[3] See *supra* at 1 n.1.

[4] The other member in SJHSRI is the Bishop of Providence but his rights are limited to issues involving religion.

CCCB currently owns at least 15%[5] of the Licensed Hospitals and Medical Facilities, through its membership interest in Prospect CharterCARE, which is the sole member in the four[6] for-profit entities that now own the Licensed Hospitals and Medical Facilities.

Certain background information is essential to understand why the proposed application for change of effective control must be denied.

In late 2013 Prospect Medical Holdings, Inc. ("PMH" or "Prospect Medical Holdings"), Prospect East Holdings, Inc. ("Prospect East Holdings"), Prospect East Hospital Advisory Services, Inc. ("Prospect Advisory"), Prospect CharterCARE, Prospect RWMC, Prospect SJHSRI, CCCB, SJHSRI, and RWH applied for approval from the Rhode Island Department of Health and the Rhode Island Attorney General to convert the Licensed Hospitals and Medical Facilities into for-profit entities.

That application made several representations concerning CCCB that are central to the appropriateness of the application for change in effective control. These included the following:

> The model being proposed, post-conversion, provides for the not-for-profit entity, CCHP[7], to continue to maintain an ownership position in the acute care, community hospitals. In addition to maintaining an ownership position, CCHP will have equal representation on the governing board post-conversion. In this manner, the local community hospital healthcare network continues with all the advantages of that model with respect to local leadership, healthcare mission, and positive economic impact on the community.[8]

[5] CCCB contends it owns at least 27.14%, as more fully explained below.

[6] Prospect RWMC, Prospect SJHSRI, Prospect Blackstone Valley Surgicare, LLC, and Prospect CharterCARE Home Health Care and Hospice LLC.

[7] "CCHP" is CCCB. Until the for-profit conversion was approved, CCCB was named CharterCARE Health Partners, and was referred to as CCHP. However, upon the closing of the conversion on June 20, 2014, Prospect CharterCARE began operating under the fictitious name of CharterCARE Health Partners.

[8] 2013 Application at 5.

As set forth above, through the proposed transaction PMH[9] will purchase an 85% interest in the Existing Hospitals and CCHP will retain a 15% interest in the Existing Hospitals. Furthermore, CCHP will have significant stake in the continued governance of the Hospitals, as the governing board will be what has been termed above as a 50/50 Board.[10]

Prospect CharterCARE, LLC's Board of Directors will be structured as follows: (i) eight (8) members; (ii) fifty (50%) percent of its members will be appointed by PMH; and (iii) fifty (50%) percent of its members will be appointed by CCHP. The purpose of the structure is to ensure a strong local presence and mission.[11]

In addition to a routine capital investment of at least $10M per year to be reinvested by Prospect CharterCARE, LLC, PMH has committed to future capital contributions of $50M within four (4) years of the closing on the transaction ("Long-Term Funding Commitment"). The specific goals of the Long-Term Funding Commitment will be determined, post-conversion, after appropriate studies and analyses are undertaken. However, under the APA,[12] the use of the Long-Term Funding Commitment may include (i) the development and implementation of physician engagement strategies, and (ii) projects related to facilities and equipment, including but not limited to:

- expansion of the cancer center at RWMC,
- expansion of the emergency department at RWMC,
- renovation/reconfiguration of the emergency department at Fatima,
- renovation of the operating rooms at RWMC,
- conversion of all patient rooms to private rooms at both Hospitals,
- renovation and expansion of the ambulatory care center at Fatima,
- new windows at both Hospitals,
- a new generator at Fatima,
- a facelift for the facades at both Hospitals,
- access for the handicapped at the front entrances of both Hospitals.

[9] Prospect Medical Holdings, Inc.
[10] 2013 Application at 8.
[11] 2013 Application at 39.
[12] The Asset Purchase Agreement covering the sale of the assets of SJHSRI, RWH, and CCCB to Prospect entities.

> The specific capital projects to be funded will be determined by Prospect CharterCARE,[13]

The Director of the Department of Health issued his report approving the transaction on May 19, 2014. That approval relied upon the above-quoted representations, by noting the following elements of the proposed conversion:

> In addition to the purchase price, Prospect CharterCARE, LLC proposes to reinvest a minimum of $10 million per year in routine capital investments at the new hospitals. PMH has also committed to a future contribution of $50 million within four years of the closing on the transaction. This "long term funding commitment" may include: (a) the development of and implementation of physician engagement strategies and (b) projects related to facilities and equipment, including but not limited to:
>
> 1) expansion of the cancer center at Newco RWMC,
>
> 2) expansion of the emergency department at Newco RWMC,
>
> 3) renovation/reconfiguration of the emergency department at Newco Fatima,
>
> 4) renovation of the operating rooms at Newco RWMC,
>
> 5) conversion of all patient rooms to private rooms at both new hospitals,
>
> 6) renovation and expansion of the ambulatory care center at Newco Fatima,
>
> 7) new windows at both new hospitals,
>
> 8) a new generator at Newco Fatima,
>
> 9) a renovation to the facades at both new hospitals.
>
> Whether the long term funding commitment is spent on physician engagement strategies or one or more of the listed capital projects will depend on the results of studies and analyses to be undertaken after the conversion is approved.[14]

[13] 2013 Application at 8-9.

[14] DOH Approval at 9.

The application for the hospital conversion included the Limited Liability Company Agreement ("LLC Agreement") to be entered into by Prospect East Holdings and CCCB.[15] That LLC Agreement made detailed provision for the obligation of Prospect East Holdings (guaranteed by PMH) to make $50 million in long-term capital contributions over four years.

> (b) The Prospect Member[16] hereby commits to make additional Capital Contributions to the Company[17] in an aggregate amount of the Long-Term Capital Commitment, to be made within four (4) years of the date of this Agreement[18] at such times and in such increments as the Board of Directors causes the Manager to request. With respect to each request for a Capital Contribution from the Prospect Member pursuant to the Long-Term Capital Commitment: (i) such request shall be supported by a return on investment calculation or a material needs assessment (in each case, acceptable to both Members); and (ii) the Capital Contribution shall neither reduce CCHP[19]'s interest or Units in the Company nor increase the Prospect Member's interest or Units in the Company.

LLC Agreement § 4.2(b).

Thus, to qualify as a Long-Term Capital Contribution, Prospect East Holdings must document that the payment was made:

1. within 4 years of June 20, 2014;
2. at the request of the Manager of Prospect CharterCARE; and
3. pursuant to either a return-on-investment analysis of a capital needs assessment that was
4. acceptable to (i.e. approved by) both CCCB and Prospect East.

[15] CECA at 43 (referring to Exhibit 10A-8) (LLC Agreement).

[16] Prospect East Holdings, Inc.

[17] Prospect CharterCARE.

[18] June 20, 2014

[19] As noted, "CCHP" in this context refers to CharterCARE Health Partners, which is the former name of CharterCARE Community Board.

CharterCARE Community Board was required by a subpoena issued in the Receivership Proceeding to produce all of its documents concerning Prospect CharterCARE, but CCCB did not have in its records a single request by Prospect CharterCARE's Manager for a capital contribution, return on investment calculation, material needs assessment, request for acceptance by CCCB, or even a single document evidencing that CCCB was ever given the opportunity to accept or reject a capital contribution.

In August 2017, SJHSRI filed a petition seeking to place the St. Joseph Health Services of Rhode Island Retirement Plan in receivership, alleging that the Plan was inadequately funded. Stephen Del Sesto was appointed by the Superior Court as Receiver of the Plan, and Wistow, Sheehan & Loveley, P.C. was appointed as special counsel to the Plan Receiver. Wistow, Sheehan & Loveley, through subpoenas issued in the Receivership Proceeding, obtained hundreds of thousands of documents which revealed that the original hospital conversion in 2014 was accomplished through a fraudulent scheme perpetrated on the Department of Health, the Rhode Island Attorney General, the unions representing Plan participants, Plan participants, and the general public. This scheme only became known as a result of an approximately eight-month investigation that was conducted under the orders and supervision of the Rhode Island Superior Court following the failure of the Plan.

Based on that investigation, the Plan Receiver and seven representative Plan participants (acting on behalf of the over 2,700 Plan participants, and their beneficiaries)

brought suit on June 18, 2018, by filing a complaint[20] in the United States District Court for the District of Rhode Island against fourteen defendants, including CCCB, PMH, Prospect CharterCARE, Prospect SJHSRI, and Prospect RWMC, seeking damages and other relief for the benefit of the Plan participants.

The claims against the Prospect entities are detailed, extensive, and raise very serious issues concerning their character and fitness to operate the Licensed Hospitals and Medical Facilities.[21] Of particular relevance to the pending CECAs are the allegations in the federal court complaint that the Prospect entities had misled the Department of Health and the Attorney General concerning CCCB's control over Prospect CharterCARE.[22] These Defendants had represented that CCCB's right to elect half the directors of Prospect CharterCARE made it "essentially a 50/50 board," when in fact "the seats filled by Prospect East had the power to make some of the most significant corporate decisions against the wishes of the directors chosen by CCCB,"[23] meaning the LLC Agreement gave Prospect East control over the key decisions for the company.[24]

The federal complaint also detailed how the Prospect entities misled the union that represented many of the Plan participants into supporting the 2014 hospital conversion, by misrepresenting the effect the proposed conversion would have on the

[20] Attached hereto as Exhibit 1. On October 5, 2018 the Plan Receiver and Plan participants filed an amended complaint, which is attached hereto as Exhibit 2. They also previously filed a companion Superior Court lawsuit, *Del Sesto et al. v. Prospect Chartercare, LLC, et al.*, PC-2018-4386, which presently remains stayed.

[21] They include claims for breach of fiduciary duty, aiding and abetting breaches of fiduciary duty, fraudulent transfer, fraud through intentional misrepresentations and omissions, fraudulent scheme, conspiracy, and civil liability for damages resulting from violation of state and federal criminal statutes. Exhibit 1 (Complaint) ¶¶ 452-555.

[22] Exhibit 1 (Complaint) ¶¶ 373-377.

[23] Exhibit 1 (Complaint) ¶ 373.

[24] Exhibit 1 (Complaint) ¶ 377.

funded status of the Plan. Beginning in August 2013, Christopher Callaci of the United Nurses & Allied Professionals had discussions with representatives from Prospect Medical who assured him that $14 million would be paid into the Plan in connection with the closing which would adequately fund the Plan, and he was provided with a bar graph purporting to show that the Pension Fund would remain adequately funded, when in fact the Prospect entities knew that the Plan would run of funds after the hospital conversion.[25]

In the petition to put the Plan into receivership filed in August 2017 (and vetted by the Prospect entities prior to its filing), filed three years after the 2014 Asset Sale, SJHSRI admitted that "**the long term issues affecting the Plan**" (emphasis supplied) had not been considered at the time of the 2014 Asset Sale. This statement alone amounted to an admission of the falsity of the representations in connection with the sale that a $14 million payment to the Plan would "stabilize" the Plan, made in connection with obtaining approval of the Department of Health and the Attorney General the 2014 Asset sale.

Four months after the federal lawsuit was brought, CCCB, SJHSRI, and RWH entered into a Settlement Agreement with the Plan Receiver (the "Settlement Agreement").[26] After intensive litigation with the Prospect entities (and others) who opposed the settlement, both the Superior Court[27] and the federal court[28] overruled those objections and approved the Settlement Agreement, certifying the individual

[25] Exhibit 1 (Complaint) ¶¶ 300-302.

[26] The Settlement Agreement is attached hereto as Exhibit 3.

[27] See Order dated November 16, 2018, attached hereto as Exhibit 4.

[28] See Memorandum and Order dated October 9, 2019, attached hereto as Exhibit 5.

plaintiffs as class representatives for purposes of that settlement. The Settlement Agreement provided for a substantial cash payment[29] and gave the Receiver control over CCCB's non-cash assets, which would be converted into cash when it was advantageous to do so.

Those non-cash assets included CCCB's interest in Prospect CharterCARE. The Settlement Agreement provides in pertinent part[30] as follows:

> The Settling Defendants[31] agree to hold the CCCB Hospital Interests in trust for the [Plan] Receiver, and that the [Plan] Receiver will have the full beneficial interests therein.

The Settlement Agreement defined "CCCB's Hospital Interests" as "all of the claims, rights and interests against or in Prospect CharterCare, LLC that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in Prospect CharterCare LLC, and any rights or interests that SJHSRI or RWH may have in connection therewith." [32]

On March 11, 2019, CCCB brought suit by filing its complaint in the Rhode island Superior Court in CCCB v. Lee.[33] The defendants in CCCB v. Lee included, *inter alia*,

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[29] The initial payment was $12,596,253.48. Further payments are anticipated in connection with proceedings that have been brought to liquidate CCCB, SJHSRI, and RWH.

[30] See Exhibit 3 (Settlement Agreement) ¶ 15.

[31] See Exhibit 3 (Settlement Agreement) at 1 (defining CCCB, RWH, and SJHSRI as the "Settling Defendants").

[32] See Exhibit 3 (Settlement Agreement) ¶ 1(d) (defining "CCCB's Hospital Interests" as "all of the claims, rights and interests against or in Prospect CharterCare, LLC that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in Prospect CharterCare LLC, and any rights or interests that SJHSRI or RWH may have in connection therewith.").

[33] The Verified Complaint is attached hereto as Exhibit 6. The full caption is CHARTERCARE COMMUNITY BOARD, individually and derivatively, as member of PROSPECT CHARTERCARE, LLC and as trustee of the beneficial interest of its membership interest in PROSPECT CHARTERCARE, LLC, Plaintiff, v. SAMUEL LEE; DAVID TOPPER; THOMAS REARDON; VON CROCKETT; EDWIN SANTOS; EDWARD QUINLAN; JOSEPH DISTEFANO; ANDREA DOYLE; PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC; PROSPECT CHARTERCARE, LLC; PROSPECT EAST HOLDINGS, INC.; PROSPECT MEDICAL HOLDINGS, INC.; JOHN DOE 1 – 10, AND JANE DOE 1 – 10, Defendants, Rhode Island Superior Court, C.A. No.: PC-2019-3654, filed March 11, 2019.

all of the directors of Prospect CharterCARE, including Samuel Lee and David Topper, who will become the sole shareholders in PMH's ultimate parent company if the CECA is granted. The allegations in CCCB v. Lee include that Prospect East and PMH failed to make the requisite $50 million in long term capital contributions, with the result that CCCB's percentage interest in Prospect CharterCARE is at least 27.14%, as follows:

> Exhibit B to the LLC Agreement states that in connection with the 20 l 4 Asset Sale, CCCB acquired "15%" of Prospect Chartercare in recognition of an "ADJUSTED CAPITAL CONTRIBUTION" of "$16.75M" while Prospect East renewed or retained "85%" of Prospect Chartercare in recognition of an "ADJUSTED CAPITAL CONTRIBUTION" OF "$95.00M*" all of which bore the same footnote, viz: "* Assumes full funding of Long-Term Capital Commitment"… The $95 million attributed to Prospect East in this Exhibit B to the LLC Agreement consisted of $45 million paid at the closing of the 2014 Asset Sale plus the $50 million due to be paid in connection with the long term capital commitment. In light of the failure to Fund the Long Term Capital Commitment, CCCB'S true proportionate membership interest in Prospect Chartercare is actually at least 27.14%.[34]

The complaint in CCCB v. Lee also alleges that the failure to fund the $50 million long-term capital commitment exposed Prospect CharterCARE to liability to the municipalities of North Providence and Providence, from whom tax stabilization and exemption ordinances were obtained, benefitting Prospect CharterCARE by over $40 million, based upon the misrepresentation by Prospect's representatives directly to the municipalities that such funds would be paid, and that such misrepresentation exposed Prospect CharterCARE (and the value of CCCB's interest in Prospect CharterCARE) to liability to refund those sums.[35]

[34] Exhibit 6 (Verified Complaint) ¶¶ 40-42.

[35] Exhibit 6 (Verified Complaint) ¶¶ 40-79.

The Verified Complaint also alleges that the directors of Prospect CharterCARE breached their fiduciary duties, and aided and abetted in other directors' breach of their fiduciary duties, by "failing to obtain the funding of the Long-Term Capital Commitment and/or allowing Prospect Chartercare to be exposed to liability to the [municipalities] of Providence and North Providence for such failure."[36] The Complaint also alleges that Prospect East Holdings and PMH in early 2018 fraudulently transferred their assets to their shareholders or related entities, by borrowing money and distributing it as dividends.[37]

Those dividends totaled $457 million, which was split $170 million to Lee and Topper, and the balance of approximately $287 million almost entirely to the private equity investors. It is theses private equity investors that Lee and Topper now seek to buy out if the pending CECA is granted.

On December 19, 2019, PMH and Prospect Advisory[38] brought suit in Delaware against CCCB.[39] That suit was based upon Prospect Advisory and PMH's interpretation of the LLC Agreement, which they contended CCCB had breached by entering into the Settlement Agreement, and also sought indemnity from CCCB for the Prospect entities' legal fees and potential liability in the suit that the Plan Receiver had brought against them in the United States District Court for the District of Rhode Island.[40]

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[36] Exhibit 6 (Verified Complaint) ¶¶ 114-127.

[37] Exhibit 6 (Verified Complaint) ¶ 130 ("Fraudulent transfers were made in connection with the 201 8 Dividends, with the actual intent of Defendants Prospect Medical Holdings and Prospect East as transfers to hinder, delay, or defraud their creditors, within the meaning of R.I. Gen. Laws § 6-1 64(3).").

[38] Prospect Advisory is the manager of Prospect CharterCARE, pursuant to a management services agreement of June 20, 2014, and is a defendant in CCCB v. Lee.

[39] That Delaware complaint is attached hereto as Exhibit 7. The full caption is PROSPECT MEDICAL HOLDINGS, INC. and PROVIDENCE EAST ADVISORY SERVICES, INC., Plaintiffs, v. CHARTERCARE COMMUNITY BOARD, Defendant, Delaware Court of Chancery, Case No. 2019-1018, filed December 19, 2019

[40] Exhibit 1 (Complaint) ¶¶ 1-6.

On December 13, 2019, CCCB, SJHSRI, and RWH petitioned[41] themselves into a liquidating receivership (as required by the Settlement Agreement approved by the Superior Court and the federal court), and the Liquidating Receiver was appointed temporary receiver.[42] Thomas Hemmendinger was appointed permanent Liquidating Receiver on January 17, 2020.[43] The order appointing Thomas Hemmendinger as permanent Liquidating Receiver provides as follows:

> That said Liquidating Receiver is authorized and directed:
>
> (a) to be substituted for and act as trustee of all of the claims, rights and interests against or in Prospect CharterCare, LLC that CharterCARE Community Board received in connection with the AMENDED & RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF PROSPECT CHARTERCARE, LLC (a Rhode Island Limited Liability Company) or subsequently obtained, including but not limited to the membership interest of at least 15% in Prospect CharterCare, LLC, and any rights or interests that St. Joseph Health Services of Rhode Island or Roger Williams Hospital may have in connection therewith (collectively the "Hospital Interests") which Petitioners have been holding in trust for Stephen Del Sesto solely in his capacity as the Permanent Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan Receiver") pursuant to that certain Settlement Agreement dated as of August 3 1, 2018 between and among the Plan Receiver, the Petitioners, and others[44] ("the Settlement A Agreement"); and
>
> (b) to hold and administer the Hospital Interests in trust solely for the benefit of the Plan Receiver according to and subject to the terms of the Settlement Agreement, **including but not limited to prosecution of CharterCARE Community Board v. Samuel Lee, et al., PC-2019-3654**.[45]

[41] The Petition is attached hereto as Exhibit 8.

[42] The Order appointing Thomas Hemmendinger temporary receiver is attached hereto as Exhibit 9.

[43] The Order appointing Thomas Hemmendinger permanent receiver is attached hereto as Exhibit 10.

[44] The seven representative Plan participants.

[45] Emphasis supplied.

ARGUMENT

I. SUMMARY OF ARGUMENT

The Change in Effective Control applications were filed without notice to the Liquidating Receiver or Plan Receiver, and without their approval.[46] They are materially incomplete and they contain material misrepresentations and omissions. Each of these deficiencies standing alone would be good cause for denial of the applications. Taken together they compel that result.

II. THE APPLICATIONS ARE MATERIALLY INCOMPLETE

The applications are materially incomplete, because they all fail to make the disclosure required by Question 20(B), of all civil litigation involving "the applicant and/or its affiliates and/or any officers, directors, trustees, members, managing or general partners, or other senior management of the applicant and/or its affiliate." [47]

Specifically, Tab 20B of the applications fails to disclose at least[48] the following litigations:

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[46] They learned only recently, and by chance, of the filing.

[47] The Applicants have a statutory obligation to provide the requested information, See R.I. Gen. Laws § 23-17-5 ("Full compliance within this An application for a license shall be made to the licensing agency upon forms provided by it and **shall contain any information that the licensing agency reasonably requires**, which may include affirmative evidence of ability to comply with reasonable standards, rules, and regulations that are lawfully prescribed under this chapter.") (emphasis supplied).

[48] Notably the response to Question 20 neither identifies nor describes any litigations involving Prospect CharterCARE's affiliates or the individual officers and directors of Prospect CharterCARE and its affiliates. That omission is false. While there is insufficient time to search the dockets of state courts, just in the federal courts alone we have found numerous omitted cases. See, e.g., *Sylvester J. Britto, Jr. v. St. Joseph Health Services of Rhode Island, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare, LLC, et al.*, C.A. No. 17-cv-00234 (D.R.I.); *George P.* Conduragis v. Prospect Chartercare, LLC, et al., C.A. No. 17-cv-00272 (D.R.I.); *Doreen Elnitsky v. Prospect Medical Holdings, Inc., et al.*, C.A. No. 17-cv-06357 (C.D. Cal.); *Marsha Fittro v. Prospect Chartercare Elmhurst, LLC, Prospect Chartercare, LLC, et al.*, C.A. No. 18-cv-00123 (D.R.I.); *Nancy Gauzza et al. v. Prospect Medical Holdings, Inc. et al.*, C.A. No. 17-cv-03599 (E.D. Pa.); *Sallie Holly v. Alta Newport Hospital, Inc., Prospect Medical Holdings, Inc., et al.*, C.A. No. 19-cv-07496 (C.D. Cal.); *In re: EOGH Liquidation, Inc.*, C.A. No. 17-cv-01595 (D.N.J.); *Richard Lupo v. John D. Prinscott, M.D., Associates in Anesthesia, Inc., and Prospect Chartercare SJHSRI, LLC*, C.A. No. 20-cv-00080 (D.R.I.); *National Labor Relations Board v. Prospect Chartercare, LLC*, C.A. No. 19-2289 (1st Cir.); *Demetra C. Ouellette v. Prospect Chartercare RWMC, LLC*, C.A. No. 19-cv-00426 (D.R.I.); *Prospect East Holdings, Inc. and Prospect Chartercare, LLC v. United Nurses & Allied*

1. CHARTERCARE COMMUNITY BOARD, individually and derivatively, as member of PROSPECT CHARTERCARE, LLC and as trustee of the beneficial interest of its membership interest in PROSPECT CHARTERCARE, LLC, Plaintiff, v. SAMUEL LEE; DAVID TOPPER; THOMAS REARDON; VON CROCKETT; EDWIN SANTOS; EDWARD QUINLAN; JOSEPH DISTEFANO; ANDREA DOYLE; PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC; PROSPECT CHARTERCARE, LLC; PROSPECT EAST HOLDINGS, INC.; PROSPECT MEDICAL HOLDINGS, INC.; JOHN DOE 1 – 10, AND JANE DOE 1 – 10, Defendants, Rhode Island Superior Court, C.A. No.: PC-2019-3654, filed March 11, 2019 ("CCCB v. Lee");

2. PROSPECT MEDICAL HOLDINGS, INC. and PROVIDENCE EAST ADVISORY SERVICES, INC., Plaintiffs, v. CHARTERCARE COMMUNITY BOARD, Defendant, Delaware Court of Chancery, Case No. 2019-1018, filed December 19, 2019 ("PMH v. CCCB"); and

3. PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, and PROSPECT CHARTERCARE RWMC, LLC, Plaintiffs, v. MICHAEL E. CONKLIN, JR and DOES 1-10, Inclusive, Defendants, Los Angeles Superior Court C.A. No. BC7722629, filed September 24, 2018, removed to the Central District of California, C.A. No. 18-cv-09131, transferred to the District of Rhode Island, C.A. No. 19-cv-00108.[49]

A copy of the Complaint in each of these cases is attached as Exhibits 6, 7, and 11.

Disclosure and description of these litigations was mandatory, since, as alleged in the Complaints, all of the Defendants in CCCB v. Lee all of the Plaintiffs in PMH v.

Professionals, Inc., C.A. No. 18-cv-00671 (D.R.I.); *Prospect Medical Holdings, Inc. v. Sylvia Burwell*, C.A. No. 14-cv-01310 (D.D.C.); *Prospect Medical Holdings, Inc. v. Unit #10, CHCA NUHHCE AFSCME AFL-CIO*, C.A. No. 19-cv-01462 (D. Conn.); *Tameka Rivers v. Crozer-Keystone Health System and Prospect Medical Holdings, Inc.*, C.A. No. 18-cv-04972 (E.D. Pa.); *Sara Elizabeth Siegler v. Sorrento Therapeutics, Inc., Prospect Chartercare RWMC, LLC, et al.*, C.A. No. 18-cv-01681 (S.D. Cal.); *Kevin Soares v. Prospect Chartercare SJHSRI, LLC, et al.*, C.A. No. 17-cv-00306 (D.R.I.); *Solola v. Prospect Chartercare RWMC*, LLC, C.A. No. 19-1415 (1st Cir.); *Karen Thompkins v. Crozer-Keystone Health System and Prospect Medical Holdings, Inc.*, C.A. No. 19-cv-02269 (E.D. Pa.); *United States ex rel. Susan Painter v. Prospect Medical Holdings, et al.*, C.A. No. 11-cv-04260 (C.D. Cal.); *Jonathan VanLoan v. The Nation of Islam, Prospect Medical Holdings, Inc., Samuel Lee, Leonard Green & Partners, et al.*, C.A. No. 19-cv-00197 (C.D. Cal.); *Jonathan VanLoan v. The Nation of Islam, Prospect Medical Holdings, Inc., Samuel Lee, Leonard Green & Partners, et al.*, C.A. No. 20-cv-00127 (C.D. Cal.).

[49] The suit *Prospect Medical Holdings, Inc. et al. v Conklin* attached the Plan Receiver's federal and state complaints as exhibits and sought indemnity from Mr. Conklin for the Prospect entities' liability to the Plan Receiver. This suit is different from the suit that the applicants have captioned in Tab 20B as "Conklin v. Prospect CharterCARE, Case No. 01-14-0001-9064)".

CCCB are affiliates and/or any officers, directors, trustees, members, managing or general partners, or other senior management of the applicants or the affiliates of those applicants.[50]

Failure to disclose CCCB v. Lee is particularly inexcusable, since one of the defendants in that suit is Joseph DiStefano, Esq., who is a Senior Counsel at the law firm which represents the applicants here.[51]

This also demonstrates that the same law firm, Adler, Pollock & Sheehan, P.C., has a disqualifying conflict of interest in the matter before the Department, and the Department should not consider the applications until the applicants engage substitute counsel.

Adler Pollock formerly represented CCCB, SJHSRI, and RWH in the negotiations and consummation of the 2014 Asset Sale, in which those entities sold all of their operating assets to Prospect entities (including Prospect CharterCARE, Prospect SJHSRI, Prospect RWMC, and PMH),[52] a transaction in which the Prospect entities were represented by their own counsel, and the interests of CCCB and its subsidiaries and the interests of the Prospect entities were clearly adverse. These negotiations included negotiating the terms of the LLC Agreement between CCCB and Prospect East Holdings, Inc.

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[50] Indeed, the Verified Complaint alleges that the individual defendants in the Rhode Island proceeding (Samuel Lee, David Topper, Thomas Reardon, Von Crockett, Edwin Santo, Edward Quinlan, Joseph Distefano, and Andrea Doyle) are the current directors of Prospect Chartercare, LLC, and that Prospect Chartercare, LLC, Prospect East Hospital Advisory Services, LLC, Prospect East Holdings, Inc., and Prospect Medical Holdings, Inc. are all affiliates of Prospect Chartercare RWMC, LLC and Prospect Chartercare SJHSRI, LLC. See Exhibit 6 (Verified Complaint) ¶¶ 4-15. See also R.I. Gen. Laws § 23-17-2(1) (which defines "Affiliate" as "a legal entity that is in control of, is controlled by, or is in common control with another legal entity").

[51] See https://www.apslaw.com/attorney/joseph-r-distefano, accessed on April 3, 2020 (listing "Joseph R. DiStefano Senior Counsel" for Adler, Pollock & Sheehan, P.C.).

[52] See, e.g., May 6, 2014 Project Review Committee transcript at 2 ("APPEARANCES: . . . FOR CHARTERCARE HEALTH PARTNERS [i.e. CharterCARE Community Board]: ADLER POLLOCK & SHEEHAN, P.C.").

Since then the interests of CCCB and those Prospect Entities has become even more adverse. For example, in CCCB v. Lee, CCCB seeks specific performance, injunctive relief, and millions of dollars in damages against the Prospect defendants and the directors, including Mr. DiStefano. Some of CCCB's claims are based on its rights under the LLC Agreement and the Asset Purchase Agreement executed in connection with the 2014 Asset Sale, including Prospect East Holdings, Inc.'s $50 million long term capital commitment, and the increase in CCCB's 15% ownership of Prospect CharterCARE resulting from a failure to fully fund the commitment. The pending CECAs expressly contend that CCCB's interests is only 15% of Prospect CharterCARE. CCCB claims that it owns at least 27.14% (almost twice 15%) of Prospect CharterCARE.[53]

Now, Adler Pollock represents the Prospect entities in seeking this Department's approval for the proposed change of effective control, in which the $50 million commitment is clearly an issue. The Prospect entities want the change in effective control applications to be approved, and CCCB, SJHSRI, and RWH all want the applications to be rejected, or, if not rejected, withdrawn, because they contend that the proposed transfer of funds from PMH to the "passive investor" and holders of stock options will make it more difficult if not impossible for CCCB to recover on its guaranty from PMH. The proposed CECA may also facilitate fraudulent transfers complained of in both the federal case and CCCB v. Lee. This adversity presents a disqualifying conflict of interest for Adler Pollock, and the applications should not be considered until the applicants engage substitute counsel.

[53] Exhibit 6 (Verified Complaint) ¶ 42.

The applicants also fail to provide any detail whatsoever concerning the lawsuit brought by the Plan Receiver against them in the United States District Court, which makes allegations regarding their (lack of) character and fitness, not to mention alleging they committed fraud upon the Department of Health and the Office of the Attorney General in connection with the 2014 CECA.

Since the Applications are materially incomplete, the Department of Health should not consider the Applications, but rather require a resubmission fully disclosing the litigations.

Moreover, as discussed below, the allegations in the Complaint[54] that CCCB filed in CCCB v. Lee contradict key representations in the Applications, demonstrate that the Applications contain material omissions, and, most importantly, raise serious concerns that the Applications do not satisfy the substantive criteria set forth in 216-RICR-40-10-4, and, therefore, should be denied.

III. THE APPLICATIONS CONTAIN MATERIAL MISREPRESENTATIONS AND OMISSIONS

Unless the Applications are promptly withdrawn, the undersigned request that the Department of Health schedule a public hearing at which they will make a full submission, including testimony under oath, which will confirm that the Applications cannot carry the applicants' burden[55] of satisfying the substantive criteria set forth in 216-RICR-40-10-4. Accordingly, the undersigned submit this Objection without prejudice to their right to make further submissions at or in connection with such public

[54] Which as a Verified Complaint was filed under oath.

[55] See 216-RICR-40-10-4.4.3(E) ("Except as otherwise provided in these regulations, a review by the Health Services Council of an application for a license, in the case of a proposed change in the owner, operator, or lessee of a licensed hospital, shall specifically consider **and it shall be the applicant's burden of proof to demonstrate**: . . .") (emphasis supplied).

hearing. The undersigned further reserve their rights to cross-examine any witnesses submitted in support of the Applications.

The Applications and supporting materials are 1,197 pages, such that it is not possible for this Objection to address each issue raised thereby. Instead we focus on certain key factual issues.

A. The Applications misstate and fail to disclose the true consideration for the transaction

The Applications seek approval for a transaction in which Prospect Medical Holdings, Inc. will buy-out certain "private equity investors" in a company called Ivy Holdings, Inc. ("Ivy").[56] The financial impact on the Licensed Hospitals and Medical Facilities of that transaction is a key issue in determining whether the Applications should be approve or denied. See 216-RICR-40-10-4.4.3(E) (setting forth relevant considerations including, *inter alia* to "[t]he extent to which the facility will continue, without material effect on its viability at the time of change of owner, operator, or lessee, to provide safe and adequate treatment for individual's receiving the facility's services as evidenced by: a. The immediate and long-term financial feasibility of the proposed financing plan….").

According to the CECAs, Prospect Medical Holdings allegedly will use its "corporate cash" to pay $11,940,992, to buy out certain "private equity investors" in Ivy.[57] To prove that allegation, the Applicants refer to and have provided a copy of a merger agreement as Tab 14 to their Applications.[58]

[56] See CECA of Prospect RWMC at 1 and CECA of Prospect SJHSRI at 1.
[57] See CECA of Prospect RWMC at 1 and CECA of Prospect SJHSRI at 1.
[58] Id.

However, that merger agreement provides that the buy-out price will be that amount of $11,940,992, *plus an unspecified amount required to buy-out an unspecified number of options at an unspecified price per option*. Specifically, that merger agreement defines "Total Enterprise Value" as $11,940,992, and provides that the "Aggregate Purchase Price" for the buy-out shall be "the Total Enterprise Value, **plus the aggregate exercise price of all vested In-The-Money Options**."[59] Nowhere in the 1,197 pages of their submission do the Applicant disclose the exact amount or even an estimate of the "aggregate exercise price of all vested In-The-Money Options." Similarly, the Applicants do not disclose (a) the amount of In-The-Money Options outstanding, (b) the amount by which such options are "in-the-money," or (c) who owns them. For all we know, the "aggregate exercise price of all vested In-The-Money Options" could be (a) nothing at all, (b) relatively trivial, or (c) greatly in excess of $11,940,992. We believe it must be the last. If one assumed that the total price were only $11,940,992 (or some minor addition thereto), then the agreed value of all the hospitals and health care facilities owned by the group would only be $18,081,453.[60] Given the fact that the group operates twenty (20) hospitals and health care facilities,[61] it is obvious that the real amount of the payment must be much more than $11,940,992.

As noted above, the financial impact on the Licensed Hospitals and Medical Facilities of the proposed transaction is a key issue in determining whether the Applications should be approved or denied. See 216-RICR-40-10-4.4.3(E). This

[59] Applications Tab 14 (Merger Agreement) at 2 (emphasis supplied) (defining "Aggregate Purchase Price").

[60] The percentage ownership in Ivy being bought out under the proposed CECA is 66.04%. If that 66.04% interest is worth $11,940,992, then the company as a whole (100%) is worth only $18,081,453.66 ($11,940,992 is 66.04% of $18,081,453.66).

[61] See Tab E to the Applications.

omission of the actual purchase price makes it absolutely impossible to evaluate the effect the proposed transaction will have on the Licensed Hospitals and Medical Facilities. That omission is so fundamental that the Applications should be denied on that ground alone.

B. Allowing Prospect Medical Holdings, Inc. to buy-out shareholders of Ivy, to benefit Lee and Topper, is fundamentally problematic, irregular, and wrong

Neither the Applications nor the merger agreement supplied at Tab 14 identifies any value or other benefit whatsoever that Prospect Medical Holdings will receive in return for paying the Aggregate Purchase Price. Indeed, Prospect Medical Holdings is not a party to and is not even referred to in the merger agreement, so there is no demonstrated legally cognizable obligation of Prospect Medical Holdings to make the payment. Moreover, the Applications fail to describe the effect of the payment on Prospect Medical Holdings's finances.

The merger agreement certainly does not provide that Prospect Medical Holdings will receive the shares in Ivy that Prospect Medical Holdings is providing the funds to purchase. To the contrary, according to the application, those shares are to be transferred to a company called Chamber, Inc.,[62] which the Applicants describe as a "newly formed entity … which will become the parent of" Ivy, and which will be owned 100% by Topper and Lee.[63] The Applications attach at Tab 15 the "pre-transaction" organizational chart that shows that Prospect Medical Holdings is *two subsidiaries below* Ivy. Thus, the Applicants are seeking approval for a transaction in which a

[62]CECA of Prospect RWMC at 1 and CECA of Prospect SJHSRI at 1.
[63] CECA of Prospect RWMC at 1 and CECA of Prospect SJHSR at 1.

subsidiary two levels below a parent company will provide the funds to enable Topper and Lee to own all the entities.[64]

It is a fundamental precept of corporate law that the directors of a corporation owe a duty of absolute loyalty to the corporation. See In re Textron, Inc., 811 F. Supp. 2d 564, 575 (D.R.I. 2011) ("Loyalty is a core fiduciary obligation that directors owe to the corporation they serve."). The Applicants have made no showing whatsoever that the proposed transaction has any benefit whatsoever to Prospect Medical Holdings, much less that any benefit outweighs the expense of (at least) $11,940,992. Indeed, the Prospect entities have not even provided a resolution of the Board of Directors of Prospect Medical Holdings approving the transaction. A transaction so unsupported and so irregular cannot be approved. Because of the guarantee by Prospect Medical Holdings of Prospect East Holding's obligations to Prospect CharterCARE and CCCB, this transfer by Prospect Medical Holdings is a matter of grave concern to CCCB and the Plan Receiver for whom CCCB holds its interests in Prospect CharterCARE in trust. For the same reason it is a matter of grave concern to the Plan participants.

C. Prospect East Holdings is in default of its obligation, and Prospect Medical Holdings is in default of its guaranty, to pay $50 million to Prospect Chartercare, LLC for the benefit of Prospect Chartercare RWMC, LLC and Prospect Chartercare SJHSRI, LLC

The Applicants throughout their submissions allege that the proposed transaction will have no material effect on Prospect RWMC or Prospect SJHSRI.[65] That is simply

[64] Except CCCB's interest in Prospect CharterCARE.

[65] See Prospect RWMC's Application at 6 ("The Transaction does not impact RWMC's capital and operating needs. RWMC will continue to generate sufficient revenues to cover its expenses. In the event any additional revenues are required, PCC and PMH has [sic] sufficient cash to fund any additional operating needs."); Prospect SJHSRI's Application at 6 ("The Transaction does not impact OLF's [Prospect SJHSRI's] capital and operating needs. OLF

false. To the contrary, as shown below, any transfer of funds out of Prospect Medical Holdings is clearly detrimental to both Prospect RWMC and Prospect SJHSRI, because it limits the assets of Prospect Medical Holdings available to fund the $50 million guaranty. In addition, it improperly transfers assets necessary to respond to any judgment that might be obtained in the federal court case or CCCB v. Lee against Prospect CharterCARE, Prospect East Holdings, and/or Prospect Medical Holdings.

In connection with the original asset purchase in 2014, and as part of the conditions imposed by the Department of Health and the Rode Island Attorney General, Prospect East Holdings became obligated, and Prospect Medical Holdings became the guarantor of that obligation,[66] to contribute $50 million in long term capital contributions to Prospect Chartercare to enable Prospect Chartercare to fund capital improvements at the hospitals owned by Prospect RWMC and Prospect SJHSRI.[67] That obligation was incorporated in the LLC Agreement between Prospect East Holdings and CharterCARE Community Board.[68]

Moreover, CharterCARE Community Board was a direct beneficiary of that obligation, because increasing the capital assets of Prospect CharterCARE would increase the value of CharterCARE Community Board's equity interest in Prospect CharterCARE at least in the amount of CharterCARE Community Board's share in Prospect CharterCARE.

[Prospect SJHSRI] will continue to generate sufficient revenues to cover its expenses. In the event any additional revenues are required, PCC and PMH has [sic] sufficient cash to fund any additional operating needs.").

[66] See Exhibit 12 (Prospect Medical Holdings's Guaranty dated May 23, 2014).

[67] See Asset Purchase Agreement (dated as of September 24, 2013) § 2.5(b).

[68] See LLC Agreement § 4.2(b).

As noted,[69] there is no evidence of payment of any portion of the $50 million long-term capital commitment.[70] Under those circumstances, Prospect Medical Holdings cannot be permitted to pay (for the benefit of Ivy's shareholders) millions of dollars of its "corporate cash," all of which should instead be used to pay the $50 million long-term capital commitment to Prospect CharterCARE, under its guaranty of that obligation of Prospect East Holdings, and be available to pay any judgments that may be awarded in the federal court and CCCB v. Lee against the Prospect entities, and to meet the need for operating funds of the Licensed Hospitals and Medical Facilities.

D. The Applications misrepresent the financial condition of Prospect RWMC, Prospect SJHSRI, Prospect CharterCARE, and Prospect Medical Holdings

The Applications acknowledge, as they must, that both Prospect CharterCARE and Prospect Medical Holdings, Inc. are obligated to financially support Prospect RWMC and Prospect SJHSRI. They claim that Prospect CharterCARE and Prospect Medical Holdings "has [sic] sufficient cash to fund any additional operating needs" in the event that Prospect RWMC and/or Prospect SJHSRI require additional revenues to cover their expenses.[71]

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[69] See *supra* at 5-6.

[70] The financial statements submitted in connection with the CECA claim that a debt of some $24.7 million due to Prospect Advisory for unpaid management fees was converted into a capital contribution by Prospect East Holdings. That debt does not appear to be in good faith since the same financial statements show that Prospect CharterCARE paid millions of dollars in administration expenses to its own staff and staff of Prospect SJHSRI and Prospect RWMC. Moreover, that alleged debt was owed to Prospect Advisory, and not to Prospect East Holdings, and Prospect East Holdings did not satisfy that debt to Prospect Advisory. Accordingly, even if the debt were real (which it was not), forgiveness of that debt by Prospect Advisory cannot be converted into ca capital contribution by Prospect East Holdings. Finally, the financial statements under the unhelpful heading of "other" list millions of dollars in expenses, which need to be explained.

[71] Applications at 23(C).

However, the Applications misrepresent the financial ability of Prospect CharterCARE and Prospect Medical Holdings to fulfill that obligation, by stating that "[i]In the event any additional revenues are required [by Prospect RWMC and/or Prospect SJHSRI], PCC[72] and PMH[73] has [sic] sufficient cash to fund any additional operating needs."[74]

The balance sheet in the financial statement for Prospect Medical Holdings that the Applicants provide at Tab 28 of their Applications shows only $7,694,000 in unrestricted cash or cash equivalents as of September 30, 2018 (which is the most recent statement), down from $27,109,000 as of September 30, 2017, $29,587,000 as of September 30, 2016, and $65,899,000 as of September 30, 2015. That cash would not be sufficient even to pay the "Aggregate Purchase Price" even if that were only $11,940,992, which it almost certainly is not. It certainly leaves nothing to fund the operating needs of the Licensed Hospitals and Medical Facilities.

The balance sheet in the financial statement for Prospect CharterCARE that the Applicants also provide at Tab 28 of their Applications is even worse: it shows that as of September 30, 2018, and September 30, 2017, Prospect CharterCARE had no cash whatsoever!

The Applications also misrepresent that Prospect RWMC and Prospect SJHSRI "continue to generate sufficient revenues to cover [their] expenses."[75] Shockingly this misrepresentation is made in the same Applications wherein it is revealed that the

[72] Prospect CharterCARE.
[73] Prospect Medical Holdings.
[74] CECAs at 23(C).
[75] CECA at 23(C).

hospitals cannot pay over $24 million in management fees allegedly due to Prospect Advisory! The balance sheet in the financial statements for both Prospect RWMC and Prospect SJHSRI for the years ending September 30, 2018 and September 30, 2017, that the Applications also provide at Tab 28, states that those entities are "dependent on Prospect[76] to fund ongoing operations."[77] They also show that Prospect SJHSRI ended its fiscal years 2017 and 2018 with zero cash, and that Prospect RWMC also ended its fiscal year 2018 with zero cash, down from cash of merely $299,000 at the end of the fiscal year 2017.

The Applicants also make the misleading and completely unsupported statement that "in fact, in July of 2019, Medical Properties Trust invested $1.55 billion in PMH. That investment has not only strengthened PMH financially, but it also provided it with a significant and experienced potential source of funding for improvements to its facilities."[78] That statement is not included in any of the financial statements, is not supported by any documents, and certainly is not attested to by a certified public accountant. In fact, that statement is completely belied by the economics of the transaction for which the applicants seek approval. That transaction would pay the alleged "private equity investors" the sum of $11,940,992 (and some undisclosed amount) for their shares in Ivy Holdings, which in turn owns all the shares of PMH.

[76] Prospect Medical Holdings is defined as "Prospect." CECA Tab 28 (Prospect Chartercare RWMC, LLC Notes to Consolidated Financial Statements at n.1, and Prospect Chartercare SJHSRI, LLC Notes to Consolidated Financial Statements at n.1).

[77] CECA Tab 28 (Prospect Chartercare RWMC, LLC Notes to Consolidated Financial Statements at n.1 and Prospect Chartercare SJHSRI, LLC Notes to Consolidated Financial Statements at n.1).

[78] CECAs at 23(C).

Those "private equity investors" own 66% of the shares in Ivy Holdings.[79] It is inconceivable that $1.55 billion was invested in PMH in 2018 but the majority interest in PMH's parent company (which owns all of PMH) is only worth $11,940,992 today.

Publicly available information reveals that what actually happened in 2018 was that PMH sold most of its real estate (in which most of its hospitals operated) to a real estate investment trust called Medical Properties Trust, and then leased the real estate back.[80] That was an investment by that Trust in real estate formerly owned by PMH, not an investment in PMH after the properties were sold. Moreover, Prospect Medical Holdings used an undisclosed amount of the proceeds to pay down existing debt,[81] essentially substituting one creditor for another. Prospect Medical Holdings also has not disclosed what it has done with, or the amount, if any, of cash it obtained from that sale-leaseback that was not required to pay back existing debt.

Indeed, in 2018, Prospect Medical Holdings used borrowed cash to issue $457 million in dividends to stockholders,[82] reducing the assets of Prospect Medical Holdings and leading to credit downgrades.[83] Borrowing money in order to pay dividends is certainly a questionable practice. Moreover, following an earlier $100 million dividend

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[79] CECA Tab G1-D at 2-3 (reciting that Samuel Lee presently owns 19.51% of Ivy Holdings, Inc. and the David & Alexa Topper Family Trust owns 14.45%, leaving 57.82% for the Green entities and 8.22% for other undisclosed shareholders).

[80] See https://www.globallegalchronicle.com/prospect-medical-holdings-1-55-billion-sale-leaseback-and-financing/, accessed April 3, 2020.

[81] Id.

[82] See Prospect Medical Holdings, Inc.'s Consolidated Financial Statements as of and for the years ended September 30, 2018 and 2017, at 44 ("The proceeds of the Term B-1 Loans and the New ABL Facility (the 'New Senior Secured Credit Facilities') were used . . . to pay a dividend of $457.0 million to the Company's stockholders . . . ."); id. at 48 ("The Company distributed approximately $457.0 million in connection with the issuance of 'New Senior Secured Credit Facilities' during the year ended September 30, 2018, which was recorded against retained earnings, and was ultimately paid to the common stockholders of Ivy Holdings Inc").

[83] See https://www.moodys.com/research/Moodys-downgrades-Prospect-Medical-Holdings-Incs-CFR-to-B3-outlook--PR_397518

paid in 2012, the Department of Health and the Rhode Island Attorney General queried Prospect Medical Holdings in connection with the 2014 Asset Sale as to whether it had any intention of continuing such practices.[84] Prospect Medical Holdings responded that it had no such intention.[85] Nevertheless, in 2018 Prospect Medical Holdings went ahead and issued a dividend of $457 million to its shareholder Ivy, out of borrowed funds.[86]

E. The Applications are fundamentally self-contradictory

The four applications for change in effective control each are fundamentally self-contradictory. They each identify the applicant as "Chamber, Inc." on page 1.[87] However, on page 2 they each identify the applicant as another entity.[88] Moreover, all four of the applications for change in effective control are signed by Jeffrey Liebman, who is identified as "President or Chief Executive Officer."[89] However, Jeffrey Liebman is listed on page 2 of each of the four applications as the "President or Chief Executive Officer" of Prospect RWMC, Prospect SJHSRI, Prospect Blackstone Valley Surgicare, LLC, or Prospect CharterCARE Home Health Care and Hospice LLC, respectively. It does not appear that Jeffrey Liebman is President or Chief Executive Officer of the applicant Chamber, Inc., and he certainly is not identified as such. Indeed, the merger

[84] See Project Review Committee May 6, 2014 hearing transcript at 21-22, 42-43; Non-Confidential Responses to Fourth Supplemental Questions to the HCA Application (AGE14-136246) ("S4-22 Please confirm that Prospect does not plan to make another dividend and that the 100M dividend to the parent holding company in 2012 was limited to unique capital market situation at the time. Response: This statement is correct.").

[85] Id.

[86] See supra at 27 n.82.

[87] The Department of health website also identifies the applicant as "Chamber, Inc." See https://health.ri.gov/licenses/detail.php?id=204, accessed on April 3, 2020.

[88] The four applicants identified on page 2 are Prospect RWMC, Prospect SJHSRI, Prospect Blackstone Valley Surgicare, LLC, and Prospect CharterCARE Home Health Care and Hospice LLC.

[89] See Change in Effective Control Applications at 1.

agreement that the applicants attach to the CECAs application as Tab 14 lists the "Chief Executive Officer" of Chamber, Inc. as "Samuel Lee." Jeffrey Liebman's name appears nowhere in that document.

This lack of any apparent relationship between Jeffrey Liebman and Chamber, Inc. is not some mere technical deficiency. For example, by signing the applications, Liebman certified that "the information contained therein is complete, accurate, and true." However, Liebman would have no way of making that certification for information concerning Chamber, Inc., Ivy Holdings, or the so-called "private equity investors" in Ivy Holdings, since those entities are several levels removed from the companies in which Liebman is an officer. He cannot even attest to the authenticity of the merger agreement, to which the companies Liebman works for are not even parties.

CONCLUSION

The Department of Health should not allow Prospect Medical Holdings, Inc. or any of its affiliates to be used as a private piggybank for Lee and Topper to the detriment of the people of Rhode Island. The Department of Health should withdraw its acceptance of the Applications on the grounds that they are incomplete. In the alternative that the Applications are considered on the merits, they should be denied.

The undersigned reserve all rights and remedies.

Dated: April 9, 2020

Respectfully submitted,

Thomas S. Hemmendinger, as Liquidating Receiver of CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital

/s/ Thomas S. Hemmendinger

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and

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/s/ Stephen Del Sesto

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Tab 3

Congress of the United States

Washington, DC 20515

June 4, 2020

Jonathan Sokoloff, Managing Partner
Leonard Green & Partners
11111 Santa Monica Boulevard
Suite 2000
Los Angeles, CA 90025

Dear Mr. Sokoloff,

We are writing out of concern regarding actions Leonard Green & Partners has taken that undermine the stability of Prospect Medical Holdings, a chain of safety net hospitals. We all represent communities with hospitals who are members of Prospect Medical, and we know how desperately their services are needed by patients and to protect our public health.

The Leonard Green-led investor group that owns Prospect Medical has drawn $658 million dollars in fees and dividends from Prospect Medical— even as its hospitals have suffered operating challenges and underfunded pensions and have faced regulatory scrutiny both before and during the coronavirus pandemic. The need for essential health services is clearer than ever, making it even more egregious that Leonard Green & Partners is using these safety net hospitals to enrich wealthy investors at the expense of health care workers and the quality of patient care. In using Prospect Medical to pay itself and its investors massive dividends, Leonard Green is putting some of our communities' most vulnerable patients at risk and weakening public health protections.

Safety net hospitals provide a resource for affordable care for those in towns, cities, and counties where it may not otherwise exist.[1] Even after the Affordable Care Act expanded coverage for many Americans, about 27 million patients are still uninsured and millions more are underinsured.[2] In the wake of the coronavirus pandemic, 36 million Americans have already filed for unemployment. Many of these individuals had employment-based insurance and now find themselves navigating COBRA payments or trying to apply for Medicaid.[3] Safety-net hospitals often operate on razor thin margins,[4] and now is not the time to wring our safety-net hospitals dry to enrich investors.

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[1] Safety-Net Health Systems At Risk: Who Bears The Burden Of Uncompensated Care?, HealthAffairs, Retrieved at: https://www.healthaffairs.org/do/10.1377/hblog20180503.138516/full/
[2] HealthAffairs, as cited.
[3] 'Rolling Shock' as Job Losses Mount Even With Reopenings New York Times, Retrieved at: https://www.nytimes.com/2020/05/14/business/economy/coronavirus-unemployment-claims.html
[4] Safety-net providers operated with an average margin of 1.6% in 2017, Healthcare Finance, Retrieved at: https://www.healthcarefinancenews.com/news/safety-net-providers-operated-average-margin-16-2017

Leonard Green acquired Prospect Medical in December 2010 in a $363 million leveraged buyout.[5] As you know, leveraged buyouts are an acquisition finance structure that loads the target being purchased with debt and lets investors get upside benefits without putting their own money at stake.

At the time that you purchased it, Prospect Medical was a five-hospital community health system in Southern California.[6] But today the company includes a number of hospitals and affiliated medical groups across California, Pennsylvania, New Jersey, Connecticut, and Rhode Island, an expansion that occurred even as Prospect faced challenges meeting its own expenses. Even before the coronavirus pandemic, Prospect Medical saw its operating income decline dramatically in recent years, from $142 million in 2015 to $17 million in 2018. Prospect's operating margin dropped from 10.8% in 2015 to just 0.6% in 2018.[7] This dramatic reduction left Prospect without any cushion to fund its ongoing business, but extracted money for investors. In addition, Prospect faced $260 million in unfunded pension liabilities as of September 2018.[8] Yet since Leonard Green acquired Prospect in 2010, the firm and its other owners have collected approximately $658 million in fees and debt-funded dividends from the hospital company. This has significantly increased its overall leverage,[9] and placed the existence of these hospitals at risk. These decisions have not been impeded by the group's continuing financial and quality concerns.

After ten years of Leonard Green & Partners ownership, Prospect Medical Holdings' hospitals have some of the lowest quality ratings from the Centers for Medicare and Medicaid Services.[10] In Connecticut, state regulators placed Prospect's three hospitals under review last year for deteriorating conditions that they said place the lives of patients in "immediate jeopardy."[11] In Rhode Island, Prospect-owned hospitals' pensioners are suing Prospect for allegedly hiding the pension plan's poor health to shield its own liability from regulators.[12] Late last year, Prospect shuttered all of its health care facilities in Texas, laying off nearly 1,000 workers, and leaving communities without points of care.[13] The company then sold the downtown hospital real estate to a hotel developer.[14]

These decisions have put hospitals in violation of state regulatory requirements and have forced the hospitals to pay millions, further eroding operating resources to invest in patient care. A Leonard Green-

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[5] SEC Contribution and Subscription filing, Retrieved at: https://www.sec.gov/Archives/edgar/data/1063561/000095012310079639/v57129exv99w3.htm and Leonard Green Buying Prospect Medical, PE Hub, Retrieved at: https://www.pehub.com/leonard-green-buying-prospect-medical/

[6] "Prospect Medical Holdings, Inc. to Be Acquired by Leonard Green & Partners, L.P. and Management for $8.50 Per Share," Prospect Medical Holdings press release, August 16, 2010. https://www.businesswire.com/news/home/20100816005890/en/Prospect-Medical-Holdings-Acquired-Leonard-Green-Partners

[7] Prospect Medical Holdings Consolidated Financial Statements as of and for the Years Ended September 30, 2018 and 2017. Prospect Medical Holdings Consolidated Financial Statements as of and for the Years Ended September 30, 2016 and 02015. https://pestakeholder.org/wp-content/uploads/2020/05/UPDATE-Leonard-Green-Prospect-Medical-Dividends-PESP-051420.pdf

[8] Prospect Medical Holdings Consolidated Financial Statements as of and for the Years Ended September 30, 2016 and 02015. https://pestakeholder.org/wp-content/uploads/2020/05/UPDATE-Leonard-Green-Prospect-Medical-Dividends-PESP-051420.pdf,

[9] Rating Action: Moody's downgrades Prospect Medical Holdings, Inc.'s CFR to B3; outlook changed to negative, Moody's Investor Service, Retrieved at: https://www.moodys.com/research/Moodys-downgrades-Prospect-Medical-Holdings-Incs-CFR-to-B3-outlook--PR_397518

[10] CMS Hospital Compare, Retrieved at: https://www.medicare.gov/hospitalcompare/search.html

[11] After 2 deaths and a series of medical errors, the for-profit owner of Waterbury and Manchester hospitals faces protests, major sanctions, Hartford Courant, Retrieved at: https://www.courant.com/news/connecticut/hc-news-waterbury-hospital-prospect-medical-protests-20190602-hqc3yulngngwnd6qftmeiogdsq-story.html

[12] Lawsuits allege fraud, conspiracy in insolvency of St. Joseph Health Services of Rhode Island plan, Modern Healthcare, Retrieved at: https://www.modernhealthcare.com/article/20180622/NEWS/180629970/lawsuits-allege-fraud-conspiracy-in-insolvency-of-st-joseph-health-services-of-rhode-island-plan

[13] Last Nix Healthcare Facility in San Antonino Set to Close, KSAT, Retrieved at: https://www.ksat com/news/2019/11/06/last-nix-health-care-facility-in-san-antonio-set-to-close/

[14] Hotel Company Purchases Downtown San Antonio's Historic Nix Hospital Building, San Antonio Current, Retrieved at: https://www.sacurrent.com/the-daily/archives/2020/01/03/hotel-company-purchases-downtown-san-antonios-historic-nix-hospital-building

led investment group collected a $457 million dividend from Prospect's hospitals. This decision placed the facilities in violation of an agreement made with state regulators. In their consideration of an application from Prospect to convert the company's CharterCARE hospitals in Rhode Island from non-profit to for-profit in 2014, the Rhode Island Office of the Attorney General and the State Department of Health made note of previous dividends, stating that Prospect assured the regulators that it did not intend to make additional dividend distributions to its ownership group.[15] Prospect paid the $457 million dividend just four years later.

Leonard Green's blatant disregard for its commitments to these safety net hospitals cannot continue. Private equity firms cannot continue to raid essential health services at the expense of workers and communities. As owners of medical facilities, you take on the responsibility to ensure the hospitals have sufficient resources to care appropriately for patients. We ask that Leonard Green return the fees and dividends you have collected from Prospect Medical, and that you take all other steps necessary to guarantee continuity of care for patients. Investors have a duty to be stewards of the businesses they own, including protecting healthcare workers, delivering on promises to patients, and respecting applicable law. We respectfully request a reply by June 12, 2020, with regard to our request for a refund of dividends and fees and adequate resources for Prospect Medical.

Best,

KATIE PORTER
Member of Congress

LLOYD DOGGETT
Member of Congress

MARY GAY SCANLON
Member of Congress

ROSA DeLAURO
Member of Congress

[15] State of Rhode Island Department of the Attorney General, CharterCARE/Prospect Final Decision, Retrieved at: http://www.riag.ri.gov/documents/5-16-14AGFinalDecision.pdf; and Department of Health, Committee of the Health Services Council, Submitted May 2014, Retrieved at: https://drive.google.com/file/d/0B9lx-sHDAL9qRmJPWmd1MXNpbEk/view