

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

- - - - -X  
 Stephen DeI Sesto, as : 18-cv-000328(WES)  
 Receiver and :  
 Administrator of the St. :  
 Joseph Health Services of :  
 Rhode Island Retirement :  
 Plan, :  
 Plaintiffs, : United States Courthouse  
 : Providence, Rhode Island  
 :  
 vs. :  
 :  
 Prospect CharterCARE, : Tuesday, July 20, 2021  
 LLC, et al., :  
 Defendants. :

BEFORE THE HONORABLE WILLIAM E. SMITH  
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Plaintiffs: MAX WISTOW, ESQ.  
 STEPHEN P. SHEEHAN, ESQ.  
 BENJAMIN G. LEDSHAM, ESQ.  
 Wistow, Sheehan & Loveley, PC  
 61 Weybosset Street  
 Providence, RI 02903

For the Defendants: PRESTON W. HALPERIN, ESQ.  
 Shechtman Halperin Savage, LLP  
 1080 Main Street  
 Pawtucket, RI 02860

DAVID R. GODOFSKY, ESQ.  
 STEVE BOYAJIAN, ESQ.  
 Alston & Bird, LLP  
 950 F Street, NW  
 Washington, D.C. 20004-1404

THOMAS S. HEMMENDINGER, ESQ.  
 Brennan, Recupero, Cascione, Scungio &  
 McAllister, LLP  
 362 Broadway  
 Providence, RI 02903

For the Defendants:    MARK RUSSO, ESQ.  
Ferrucci Russo P.C.  
55 Pine Street, 4th Floor  
Providence, RI 02903-2841

HOWARD MERTEN, ESQ.  
EUGENE G. BERNARDO, ESQ.  
Partridge Snow & Hahn, LLP  
40 Westminster Street, Suite 1100  
Providence, RI 02903

CHRISTOPHER J. FRAGOMENI, ESQ.  
Savage Law Partners  
564 South Water Street  
Providence, RI 02903

CHRIS CALLACI, ESQ. (General Counsel)  
United Nurses & Allied Professionals  
375 Branch Avenue  
Providence, RI 02904

ARLENE VIOLET, ESQ.

For the Receiver:    STEPHEN DEL SESTO, ESQ.  
Pierce Atwood, LLP  
One Financial Plaza, 26th Floor  
Providence, RI 02903

1 (VIA VIDEO CONFERENCE)

2 20 JULY 2021

3 THE COURT: We're here in the matter of Stephen  
4 Del Sesto, Receiver, of the St. Joseph Health Services  
5 of Rhode Island Retirement Plan vs. Prospect  
6 CharterCARE, LLC, et al. And we're here for the final  
7 fairness hearing on the class settlement.

8 So let's have all counsel who are going to speak  
9 on anything -- I think we should probably have all of  
10 you just identify yourselves for the record so that the  
11 record is clear as to who is here for this hearing. So  
12 why don't we start with plaintiffs, and then we'll move  
13 over to the defendant side.

14 MR. SHEEHAN: Your Honor, it's Stephen P.  
15 Sheehan appearing for the plaintiff, along with Max  
16 Wistow.

17 MR. WISTOW: And Benjamin Ledsham is here also  
18 sharing my screen. In case I do something stupid, he  
19 can fix it. So Benjamin Ledsham also for plaintiffs.

20 MR. DEL SESTO: Your Honor, although I'm not an  
21 attorney in this matter, I'm one of the litigants,  
22 Stephen Del Sesto, the Receiver in state court.

23 THE COURT: Thank you. Go ahead on defendants  
24 side.

25 MR. HALPERIN: I'll start. This is Preston

1 Halperin -- good afternoon, your Honor -- on behalf of  
2 Prospect Medical Holdings, Prospect East.

3 MR. RUSSO: Mark Russo, your Honor, on behalf of  
4 the remaining Prospect entities.

5 MR. GODOFISKY: David Godofsky, your Honor, on  
6 behalf of Angell Pension Group. And Steve Boyajian is  
7 here with me virtually.

8 MR. MERTEN: Your Honor, Howard Merten and Gene  
9 Bernardo is also on for the Diocesan defendants.

10 MR. HEMMENDINGER: And your Honor, Thomas  
11 Hemmendinger, the Liquidating Receiver for CharterCARE  
12 Community Board, St. Joseph Health Services of Rhode  
13 Island and Rogers Williams Hospital. Those entities  
14 are also defendants in this case still.

15 THE COURT: Okay. All right. I think that  
16 covers it. Oh, sorry. You were on mute there, Chris.

17 MR. FRAGOMENI: Good afternoon, your Honor.  
18 Chris Fragomeni also on behalf of Prospect Medical and  
19 Prospect East.

20 THE COURT: Okay. Anything else? I see some  
21 activity going on here.

22 MR. CALLACI: Your Honor, Chris Callaci on  
23 behalf of the United Nurses and Allied Professionals.

24 THE COURT: Got it. All right. I think that  
25 covers it. Anybody else who wants to enter an

1 appearance?

2 All right. So I'll hear from the plaintiffs. I  
3 take it you have a bit of a presentation to make here.

4 MR. SHEEHAN: Yes, your Honor, we do. There are  
5 two motions before the Court; the motion for a final  
6 settlement approval and also the motion for attorneys'  
7 fees. And I'm going to address the motion for  
8 preliminary settlement approval, and Mr. Wistow is  
9 going to address the motion for attorneys' fees.

10 Your Honor, with respect to final approval, the  
11 issues have been fully briefed. The standard on a  
12 preliminary settlement approval is the probability that  
13 the settlement will reach final approval and addressed  
14 all of the issues that are involved upon which a  
15 finding of final approval should be based. Also a  
16 detailed notice was sent to all the Plan participants.  
17 The briefs obviously were filed on all parties, and  
18 there were no objections. Consequently, your Honor,  
19 I'm not going to address all of the issues. For the  
20 most part, we're going to rely on the briefs and the  
21 fact that there have been no objections.

22 I would, however, like to briefly address three  
23 issues. And the first issue, your Honor, is to briefly  
24 describe the settlement and answer any questions the  
25 Court may have with respect to the settlement. The

1 second issue is to briefly outline the procedural  
2 developments since the Court previously approved  
3 settlements in this case. And finally, your Honor, I'd  
4 like to just briefly discuss the form of any order to  
5 be entered granting settlement approval.

6 If that pleases the Court, I'd like to start  
7 first with the observation that the two settlements  
8 that were previously approved were agreed to back in  
9 the fall of 2018. The approval took one year. It was  
10 very complex, your Honor. We had to obtain state court  
11 approval in connection with the receivership from Judge  
12 Stern. We had to obtain this Court's approval with  
13 respect to Settlement B. We had to go back to state  
14 court for a cy-près order allowing the settlement funds  
15 to be disbursed from the defendant, which was a  
16 charitable foundation. The Court allowed limited  
17 discovery in connection with Settlement A. Depositions  
18 were taken, et cetera.

19 While that was going on, your Honor, the federal  
20 court suit against Prospect, Angell and the Diocesan  
21 defendants was continuing and has continued since then.  
22 There were extensive motions to dismiss which reached  
23 finally hearing, and at the hearing it was decided that  
24 they would be dismissed -- denied, rather -- without  
25 prejudice in favor of cross-motions for summary

1 judgment on the limited issue of whether the Plan was  
2 covered by ERISA. That briefing for the motion for  
3 summary judgment involved thousands of pages, your  
4 Honor. I'd like to say, first of all, that that  
5 briefing was complete at the point in time that the  
6 settlement was entered into indicating, which I think  
7 all parties will agree, the posture of the case at that  
8 point contributed to settlement; the fact that we had  
9 gotten to that stage in the summary judgment  
10 proceedings.

11 The other -- there are two or three other lines  
12 of development that were going forward in connection  
13 with the issues in this case but not before this Court.  
14 And one was superior court litigation and a case that  
15 had been brought by CharterCARE Community Board when  
16 Mr. Land was still involved with that entity and then  
17 was taken over by Mr. Hemmendinger as Liquidating  
18 Receiver versus Prospect based upon CharterCARE  
19 Community Board's initial 15 percent interest in the  
20 two hospitals, Fatima Hospital and Roger Williams  
21 Hospital through the corporations that own them.

22 The asset purchase agreement had obligated  
23 Prospect CharterCARE to contribute \$50 million in  
24 capital to those hospitals and had also, we contend,  
25 had obligated Prospect to cooperate with CharterCARE

1 Community Board in providing CharterCARE Community  
2 Board with the information that was needed to determine  
3 whether or not to exercise a put option, a right to  
4 sell the interest back to Prospect CharterCARE. Those  
5 issues were raised as breaches by Prospect in that case  
6 of *CCCB v. Prospect*.

7 And that case is also a factor in the  
8 settlement, your Honor, in that the settlement provides  
9 that -- covers what's going to happen in CharterCARE  
10 Community Board's interests in these underlying  
11 hospitals. It's going to be transferred to Prospect in  
12 return for a stipulated value for the shareholding  
13 interest of \$4 million and \$1 million value applied to  
14 CharterCARE's causes of action against Prospect apart  
15 from the value of its shares.

16 Since then, your Honor, there's also been  
17 initiation of the liquidating receivership brought by  
18 Mr. Hemmendinger on behalf of the three entities,  
19 Rogers Williams Hospital, St. Joseph and CharterCARE  
20 Community Board. And that was a condition of the  
21 settlement approved by your Honor, Settlement A. The  
22 Plan Receiver, through counsel, has also been involved  
23 as a creditor in those proceedings. That liquidating  
24 receivership is also a factor in this settlement in  
25 that the -- in connection with the settlement, Prospect



1 is releasing all claims it might have in that  
2 liquidating receivership as well any claims it might  
3 have as creditor.

4 Since the prior settlements were approved by  
5 your Honor, a lawsuit was commenced by Prospect in  
6 Delaware that involved Prospect's claims that  
7 CharterCARE Community Board was in breach of its  
8 obligation and obligated to indemnify Prospect for many  
9 millions of dollars and ultimately any liability that  
10 Prospect might have to plaintiffs in this case. That  
11 lawsuit, if successful, would have eliminated the value  
12 of CharterCARE Community Board's interest in the  
13 hospitals. It is being dealt with in connection with  
14 the settlement. It's going to be dismissed.

15 There were also, your Honor, administrative  
16 proceedings. Prospect filed applications for approval  
17 from the appropriate regulatory agencies for a buyout  
18 of --

19 THE COURT: We're getting some bad feedback from  
20 someplace. Off the record for a second.

21 (Off-the-record discussion)

22 MR. SHEEHAN: I was starting to address, your  
23 Honor, the administrative proceedings where Prospect  
24 wanted to buy out its majority interest, Leonard Green.  
25 Those who were before the Rhode Island Attorney General

1 and the Department of Health, CharterCARE Community  
2 Board, through the Liquidating Receiver, was holding  
3 CCCB's interest in trust for the Plan Receiver and  
4 therefore was acting pursuant to the consultation and  
5 direction of Plan Receiver's counsel, Wistow, Sheehan &  
6 Loveley, objected to those applications for  
7 administrative approval and asserted that the payments  
8 were, indeed, fraudulent transfers that would have the  
9 effect of denuding Prospect Medical of assets that  
10 would be needed ultimately to meet Prospect Medical's  
11 liability in this case.

12 Those administrative proceedings are also a  
13 factor in the settlement, your Honor, as shown by the  
14 fact that one of the elements of the settlement was the  
15 requirement that plaintiffs withdraw those objections  
16 and CCCB withdraw those objections. So there have been  
17 a number of proceedings and they all, your Honor,  
18 ultimately, we contend, led to this settlement.  
19 They're extensive and detailed, and I'd be happy to get  
20 into them. They are addressed in the papers, however.

21 Next, your Honor, I'd like to just briefly  
22 address the form and timing -- well, before I do that,  
23 I had intended at the outset to state the obvious, your  
24 Honor, which is that this is a settlement for \$30  
25 million, 27.25 of which is going to come from Prospect

1 and 2.75 is going to come from Angell. The settlement  
2 is going to be paid through letters of credit which  
3 when will be payable upon the Court's entry of an order  
4 along the lines of the order of final approval set  
5 forth in the settlement agreement.

6 And that requirement from the settlement  
7 agreement is that the order of final approval state  
8 that the settlement is fair, reasonable and adequate,  
9 number one. And two, it is in good faith -- a  
10 good-faith settlement under Rhode Island General Laws  
11 23-17.14-35. And of course finally, third, such other  
12 and further relief as the federal court may direct.

13 So we would request, your Honor, that the order  
14 of final approval, which is obviously going to include  
15 a number of elements, specifically include those  
16 findings so that Mr. Del Sesto may properly draw on the  
17 letters of credit and properly certify to the registry  
18 of court and to this Court that Angell's portion of the  
19 settlement should also be paid to him. Also with  
20 respect to the timing of the order of final approval,  
21 obviously plaintiffs are desirous of settlement -- of  
22 the approval as soon as possible since it is the  
23 trigger for payment. And we understand that Prospect,  
24 for business reasons, would also like to have the  
25 approval entered as soon as possible. Mr. Halperin, to

1 the extent the Court wishes, will address why that is  
2 the case.

3 Unless the Court has any questions or any  
4 questions about how the settlement works, I'm going to  
5 defer now to Mr. Wistow

6 THE COURT: No. Let me hear from Mr. Wistow.

7 MR. WISTOW: Thank you, your Honor. I was going  
8 to say on the issue of an order entering quickly, I  
9 think I speak for Mr. Halperin also, as Mr. Sheehan  
10 indicated, he would like it. I believe your Honor  
11 might want to issue a written decision. Obviously  
12 that's up to you. And it obviously is not unheard of  
13 to have an order enter, decision to follow. If there's  
14 going to be a decision, I imagine it would take quite a  
15 while to write it. And all the parties here, all of  
16 them, I believe, are anxious to at least have the  
17 order.

18 THE COURT: Why do you think I need to write a  
19 written decision?

20 MR. WISTOW: I don't, I don't. I'm not  
21 suggesting you do. I'm suggesting if you wish to.  
22 Obviously that's your choice, not mine. But if you  
23 wish to, I was going to suggest and am suggesting that  
24 an order enter, decision to follow. That's something  
25 that Judge Stern did in one of our more complex

1 situations in this case where there was a time element,  
2 he entered the order and then wrote a decision later.  
3 I'm not asking your Honor to write a decision.

4 THE COURT: My feeling about this is this  
5 is -- maybe it overstates it to say that it's unique,  
6 but it's pretty close to unique. It's so highly  
7 complicated and idiosyncratic I think, I'm not sure  
8 that there's anything that I could say in a decision  
9 that would be of any value to anyone else other than  
10 the parties here.

11 And all of you really care about is -- I mean,  
12 you did all the work. I don't need to explain  
13 anything. I couldn't explain it certainly any better.  
14 I would just repeat what is said. But what you're  
15 interested in, I think, is the findings and the order.

16 MR. WISTOW: No, your Honor is right. The  
17 chance of this decision being precedential in some  
18 future case is pretty remote. I don't expect anything  
19 like this to happen in the next hundred years or so, if  
20 there's going to be another hundred years, so I agree.

21 Let me address -- Mr. Sheehan addressed the  
22 settlement eloquently. Speaking on behalf of the  
23 Receiver and the Plan participants, I would like to  
24 speak on behalf of my office with regard to the fee.

25 THE COURT: Before you get to the fee, Mr.

1 Wistow, I'm looking at the -- so I'm looking at  
2 the -- I think this is the order that Mr. Sheehan  
3 referred to, but I don't think this is a final order.  
4 This is the order of preliminary approval. This is  
5 Exhibit D I believe to the papers.

6 Have you prepared a final order of approval of  
7 the settlement, a draft, a proposed order?

8 MR. WISTOW: No. We can do that today or as  
9 late as tomorrow. We wanted to -- we felt it perhaps  
10 premature to do it, but we can do it today.

11 THE COURT: All right. Okay. Good enough.

12 So go ahead and tell me about the fees.

13 MR. WISTOW: All right. Well, what I can tell  
14 you is that in going over this matter, in preparing for  
15 it, I was startled to be reminded about just how  
16 complicated it had gotten. And there were many, many  
17 areas that have just simply not been before your Honor.  
18 They were alluded to generally by Mr. Sheehan, but we  
19 were intimately involved in all of these matters which  
20 I'll touch on briefly, all of which truly led, I think  
21 incontrovertibly, to the settlement that's before you.

22 For example, there is a state court suit in  
23 which the receiver and the liquidating receivers both  
24 joined claiming fraudulent transfers not only against  
25 the Prospect Medical Holdings companies and their

1 affiliates, but also the two stockholders of Prospect  
2 Medical individually. A gentleman named Lee and  
3 Topper. And there was an enormous amount of activity  
4 in that case, none of which appears in this court, but  
5 was extensively litigated in front of Judge Stern. And  
6 we've also been working, along with Tom Hemmendinger,  
7 the Liquidating Receiver, to try to bring to final  
8 fruition some additional areas which we think would be  
9 the source, and Mr. Hemmendinger agrees with us, would  
10 be the source of perhaps millions of dollars more for  
11 the Plan. We continue to work on those issues. They  
12 involve the RI DEM, the Rhode Island department of  
13 Environmental Management, the Department of Labor,  
14 Beacon Insurance and, most importantly, a significant  
15 number of trusts that are in favor of the old Heritage  
16 Hospitals in which we believe that we can convert into  
17 payments to the Liquidating Receiver which in turn will  
18 go into the Plan.

19 And we've been actively working on that. That's  
20 one of the complicating factors. Mr. Sheehan mentioned  
21 the suit in Delaware. That was totally unexpected as  
22 was the prior when we first signed onto this. Let me  
23 explain a little bit about the administrative  
24 proceedings and why I think they play such a big role  
25 in this settlement.

1           In Rhode Island, there are two agencies that  
2 deal with the kind of conversion that Prospect Medical  
3 was trying to attempt, and those are the Department of  
4 Health and the Department of Attorney General. And  
5 they have two completely different proceedings. One is  
6 called the Hospital Conversion Act and one is called  
7 the Change in Effective Control. And we came in as  
8 soon as we found about it, and in order to protect our  
9 15 percent ownership interest in this we filed, on  
10 behalf of both the Liquidating Receiver and the Plan  
11 Receiver, formal objections. We appeared and argued  
12 why these were fraudulent, why they should not go  
13 forward. As a result of our filing extensive papers,  
14 including reports from financial experts that these  
15 entities were quite on the brink of insolvency, that  
16 these deals should not go through.

17           And the Attorney General's office came in after  
18 this and said we are going to go slowly and delay this  
19 and our objections were filed in the fall of 2019. And  
20 we continued to argue and submit documents. And before  
21 the settlement was consummated -- I shouldn't say  
22 consummated -- the settlement before you was agreed  
23 upon, one of the important conditions was that the  
24 plaintiffs would agree to withdraw their objections  
25 from the administrative proceedings and agree not to



1 participate further in the matters nor to make public  
2 statements in the media about what they had been up to.

3 We did withdraw that, but what happened was in  
4 June, June of this year, the Attorney General came down  
5 and, we believe, at least partially as a result of what  
6 we had stirred up, insisted on ultimately an \$80  
7 million escrow to be filed with the Attorney General to  
8 ensure that the local hospitals are able to go forward;  
9 in addition, because of the threat of insolvency that  
10 we had raised. By the way, if we may say so, our fear  
11 of insolvency was why we asked for letters of credit  
12 from JPMorgan. We were not prepared to accept the  
13 promise of the defendants to make a payment.

14 I don't include Angell in that. Angell has  
15 deposited its share into the registry of the superior  
16 court. But in both cases we're completely secured.

17 In any event, the Attorney General has required  
18 as of June 1st, I believe, of this year, an \$80 million  
19 escrow to help support the hospitals. And in addition,  
20 has made the hospitals agree -- made Prospect Medical  
21 agree -- to stop charging 3 percent of the annual  
22 revenues of these two hospitals as management fees.  
23 That represents a savings for the hospitals -- I'm not  
24 suggesting, by the way, your Honor, that that money is  
25 coming to the Plan Receiver, but it certainly is for

1 the benefit of the community. There's millions of  
2 dollars each year that are not going to be paid to  
3 Prospect Medical as a result, we believe, of the stir  
4 we caused in the administrative proceedings.

5 I want to go on to say that other things that we  
6 never anticipated when we got into this case were the  
7 various motions to adjudge each other in contempt.  
8 This was a very heated, controversial and adversarial  
9 conversation, as you'll hear in a little bit. Now,  
10 it's not just us who are saying this is complicated.  
11 The Retired Chief Judge Frank Williams submitted an  
12 affidavit, a declaration in this case under oath, in  
13 which he indicated that he had been involved in  
14 thousands of cases over his career and insofar as a  
15 mediator, he recalled many hundreds of cases.

16 He's been practicing, as you'll see from his  
17 affidavit, for 50 years in private practice and as a  
18 superior court judge, as the chief of the supreme court  
19 and now has been actively involved as a mediator. He  
20 described this case as, quote, complex, novel and  
21 involving unsettled questions of law.

22 And he goes and he recites the complications  
23 that Mr. Sheehan and I have alluded to that are  
24 involved in this case but not before this Court. He  
25 ends up saying -- and I'd like to quote him -- he says,

1 I believe that this litigation is unique within the  
2 United States. Other, quote, church plan, unquote,  
3 cases typically involve one employer, perhaps a  
4 hospital, continuously operating an employee benefits  
5 plan. The instant litigation involves more than a  
6 dozen defendants, each of which plaintiffs contend has  
7 liability for the shortfall in the funding of the Plan.  
8 Defendants deny any responsibility whatsoever.

9 Then he goes on to say, This is, to my  
10 knowledge, the first, quote, church plan, unquote, case  
11 to involve even one state court-appointed receiver,  
12 much less two. Moreover, the Prospect defendants have  
13 been steadfast in their denial of liability for the  
14 shortfall in the funding of the Plan based on the fact  
15 that their agreement to purchase the assets of the  
16 failing hospitals in 2014 expressly excluded any  
17 responsibility for the sellers pension plan.

18 Then he says -- I hope your Honor can agree with  
19 this -- he says, This matter represents one of the most  
20 complex, if not the most complex, matters in which I  
21 have been involved in all my years as a lawyer, judge  
22 or mediator. And then he goes on to discuss the fee.  
23 And I hope your Honor considers this sort of an expert  
24 opinion. He says in paragraph 13 he says, Based upon  
25 my experience as a judge and as a mediator, it is my

1 opinion that a request by Wistow, Sheehan and Loveley  
2 for an attorneys' fee in the amount of 23 1/3 percent  
3 of the \$30 million settlement in accordance with their  
4 court-appointed fee agreement with the Plan Receiver is  
5 reasonable and appropriate given the complexity of this  
6 matter and the significant relief recovered by Wistow,  
7 Sheehan & Loveley.

8 I'm going to talk about the contract that exists  
9 between our office and the Plan Receiver in a moment,  
10 but I will point out that in his affidavit he does a  
11 computation of the percentage fee that we would  
12 actually be getting based on the fact that we had given  
13 up a portion of our fees before to expedite getting  
14 some money into the Plan. And he makes a computation  
15 that we're actually, if your Honor grants the 23 1/3  
16 percent in this case, overall our fees would be 22.15  
17 percent, which is lower than what he describes in the  
18 affidavit which we put in our brief about the benchmark  
19 usually used in percentage of the fund cases.

20 So we're below the benchmark of 25 percent.  
21 We're even below the contractual agreement we had.  
22 We're closer to the 20 percent to what he quotes is the  
23 circuit cases generally go between 20 and 30 percent  
24 with the benchmark being around 25. So we're actually  
25 closer to the 20 percent than we are even to the 25.

1           Now, I want to emphasize, if I may, the  
2           significance, we think the overriding significance, of  
3           the contract we entered with the Plan Receiver at the  
4           very beginning of our involvement back in August of  
5           2017. And I refer you specifically, your Honor, to the  
6           affidavit of Stephen Del Sesto, the Plan Receiver.  
7           That's document 2076. And the first thing I want to  
8           comment about his affidavit or declaration, I should  
9           say, but again under oath, is he says, and I quote, I  
10          have read the declaration of Frank J. Williams, CJ  
11          Retired, dated January 19, 2021, and I concur with  
12          everything stated therein. I would add that as to the  
13          litigation history of this case which began in the fall  
14          of 2017, almost precisely three years before the  
15          mediation, he says in my more than two decades of  
16          practice, I have not been involved in another matter so  
17          fiercely litigated or negotiated. That's a euphemism,  
18          I believe, for the rancor that was going on between  
19          counsel.

20                 And by the way, all I can say is everybody was  
21                 acting zealously, and it was at times very, very  
22                 difficult. As I said, there were motions for contempt  
23                 on both sides and so forth.

24                 He explained also in his affidavit how we  
25                 negotiated the fee of 23 1/3 percent. And he explains

1       how he did that as an officer of the court and as an  
2       agent of the court as Receiver. And he indicates that  
3       we actually -- shame on us -- asked for more and he  
4       negotiated us down to the 23 1/3 which we agreed to.  
5       He then went and got the okay from Judge Stern, the  
6       superior court judge in charge of the Plan  
7       receivership, and he says -- and I ask your Honor  
8       please to take this into consideration -- Mr. Del Sesto  
9       says, It is important that plaintiffs' counsel have a  
10      strong financial incentive to pursue the claims in this  
11      litigation which are legally and factually complex and  
12      extremely document intensive and span many decades of  
13      Plan administration. I believe the existing fee  
14      structure gave them that incentive and their zealous  
15      prosecution of plaintiff' claims to date indicates that  
16      belief -- excuse me, vindicates that belief. It would  
17      be detrimental to the plan receivership estate for that  
18      financial incentive be lessened and for Wistow, Sheehan  
19      & Loveley be awarded fees that are less than the fees  
20      to which they would be entitled under the retainer  
21      agreement. Again, the agreement approved by Judge  
22      Stern. Not to suggest for a moment that your Honor is  
23      necessarily bound by that.

24               Now, let me suggest so far the benefit to the  
25      Plan. The total gross payments so far, if your Honor

1 approves this settlement, will be over 41 -- bear with  
2 me just a moment. The settlements to date would be  
3 over \$47 million in gross. That's to be compared, your  
4 Honor, to get a sense of how meaningful that is, when  
5 the original acquisition took place by Prospect Medical  
6 Holdings of the Heritage Hospitals back in 2014, the  
7 total amount allocated out of the purchase price to go  
8 into the pension plan at that time was only \$14  
9 million. And that's one of the protests -- one of the  
10 claims we made that they pulled the wool over the  
11 Attorney General's Office eyes at that time and that  
12 that 14 million was relatively meaningless.

13 Even now with gross payments of three-and-a-half  
14 times what was paid in 2014, we still have significant  
15 shortfalls. We're hoping, and I say this in looking at  
16 Mr. Reardon, we hope that we get the rest of it in  
17 combination through the Liquidating Receiver and  
18 through our remaining claims against the Diocese and  
19 the Bishop. And we hope to be back at some point in  
20 the future asking for 23 1/3 of the fees attributable  
21 to any result we get with the Bishop.

22 Now, I want to tell you specifically what Judge  
23 Stern said about this particular settlement. And this  
24 is document 206 before your Honor. And this is a  
25 transcript of the hearing where he approved this

1 particular settlement. And of course it was necessary  
2 he do that because one of the settling parties is his  
3 receiver. So the Receiver asked for instructions and  
4 of course, you know, recommended the settlement.

5 But anyway, Judge Stern said when he approved  
6 this, in the transcript he said, I would concur with  
7 what was said. This very much is one of the most, if  
8 not the most, complicated issue in litigation the Court  
9 has before it. The only one that I can think of that  
10 may have been more complex was the case before my  
11 predecessor Justice Silverstein in another very large  
12 case involving Mr. Wistow. So I'm flattered and  
13 pleased about that comment. He was referring I believe  
14 to the *38 Studios* case.

15 Now, when ruling from the bench on the approval,  
16 he said as follows, That contingency fee which was  
17 negotiated between the Plan Receiver and Special  
18 Counsel was previously approved by this Court and was  
19 approved by this Court in the prior settlements as  
20 well. With respect to the case presently before the  
21 Court in the petition, the Court finds that the  
22 contingency fees and costs are fair, reasonable and  
23 certainly for the benefit of the plan receivership of  
24 state and that contingency fee as well as reasonable  
25 costs are approved. He goes on to say recognizing your



1 Honor's role in this he says, I certainly understand  
2 that Judge Smith is going to need to consider these  
3 fees with respect to the class action. And that is one  
4 of the main reasons, as I mentioned before, that while  
5 the Court is giving a decision from the bench at this  
6 point so we can proceed forward, I will issue a set of  
7 findings as well to supplement the decision, in other  
8 words, to aid your Honor in coming to an appropriate  
9 decision.

10 Now, what's very, very, very unusual about this  
11 case as a quote, class action, is that FRCP 23(c)  
12 specifically says, and I quote, In a certified class  
13 action, the Court may award reasonable attorneys' fees  
14 and nontaxable costs that are authorized by law or by  
15 the parties' agreement. Emphasis -- I'm sorry, I'm  
16 reading from my own notes. So it is possible to have  
17 an agreement as to attorneys' fees in a class action.  
18 It would be very unusual obviously, because we would  
19 need, the cases show, a very sophisticated party who is  
20 one of the members of the purported lead plaintiffs;  
21 one of the examples would be a situation where a  
22 stockbroker feels that -- a group of stockbrokers have  
23 been cheated in some fashion, wants to bring a class  
24 action, is obviously much more sophisticated obviously  
25 than the people who are the plaintiffs in this case.

1           Before I get into the relationship with the  
2 individual plaintiffs and what they're getting out of  
3 this, I would like to talk to your Honor about the  
4 percentage-of-fund method which is what we're talking  
5 about. We're talking about a percentage of the \$30  
6 million. And the decisions in this circuit say that  
7 the percentage-of-fund method is preferred in common  
8 fund cases. And I quote from a decision from the  
9 District of New Hampshire, it's in our memo, *In re*  
10 *Cabletron Systems*. And they quote from the Third  
11 Circuit case. They say, The percentage-of-fund method  
12 is preferred in common fund cases because it allows  
13 courts to award fees from the fund in a manner that  
14 rewards counsel for success and penalizes it for  
15 failure. And it goes on to say this is something the  
16 lodestar method cannot do.

17           Interestingly enough, there's a First Circuit  
18 case -- there's 13 appeals involving the fires at the  
19 -- I believe it's the *Metro Goldwyn Mayer* hotel  
20 complex. And I quote from that case. It says, In  
21 complex litigation in common fund cases, by and large  
22 tend to be complex. The percentage-of-fund approach is  
23 often less burdensome to administer than the lodestar  
24 method. And they go on to say, Using the  
25 percentage-of-fund method in a common fund case

1 enhances efficiency or, put into reverse, using the  
2 lodestar method in such a case encourages inefficiency.  
3 Under the latter approach, attorneys not only have a  
4 monetary incentive to spend as many hours as possible,  
5 but also faces strong disincentive to early settlement.  
6 If the plaintiff percent-of-fund method is utilized,  
7 the lawyer is still free to be inefficient or to drag  
8 her feet in pursuing settlement options, but rather  
9 than being rewarded for this unproductive behavior, she  
10 will likely reduce her own return and hours expended.

11 Finally, one other quote from 13 appeals, the  
12 First Circuit case. Another point is worth making --  
13 forgive me for reading all this material, your Honor,  
14 but obviously this particular motion is a peculiar  
15 importance to my firm. Another point is worth making,  
16 because the percent-of-fund technique is  
17 result-oriented rather than process-oriented, it better  
18 approximates the workings of the marketplace. We think  
19 that Judge Posner captured the essence of this point  
20 when he wrote that, quote, The market in fact pays not  
21 for the individual hours but for the ensemble of  
22 services rendered in a case of this character, unquote.  
23 And then the First Circuit goes on, The marketplace  
24 pays for the results achieved. Then there's a -- I'd  
25 like to quote from a district court case from

1 Massachusetts. And it says, quote, Within the First  
2 Circuit courts generally reward fees in the range of 20  
3 to 30 percent with 25 percent as the benchmark."

4 Now, your Honor, in this court in the past 12  
5 months, this Court has awarded in two class actions 33  
6 1/3 percent. And that's *In re Loestrin* and *Kondash vs.*  
7 *Citizens*, which I submit -- and I don't mean to demean  
8 the cases in any way -- were nowhere near as  
9 complicated as what we've been through. And Magistrate  
10 Judge Sullivan in the opinion adopted, but fully  
11 adopted by your Honor, said -- I believe it's in the  
12 *Loestrin* case -- and I quote her, Indeed, it is fair to  
13 say that a, quote, Clear consensus among federal and  
14 state courts, unquote, has emerged that the  
15 percentage-of-fund approach is a more efficient, better  
16 reason and effective method. Consistent with these  
17 principles, the traditional one-third of the funds has  
18 been routinely approved as appropriate for TCPA  
19 settlements in courts in other circuits.

20 Now, what I want to say is this is very much in  
21 our case because in a way it's not even a common fund  
22 case. Then let me explain what I mean by that. We  
23 have always regarded the principal plaintiff as the  
24 Plan Receiver. And the reason that we brought in seven  
25 putative class plaintiffs is actually set forth in the

1       retainer agreement that we have with those seven  
2       individual plaintiffs. And what that says -- and that  
3       also, your Honor, is part of the record in this case,  
4       the retainer agreement.

5               It says, Wistow, Sheehan & Loveley believes that  
6       the Receiver has standing to bring all necessary claims  
7       to protect participants and participants'  
8       beneficiaries. However, it is expected there may be  
9       issues raised as to whether or not participants and  
10      participants' beneficiaries have the standing as to  
11      certain claims. To mitigate that potential issue,  
12      Wistow, Sheehan & Loveley is proposing to join  
13      class-action claims along with the claims of the  
14      Receiver. You will be one of the several persons  
15      represented by Wistow, Sheehan & Loveley named with  
16      regard to the class-action claims.

17             And we disclosed to them at the time not only  
18      our relationship with Mr. Del Sesto as Receiver but  
19      attached a copy, with his permission, of the retainer  
20      agreement that we had with him. Now, the reason we  
21      added them was because the general rule is that a  
22      trustee -- and we regarded Mr. Del Sesto to be a  
23      trustee since he was operating the Plan -- the general  
24      rule is you needn't join beneficiaries but there are  
25      keen exceptions. We anticipated that we would get the

1 most vigorous fights from the other side if we didn't  
2 add these people. I don't know what would have  
3 happened if we didn't, but that's what we anticipated,  
4 and we were very concerned because of the statute of  
5 limitations running out on some of the claims, for  
6 example, fraudulent transfers, we brought the suit just  
7 in time. And we didn't want to run across the risk  
8 that later on they could convince the Court that we  
9 should have brought in individual participants.

10 Now, it's noteworthy, your Honor, that the only  
11 benefits in any of these settlements so far, including  
12 the proposal, are not going directly to any of these  
13 Plan participants. This is not a common fund in the  
14 sense that we collect \$40-odd million and then  
15 individual plaintiffs put in their individual claims  
16 and we disburse the money or some administrator  
17 disburses the money to them depending on what their  
18 individual claim is and whether or not they respond.  
19 This is not that case.

20 This is a case where it's clear that every  
21 nickel of the settlement is going into the Plan  
22 receivership which, of course, has an enormous benefit  
23 to the Plan participants. It's just not the direct one  
24 and there is no common fund. Unless you want to call  
25 the Plan the common fund which in my belief, as class

1 actions go, it's different.

2 Now, in the document 207, Exhibit 13, which is  
3 the fee agreement with the class-action  
4 representatives, it expressly says that, quote, If a  
5 monetary recovery is obtained for a plaintiff within  
6 the class, it goes on to explain that we go in and seek  
7 fees for that. That didn't happen. There is no  
8 monetary recovery whatever for any member of the class.  
9 Again, not to say that they haven't benefited  
10 enormously because of it. So in a sense we're really  
11 not even seeking a fee from the class or a class fee.  
12 It's really a ratification of the payment to Mr. Del  
13 Sesto as receiver and a ratification of the contract we  
14 entered into.

15 By the way, these seven represented plaintiffs  
16 were referred to us by three lawyers. And I want to  
17 explain that because at least one of them is here  
18 today, and you have affidavits from all of them. We're  
19 talking about Mr. Callaci, who has introduced himself,  
20 representing the Union, Arlene Violet, who represents  
21 something like 357 people, and Jeff Kasle who  
22 represents 247. And let me explain what I mean by  
23 "represents" and how involved this became.

24 When the petition was originally filed in  
25 August 2017 by the Heritage Hospitals, that petition

1 was against the Plan itself. It was a petition to put  
2 the Plan into receivership. That was the receivership  
3 that ultimately resulted in the appointment of Mr. Del  
4 Sesto. But concomitant with that request to put that  
5 plan into receivership was a request to immediately  
6 reduce the benefits to all of the claimants. By  
7 "claimants," I mean the beneficiaries of the Plan. To  
8 automatically reduce everybody's payment by 40 percent  
9 immediately.

10 There was controversy between the participants  
11 as to who, if anybody, should bear that reduction. The  
12 younger people felt, for example, that the older people  
13 had been receiving payments for many years. They had  
14 just begun or hadn't even begun; they shouldn't get a  
15 reduction. The older people felt the younger people  
16 could perhaps get a job somewhere else. They were  
17 totally dependent. There was a third group I won't get  
18 into.

19 I, of course, could not possibly get involved in  
20 that issue. In our fee agreement, it says we're not  
21 going to. Each of these people who is concerned about  
22 this ended up in groups that were represented pro bono  
23 by Mr. Kasle and Mr. Callaci and by Ms. Violet. Their  
24 function was to negotiate as best they could to try to  
25 figure out what to do, who would bear the 40 percent



1 reduction, if anybody.

2 Those meetings took place with those three  
3 lawyers and Mr. DeI Sesto as Receiver. Again, I stayed  
4 away from it completely. But when I became aware of  
5 who these people were and what they were doing, I asked  
6 them if they were interested in recommending  
7 representative plaintiffs to join in the case. And  
8 they did. And that's why I say referral by them.

9 And I want to emphasize that there's no referral  
10 fee payment or anything like that. We would be  
11 obliged, obviously, to disclose that to the Court if  
12 there's any question of the fees that are being shared,  
13 but there are not. So what we're saying here, your  
14 Honor, is this in a sense is really not even a common  
15 fund case, but if you consider it that, then most of  
16 the cases say the percentage of the fund would be an  
17 appropriate thing.

18 Your Honor, I'm not going to ask you for  
19 sympathy or anything like that, but I wish to point out  
20 that we are a small firm. Right now there is five of  
21 us in the firm. There's a limit to how much we can do.  
22 We've been consumed with this case. And we've had a  
23 significant opportunity cost associated with  
24 taking -- deferring action on some cases where it's  
25 possible, turning away cases that came to us, and I

1 think that has to be taken into consideration here.

2 We have filed declarations by Mr. Callaci, Ms.  
3 Violet and Mr. Kasle who not only ask the Court to  
4 approve the settlement itself, but affirmatively ask  
5 the Court to approve our fee of 23 1/3 percent. Those  
6 people represent -- those three individuals who I  
7 mentioned represent over a thousand of the Plan  
8 participants.

9 It should be noteworthy that not one single  
10 participant that, as I understand it, has filed an  
11 objection to anything, indeed, nobody has filed an  
12 objection to anything with the exception of Mr. Merten  
13 who has the technical objection that he wants to  
14 preserve the situation with the special statute that  
15 was passed; he wants to continue to say it's  
16 unconstitutional. And we've offered that originally,  
17 and we have no problem with that. With that caveat  
18 that he's preserved that, the only remaining defendants  
19 in the case have no objection.

20 Incidentally, what's interesting, I might point  
21 out, is that on July 14th the Governor signed a  
22 statute, signed legislation, that should have been done  
23 years and years ago, doing away with these special  
24 statutes that have been passed. This is the fourth one  
25 I've been involved in. The *RISDIC* one, there was a

1 special statute that recognized that the non-settling  
2 defendants would only get a pro tanto and not a pro  
3 rata benefit from it. Then that was followed by the  
4 *The Station* fire special legislation. Then followed by  
5 *38 Studios* and now here.

6 Now, the legislature has -- this is just of  
7 general interest, I think partially as a result of the  
8 activity here in these kind of cases -- has changed the  
9 law in Rhode Island so now Rhode Island follows what's  
10 the majority statutory scheme which gives only pro  
11 tanto relief to the non-settling defendants rather than  
12 pro rata. Having said all of that, I'd ask your Honor  
13 to award us our fees.

14 THE COURT: All right. Thank you, Mr. Wistow.

15 All right. Any comments from defendant counsel?

16 MR. HALPERIN: Your Honor, Mr. Halperin. I do  
17 have a couple of comments, if I may?

18 THE COURT: Let's start with Mr. Halperin, yes.

19 MR. HALPERIN: Thank you.

20 Your Honor, on behalf of all of the Prospect  
21 entities, we obviously are here in support of the  
22 settlement that we've entered into and have nothing to  
23 say other than to ask the Court to approve it as  
24 quickly as is possible. And we certainly support the  
25 notion that an order consistent with what we need for

1 the plaintiffs to be able to draw on the letter of  
2 credit is actually critical. There's very specific  
3 language in the letters of credit that must be compiled  
4 with. And it refers back to the settlement agreement  
5 as Mr. Sheehan indicated.

6 It's no different than what your Honor already  
7 approved back in September of 2019 with the earlier  
8 settlement in which the Court made a finding that the  
9 settlement was entered into in good faith and  
10 determined to be fair, adequate and reasonable. The  
11 only slight difference is our language in our  
12 settlement refers to good faith under the Rhode Island  
13 statute. That was the only distinction. I'm not sure  
14 whether that's a distinction with meaning, but if the  
15 Court is inclined to reference that, that would be  
16 helpful. And we too have no issue with the reservation  
17 that the Court also included in the previous settlement  
18 that the issue of whether the settlement statute is  
19 preempted by ERISA or is unconstitutional are preserved  
20 for the future on behalf of the other litigants. So  
21 that would resolve the issues with respect to getting  
22 the monies flowing if the Court could focus on that.

23 With respect to the overall case, I certainly  
24 share the sentiment that Mr. Wistow indicated that  
25 there were a lot of factors that led to this

1 settlement. And it certainly was fiercely litigated,  
2 there's no question about that. I do want to state for  
3 the record that Mr. Wistow brought up the fact that the  
4 Attorney General in a regulatory proceeding that really  
5 has nothing directly to do with this case, ultimately  
6 did approve the effective change of control that  
7 Prospect was seeking with conditions, one of which is  
8 that certain letters of credit be posted.

9 But what I would like to put on the record is  
10 that in that same decision there was a finding that  
11 Prospect had fully complied with the conditions that  
12 were imposed back in 2014. And it were subsequent  
13 events, transactions that Prospect entered into, that  
14 led to the concern that there was a financial  
15 instability and a need for these new conditions to  
16 approve this new application. So I did not want that  
17 to be unsaid.

18 Lastly, your Honor, I would like to publicly  
19 thank Retired Chief Judge Frank Williams. Without his  
20 efforts going between myself and Mr. Wistow and Mr.  
21 Sheehan, there's no likelihood that we would be here  
22 today. And I think he deserves a significant amount of  
23 credit. I'd just like that noted for the record. And  
24 with that, I thank the Court for the time.

25 THE COURT: Thank you, Mr. Halperin.

1           MR. WISTOW: I was remiss in not thanking Judge  
2 Williams also. I can tell you that he moves people.  
3 He would call us up 2 o'clock in the morning and say,  
4 Mr. Wistow, what's your answer to Mr. Halperin's latest  
5 proposal? He would call on the weekend. And there's  
6 no doubt that he played a vital role in the situation.  
7 I'm sure he woke up Mr. Halperin from time to time.

8           THE COURT: Okay. Well, thank you. I know he  
9 did a great job and I've spoken to him about it, and I  
10 got an email from him. I know he had hoped to attend  
11 this hearing actually but was caught up in another  
12 mediation so he said he was unable to attend but made  
13 himself available if there were any questions.

14           But let me ask, I know Mr. Merten was about to  
15 say something so let me ask him.

16           MR. MERTEN: Very quickly, your Honor. Despite  
17 how complex everything was and how bitter everything  
18 was fought leading up to this point, there seems to be  
19 complete agreement as to the motions before the Court  
20 and the inclusion of the provision that the Court put  
21 in its March 26th, 2021, order with respect to the  
22 constitutionality paragraph 22, which is the only issue  
23 that the Diocesan defendants raised. So we think the  
24 path forward is probably pretty clear with respect to  
25 the settlement and even the attorneys' fees.

1 THE COURT: Okay. Very good.

2 Mr. Godofsky.

3 MR. GODOFSKY: Yes, your Honor. Thank you very  
4 much.

5 So I would like to just emphasize the point that  
6 Mr. Sheehan made about the complexity of this case and  
7 the value of the settlement to the class. This case  
8 was filed more than three years ago. We are still not  
9 through the motion-to-dismiss phase. If it were not  
10 for this settlement, we would face heated litigation  
11 over novel issues involving pleading standards,  
12 standing, class certification, fiduciary duty,  
13 privilege, breach of duty, damages, church plan issues,  
14 funding standards for church plans and successor  
15 liability. Many of these issues are issues of first  
16 impression or unsettled law or extremely unique factual  
17 issues. If it were not for this settlement, plaintiff  
18 class would be probably years away from getting any  
19 money from any of the settling defendants, if any, and  
20 if ever.

21 Given that, given the fact that this case has  
22 been truly fiercely litigated and that it would not be  
23 over were it not for the settlement, Angell's position  
24 is that this settlement is a good settlement, it's a  
25 fair settlement. And Angell would also like to request

1 a quick ruling on the fairness of the settlement. We  
2 believe it's in everybody's interests for this to be  
3 resolved quickly.

4 Thank you very much, your Honor. If you have  
5 any questions for me, I'd be glad to answer them.

6 THE COURT: No, I don't have any specific  
7 questions.

8 All right. Any others?

9 MR. CALLACI: Your Honor, may I be heard?

10 THE COURT: Sure. Mr. Callaci.

11 MR. CALLACI: Your Honor, my name came up when  
12 Mr. Wistow was making some comments; thankfully not in  
13 the pejorative. He did make note of the fact that I  
14 submitted a declaration in this case. And while it  
15 does speak for itself, I do want to say that I come  
16 before you today standing by what I said in that  
17 affidavit; offering the Union's unequivocal support for  
18 the terms of the settlement, for the legal fees under  
19 the engagement and fee agreement that's been approved  
20 by the Court a long time ago.

21 I have the good fortune of representing nearly  
22 400 union members who are among the 2700 participants  
23 in this case. And they wanted me to go on the record  
24 today to also say that they are grateful that there  
25 have to date been no cuts to the benefit. They are



1 grateful for the brilliant work that has been done by  
2 the Plan Receiver, Mr. DeI Sesto, the Special Counsel,  
3 Mr. Wistow, Mr. Sheehan, Mr. Ledsham. And they have  
4 all kept, at least the folks I represent, fully  
5 informed over the course of this litigation, which is  
6 not an easy thing to do but it's a critical and  
7 important thing to do because when you are worried  
8 about your income security when you're on a fixed  
9 income, when you are retired, at the very least knowing  
10 what's going on in the case and being fully informed;  
11 it lends some calm to an otherwise un-calm and  
12 nerve-racking situation.

13 And I wanted it to be clear that the folks I  
14 represent are grateful for the work that has been done  
15 so far and for the steady hand of the Court. Thank  
16 you.

17 THE COURT: Thank you. All right.

18 Any other -- yes, Mr. Hemmendinger.

19 MR. HEMMENDINGER: Sorry, your Honor. I don't  
20 have anything specific to add to what other counsel  
21 have said on both sides in support of the settlement,  
22 but I particularly agree with what Mr. Sheehan and Mr.  
23 Wistow have said about the merits of the settlement,  
24 the benefits of the settlement and the work that was  
25 done to achieve it. Thank you.

1 THE COURT: Thank you.

2 MS. VIOLET: Your Honor, could I be heard?

3 THE COURT: Who is that?

4 MS. VIOLET: Arlene Violet, your Honor.

5 THE COURT: Oh, sure. Your name wasn't on  
6 there, Ms. Violet. Go ahead.

7 MS. VIOLET: Your Honor, I just want to echo  
8 Attorney Callaci's comments. My clients certainly  
9 support 100 percent this settlement. And I also want  
10 to comment on the absolute brilliance of the Wistow  
11 firm, textbook legal work that they did, and the total  
12 support of the fees that they are requesting. Thank  
13 you, your Honor.

14 THE COURT: Thank you. All right. Anyone else?  
15 Okay. Well, I thank you all for the  
16 presentations and the comments. So I'm going to keep  
17 my comments fairly brief on the record here. I would  
18 like to have a written order prepared, but let me keep  
19 it fairly simple.

20 I am going to approve -- grant final approval of  
21 the settlement, certify the class, the class  
22 representatives and counsel. And I'll also make the  
23 finding requested with respect to good faith under  
24 Rhode Island General Law Section 23-17.14 to 35. And  
25 the order that will issue should note the reservation

1 with respect to the Diocesan defendants with respect to  
2 their argument about the statute being preempted or  
3 unconstitutional. So I'm going to ask plaintiffs'  
4 counsel to prepare an order to that effect and also  
5 approving the attorneys' fees in the amount in the  
6 percentage requested.

7 Just by way of sort of general comments with  
8 respect to this approval, I don't believe it  
9 would -- as I've indicated earlier, that it's either  
10 necessary, nor would it be all that much help to anyone  
11 for me to write an opinion in this case. One of the  
12 reasons I feel that way is not just its uniqueness, but  
13 I think this is about the most well-supported and  
14 thoroughly vetted settlement and request for attorneys'  
15 fees that I've seen, and I've presided over a number of  
16 class actions which have resulted in settlements. But  
17 by the time it's gotten to me at this juncture, it has  
18 essentially been vetted and approved by Judge Stern,  
19 with a very thorough and well-reasoned and compelling  
20 written opinion which has been referenced here. The  
21 affidavit of Retired Chief Justice Williams, which is  
22 also comprehensive and thorough and places the case and  
23 the settlement and the attorneys' fees award in  
24 context. The fact that the fee award was negotiated by  
25 a very sophisticated receiver, Mr. Del Sesto, who is as

1 experienced in these matters as anyone in the bar and  
2 who I think negotiated a very good fee arrangement and  
3 contract with the Special Counsel on behalf of the  
4 members -- on behalf of the receivership I should say.  
5 And it comes to me not only with all of that support  
6 but now, as we've just heard on the record, the support  
7 in the affidavits of Mr. Callaci and Ms. Violet and  
8 Mr. Kasle on behalf of the individual members of the  
9 Plan who are the ultimate beneficiaries of this  
10 settlement when the money is paid. And all of that in  
11 combination just overwhelmingly suggests to me that the  
12 settlement is fair and reasonable and for the benefit  
13 of all of these members.

14 In addition to that, the percentage strikes me  
15 as more than reasonable I think that in the  
16 circuit -- the cases have been cited. I've commented  
17 on this in prior decisions, but the percentage-of-fund  
18 method has been adopted and approved by the First  
19 Circuit and in the district courts. And I think the  
20 actual percentage here, the 23 1/2, is well within the  
21 usual percentages that are approved. It's been noted  
22 that those are typically between 20 and 30 percent. In  
23 my experience, they're sometimes over 30 percent. So I  
24 think that 23 1/2 percent that was negotiated here is  
25 more than reasonable.

1           And that's especially true in light of the  
2 complexity of what -- complexity of this case. It is  
3 among the certainly top three or four of most complex  
4 cases that I have been involved in, although my  
5 own -- I will say very thankfully that most of the  
6 complexity has been dealt with on your side of the  
7 screen and not on my side of the screen and maybe in  
8 Judge Stern's court. I think we have -- on this side  
9 we've skated a little bit free of the rancor and the  
10 -- maybe not all the rancor, but a lot of it and some  
11 of the complexity.

12           I think Mr. Wistow mentioned the *Loestrin* case.  
13 I don't see anybody on this screen who was involved in  
14 that case, but don't underestimate the *Loestrin* case.  
15 There were 25 testifying experts and 50 substantive  
16 motions in limine and settled right after I impaneled  
17 the jury and just before opening statements. And it  
18 was, I think, a \$300 million settlement, if my  
19 recollection serves me correctly, in an antitrust class  
20 action, multidistrict litigation case. So I put this  
21 maybe in that same league.

22           So when I look to the 23 1/3 percent, and just  
23 by my own experience comparing it to some other cases  
24 where certainly higher percentages have been approved  
25 for equal or lesser intensity of work, I will say that

1 I think that Mr. Wistow and Mr. Sheehan and their firm  
2 have -- did some really exceptional lawyering and very  
3 creative and very tenacious so I have no trouble  
4 approving that fee award.

5 So I don't think it really is necessary for me  
6 to say too much more than that. I would just ask you  
7 to prepare a written order and circulate that order  
8 before submitting it to other counsel for any comment.  
9 And then once you submit it to me, I will review it and  
10 make any changes I think are necessary and I'll get  
11 that executed. And I think that will get you on your  
12 way to getting these funds distributed.

13 MR. WISTOW: Thank you, your Honor.

14 THE COURT: All right. So is there anything  
15 else before we sign off?

16 MR. WISTOW: I guess I have to give you some bad  
17 news. We may be back in front of you with the  
18 remaining defendants.

19 THE COURT: Yes. I figured that we would be  
20 setting something up. Maybe we can go off the record  
21 for just a moment before we adjourn just so that we  
22 don't bother the court reporter with this, but what is  
23 your plan in terms of the rest of the case?

24 (Off-the-record discussion)

25 (Time noted; 3:25 p.m.)

1  
2 I, Lisa Schwam, CRR-RPR-RMR, do hereby  
3 certify that the foregoing transcript is a correct  
4 transcript *of a remote video conference* prepared to the  
5 best of my skill, knowledge and ability of the  
6 proceedings in the above-entitled matter.  
7

8 /S/ Lisa Schwam

9 Lisa Schwam, CRR-RPR-RMR  
10 Federal Official Reporter

Date:  
August 3, 2021

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25