

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN, ET AL. :

Plaintiffs :

v. :

C.A. No:1:18-CV-00328-WES

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**PLAINTIFFS’ LR CV 56(a)(4) STATEMENT OF UNDISPUTED AND
DISPUTED MATERIAL FACTS IN OPPOSITION TO THE DIOCESAN
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to LR Cv 56(a)(4), Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (“Named Plaintiffs”) and on behalf of all class members¹ (the Receiver and the Named Plaintiffs being referred to collectively as “Plaintiffs”), submit this statement of undisputed and disputed² material facts in opposition to the Motion for Summary Judgment on Count IV

¹ Contingent upon the Court certifying the Class and appointing them Class Representatives. The individual plaintiffs have previously been certified as class representatives but only for purposes of three settlements. See ECF # 162; ECF # 164; ECF # 217.

² LR Cv 56(a)(4) refers to the opposing party identifying “additional undisputed facts not contained in the moving party’s statement of undisputed facts which preclude summary judgment...” However, although summary judgment must be based on undisputed material facts, disputed material facts are just as effective as undisputed material facts to preclude summary judgment. Accordingly, Plaintiffs draw no distinction between undisputed and disputed material facts for purposes of their LR Cv 56(a)(4) statement.

Because the Diocesan Defendants’ facts are numbered 1–39, Plaintiffs’ facts are consecutively numbered beginning with 40. See LR Cv 56(a)(4).

of the Complaint filed by the Diocesan Defendants.³

SCOPE OF THESE FACTS

The following facts are addressed to three issues:

- To demonstrate that after the 2014 Asset Sale, the Plan was administered by an organization whose main job was administering or funding the Plan, which retroactively “cured” any prior disqualification based on the Plan’s not having been administered by a principal purpose organization;⁴
- To demonstrate that the Diocesan Defendants both controlled and had a substantial identity of interest with SJHSRI⁵ in connection with the application filed by SJHSRI and others with the Rhode Island Attorney General and the Rhode Island Department of Health under the Hospital Conversions Act for approval of the sale of SJHSRI’s assets to Prospect entities in late 2013 and the first half of 2014, such that SJHSRI’s statements to the regulators are attributed to the Diocesan Defendants for purposes of judicial estoppel; and
- To demonstrate that the Diocesan Defendants and SJHSRI predicated that application upon the assertion that the Plan was a “Church Plan” exempt from ERISA, including the express assertion that the Plan was administered by a principal purpose organization, in direct contradiction to the position that the Diocesan Defendants are taking in their motion for summary judgment, such that the Diocesan Defendants are judicially estopped from now asserting that the Plan did not qualify for the “Church Plan” exemption.

³ I.e., the Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation and Diocesan Service Corporation.

⁴ These facts for the most part are from the period beginning June 20, 2014 through the appointment of the Receiver as Plan Administrator on October 20, 2017. Under the “cure” provisions of ERISA, 29 U.S.C. §1002(33)(D), insofar as the Plan was administered by a principal purpose organization during this period, that cures any disqualification from church plan status due to the Plan’s previously having not been administered by a principal purpose organization.

⁵ I.e. St. Joseph Health Services of Rhode Island (“SJHSRI”).

ADDITIONAL DISPUTED AND UNDISPUTED MATERIAL FACTS

40. SJHSRI was formed in 1892 as the corporation named St. Joseph Hospital. In 1970, St. Joseph Hospital (pursuant to a merger) acquired Our Lady of Fatima Hospital. Exhibit 1 (An Act Providing for the Merger of St. Joseph’s Hospital and Our Lady of Fatima Hospital). In 1995, St. Joseph Hospital was renamed St. Joseph Health Services of Rhode Island. Exhibit 2 (Articles of Amendment). SJHSRI operated Our Lady of Fatima Hospital (“Fatima”) as a completely independent Catholic Hospital from 1970 until January 4, 2010. Diocesan Defendants’ Statement of Undisputed Material Facts (“DD SUMF”) Exhibit 10 (SJHSRI’s amended and restated bylaws).

41. From 1995 to January 4, 2010, the Bishop of Providence appointed all members of the board of SJHSRI, who served at his pleasure. Exhibit 3 (SJHSRI’s 1995 bylaws) at 4 (Article II, § 1). He was also the Chairman of and appointed all of the members to SJHSRI’s Retirement Board, which administered the Plan. DD SUMF Exhibit 2 (St. Joseph Health Services of Rhode Island Retirement Plan as Amended and Restated effective July 1, 1995) § 18.1.

42. In May of 2008, SJHSRI and Roger Williams Hospital (“RWH”) entered into a “Memorandum of Understanding” (“MOU”) and agreed in principle to an affiliation to create a new health care system. DD SUMF ¶ 8; DD SUMF Exhibit 6 (May 12, 2008 Memorandum of Understanding).

43. The MOU expressly provided that it was “a fundamental understanding of the Parties that the System shall be structured and governed in a manner that will preserve the Catholicity of SJHSRI ...” DD SUMF Exhibit 6 (MOU) at 1. Pursuant to the MOU, “SJHSRI will maintain its designation as a Catholic hospital operating in full compliance with the social and ethical teachings of the Catholic Church, including the

Religious and Ethical Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop ('ERDs')."

DD SUMF Exhibit 6 (MOU) at 4.

44. As of February 2, 2009, SJHSRI, RWH and the Bishop entered into a Health Care System Affiliation and Development Agreement. DD SUMF ¶¶ 19; DD SUMF Exhibit 9 (Health Care System Affiliation and Development Agreement).

45. The affiliation involved the creation of a new "healthcare system" under a new entity, then-known as CharterCARE Health Partners ("CCHP"). CCHP would be the sole member of RWH, and the sole Class A member of SJHSRI. The Bishop of Providence was the sole Class B Member of SJHSRI, with each member of SJHSRI having different voting rights. See DD SUMF ¶¶ 19 & 20; DD SUMF Exhibit 9 (Health Care System Affiliation and Development Agreement); DD SUMF Exhibit 10 (2010 SJHSRI By-laws) at 4.

46. Notably, the Affiliation Agreement included provisions to ensure that SJHSRI would remain a Catholic hospital despite being affiliated with a secular system. DD SUMF Exhibit 9 (Affiliation Agreement) at 2, 5, 7, 12, 14. By these provisions the parties expressly agreed that CCHP "[would] encourage and support the maintenance and support the maintenance of Catholicity at SJHSRI" and SJHSRI "[would] be a Catholic hospital." Id. at 12.

47. Following the reorganization, the Bishop or his designee was an *ex officio* member of the Board of Trustees with voting rights. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 4.2.

48. Following the reorganization, the Bishop or his designee was also the Chairperson of SJHSRI's Board of Trustees. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 6.2.

49. The Bishop or his designee remained Chairman of SJHSRI's Board of Trustees throughout the period from January 4, 2010 through at least April 2016. See Exhibit 4 (2010 SJHSRI Board of Trustees membership list); Exhibit 5 (2014 SJHSRI Board of Trustees membership list); Exhibit 6 (Bishop Tobin's letter of April 25, 2016 acknowledging Monsignor Paul D. Theroux's request to resign effective as of the end of 2016).

50. Following the reorganization, the Bishop had the exclusive right to appoint the Vice Chairperson of SJHSRI's Board of Trustees. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 6.2.

51. SJHSRI's actuaries informed SJHSRI that minimum recommended contributions that would be required if the Plan were subject to ERISA for the following Plan years: 2010, 2011, 2012, 2013, and 2014. DD Motion to Dismiss at 45; DD Motion to Dismiss Exhibit 9⁶ (chart labeled "St. Joseph Hospital Services of Rhode Island Retirement Plan Historical Actuarial Information 7/1/2003-6/30/2013"); Exhibit 7 hereto (Actuarial Valuation for Plan Year Ending June 30, 2014) at 12.

52. However, SJHSRI made no contributions in 2010, 2011, 2012, or 2013, and no contribution in 2014 until June 20, 2014 when \$14,000,000 was contributed to the Plan in connection with the 2014 Asset Sale. DD SUMF ¶¶ 31–33.

⁶ ECF # 238-9.

53. There is no documentation evidencing that SJHSRI ever informed Plan participants that it was not making recommended minimum contributions to the Plan, that the Plan was underfunded, or that the purpose of the 2014 Asset Sale was to separate (and hopefully insulate) SJHSRI's operating assets from SJHSRI's pension liability. Exhibit 8 (Declaration of Stephen P. Sheehan dated April 18, 2022 ("Sheehan Dec.")) ¶ 21.

54. Moreover, the seven individual Named Plaintiffs have submitted their Declarations attesting to the fact that they were never informed that SJHSRI was not making recommended minimum contributions to the Plan, that the Plan was underfunded, or that the purpose of the 2014 Asset Sale was to separate (and hopefully insulate) SJHSRI's operating assets from SJHSRI's pension liability. Declarations of Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque attached hereto as Exhibits 9 – 15 respectfully. See id. ¶ 3.

55. In March 2011, the leadership of CCHP decided to seek a capital partner. See Exhibit 16 (Bishop Tobin's September 27, 2013 letter to the Congregation for the Clergy) at 1; Exhibit 17 (March 17, 2011 minutes of the SJHSRI Board of Trustees) at 2-3.

56. In the Fall of 2011, SJHSRI's balance sheet showed an accumulated deficit owed on the Plan of approximately \$72,000,000. Exhibit 18 (November 15, 2011 CCHP Finance, Audit & Compliance Committee Meeting minutes) at 2.

57. Prospect Medical Holdings, Inc. ("Prospect") was identified as one possible partner. Exhibit 19 (August 16, 2012 CCHP Board of Trustees minutes) at 3.

58. Prospect did not want to assume liability for the deficit or satisfy the obligation. Exhibit 20 (September 24, 2012 Letter of Intent) at 2.

59. On September 10, 2012, Prospect's representative Tom Reardon sent an email to CCHP and SJHSRI's CEO Ken Belcher requesting a meeting "to talk more about a creative solution to the pension issue and talk joint venture LOI [Letter of Intent] terms." Exhibit 21 (September 10, 2012 email) at 2.

60. Tom Reardon, Ken Belcher, and Jeff Bauer of The Angell Pension Group, Inc. ("Angell") met on September 12, 2012. Exhibit 21 (September 10, 2012 email); Exhibit 22 (September 12, 2012 email).

61. On November 5, 2012 Ken Belcher advised SJHSRI's Board of Trustees that Prospect's position with respect to the pension liability of \$72 million was to "develop a [separate] board to manage the Pension fund." Exhibit 23 (November 5, 2012 SJHSRI Board of Trustees meeting minutes) at 3.

62. On September 20, 2012, another potential suitor, LHP Hospital Group, Inc. ("LHP") sent CCHP, SJHSRI, and RWH a draft letter of intent which proposed, *inter alia*, that "[t]hrough the transaction, LHP will contribute ~\$160 million in cash which will be used, in part, to retire CCHP's long-term debt of ~\$33 million and resolve CCHP's pension liability of ~\$72 million." Exhibit 24 (September 20, 2012 LHP Draft Letter of Intent).

63. According to the minutes of the meetings of SJHSRI's Board of Trustees, they did not want to devote so much capital to paying the pension liability. See Exhibit 25 (January 17, 2013 SJHSRI Board of Trustees meeting minutes) at 3.

64. On September 24, 2012, Prospect sent CCHP a letter of intent which proposed, *inter alia*, the formation of a new company to hold the assets of RWH and

SJHSRI. This letter of intent stated that the new company would not assume SJHSRI's pension plan, and instead:

Discharge of Pension Plan Liability. As stated above the pension plan liability of SJHSRI as reflected on CCHP's financial records will not be assumed by Newco. Furthermore, \$86 million of cash and investments held by Bank of America and designated for the discharge of the pension plan obligations shall not be contributed to Newco. We propose that the \$14 million cash contribution of CCHP be transferred to SJHSRI to augment the assets available to discharge the Pension plan liability. . . . We anticipate that we would need to negotiate the discharge of the pension liability with SJHSRI's unions.

Exhibit 20 (Prospect's September 24, 2012 Letter of Intent).

65. Union approval was required for such discharge of the Plan liability.

Exhibit 20 (Prospect's September 24, 2012 Letter of Intent) at 3.

66. On or about March 18, 2013 Prospect signed its final Letter of Intent to purchase the assets of CCHP, RWH, and SJHSRI, pursuant to an asset purchase agreement (the "APA"). The Letter of Intent stipulated that the purchaser would not assume, and SJHSRI would remain liable for, "Seller's... pension liability," and provided for the "SJHSRI Pension Plan Discharge" as follows:

SJHSRI Pension Plan Discharge

- a. Seller will work diligently to freeze the SJHSRI pension obligations in an amount equal to \$100 million (the "Final balance"). This process may include creation of a separate fund, and appointment of a small board and investment CEO to manage the Final balance. The intent of this action is to maintain the pension plan as a "Church Plan",
- b. The gap between the current SJHSRI Retirement Plan assets and the Final Balance will be funded by contributions from the Seller.

The signed Letter of Intent is attached hereto as Exhibit 26.

67. One of the lead union negotiators was Christopher Callaci of United Nurses and Allied Professionals ("UNAP"). Exhibit 27 (Declaration of Christopher

Callaci (“Callaci Dec.”) ¶ 5. During the period from 1998 up to June 20, 2014, senior executives from SJHSRI informed him on many occasions that the Plan was exempt from ERISA because it was a “church plan.” Exhibit 27 (Callaci Dec.) ¶ 4.

68. The new owners requested UNAP’s support for the proposed sale. Exhibit 27 (Callaci Dec.) ¶ 5. They advised him they were completely unwilling to accept liability for the Plan. Exhibit 27 (Callaci Dec.) ¶ 18. In connection therewith, UNAP’s president signed the Memorandum of Understanding (“MOU”) between UNAP, Prospect Chartercare, LLC, and CharterCARE Community Board. Exhibit 27 (Callaci Dec.) ¶ 12.

69. The MOU was accepted by UNAP under the then understanding that the Plan was exempt from ERISA. Exhibit 27 (Callaci Dec.) ¶ 12. Several provisions in the MOU in particular were premised on that understanding, including but not limited to the following term:

11. On or before Closing, CharterCARE will contribute \$14 million to the St. Joseph Health Services Retirement Plan (the “Defined Benefit Plan”). UNAP agrees that Prospect, its affiliated parties, and Prospect CharterCARE, LLC will not have any obligations to the Defined Benefit Plan and that the Defined Benefit Plan shall become frozen upon closing.

Exhibit 27 (Callaci Dec.) ¶ 12.

70. On the other hand, if UNAP had been informed that in fact the Plan was governed by ERISA, UNAP would have passed that information on to all union members who were employed by SJHSRI, and would have approached UNAP’s negotiations with Prospect and SJHSRI from a different posture. Exhibit 27 (Callaci Dec.) ¶ 16. At a minimum, UNAP would have insisted that UNAP and SJHSRI’s employees be provided with additional information concerning the Plan, including all the disclosures required under ERISA. Exhibit 27 (Callaci Dec.) ¶ 16. UNAP certainly would have demanded an explanation of why a plan that had been reported to be a

church plan over many years was at that time, in 2013-2014, being described instead as an ERISA plan. Exhibit 27 (Callaci Dec.) ¶ 17.

71. UNAP was not provided which LHP's draft letter of intent, which proposed, *inter alia*, that "[t]hrough the transaction, LHP will contribute ~\$160 million in cash which will be used, in part, to retire CCHP's long-term debt of ~\$33 million and resolve CCHP's[] pension liability of ~\$72 million." Exhibit 27 (Callaci Dec.) ¶ 19.

72. Pursuant to SJHSRI's by-laws following the 2009/2010 reorganization, for so long as SJHSRI was "Under Catholic Sponsorship," the affirmative votes of both the Class A Member of the Corporation and the Class B Member were required to act on certain matters, including "the sale, mortgaging or leasing of any real or personal property of the Corporation having a value in excess of the relevant canonical threshold as the same may exist from time to time...." DD SUMF Exhibit 10⁷ (2010 SJHSRI By-laws) § 4.13(a).

73. Pursuant to SJHSRI's by-laws following the reorganization, "Under Catholic Sponsorship" meant that both of the following conditions are met: "(i) SJHSRI was sponsored by the Roman Catholic Church, as determined by the Bishop; and (ii) SJHSRI was listed in the Official Catholic Directory, or if the Official Catholic Directory ceased to exist, the St. Joseph Health Services of Rhode Island Retirement Plan (the 'Plan') continued to be a Church Plan." DD SUMF Exhibit 10⁸ (2010 SJHSRI By-laws) § 5(k).

⁷ ECF # 237-10.

⁸ ECF # 237-10.

74. Pursuant to the directives of the United States Conference of Bishops (“USCB”), the entities within a Catholic Diocese are eligible to be listed in the Official Catholic Directory only if the entities were under the sponsorship of the Diocese. See Exhibit 28 (Group Ruling and OCD Reportable Changes instructions).

75. The Diocese of Providence, under supervision of a diocesan attorney, determines what entities should be listed in the Official Catholic Directory under the sponsorship of the Diocese of Providence. Exhibit 28 (Group Ruling and OCD Reportable Changes instructions).

76. At all times from SJHSRI’s acquiring ownership of Fatima Hospital until SJHSRI filed the petition to place the Plan into receivership on August 18, 2017, SJHSRI was listed in the Official Catholic Directory as under the sponsorship of the Diocese of Providence. Exhibit 29 (1970 Official Catholic Directory listing); Exhibit 30 (1996 Official Catholic Directory listing); Exhibit 31 (2010 Official Catholic Directory listing); Exhibit 32 (2014 Catholic Directory listing); Exhibit 33 (2015 Official Catholic Directory listing); Exhibit 34 (2016 Official Catholic Directory listing); Exhibit 35 (2017 Official Catholic Directory listing).

77. Accordingly, the Plan was “Under Catholic Sponsorship” according to the terms of the APA.

78. The sale of SJHSRI’s assets in 2014 exceeded the canonical threshold. Exhibit 36 (Minutes of Meeting of College of Consultors on September 26, 2013) (quoting the Bishop as stating that “this transaction will require canonical action from the Consultors”, and that “[g]iven that the financial amounts involved in the alienation exceed the maximum amount set by the United states Conference of Catholic Bishops, the transaction will require the additional consent of the Holy See...”).

79. Accordingly, pursuant to SJHSRI's by-laws following the 2009/2010 reorganization, the Bishop's approval as the sole Class B member of SJHSRI was required for SJHSRI to enter into the APA. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 4.13(a).

80. Expressing concern over committing to the asset sale without this issue being resolved, CCHP's Chief Executive Officer Kenneth Belcher at a meeting of the Executive Committee of CCHP's Board of Trustees on July 25, 2013 raised the possibility of signing an asset sale agreement with the Prospect Entities but making it "subject to" if Bishop signs off on the pension piece." Exhibit 37 (handwritten notes of the July 25, 2013 executive board meeting) at Bates # SJHSRI-128528. The impact of failure to obtain the "support" of the "Diocese/Bishop" was also discussed, concluding "no sponsorship is a problem esp. w/ pension plan". Id. The conclusion of this meeting of the Executive Committee was to share the current version of the APA with Bishop Tobin, and seek his support and agreement to maintaining SJHSRI in the Catholic Directory, prior to SJHSRI, RWH, and CCHP's signing the Asset Purchase Agreement. Exhibit 38 (July 25, 2013 CCHP Executive Committee minutes) at 2.

81. On August 8, 2013, SJHSRI's counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with the current draft of the APA. Exhibit 39 (August 8, 2013 email). That draft contained the following statement as part of the "Warranties of Sellers": "Each Church Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code and Seller has not made, with respect to any Seller Plan listed on Schedule [...], an election pursuant to Section 410(d) of the Code." Exhibit 40 (draft APA) § 4.17(i) (bracketed cross-reference code omitted).

82. On August 14, 2013, counsel for SJHSRI, CCHP, and RWH (including at least Keith Anderson), together with CCHP's "senior leadership" (including at least Kenneth Belcher and Edwin Santos) met at the offices of Corporation Sole, Diocesan Administration, and Diocesan Service to obtain their cooperation. See Exhibit 41 (August 14, 2013 CCHP Executive Committee minutes following the meeting). That meeting was also attended by Bishop Tobin, Rev. Timothy Reilly (the Chancellor of the Diocese of Providence), and Msgr. Paul Theroux (who was a member of the Diocesan Finance Council).

83. Counsel for SJHSRI, CCHP, and RWH brought to the meeting on August 14, 2013 with Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux a document on the joint letterhead of counsel and CCHP, entitled "Overview of the Strategic Transaction with Prospect Medical Holdings, Inc., Presentation to the Board of Directors," referring to the Board of Trustees for SJHSRI, CCHP, and RWH. A copy of that document is attached hereto as Exhibit 42. That document outlined the salient details of the 2014 Asset Sale, whereby SJHSRI, CCHP, and RWH would sell "substantially all of their assets to Prospect CharterCARE LLC ('Newco')." Exhibit 42 at 2.

84. The very first page of the presentation (after the cover page) noted that only \$14 million of the sales proceeds would be paid into "the Church-sponsored retirement plan (the 'Church Plan')." Exhibit 42 at 2.

85. The document then detailed certain promises that would be made to the Corporation Sole, Diocesan Administration, and Diocesan Service as part of the transaction, which were described as follows:

Catholic identity covenants of Prospect and Newco

- Our Lady of Fatima Hospital and other legacy SJHSRI facilities will be operated in compliance with the ERDs⁹
- Roger Williams Medical Center and its facilities will not engage in prohibited activities
 - Abortion
 - Euthanasia
 - Physician-assisted suicide
- Any hospital or facility acquired or established after Closing must comply with restrictions on prohibited activities
- The Bishop has a direct right to enforce the Catholicity covenants
- CCHP intends to propose that the Bishop may require a name change of Our Lady of Fatima Hospital and other legacy SJHSRI facilities if he is unsuccessful in enforcing the covenants

Exhibit 42 at 7.

86. This “Overview of the Strategic Transaction” that counsel reviewed with Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux during the meeting on August 14, 2013, then laid out the *quid pro quo* for freeing New Fatima Hospital from the unfunded liabilities of the Plan, and granting these extensive and perpetual “Catholic identity covenants” for New Fatima Hospital and New Roger Williams Hospital. Defendants SJHSRI, RWH, and CCHP, through their counsel, informed Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux at this meeting that it was a “requirement” of the parties to the Asset Purchase Agreement that Defendants Corporation Sole,

⁹ Ethical and Religious Directives for Catholic Health Care Services.

Diocesan Administration, and Diocesan Service “[m]aintain the retirement plan of St. Joseph Health Services of Rhode Island as a ‘Church Plan’.” Exhibit 42 at 8.

87. On September 11, 2013, SJHSRI through its counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with a draft of the APA for their review and approval. Exhibit 43. That draft had the same language quoted previously from the version that the Diocesan Defendants had received on August 8, 2013 which stated that “Each Church Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code and Seller has not made, with respect to any Seller Plan listed on Schedule [...], an election pursuant to Section 410(d) of the Code.” Exhibit 44 (bracketed cross-reference code omitted) at page Bates # PMH_00098932 (§ 4.17(i)).

88. On September 12, 2013, SJHSRI through its counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with a copy of the presentation that had been shared with them on August 14, 2013, at the Diocesan Defendants’ request so they could share it with the Diocese of Providence Finance Council. Exhibit 45 (September 12, 2013 email). The presentation states that it was “For the Bishop of the Roman Catholic Diocese of Providence, Rhode Island,” and was CONFIDENTIAL. Exhibit 46 (presentation).

89. On September 17, 2013, the Finance Council of the Diocese of Providence met with Ken Belcher, the CEO of CharterCARE Health Partners and SJHSRI to review the terms of the APA. See Exhibit 47 (Finance Council minutes). At the meeting it was stated that the cash proceeds from the sale would include “\$14 million for the Church sponsored retirement plan (referred to as the ‘Church Plan...’)”. Exhibit 47 (Finance Council minutes) at 1.

90. At the meeting there was a discussion of the “Catholicity covenant part of the” APA, which the Chancellor described as “very solid.” Exhibit 47 (Finance Council minutes) at 2.

91. It was noted at the meeting of the College of Consultors that “[o]nce [the APA is] approved by the Finance Council, the College of Consultors and the Bishop, who has the final say, the documentation will be sent to the Vatican for final approval.” Exhibit 47 (Finance Council minutes) at 2.

92. At the meeting, the Bishop asked for a motion to be made to approve the “proposal of alienation of CharterCARE, St. Joseph Health Services to Prospect (Newco), and the motion was made, seconded and accepted.” Exhibit 47 (Finance Council minutes) at 3.

93. On September 18, 2013, the Chancellor by email provided SJHSRI’s counsel with a draft of the Bishop’s letter to the Vatican seeking approval for the transaction, and solicited counsel’s comments. Exhibit 48 (email attaching draft letter). The letter recounted the “merger” of SJHSRI and RWH into CCHP in 2009, and stated that “[s]hortly thereafter, in the wake of the global economic downturn, CharterCARE soon began to experience the need for increased capital and was confronted with a **spiraling and gaping unfunded liability within its employee-pension system**” (emphasis added). Exhibit 48.

94. On September 24, 2013 SJHSRI’s counsel provided the Diocesan Defendants (by email to the Chancellor) with red-lined revisions to the Bishop’s letter to the Vatican, which deleted the reference to “spiraling and gaping” pension liability, and substituted “significant” liability, stating that he preferred the revision “**in the event this letter was ever subject to discovery in a civil lawsuit**” (emphasis added). Exhibit 49.

95. On September 24, 2013 the APA was signed. A copy of the APA (exhibits omitted) as signed on September 24, 2013 is attached hereto as Exhibit 50.

96. The APA included Warranties and Representations of Sellers. Exhibit 50 (APA) at 14-36.

97. Many of the Warranties and Representations of Sellers were qualified as being “[t]o Sellers’ knowledge.” See, e.g., Exhibit 50 (APA) at 18, 19, 21 & 23.

98. Certain other Warranties and Representations of Sellers were not qualified. See, e.g., Exhibit 50 (APA) at 19.

99. Certain of the Warranties and Representations of Sellers concerned the Plan, which the APA referred to as the “Retirement Plan.” See, e.g., Exhibit 50 (APA) at A-13.

100. The Warranties and Representations of Sellers as to the Plan were not qualified, but, rather, were categorical, such as follows:

The Retirement Plan is a Church Plan^[10]. The Retirement Plan has been a Church Plan since the date on which the Retirement Plan was established, and has continuously maintained such status since that date. **The Retirement Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code** and Seller has not made, with respect to the Retirement Plan, an election pursuant to Section 410(d) of the Code.

Exhibit 50 (APA) at 28 (emphasis supplied).

101. Section 2.4 of the APA stated:

2.4 Excluded Liabilities of Sellers. Notwithstanding anything herein to the contrary, the Company and/or the Company Subsidiaries are assuming only the Assumed Liabilities and are not assuming and shall not become liable for the payment or performance of any other Liability of

¹⁰ The APA defined “Church Plan” as “a ‘church plan’ within the meaning of [IRS] Code Section 414(e)”. Exhibit 50 (APA) at 28.

Sellers (collectively, the "Excluded Liabilities"). The Excluded Liabilities are and shall remain Liabilities of the Sellers. Without limiting the generality of the foregoing, the term "Excluded Liabilities" includes any Liability: (i) that is not related to the Business; (ii) relating to any Material Indebtedness; (iii) that is described on Schedule 2.4; or (iv) pertaining to any Excluded Asset.

Exhibit 50 (APA) at 8 (underlining in the original).

102. Schedule 2.4 to the APA, captioned "Certain Excluded Liabilities," listed as one bulleted item: "All Liabilities related to the Retirement Plan." Exhibit 51 (Schedule 2.4).

103. On September 26, 2013, there was a meeting of the Roman Catholic Diocese College of Consultors, including the Bishop, at which the presentation previously reviewed by the Bishop on August 14, 2013 was presented to and reviewed by the College of Consultors. Exhibit 36 (College of Consultors minutes). The Bishop informed them that "this transaction will require canonical action from the Consultors", and that "[g]iven that the financial amounts involved in the alienation exceed the maximum amount set by the United States Conference of Catholic Bishops, the transaction will require the additional consent of the Holy See..." Exhibit 36 (College of Consultors minutes) at 2. The Bishop "reminded the College that because SJHSRI/Our Lady of Fatima Hospital is subject to the juridic person of the Diocese of Providence, the College's formal consent was required." Exhibit 36 (College of Consultors minutes) at 2. A motion was then made, seconded and voted "[t]o consent to the alienation of substantially all assets of SJHSRI/Our Lady of Fatima to Prospect CharterCARE, LLC..." Exhibit 36 (College of Consultors minutes) at 2.

104. On September 27, 2013 the Diocesan Defendants (through the Bishop) sent their letter to the Vatican seeking approval for the transaction. Exhibit 16. The

letter enclosed the signed APA in its entirety. Exhibit 16 at 3 (identifying the enclosures). It also enclosed the presentation by SJHSRI's counsel that the Bishop had reviewed on August 14, 2013, September 17, 2013, and September 26, 2013. The letter to the Vatican states that this presentation "provides an overview of the transaction's details." Exhibit 16 at 3. The letter also made the following statements (*inter alia*):

[W]ithout this transaction, it appears that a consistent Catholic healthcare presence in the Diocese of Providence would be gravely compromised, and the financial future for employee-beneficiaries of the pension plan would be at significant risk. I believe that the APA between CharterCARE and Prospect will help avoid the catastrophic implications of such a failure, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima. The alienation will allow the Diocese, through CharterCARE, to better attain the goals of fulfilling the mission of serving the poor and those in need, while respecting Catholic medical ethics and the Gospel of Life. We are grateful for the strong local presence of SJHSRI/Our Lady of Fatima Hospital that has been a foundation for Catholic healthcare here for over 100 years.

The APA states that SJHSRI/Our Lady of Fatima Hospital will retain its Catholic identity, its existing policies on charitable and pastoral care, and its community benefit program. Additionally, it will continue to approach labor relations from a social justice perspective. The transaction will provide Our Lady of Fatima Hospital with much-needed capital for infrastructure, programs and pensions, while it continues to provide high-quality hospital services in accord with the Ethical and Religious Directives for Catholic Health Care Services, (the "Directives") as provided by the United States Conference of Catholic Bishops. The APA states that the Bishop of Providence has a direct right to enforce the Catholicity covenants, and that the Bishop shall be the sole arbiter with respect to matters relating to compliance with the Directives at the SJHSRI/Our Lady of Fatima locations. In the event of non-compliance, the Bishop may request that Prospect CharterCARE, LLC cease operating under the names "St. Joseph" or "Our Lady of Fatima" or any other name that implies Catholicity. Any hospital or facility that Prospect CharterCARE, LLC subsequently acquires or establishes must comply with the restrictions on prohibited activities.

The transaction is subject to customary civil law closing requirements, including approvals from the Rhode island Attorney general and the Rhode island department of health, and will be subject to the conditions of the Hospital Conversions Act. Hearings in both those offices will begin shortly, and we expect that the necessary approvals will be obtained in the next 60 days. Should any unexpected issues arise, I will notify you.

As noted, this alienation has been approved by the CharterCARE Board of Trustees. In addition, it has also received the consent of the diocesan Finance Council on September 16, 2013 and the consent of the College of Consultors on September 26, 2013 – all in accord with Canon 1292, §1. I have no objection to the alienation.

* * *

As you can see, this alienation is the culmination of a long process. It is my sincere hope that Your Excellency will understand the important role of this alienation for the faithful of the Diocese of Providence, and the thousands of patients, employees, and pensioners of SJHSRI. Since we expect civil approvals in the coming weeks, I respectfully request your permission to proceed, so that the Diocese of Providence (through CharterCARE and affiliate SJHSRI/Our Lady of Fatima Hospital) may complete the final steps within the desired timeframe.

Exhibit 16 (emphasis supplied) at 1–3.

105. On October 18, 2013, CCHP, RWH, SJHSRI, Prospect Medical, Prospect East Advisory Services, LLC, Prospect East Holdings, Inc. (“Prospect East Holdings”), Prospect CharterCARE, LLC (“Prospect CharterCARE”), Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC (collectively the HCA Applicants”) submitted to the Rhode Island Department of Health and the Rhode Island Attorney General a hospital conversion application (“HCA Application”) pursuant to the Rhode Island Hospital Conversion Act, for permission to convert all health care facilities owned and operated by non-profit RWH and non-profit SJHSRI, including Our Lady of Fatima Hospital and Roger Williams Hospital, to a for-profit joint venture Prospect

CharterCARE in which Prospect East Holdings would initially have an 85% interest and CCHP would have the remaining 15% interest. The HCA Application submitted October 18, 2013 (exhibits omitted) is attached hereto as Exhibit 52.

106. The HCA Application contained a sworn and notarized certification signed by all of the HCA Applicants, including SJHSRI, which certified that “all the information contained in this application is complete, accurate and true.” Exhibit 52 at pages Bates ## SJHSRI 103679–103699.

107. The information contained in the HCA Application included the APA dated as of September 24, 2013. See Exhibit 52 (HCA) at 47 (referring to and attaching the APA as an exhibit).

108. Although the Bishop was not a signatory to the APA, the APA expressly provides that the Bishop is a third party beneficiary of the APA. Exhibit 50 (APA) at 76 (§ 15.5(b)).

109. The APA states that the Sellers, including SJHSRI, “shall promptly apply for and use commercially reasonable efforts to obtain those ecclesiastical approvals required from officials within the Roman Catholic Church (the ‘Church’) in order to consummate the Transactions, including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, and the permission of the Holy See through the Vatican Congregation of Bishops (the ‘Church Approvals.’)” Exhibit 50 (APA) at 45 (§ 7.5(e)).

110. The Sellers’ obligations under the APA were subject to the condition precedent of “Sellers shall have received the Church Approvals.” Exhibit 50 (APA) at 54 (§ 10.4(b)).

111. At a meeting of the CCHP Investment Committee on November 15, 2013, Committee Chairman Marshall Raucci informed the Committee that the projected \$14,000,000 contribution to the Plan in connection with the proposed asset sale “would bring the funding level to 90% or better.” Exhibit 53 at 5.

112. The Investment Adviser for the Plan in 2013 was Mercer Investment Consulting, Inc. (“Mercer”). See Exhibit 54 (2012 agreement between CCHP and Mercer Investment Management, Inc.) at 1 referencing separate agreement with Mercer Investment Consulting, Inc.).

113. On December 17, 2013, Chris Cozzini, who was one of the principals of Mercer, contacted the Chief Operating Officer of CCHP Michael Conklin and noted that the CCHP Investment Committee “is under the impression that the funded status of the plan will get to 90%.” Exhibit 55 at 1. Mr. Cozzini informed Mr. Conklin that conclusion was based upon the actuary assuming a future rate of return on Plan assets of 8%. He also noted that “[s]ince the plan is a church plan, you can set their own assumptions...,” but that “[u]sing current market discount rates the funded status will only improve to about 60%...” Id.

114. Moreover, if the Plan were not exempt from ERISA as a “Church Plan,” the funded status of the Plan would have to be determined using the projected future rates of return required by ERISA, which were much less than 8%. Exhibit 56 (Declaration of James E. Holland dated April 6, 2022 (“Holland Dec.”)) at 6. Using the rates required by ERISA, the funded status of the Plan would be from 62.97% (using the rate required by the Pension Benefit Guaranty Corporation) to 74.39% (using the rates ERISA required for determination of the required minimum contribution). Exhibit 56 (Holland Dec.) at 6. In addition, a notice would have to be sent to the Plan participants

every year, reporting the funded status of the Plan using both rates, and informing the Plan participants every year when SJHSRI failed to make the required minimum contribution to the Plan. Exhibit 56 (Holland Dec.) at 8.

115. On January 2, 2014, the HCA Applicants resubmitted the HCA Application, accompanied by the same certification. The HCA Application resubmitted January 2, 2014 (exhibits omitted) is attached hereto as Exhibit 57.

116. Without the Bishop's participation, it would have been impossible for SJHSRI to claim that the Plan was a "church plan" exempt from ERISA. The Bishop signed a resolution as of April 29, 2013 (the "Bishop's Resolution"). It states in pertinent part as follows:

RESOLVED: That the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.

DD SUMF Exhibit 18 (Bishop's April 29, 2013 Resolution).¹¹

117. The Bishop was also directly involved and cooperated with SJHSRI in the determination of the entity that would have responsibility for administration of the Plan. The Bishop's Resolution which SJHSRI provided to the Bishop for his signature also addressed that issue, as follows:

RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan.

¹¹ ECF # 237-18.

RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island has the authority, pursuant to the terms of the Plan, to appoint a committee to act on its behalf with respect to administrative matters related to the Plan.

RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to administrative matters related to the Plan.

DD SUMF Exhibit 18.¹² (Bishop's April 29, 2013 Resolution).

118. There is virtually no documentation concerning the circumstances that led to the creation and execution of the Bishop's Resolution. Exhibit 8 (Sheehan Dec.) ¶¶ 20.

119. On February 7, 2014, R. Otis Brown, purportedly acting on behalf of CCHP, sent an email to the Diocesan Defendants (through the Chancellor), copied to the CEO of CCHP and SJHSRI, that requested that the Bishop "author" a "letter... of support" for the HCA Application to the Members of the Rhode Island Health Services Council. Exhibit 58 (R. Otis Brown's email). Mr. Brown evidently attached to his email a draft letter from the Bishop to the members of the Health Services Council, which he stated was a "sample draft." See id. Neither CCHP nor the Diocesan Defendants produced a copy of that attachment in response to the Receiver's subpoenas in the Receivership Proceeding, although it was clearly encompassed by the subpoenas. Exhibit 8 (Sheehan Dec.) ¶¶ 20.

120. On February 14, 2014, the Diocesan Defendants (through the Chancellor) informed Mr. Brown that "Bishop Tobin today signed the letter you requested" and

¹² ECF # 237-18.

attached an electronic (unsigned) copy. See Exhibit 59 (Father Reilly's email). The Chancellor informed Mr. Brown that "[w]e've not put the signed original in the mail yet ... so let us know if you have any comments once you read it. Otherwise, we'll mail it directly to the Health Services Council at the address you provided." Id. (ellipsis in original). A copy of the Bishop's signed letter is attached hereto as Exhibit 60.

121. On February 20, 2014, the Rhode Island Department of Health Office of Health Systems Development received the letter signed by Bishop Tobin. It stated in pertinent part as follows:

Dear Members of the Health Services Council:

I write on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings, which will assure that Rhode Islanders continue to have the choice of Catholic-sponsored health care at Our Lady of Fatima Hospital, and at St. Joseph Community health Center in South Providence – which provides critical primary and specialty care to thousands of less fortunate citizens each year.

* * *

The Diocese of Providence is grateful to CharterCARE for all it has done to preserve the healing ministry of SJHSRI/Our Lady of Fatima Hospital, all within difficult financial circumstances. **However, without this transaction, it appears that a consistent Catholic health care presence in the Diocese of Providence would be gravely compromised, and the financial future for employee-beneficiaries of the pension plan would be at significant risk. I believe that the partnership will help avoid the catastrophic implications of such a failure**, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima. The transaction will also allow the Diocese, through CharterCARE, to better attain the goals of fulfilling the mission of serving the poor and those in need, while respecting Catholic medical ethics and Church Law. We are grateful for the strong local presence of SJHSRI/Our Lady of Fatima Hospital that has been a foundation for Catholic healthcare here for over 100 years.

I respectfully ask you to look favorably on this proposed transaction.

Sincerely yours,

Thomas J. Tobin
Bishop of Providence

[Emphasis supplied]

Exhibit 60 (Bishop Tobin's signed letter).

122. The HCA process included the Attorney General addressing written questions to the HCA Applicants and the HCA Applicants providing formal written responses. The Department of Health and the Attorney General advised the HCA Applicants that these governmental agencies "will consider the answers to these questions as a supplement to the Initial Application." See, e.g., Exhibit 61 (March 24, 2014 cover letter to applicants' counsel); Exhibit 62 at 2 (April 7, 2014 cover letter to applicants' counsel). Accordingly, the answers of the HCA Applicants were subject to their certification that the information contained in their responses was "complete, accurate and true."

123. At the same time that the Rhode Island Department of Health was considering the HCA Applications, it was also considering separate applications by the applicants for Change in Effective Control ("CEC Applications") of the hospital facilities being transferred. On February 21, 2014, the Rhode Island Department of Health sent the HCA Applicants a list of questions to supplement the record of the CEC Applications, which included a request for a status report on the church approvals required for the transaction. Exhibit 63. The question and the HCA Applicants' response on March 7, 2014 were as follows:

6. Asset Purchase Agreement. Please address the following:
 - a. Section 7.5(e) of the APA relates to seller obtaining ecclesiastical approvals from the Roman Catholic Church including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island

and the permission of the Holy See through the Vatican Congregation of Bishops. Please identify the status of and expected date for obtaining such approvals.

Response: On September 17, 2013, the Finance Council of the Diocese of Providence voted to consent to the alienation of substantially all of the assets of Saint Joseph Health Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE, a newly-formed affiliate of CCHP and PMH.

On September 26, 2013, the Roman Catholic diocese of Providence College of Consultors voted to consent to the alienation of substantially all of the assets of Saint Joseph Health Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE.

On September 27, 2013, Bishop Thomas J. Tobin, bishop of the Diocese of Providence, sent correspondence to Most Reverend Celso Morga Izurubieta, Secretary, Congregation for the Clergy in Vatican City, indicating that he has no objection to the alienation and requesting canonical permission for the proposed alienation of substantially all of the assets of Saint Joseph Health Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE.

At the request of the Congregation for the Clergy, additional information was sent to Cardinal Beniamino Stella, Prefect, Congregation for the Clergy on February 17, 2014. A response is anticipated in the next few weeks.

Exhibit 64 (Responses to the Supplemental Questions to the Change in Effective Control Application) at 11-12.

124. On March 28, 2014, the Diocesan Defendants (through the Chancellor) emailed to SJHSRI the “Vatican Approval letter” dated March 20, 2014, which the Chancellor stated was “good news” which “informs Bishop Tobin of the Holy See’s approval of the transaction.” Exhibit 65 at 1. The Vatican’s Approval Letter expressly

states that it had been issued at the request of the Bishop pursuant to the Bishop's letter dated September 27, 2013. See Exhibit 65 at 2.

125. On April 28, 2014 the HCA Applicants forwarded the Vatican Approval letter to the Attorney General. Exhibit 66.

126. Certain of the Department of Health's and the Attorney General's written questions to the HCA Applicants concerned the Plan, including SJHSRI's liabilities under the Plan and the sufficiency of the Plan's assets to funds the Plan's obligations to pay retirement benefits. See, e.g., Exhibit 62 (Third Set of Supplemental Questions) at 4.

127. The list of questions that the Department of Health submitted to the HCA Applicants on February 21, 2014 included a question regarding the use of the purchase price. Exhibit 63 at 3. The relevant portions of the question and the relevant answers (highlighted in bold) which the HCA Applicants provided on March 7, 2014 were as follows:

5. Purchase Price and Uses. The purchase price for the proposed transaction is \$45 million (reflecting 85% ownership interest of Prospect). Please address the following:

* * *

b. Additionally, please discuss the intend uses of the \$45 million that will be going to CharterCARE and how those uses for spending those funds would be established.

Response:

* * *

d. \$14,000,000 shall be applied to the St. Joseph Pension Plan.

- c. Please identify the extent to which, if any, the purchase price will be used by CharterCARE for community benefit versus paying off debts.

Response: The use of the sale proceeds as described in Section (b) above will benefit the community in three ways:

* * *

b. The use of \$14M to strengthen the St. Joseph Pension Plan will be of significant benefit to the community as it will assure that the pensions and retirement of many former employees, who reside in this community, are protected.

Exhibit 64 at 10–11. These answers were signed by CCHP and SJHSRI CEO Ken Belcher, under the attestation that “the information contained in this material is true, accurate, and complete.” Id. at 16 & 17.

128. On April 7, 2014 the Department of Health and the Attorney General issued questions to the HCA Applicants numbered S3-1 through S3- 65.¹³ Exhibit 62. Question number S3-46 stated as follows:

Please provide:

- a. the most recent actuarial valuation of the Pension Plan;
- b. the documentation as to the determination that \$14M^[14] will stabilize the plan, and a description of any written information of the understanding with employee representatives with respect to the freezing and funding of the plan;
- c. how many employees are eligible for this pension; and
- d. how many employees will be affected by the freeze.

Exhibit 62 at 7.

¹³ “S3” meaning third set of supplemental questions.

¹⁴ Referring to the \$14 million that would be deposited into the Plan if and when the HCA Application was approved and the asset sale closed.

129. On April 14, 2014 the HCA Applicants provided the Attorney General and the Department of Health with their written responses to these questions. Exhibit 67.

They responded to Question S3-46 as follows:

Response:

- a. See attached **Confidential Exhibit S3-46A**;
- b. See attached **Confidential exhibit S3-46B**;
- c. There are **2,828 eligible participants including actives, inactive per-diems, terms with vested balances and retirees and beneficiaries; and**
- d. **199 employees.**

Exhibit 67 (emphasis in original).

130. Confidential Exhibit S3-46B included an analysis prepared by Angell of the effect that the \$14,000,000 contribution would have to “stabilize” the Plan. Exhibit 68. In that analysis, Angell stated that “[i]t is assumed that the Plan will remain a non-electing Church Plan and will not become subject to ERISA.” Exhibit 68 at Bates # S3C-PHCA00090. The analysis concluded that with the \$14,000,000 contribution, the Plan would be 94.9% funded as of July 1, 2014. Id. That calculation was expressly based upon the assumption that the existing Plan assets plus the \$14,000,000 would earn a future rate of return of 7.75%. Id.

131. This computation was the subject of sworn testimony of the Chief Executive Officer of SJHSRI Kenneth Belcher at a public hearing on April 7, 2014 in connection with the HCA Applications. Exhibit 69 (April 7, 2014 hearing transcript). Mr. Belcher was asked to address three questions that had been raised by a recent report on SJHSRI by Moody’s Investor Services. See Exhibit 69 (hearing transcript) at 61-62.

132. Moody's report dated February 21, 2014 is attached hereto as Exhibit 70. WPRI's March 3, 2014 news article summarizing the report stated that it warned that SJHSRI's "dwindling cash and large pension liabilities may force it to default on its bonds." Exhibit 71 (WPRI's March 3, 2014 news article).

133. The third question to CEO Belcher related to Moody's' concern over the funded status of employee retirement accounts, including the Plan. See Exhibit 69 (hearing transcript) at 62; Exhibit 70 (Moody's report) at 2. Mr. Belcher testified as follows:

MR. BELCHER: . . . But the third part was on the pension fund, and the impact on the pension fund with this -- and I think you know we shared information up-front is that at the time of the closing we'll be putting millions of dollars into the pension fund which will bring it to a level of roughly 91 and a half percent funding which is above the safe level that you need for sort of a quote safe level. So all of this really helps stabilize the pension fund as well.

Exhibit 69 (hearing transcript) at 65-66 (emphasis supplied).

134. This computation was also the subject of additional submissions to the Attorney General and the Department of Health to secure approval of the HCA Application. On May 2, 2014 the HCA Applicants submitted "the Transacting Parties' Final Supplemental HCA Responses" with exhibits to the Department of Health and the Attorney General. Their cover letter is attached hereto as Exhibit 72. This submission included the "Confidential Final Supplemental Responses to the HCA Application" (the "Final Confidential Responses") which is attached hereto as Exhibit 73. The Final Confidential Responses included the following statement with respect to the Plan:

Pension:

Please see attached at Confidential Miscellaneous Exhibit 3 is the requested information regarding the Pension Plan.

Exhibit 73 (Final Confidential Responses) at 6.

135. **Confidential Miscellaneous Exhibit 3** is attached hereto as Exhibit 74. It consists of a narrative captioned the "**Confidential Response Regarding Pension**" and Attachment 1 thereto. The **Confidential Response Regarding Pension** states as follows:

Confidential Response Regarding Pensions

Enclosed herein at Attachment 1 is a listing of the projected contributions necessary to keep the St. Joseph Health Services of Rhode Island Retirement Plan (the "Pension Plan") funded at recommended levels. **First, it is important to note that these contributions are not mandatory. Secondly, it is important to note that upon receipt of the \$14 M contribution that will be made in connection with the proposed transaction, the Pension Plan will be funded in excess of ninety percent (90%).**

That being said, there are three potential sources of funding through which additional contributions can be made to the Pension Plan. They are as follows:

1. The Perpetual Trust income of St. Joseph Health Services of Rhode Island, which has over the last few years averaged approximately \$300,000.00;
2. The second pool of income will be distributions from the fifteen percent (15%) ownership interest that CCHP will maintain in the joint venture; and
3. The third possible stream of funds is the RWMC Perpetual Trust income, which has averaged approximately \$170,000.00 over the last few years.

The first source can and will be utilized. The second source, combined with the first source, may satisfy the funding recommendations as the Hospitals reach a level of profitability. Research is being done as to the potential use of the third source.

Exhibit 74 (Confidential Response Regarding Pension) at 1 (emphasis supplied).

136. On May 2, 2014, Assistant Attorney General Genevieve M. Martin requested that SJHSRI's counsel "send me your legal analysis as to the ability to use

RWMC perpetual trust income to pay St. Joseph's expenses, including its pension expenses." Exhibit 75 (email). On May 8, 2014, SJHSRI's counsel forwarded documentation to Ms. Martin the following:

Finally, attached is the Roger Williams Medical Center (RWMC) Board of Trustees Resolution authorizing the use of the RWMC Board Designated Funds to satisfy the St. Joseph Health Services of Rhode Island (SJHSRI) liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

Exhibit 76 (counsel's email attaching the resolution).

137. The Resolution identifies \$6,666,874 in "RWMC Board Designated Funds" and "approves and directs use of the RWMC Board Designated Funds to satisfy SJHSRI's liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation."

Exhibit 76 at 4.

138. The Attorney General retained James P. Carris, C.P.A. "to review and evaluate the Proposed transaction and to provide expert witness testimony if the Proposed Transaction proceeds to litigation." Exhibit 77 (Carris Retainer Agreement as March 25, 2014) at 2. In particular, Mr. Carris was retained to "[a]nalyze all financial aspects of the Proposed Transaction..." Id. at 3.

139. The Department of Health retained Harborview Consulting, LLC to provide expert analysis (principally through Dr. John J. Schibler). The Department of Health's May 19, 2014 Decision with Conditions approving the HCA conversions summarized that scope of services and the Department of Health's reliance thereon:

For this conversion review, the Department contracted with Harborview Consulting, LLC ("Harborview"), the principal of which is John J. Schibler, CPA, Ph.D., to work directly with staff to interpret and analyze financial

information supplied by the transacting parties. Additionally, Harborview's services included the analysis of financial documents, papers, and related financial records provided by the transacting parties, that included audited and internal financial and operating statements, and any financial or utilization data provided to the Department by the transacting parties as part of the conversion review. The purpose of the contract was to obtain consulting services of an expert in the hospital/health care accounting industry to develop a financial assessment of the proposed conversion.

Exhibit 78 (Decision with Conditions) at 2.

140. On May 6, 2014, Dr. John J. Schibler testified before the Project Review Committee:

REVEREND SHIRE: Thank you very much, Doctor. Let me start with a question. I'm interested in hearing more about the unfunded pension liability. Can you say a few words about that.

DR. SCHIBLER: Yeah, I looked at the unfunded pension liability. I have looked at a report. Let me qualify this by one thing. Usually, typically what I would want to look at is either the footnote in the audited financial statements or I would want to look at the actual actuary's report. I did see a projection, and in essence what that projection said was that with that \$14 million being added to the pension plan, that it was going to require about an additional \$600,000 a year to fund that pension plan, and that they were intending that that was to come from some perpetual trusts that are part of St. Joseph's, and then it was also indicated that possibly anything that they would receive on their 15 percent from the joint venture. So, again, the reason I qualify that is it's been represented that the pension plan with the \$14 million is funded to the 90 percent level. I have not seen an actuary's report that actually specifies that 90 percent level, so that's the only qualification.

Exhibit 79 (May 6, 2014 Project Review Committee hearing transcript) at 24-25.

141. At the conclusion of the May 6, 2014 Project Review Committee hearing, the committee voted to approve the HCA applications and recommend further approval by the Health Services Council. Exhibit 79 (May 6, 2014 Project Review Committee hearing transcript) at 87-89.

142. The Project Review Committee issued a written report to the Health Services Council on May 13, 2014. Exhibit 80.

143. On May 13, 2014, the Health Services Council of the Rhode Island Department of Health approved the Project Review Committee's written report, recommending that the Department of Health approve the CEC Applications with certain conditions. Exhibit 80 (May 13, 2014 Health Services Council hearing transcript) at 98.

144. On May 14, 2014, Mr. Carris submitted his report to the Attorney General. Exhibit 81.

145. The Attorney General conditionally approved the HCA Application by written decision dated May 16, 2014. Exhibit 82. One of the "conditions" imposed by the Attorney General:

9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.

Exhibit 82 at 52.

146. The Rhode Island Department of Health conditionally approved the HCA Application on May 19, 2014. Exhibit 78. One of the "conditions" imposed by the Rhode Island Department of Health was:

1. The transacting parties shall implement the conversion, as detailed in the initial application, and as conditionally approved by the Director of Health.

Exhibit 78 at 33.

147. The asset sale closed on June 20, 2014. See Exhibit 83 (June 23, 2014 email from the Diocese of Providence to Michael Conklin acknowledging receiving \$638,838.25 from the closing proceeds).

148. At 10:17 a.m. on June 20, 2014, CCHP filed articles of amendment with the Rhode Island Secretary of State, changing its name from “CharterCARE Health Partners” to “CharterCARE Community Board.” Exhibit 84 (Articles of Amendment) at 1.

149. One minute later, at 10:18 a.m. on June 20, 2014, Prospect Chartercare, LLC filed a “fictitious business name statement” with the Rhode Island Secretary of State, stating that it would operate under the “fictitious name” of “CharterCARE Health Partners,” which was the same name under which SJHSRI, RWH, and CCHP had operated Old Fatima Hospital and Old Roger Williams Hospital from 2009 right up to the day of the closing of the 2014 Asset Sale. Exhibit 85 (fictitious business name statement) at 1.

150. Moreover, the new entities retained existing management, including the executives that had led the effort for regulatory approval such as Ken Belcher and Michael Conklin. See Exhibit 57 (January 2, 2014 HCA Application) at 39 (“[T]he CEO of the Licensed Entities, Ken Belcher, will report to the President of Prospect East. . . . The Chief Financial Officer (‘CFO’) of Prospect CharterCARE, LLC, Mike Conklin, will report to the CEO of Prospect CharterCARE, LLC . . .”).

151. On July 24, 2014, the Chancellor of the Diocese of Providence, Father Timothy Reilly, contacted the Editor of the *Rhode Island Catholic* about doing a story on the sale of Our Lady of Fatima Hospital, which would be a “great way to emphasize the positives of this transaction.” Exhibit 86 (Father Reilly’s July 24, 2014 email). In his email Father Reilly made the following statement:

Given the financial challenges for SJHSRI/Fatima Hospital over the past five years, the new joint venture presents the best possible alternative so that Catholic healthcare continues to be available here in Rhode Island.

The Catholic Church will remain involved in the ongoing mission of SJHSRI/Fatima Hospital, especially regarding pastoral care. That will not change.

And, since the new parent company is contractually bound by “Catholicity covenants”, the Catholic identity of Fatima Hospital remains as well (the covenants provide for, among other things, the continued presence of a Catholic priest-chaplain; a specifically Catholic chapel in which the Blessed Sacrament is kept; as well as the signage, crucifixes, and statues that serve as visible reminders that Our Lady of Fatima is a Catholic hospital.

Exhibit 86 at 1.

152. Not coincidentally, over those five years SJHSRI had accrued accumulated liabilities on the Plan of over \$72,000,000. *See supra* at ¶ 56. However, as a result of the Asset Sale, the entity that owned Fatima Hospital no longer carried liability for the Plan on its balance sheet. Exhibit 87 (Prospect Chartercare, LLC’s 2014/2015 audited financial statements) *passim*.

153. On August 21, 2014, the *Rhode Island Catholic* published its story.

Exhibit 88. The Bishop was interviewed in connection with the story, and stated as follows:

For all intents and purposes, Fatima Hospital will retain its Catholicity, and that is guaranteed by contract now. It’s not just an aspiration, it’s guaranteed by contract that the Catholic identity of Fatima Hospital itself is still under the supervision of the local bishop and that in all of its ministries and external signs Fatima Hospital will be as Catholic as it has ever been.

Even though we are out of the direct delivery of healthcare services itself, we will still have a hospital that’s thoroughly Catholic in many ways.

Exhibit 88 at 2.

154. Ken Belcher (formerly SJHSRI’s CEO) was also interviewed and stated as follows:

The new partnership will continue to uphold its commitments to preserve the Catholic identity of the facilities just as CharterCARE had promised the diocese it would do when it initially became the parent company.

We have been very careful to make sure that we have maintained all the promises that we said we would, particularly within the affiliated structure and respecting the ethical and religious directives.

Exhibit 88 at 2.

155. Attorney Richard P. Land of the law firm Chace Ruttenberg & Freedman, LLP (“CRF”) acted as attorney and agent for CCHP, SJHSRI, and RWH. Exhibit 89 (Affidavit of Richard P. Land dated March 8, 2022 (“Land Aff.”)) ¶ 2. Throughout that representation, he was the attorney from CRF with primary responsibility for the work done on behalf of or in connection with CCHP, SJHSRI, and RWH. Exhibit 89 (Land Aff.) ¶ 3. Indeed, he was expressly authorized to act “in connection with the administration, management and potential wind-down of the” Plan. Exhibit 89 (Land Aff.) Tab A (Written Consent of the Class A Member of St. Joseph Health Services of Rhode Island as of December 15, 2014) at 2.

156. Attorney Land continued in that capacity until December 18, 2019, when Attorney Thomas Hemmendinger (the “Liquidating Receiver”) was appointed by the Rhode Island Superior Court as temporary liquidating receiver of CCHP, SJHSRI and RWH in connection with the petitions for judicial liquidation of CCHP, SJHSRI, and RWH that were filed on December 13, 2019 in the Superior Court action captioned In re: CharterCARE Community Board; St. Joseph Health Services of Rhode Island; and Roger Williams Hospital, PC-2019-11756 (the “Liquidating Receivership”). Exhibit 89 (Land Aff.) ¶ 4. Attorney Hemmendinger was thereafter appointed permanent liquidating receiver, on January 17, 2020. Id.

157. From the outset of the Liquidating Receivership, Attorney Land provided the Liquidating Receiver with transition briefings and consultations. Exhibit 89 (Land Aff.) ¶ 5. On January 9, 2020, the Superior Court granted the Liquidating Receiver's petition to retain CRF as Special Counsel in the Liquidating Receivership "to continue providing valuable transition services to the Liquidating Receiver and to represent the Liquidating Receiver on certain other matters where its intimate knowledge is particularly helpful." Id. Since then, CRF has acted as Special Counsel upon request of the Liquidating Receiver, and Attorney Land was the attorney from CRF with primary responsibility for the work done on behalf or in connection with the Liquidating Receivership. Id.

158. While he was acting as agent and attorney for CCHP, SJHSRI, and RWH, Attorney Land was aware that on or about June 20, 2014, SJHSRI, RWH, and CCHP sold their operating assets to Prospect Chartercare and various other entities in the Prospect group of companies. Exhibit 89 (Land Aff.) ¶ 6. He was also aware that it was intended that, thereafter, RWH and SJHSRI would go into wind-down, RWH would be liquidated, but SJHSRI's funding obligations and obligations as the Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan would continue. Id.

159. Throughout his service as attorney and agent for SJHSRI, Attorney Land participated in the wind-down of SJHSRI and RWH, which consisted of the payment of obligations incurred while SJHSRI operated Fatima Hospital and thereafter in connection with the wind-down, and while RWH operated Roger Williams Hospital and thereafter in connection with the wind-down, and collection of all debts owed to SJHSRI and RWH. Exhibit 89 (Land Aff.) ¶ 8.

160. SJHSRI and RWH were left with certain financial assets after the sale of SJHSRI and RWH's operating assets to Prospect Chartercare and related entities. SJHSRI and RWH were nonprofit corporations, and a significant portion of their remaining assets were charitable bequests, the disposition of which was subject to the approval of the Rhode Island Attorney General ("RIAG") and the Superior Court. Exhibit 89 (Land Aff.) ¶ 9.

161. The RIAG's conditions of approval included the requirement that the assets of SJHSRI and RWH that were retained by those entities (not sold to Prospect) be allocated and distributed pursuant to a Cy Pres proceeding, based upon the submission of a Cy Pres petition approved by the RIAG. Exhibit 89 (Land Aff.) ¶ 10.

The RIAG's Decision included Condition No. 8 on page 52, as follows:

8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed Cy Pres petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, **with such proposed modifications as agreed to by the Attorney General, and (c) the approved Cy Pres petition be filed with the Rhode Island Superior Court.**

[Emphasis supplied]

Exhibit 89 (Land Aff.) ¶ 10.

162. Accordingly, the disposition of SJHSRI's charitable assets following the sale to Prospect was pursuant to the conditions imposed by the RIAG, including the requirements for a Cy Pres petition satisfactory to the RIAG, and were not subject to the

discretion of SJHSRI or SJHSRI's Board of Trustees as would have been the case if SJHSRI were operating without such control. Exhibit 89 (Land Aff.) ¶ 11.

163. SJHSRI, RWH, and an affiliated foundation, CharterCARE Foundation ("CCF"), were the petitioners in the Cy Pres proceeding and were represented by Adler Pollock & Sheehan P.C. ("APS"). Exhibit 89 (Land Aff.) ¶ 12. APS prepared and secured the RIAG's advance approval for the Cy Pres petition which was filed on January 13, 2015. Exhibit 89 (Land Aff.) ¶ 12; Land Aff. Tab C. The petition referred in paragraph 14 to the RIAG's condition concerning charitable assets as follows:

The AG decision discussed the proposed disposition of charitable assets at pages 23 through 32 having reviewed draft cy pres petition outlines submitted during the HCA review. Among other things, it approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to cy pres approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing.

Exhibit 89 (Land Aff.) ¶ 12.

164. The Cy Pres petition in its paragraphs 24, 27-29, and 32 sought Superior Court approval for RWH to retain charitable assets totaling \$17,109,003.04 to pay its pre and post-closing liabilities and to transfer any remaining balance to SJHSRI for SJHSRI to use to pay its pre and post-closing liabilities, including its pension obligations. Exhibit 89 (Land Aff.) ¶ 13.

165. The Cy Pres petition in its paragraphs 27, 30, and 32 sought court approval for SJHSRI to retain charitable assets totaling \$6,473,365 to pay its pre and post-closing liabilities, including its pension obligations. Exhibit 89 (Land Aff.) ¶ 14.

166. The Cy Pres petition in its paragraph 17 expressly noted that SJHSRI's pension obligations would remain after its other pre and post-closing liabilities were paid:

17. As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were paid, i.e., bond, pension and account payable liabilities, using sales proceeds from PMH and unrestricted cash. In addition, the Outstanding Pre and Post Closing Liabilities remain to be paid, including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's compensation payments. It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes.

Exhibit 89 (Land Aff.) ¶ 15.

167. The Cy Pres petition was granted by the Rhode Island Superior Court by order dated April 20, 2015. Exhibit 89 (Land Aff.) ¶ 16.

168. Consequently, virtually all ordinary business decisions which a board of trustees normally would be expected to supervise were pre-determined or non-existent for SJHSRI's Board of Trustees following the sale of SJHSRI's operating assets.

Exhibit 89 (Land Aff.) ¶ 17. There were no operating issues to be managed or for the Board to supervise, because SJHSRI had no remaining operating business or operating assets. Id. In addition, the sources and amount of SJHSRI's charitable and other assets and SJHSRI's obligation to apply them to pay its pre and post-closing liabilities were already determined in the Cy Pres proceeding and the prior Decision of the RIAG. Id.

169. However, SJHSRI remained Plan Administrator with full power and authority to amend or terminate the Plan. Exhibit 89 (Land Aff.) ¶ 18. Moreover, the ultimate goal of the wind-down of RWH and SJHSRI was to fund SJHSRI's obligations

under the Plan. Id. Thus, the principal matter going forward for SJHSRI and SJHSRI's Board of Trustees was the maintenance and funding of the Plan. Id. That was no mere formality. To the contrary, it was clear that the Plan was not sufficiently funded to pay all its obligations to the Plan participants. Id. In other words, if nothing were done to address the problem, those Plan participants who were already receiving benefits would receive some or all the benefits they expected, whereas Plan participants who had not yet retired would receive much less or possibly nothing because the Plan would run out of money. Id.

170. In connection with the Plan receivership in the Rhode Island Superior Court, captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, C.A. No: PC-2017-3856, SJHSRI was served with a subpoena duces tecum that requested, inter alia, “[a]ll documents relating to the establishment, functions, or conduct of any board, committee, or subcommittee that administers or administered the Plan, including any board or committee or subcommittee resolutions and any appointments to such board, committee, or subcommittee.” Exhibit 89 (Land Aff.) ¶ 19.

171. Attorney Land responded to the subpoena on behalf of SJHSRI and produced all such documents in the possession or control of SJHSRI and does not recall seeing any document by or on behalf of SJHSRI or SJHSRI's Board of Trustees indicating that SJHSRI's Board of Trustees ever intended to or in fact appointed the Finance Committee of CharterCARE Health Partners (under that name or as renamed CharterCARE Community Board) to act with respect to any matters related to the Plan. Exhibit 89 (Land Aff.) ¶ 19.

172. The records of SJHSRI reveal that SJHSRI did not designate an Administrator or named fiduciary, and, thus, SJHSRI remained the Administrator and named fiduciary of the Plan until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated Plaintiff Receiver as administrator of the Plan. DD SUMF ¶¶ 30; DD SUMF Exhibit 11 (October 20, 2017 Resolution).

173. During the period of Attorney Land's involvement from mid-November, 2014 through the filing of the petition to put the Plan into receivership on August 18, 2017, there was no active Finance Committee of CharterCARE Health Partners, and no one purporting to act on behalf of the Finance Committee of CharterCARE Health Partners exercised any authority over the Plan. Exhibit 89 (Land Aff.) ¶¶ 20.

174. The issue of what to do with the Plan, and specifically the problems resulting from the Plan's underfunded status, were always a matter of primary importance to SJHSRI and SJHSRI's Board of Trustees throughout the period from November 2014 through the filing of the Petition to place the Plan into receivership. Exhibit 89 (Land Aff.) ¶¶ 21. One of the members of that board until he resigned on May 1, 2015 was Christopher N. Chihlas, M.D. Id. His email to Attorney Land announcing his resignation reflects his primary concern for the Plan, which was shared by SJHSRI's Board of Trustees as a whole:

My only parting request is to tirelessly work to develop a pension plan strategy that is equitable and thus acceptable to those who worked many years expecting the Church plan to provide for them in their retirement.

Exhibit 89 (Land Aff.) ¶¶ 21; Land Aff. Tab F.

175. Dealing with this concern was the principal responsibility and focus of SJHSRI and SJHSRI's Board of Trustees throughout Attorney Land's involvement with SJHSRI, up to the filing of the petition to place the Plan into receivership on August 18,

2017. Exhibit 89 (Land Aff.) ¶¶ 22; Land Aff. Tab G. Consistent with that concern, the receivership petition in its paragraph 15 sought an order reducing all Plan participants' benefits by 40% so that the shortfall would be shared equally. Exhibit 89 (Land Aff.) ¶¶ 22.

176. The Plan was discussed during the first meeting Attorney Land attended of SJHSRI's Board of Trustees on December 15, 2014. Exhibit 89 (Land Aff.) ¶¶ 23.

177. The Plan was discussed again during the next meeting of SJHSRI's Board of Trustees on January 21, 2015. Exhibit 89 (Land Aff.) ¶¶ 24; Land Aff. Tab H (agenda for meeting). The agenda highlights the importance to the board of a range of "Pension Matters," including the "underfunding issue" and the related "Church plan issue." Exhibit 89 (Land Aff.) ¶¶ 24.

178. The "Church plan issue" that was discussed with the Board concerned reasons why the Plan might cease to qualify as a "church plan" exempt from ERISA. Exhibit 89 (Land Aff.) ¶¶ 25. It was Attorney Land's understanding that insofar as the Plan qualified for this exemption, SJHSRI was not obligated under ERISA to fund the Plan. Id. However, throughout Attorney Land's involvement with SJHSRI and SJHSRI's Board of Trustees, it was always the policy of SJHSRI and SJHSRI's Board of Trustees that SJHSRI had at least a moral obligation to fund the Plan and to honor that moral obligation to the extent possible. Id.

179. Attorney Land was aware that one possible reason that the Plan might not qualify as a "church plan" was the possibility that the church plan exemption did not apply to plans established and maintained by organizations that were supported by, but were not themselves, churches. Exhibit 89 (Land Aff.) ¶¶ 26.

180. The second possible reason of which Attorney Land was aware was the fact that even if the Plan was currently entitled to exempt status as a church plan, SJHSRI would lose its status as a public charity at some point over the next several years. Exhibit 89 (Land Aff.) ¶ 27. As noted in the petition for receivership, that was likely to occur on or before December 31, 2018. Id.

181. The first possible reason why the Plan might lose its status as a “church plan” was resolved in favor of the Plan retaining its exemption from ERISA by the decision of the United States Supreme Court on June 5, 2017 in Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017), which held that organizations such as SJHSRI that are not themselves churches can establish and maintain “church plans.” Exhibit 89 (Land Aff.) ¶ 28. However, the second possibility remained a problem. Id. Indeed, as noted in the petition to put the Plan into receivership, it appeared that on or before December 31, 2018, SJHSRI would lose its status as a public charity and, therefore, the Plan’s “church plan” exemption from ERISA. Id.

182. The problems associated with the Plan’s underfunded status were also the key issues for the meeting of SJHSRI’s Board of Trustees which took place on April 8, 2015. Exhibit 89 (Land Aff.) ¶ 29. As noted in the email dated April 2, 2015, that meeting was attended by Albert Krayter, Angell’s Director of Defined Benefit Department, who explained the underfunding problem and discussed with the Board various strategies to deal with the problem. Id. Those strategies included “two additional benefit and funding scenarios – reducing benefits by 25% and 30%, and solving for the rates of return needed to keep the Plan solvent, assuming that the Plan will continue as a church plan,” as noted in the email dated April 2, 2015. Id.

183. The problem of what to do with the Plan was a primary concern of SJSHRI and SJHSRI's Board of Trustees throughout Attorney Land's involvement, but it came to a head beginning in the Winter of 2016–2017, culminating on August 7, 2017 when the Board of Trustees after a great deal of deliberation authorized and directed Attorney Land to file the petition for receivership. Exhibit 89 (Land Aff.) ¶¶ 30. The Board's written consent is signed by only two of the three Trustees, because Father Reilly advised Attorney Land that, although he agreed with and approved of the decision, it was not necessary for him to consent in writing. Id.; Land Aff. Tab K (Board's written consent).

184. On April 15, 2019, the Plaintiff Receiver filed an election with the United States Department of Labor, electing to have the Plan become subject to ERISA, regardless of whether it was entitled to the Church Plan exemption, effective July 1, 2017. See ECF # 126-1 (attachment to the Plan's first Form 5500). As a result, the Plan became subject to ERISA by April 15, 2019, effective as of July 1, 2017.

185. The Secretary of the Treasury has never sent SJHSRI (or anyone else) a notice of default with respect to SJHSRI's failure to have met the requirement of a "principal purpose" organization under 29 U.S.C. §1002(33).

Respectfully submitted,

Plaintiffs,
By their Attorney,

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