

**Hearing Date: October 15, 2021 @ 9:30 a.m.**

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

In re:

CharterCARE Community Board,

St. Joseph Health Services of  
Rhode Island,

And

Roger Williams Hospital

PC-2019-11756

**LIQUIDATING RECEIVER'S AND PLAN RECEIVER'S MEMORANDUM IN  
SUPPORT OF MOTION TO ENFORCE SUBPOENA DUCES TECUM AGAINST  
THE BEACON MUTUAL INSURANCE COMPANY**

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**TABLE OF CONTENTS**

Relevant Travel of the Liquidating Receivership..... 1

The Subpoena Duces Tecum and Beacon’s Belated Boilerplate Objections ..... 12

Argument ..... 13

    I. The applicable abuse-of-discretion standard..... 13

    II. Beacon’s untimely objections to the subpoena are waived ..... 14

    III. Beacon’s objections to the subpoena are meritless ..... 15

        A. The subpoena is not “vague and overbroad” ..... 15

        B. It is no valid objection that Beacon previously produced some documents to the Liquidating Receiver ..... 16

        C. The subpoena does not impose undue burden and expense on Beacon..... 19

Conclusion ..... 20

Certificate of Service ..... 22

Thomas S. Hemmendinger (the “Liquidating Receiver”) as Liquidating Receiver of CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”), and Stephen Del Sesto as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan Receiver”) (the Liquidating Receiver and Plan Receiver being collectively the “Receivers”), hereby move to enforce the Liquidating Receiver’s subpoena duces tecum against The Beacon Mutual Insurance Company (“Beacon”).

#### **RELEVANT TRAVEL OF THE LIQUIDATING RECEIVERSHIP**

In August 2017, SJHSRI petitioned (“the Plan Receivership Petition”) the Rhode Island Superior Court to place the Plan into receivership, in the case captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the “Plan Receivership Proceedings”). The Plan Receivership Petition alleged that the Plan was insolvent and requested an immediate reduction of 40% in benefits under the Plan. Attorney Stephen Del Sesto was appointed Plan Receiver by the Superior Court. The Plan Receiver thereafter obtained permission from the Superior Court to retain Wistow, Sheehan & Loveley, PC (“WSL”) as his “Special Litigation Counsel” to investigate and assert possible claims that may benefit the Plan, pursuant to Special Counsel’s retainer agreement which was approved by the Superior Court prior to its execution.

In June 2018, the Plan Receiver (together with seven individual Plan participants) brought federal and Superior Court suits against defendants including CCCB, SJHSRI, and RWH. In August 2018, the Plan Receiver and the other plaintiffs entered into a settlement agreement with CCCB, SJHSRI, and RWH (the “Settlement Agreement”),

which agreement was subject to approvals by both the Superior Court and the U.S. District Court.<sup>1</sup> That Settlement Agreement was ultimately and finally approved in October 2019.

In connection with the Settlement Agreement, CCCB, SJHSRI, and RWH agreed they were liable to the Plan Receiver and the individual plan participants (at least for breach of contract) in the amount of damages of at least \$125 million, and agreed they would subsequently petition themselves into this liquidating receivership, in which the Plan Receiver and other Plan participants<sup>2</sup> would pursue that liability. In addition, paragraph 24 of the settlement agreement states:

24. The Settling Defendants agree to cooperate with and follow the requests of the Receiver and to take all reasonable measures in the Liquidation Proceedings to obtain court approval of the Petitions for Judicial Liquidation, including but not limited to **marshalling the Settling Defendants' Other Assets** and other rights of the Settlement Defendants and **opposing and seeking to limit the claims of other creditors where appropriate**.

[Emphasis supplied]

On December 13, 2019, and pursuant to their obligations under the settlement agreement, CCCB, SJHSRI, and RWH filed their petition for a liquidating receivership in the instant Liquidation Proceedings.

On December 18, 2019, the Court entered an order appointing the Liquidating Receiver as Temporary Liquidating Receiver. Paragraph 7 of that order provides:

7. That the Liquidating Receiver on behalf of the Petitioners shall perform and continue to perform their obligations under the Settlement

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<sup>1</sup> The Plan Receiver and other plaintiffs subsequently entered into two additional settlements with other defendants, which are of no immediate relevance here.

<sup>2</sup> With the Court's permission, the Plan Receiver has filed one proof of claim on behalf of both the Plan and its participants.

Agreement, including but not limited to paragraph 24 of the Settlement Agreement;

On January 17, 2020, the Court entered its Order Appointing Permanent Liquidating Receiver. Paragraph 7 of that order provides:

7. That the Liquidating Receiver on behalf of the Petitioners shall perform and continue to perform their obligations under the Settlement Agreement, including, but not limited to paragraph 24 of the Settlement A Agreement<sup>[3]</sup> . . . .

The January 17, 2020 Order Appointing Permanent Liquidating Receiver also set a bar date for all creditors of CCCB, SJHSRI, and RWH to file claims in this liquidating receivership:

11. All creditors of Petitioners in order to be entitled to be paid from the assets of Petitioners are required to file with the Liquidating Receiver at the Liquidating Receiver's office at 362 Broadway, Providence, RI 02909, on or before May 18, 2020, statements showing the amount of indebtedness claimed by them to be due, the consideration therefor, and the security or lien or priority, if any, which any creditor claims to be entitled to.

In April 2021, approximately eleven months after the May 18, 2020 bar date had elapsed, the Liquidating Receiver set a suggested deadline of May 31, 2021 for Beacon's proof of claim. That deadline too came and went. Only after the Liquidating Receiver informed Beacon on June 2, 2021 that he was setting one last "firm deadline of June 16, 2021" did Beacon file its proof of claim on June 11, 2021. Beacon, in its proof of claim, seeks reimbursement from the liquidating Receivership relating to five pre-receivership workers' compensation claims it has continued to administer for SJHSRI after this liquidating receivership was instituted.

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<sup>3</sup> I.e. the August 31, 2018 Settlement Agreement discussed *supra*.

The workers' compensation claims that Beacon has been administering date back to the 1980s and 1990s. From approximately 1986 to 1999, SJHSRI maintained a self-insurance program for its employees' workers' compensation claims, for which SJHSRI maintained a combination of self-insurance and excess insurance (above various self-insured retentions ("SIRs")<sup>4</sup>). For these claims, SJHSRI obtained excess insurance coverage under policies issued by a series of excess carriers, including Employers Reinsurance (now Swiss Re) and General Reinsurance. In order to administer the workers' compensation claims that arose during this period, SJHSRI engaged a series of third-party administrators.

Effective as of November 1, 2010, SJHSRI engaged Beacon to perform certain services under a Third Party Administration Agreement (the "TPA Agreement") (Exhibit 1 hereto). Exhibit A to the TPA Agreement identified Beacon's services as including, inter alia:

- BEACON is a third party administrator employed by ST. JOSEPH to assist in the administration of all pending claims listed on Exhibit B attached hereto and made a part hereof. Such assistance may include investigation, employer contact/interviews, payment of indemnity and medical benefits on behalf of ST. JOSEPH and recommendations to ST. JOSEPH on resolution of claims and return to work issues.

\* \* \*

- BEACON will establish and maintain claims files to contain all facts and information necessary for the proper service and administration of claims.

\* \* \*

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<sup>4</sup> These SIRs were to be paid by SJHSRI out of a Trust Account established for the limited purpose of workers' compensation outlays. See Exhibit 2 (report of Albert Risk Management Consultants).

**■ BEACON will communicate with ST. JOSEPH's excess carriers and seek reimbursement of payments beyond retention.**

[Emphasis supplied]

Exhibit 1 at 6. Exhibit B to the TPA Agreement identified as “covered claims” the claims of twelve named employees with open workers’ compensation claims. Id. at 7. In addition, Exhibit B to the TPA Agreement also identified a thirteenth category of “covered claims” as follows: “Any closed claims that require further handling that may be identified in the future while this Agreement is in effect.” Id.

According to the TPA Agreement, Beacon would advance the payments to employee claimants and later bill SJHSRI for the amounts advanced. SJHSRI would pay Beacon, and Beacon was supposed to seek reimbursement on behalf of SJHSRI from the excess carriers. Obviously, to perform its obligations under the TPA Agreement, Beacon had to determine whether the SIRs were annual or cumulative. If they were cumulative, it would be necessary for Beacon to be aware of precisely when the SIRs were satisfied. This in turn required Beacon to know, as of the time it became TPA in 2010, how much each claimant had been paid during the years before Beacon became TPA.

On February 15, 2012, in connection with certifications required by SJHSRI’s then bond indenture, Albert Risk Management Consultants reported that (according to Beacon) all open claims were being paid by excess carriers:

The current third-party administrator, Beacon Mutual, reports six (6) open claims as of 8/31/11 with no additional exposure as all six claims have reached the attaching point of the specific excess insurance. The excess insurers have accepted responsibility for excess losses and are reimbursing Beacon Mutual for indemnity and medical costs related to these claims. The insurers are highly rated and responsive to these claims.

\* \* \*

*Conclusion* Based on our review of Beacon Mutual' s estimated outstanding liabilities, their excess insurance recoveries analysis and the trust account statement, in conjunction with the Bond Indenture Agreement, it is our opinion that the Trust Account provides adequate funding to meet future workers' compensation obligations.

Exhibit 2.

Nevertheless, although Beacon was contractually required to seek reimbursement of payments from SJHSRI's excess carriers or the State of Rhode Island<sup>5</sup> where available, and although Beacon informed Albert Risk Management Consultants that it was doing so, it now appears, based on the claim Beacon filed with the Liquidating Receiver, that Beacon did so only infrequently and incompletely. Indeed, rather than the liquidating receivership owing Beacon money (as Beacon claims in its proof of claim), the contrary appears to be the case.

Since May 2015 alone, SJHSRI has reimbursed Beacon more than \$700,000 for workers' compensation claims covered by the TPA Agreement. During that period (from May 2015 to the present), according to the limited<sup>6</sup> accounting that Beacon provided to the Liquidating Receiver in June 2021, Beacon has identified only two limited sets of payments that it sought and obtained from an excess carrier (Swiss Re<sup>7</sup>) or the State of Rhode Island, on claims (of Sheila Zoglio and Dianne McCray). See Exhibit 3 (excerpt

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<sup>5</sup> Beacon has identified at least one of the claims as covered by the Rhode Island Workers' Compensation Administrative Fund (formerly the Second Injury Indemnity Fund). Notwithstanding this coverage, SJHSRI continued to reimburse Beacon for payments on this claim, until sometime after the start of the liquidating receivership.

<sup>6</sup> On its face the accounting only purports to cover periods since November 2018 (as to Sheila Zoglio), June 2019 (as to Dianne McCray), August 2019 (as to Antoinetta Grande), and December 2019 (as to Karapet Emdjian and Jean Reynolds).

<sup>7</sup> Swiss Re is evidently a successor to Employers Reinsurance.



of Beacon's accounting, identifying \$46,630.07 paid by Swiss Re for Sheila Zoglio and \$34,918.37 paid by the Rhode Island Second Injury Fund for Dianne McCray). Beacon has otherwise continued to seek reimbursement from SJHSRI for these claims and failed to make other claims against the excess carrier(s) or the State.

In addition, through subpoenas that WSL previously issued (to entities other than Beacon) during the investigative phase of the Plan Receivership, the Receivers have identified other payments that Beacon did obtain from excess carriers or the State of Rhode Island, but which Beacon inexplicably forwarded to Prospect Chartercare instead of to SJHSRI:

- Beacon received a \$11,162.77 check dated June 12, 2015 from Westport Insurance Corporation<sup>8</sup> relating to Sheila Zoglio (one of the SJHSRI employees named in the TPA Agreement). On June 18, 2015, Beacon forwarded the check to Prospect Chartercare (instead of to SJHSRI), under a cover letter stating it "represents reimbursement from the Excess Carrier for indemnity payments, medical costs, and expenses."<sup>9</sup>
- Beacon received a \$3,653.98 check dated June 11, 2015 from Westport Insurance Corporation relating to Maria Lindo (one of the SJHSRI employees named in the TPA Agreement). On June 16, 2015, Beacon forwarded the check to Prospect Chartercare (instead of to SJHSRI), under a cover letter stating it "represents reimbursement from the Excess Carrier for medical expenses, general expenses and indemnity."<sup>10</sup>
- Beacon received a \$5,991.90 check dated June 11, 2015 from Westport Insurance Corporation relating to Conceicao Silva (one of the SJHSRI employees named in the TPA Agreement). On June 16, 2015, Beacon forwarded the check to Prospect Chartercare (instead of to SJHSRI) under a cover letter stating that it "represents reimbursement from the Excess Carrier for medical expenses, general expenses, and indemnity."<sup>11</sup>

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<sup>8</sup> Westport Insurance Company was evidently a successor to Employers Reinsurance and a predecessor to or affiliate of Swiss Re.

<sup>9</sup> Exhibit 4.

<sup>10</sup> Id.

<sup>11</sup> Id.

The Receivers have found no evidence that SJHSRI ever received these funds. The Receivers also do not know how many other excess insurance payments Beacon obtained but failed to deliver to SJHSRI.

Beacon's mishandling of payments it received from excess carriers, as well as Beacon's evident failures (based on the documents provided by Beacon) to seek other payments from excess carriers, constitute a breach of the TPA Agreement. The scope of damages to the liquidating receivership resulting from that breach, since November 2010, may be valued in the many hundreds of thousands of dollars, perhaps more. (The Receivers are unable to be more specific, in light of the inadequacies of Beacon's accounting and refusals to comply with the subpoena *sub judice*.)

On June 13, 2021, Beacon wrote to the Liquidating Receiver and stated in writing that it had none of the relevant excess insurance policy documents:

**We are unable to locate reinsurance policy documents for the St. Joseph Claims**, the application/acceptance of the McCray claim by the SIF [Rhode Island Second Injury Fund], or any reinsurance correspondence for the Zoglio claim.

[Emphasis supplied]

Affidavit of Thomas Hemmendinger ¶ 20.

On June 29, 2021, a Zoom video conference was conducted among Beacon and the Receiverships.<sup>12</sup> During this conference, Beacon informed the Receivers that Beacon had only obtained limited information concerning SJHSRI's excess coverages

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<sup>12</sup> This Zoom conference was attended by Amy Vitale, Esq. (Beacon's general counsel), Patricia Antonelli, Esq. (Beacon's outside counsel), Max Wistow, Esq. and Benjamin Ledsham, Esq. (both counsel to the Plan Receiver), and Thomas Hemmendinger, Esq. (the Liquidating Receiver). See Affidavit of Thomas Hemmendinger ¶ 22; Affidavit of Max Wistow ¶ 3; Affidavit of Benjamin Ledsham ¶ 3. These affidavits are attached hereto as Exhibits 8, 9, and 10, respectively.

when Beacon came on as third-party administrator in 2010.<sup>13</sup> Beacon reiterated it had been performing services under the TPA Agreement without obtaining copies of the excess insurance policies that would confirm the existence or nonexistence of excess coverage.<sup>14</sup> Beacon also stated that, notwithstanding that it did not have the excess insurance policies, it believed that the SIRs applicable to each claimant were annual, not cumulative.<sup>15</sup> In other words, Beacon had been administering the claims on the belief that unless payments on each claim exceeded a certain annual threshold, there was no excess insurance coverage regardless of the total amount paid on each claim over the lifetime of the claim. We now know that was simply wrong.

In addition, the Receivers are seeking information relating to a bond issued by North River Insurance Company (Bond # 610-177709-09) on behalf of SJHSRI in favor of the Rhode Island Department of Labor and Training (“DLT”). See Exhibit 5 (December 22, 2020 letter from Beacon to the Liquidating Receiver and DLT).

Beacon’s letter stated: “Based on information received from Crum & Forster [agent for North River Insurance Company], the vast majority of St. Joseph claims predate the effective date of the Bond.” Id. Beacon’s letter does not indicate what information it obtained from Crum & Forster. Nevertheless, Beacon’s letter suggests that *at least some* claims were covered by the bond, and accordingly, pursuant to its obligations

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<sup>13</sup> See Affidavit of Thomas Hemmendinger ¶ 23(b); Affidavit of Max Wistow ¶ 4(b); Affidavit of Benjamin Ledsham ¶ 4(b).

<sup>14</sup> Affidavit of Thomas Hemmendinger ¶ 23(a); Affidavit of Max Wistow ¶ 4(a); Affidavit of Benjamin Ledsham ¶ 4(a).

<sup>15</sup> Affidavit of Thomas Hemmendinger ¶ 23(b); Affidavit of Max Wistow ¶ 4(b); Affidavit of Benjamin Ledsham ¶ 4(b).

under the TPA Agreement, Beacon should have collected at least some payments on this bond but has failed to do so.

Seeking to get to the bottom of the fundamental issue of whether the liquidating receivership owes Beacon or Beacon owes the liquidating receivership, on August 6, 2021, the Liquidating Receiver issued the subpoena duces tecum (Exhibit 6), and on August 10, 2021, the Liquidating Receiver effectuated service of the subpoena duces tecum on Beacon.<sup>16</sup> The subpoena was initially returnable on August 24, 2021 and seeks seven categories of documents relating to Beacon's services under the TPA Agreement. See *infra* at 12-13.

On August 18, 2021, counsel for the Plan Receiver was contacted by newly retained counsel for Beacon. Counsel for the Plan Receiver granted Beacon's counsel a seven-day extension as a matter of courtesy, making the subpoena returnable August 31, 2021. See Affidavit of Max Wistow ¶ 5. Counsel for the Plan Receiver also offered Beacon the choice between producing all of the subpoenaed documents on October 4, 2021 (i.e. eight weeks since the service of the subpoena) or filing a motion for a protective order on the return date, August 31, 2021. Id.

On August 27, 2021, Beacon produced fifty-seven (57) pages of jumbled<sup>17</sup> documents, including some documents it had not previously provided to the Liquidating Receiver. For example, Beacon for the first time provided what it claimed to be a copy

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<sup>16</sup> The Liquidating Receiver also effectuated service of a subpoena for deposition testimony under Rule 30(b)(6). That subpoena ad testificandum is not presently before the Court.

<sup>17</sup> Although the 57 pages were bates-stamped, they appear to have been produced in a completely jumbled fashion. For example, the first page of a document entitled "Endorsement No. 1" is bates-stamped Beacon00027, but what appears to be its second page is bates-stamped Beacon00045. Likewise, the first page of a document entitled "Endorsement No. 5" is bates-stamped Beacon00026, but what appears to be its second page is bates-stamped Beacon00040.

of a General Reinsurance policy that Beacon had twice previously informed the Receivers that it did not have. Beacon later supplemented this production with an additional seven (7) pages of documents it had withheld.

On August 30, 2021, counsel for the Plan Receiver wrote to Beacon's counsel with observations about Beacon's limited production and the need for full compliance with the subpoena. See Affidavit of Max Wistow ¶ 5.

On August 31, 2021, in a brief conference call with the Liquidating Receiver and counsel for the Plan Receiver, Beacon's counsel informed them that Beacon would be responding to the August 30, 2021 letter in writing.<sup>18</sup> Beacon, however, did not serve any written objections on August 31, 2021.

On September 3, 2021, Beacon's counsel wrote to the Plan Receiver's counsel. See Affidavit of Thomas Hemmendinger ¶ 28. Instead of agreeing to comply fully with the subpoena by October 4, 2021 (as offered by Plan Receiver's counsel), Beacon proposed to make only partial productions, by October 4, 2021<sup>19</sup>, of only certain categories of documents, concerning only four SJHSRI employees (i.e. fewer employees than even the five who were encompassed by Beacon's own claim). See Affidavit of Thomas Hemmendinger ¶ 28; Affidavit of Max Wistow ¶ 7. Beacon's letter also enclosed belated boilerplate objections to the subpoena. See Exhibit 7.

As noted, the sixty-four (64) pages that Beacon produced included documents that it had twice previously told the Receivers that it did not have. What Beacon did

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<sup>18</sup> See Affidavit of Thomas Hemmendinger ¶ 27; Affidavit of Benjamin Ledsham ¶ 5.

<sup>19</sup> Provided that the Liquidating Receiver identify the four employees by September 7, 2021, i.e. within one business day of Beacon's September 3, 2021 letter.

ultimately produce showed that Beacon's representations, at least regarding the Employers Reinsurance policy (covering nine of the twelve SJHSRI employees with workers' compensation claims within the TPA Agreement), were simply wrong: that the SIRs were cumulative rather than annual.

### **THE SUBPOENA DUCES TECUM AND BEACON'S BELATED BOILERPLATE OBJECTIONS**

The Liquidating Receiver's subpoena duces tecum seeks the following categories of documents from Beacon:

1. All documents relating to insurance policies (including umbrella and excess policies) under which SJHSRI was provided with any insurance coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive.
2. All documents relating to self-insurance funds or trusts under which SJHSRI had/has coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive.
3. All documents relating to communications to or from any excess insurer concerning TPA Claims<sup>[20]</sup>, including but not limited to demands for payment.
4. All documents relating to payments by any excess insurer relating to TPA Claims.
5. All documents relating to payments to Beacon relating to TPA Claims.

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<sup>20</sup> The subpoena defined "TPA Claims" as follows:

The term "TPA Claims" refers to the workers' compensation claims pertaining to Anne Sugrue, Karapet Emdjian, Jean Reynolds, Conceicao Silva, Antoinette Grande, Linda Vessella, Maria Lindo, Lori Bennett, Sheila Zoglio, Fausto Andreozzi, Dianne McCray, and Mary Hicks. The term TPA Claims also includes any closed claims that required further handling that were identified while the TPA Agreement was or has been in effect.

The subpoena further defined "TPA Agreement" as "the Third-Party Administration Agreement entered into as of November 1, 2010, between Beacon and SJHSRI."

6. All documents relating to any bond relating to SJHSRI and workers' compensation matters, including but not limited to North River Insurance Company Bond No. 610-177709-9.

7. All documents relating to efforts to collect payment on North River Insurance Company Bond No. 610-177709-9, including but not limited to (a) Beacon's efforts to collect payment from Crum & Forster on or about November 12, 2020; and (b) DLT's efforts to collect payment from Crum & Forster on or about September 23, 2020.

Exhibit 6 (Subpoena Duces Tecum).

On September 3, 2021, Beacon served an untimely<sup>21</sup> document entitled

"Objection" which stated:

The Beacon Mutual Insurance Company ("Beacon Mutual"), pursuant to Superior Court Rule of Civil Procedure 45(c)(2)(B), hereby objects to the Subpoena dated August 6, 2021 issued by the Liquidating Receiver to Beacon Mutual. As grounds for its objection, Beacon Mutual states that that [sic] the document requests contained in the Subpoena are vague and overbroad, seek information previously produced by Beacon Mutual to the Liquidating Receiver or that already is in the Liquidating Receiver's possession, and impose undue burden and expense on Beacon Mutual.

Exhibit 7 (hereinafter "Beacon's Objections").

## ARGUMENT

### I. The applicable abuse-of-discretion standard

Our Supreme Court has "consistently held that '[i]n granting or denying discovery motions, a Superior Court justice has broad discretion.'" Dawkins v. Siwicki, 22 A.3d 1142, 1150 (R.I. 2011) (affirming grant of motion to quash subpoena duces tecum served shortly before trial) (quoting Travelers Ins. Co. v. Hindle, 748 A.2d 256, 259 (R.I.

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<sup>21</sup> See infra.

2000)). Our Supreme Court “will not disturb a trial justice's decision relating to discovery ‘save for an abuse of that discretion.’” Dawkins, 22 A.3d at 1150. See Chen v. Subaru of Am., 58 A.3d 910, 913 (R.I. 2012) (finding “no abuse of discretion on the part of the trial justice” in quashing a subpoena for “failure to contain the signature of an issuing officer, in contravention of Rule 45”).

For the reasons discussed below, it would be an abuse of discretion not to grant discovery by enforcing the subpoena duces tecum.

## **II. Beacon’s untimely objections to the subpoena are waived**

Super. R. Civ. P. 45 provides in relevant part:

Subject to paragraph (d)(2)<sup>[22]</sup> of this rule, a person commanded to produce and permit inspection copying, testing, or sampling may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the self-represented litigant or attorney designated in the subpoena written objection to inspection copying, testing, or sampling of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. . . .

Super. R. Civ. P. 45(c)(2)(B).

“Rule 45 provides that the subpoenaed party must object to production within fourteen days after service of the subpoena or a time specified in the subpoena, whichever is earlier.” Berrios v. Jevic Transp, Inc., No. PC 2004-2390, 2012 WL

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<sup>22</sup> Super. R. Civ. P. 45(d)(2) provides:

When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



2946775, at \*4 (R.I. Super. July 11, 2012) (Gibney, C.J.). “A failure to object within the fourteen-day period usually results in waiver of the contested issue.” Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2463 (3d ed.).

As a leading Rhode Island treatise states:

Failure of a nonparty without adequate excuse to respond to a subpoena either to produce documents or to give testimony constitutes contempt of court. A recipient that intends not to obey the subpoena must file objections or move to quash. . . .

Kent, Simpson, Flanders, Wollin, Rhode Island Civil Procedure § 45:6.

Here, the subpoena duces tecum was served on Beacon on August 10, 2021. See supra at 10. On August 18, 2021, Beacon’s counsel was granted a seven-day extension of all deadlines as a matter of courtesy, extending the time for Beacon’s service of written objections from August 24, 2021 to August 31, 2021. Thereafter, the August 31, 2021 deadline elapsed without any further extension of the time to serve objections. Accordingly, Beacon’s objections on September 3, 2021 were untimely and Beacon’s objections are waived.

### **III. Beacon’s objections to the subpoena are meritless**

Because Beacon’s boilerplate objections were untimely and waived, the Court need not inquire into their merits. In any event, they are meritless and should be overruled.

#### **A. The subpoena is not “vague and overbroad”**

Beacon’s first boilerplate objection is that “the document requests contained in the Subpoena are vague and overbroad.” They are clearly neither.

Beacon cannot seriously contend that the subpoena is vague. All of the terms used in the subpoena are either explicitly defined therein or are words of common usage within the insurance industry. Beacon does not point to a single term that it does not understand or is incapable of applying. Indeed, prior attempts by the Receivers to inquire as to any confusion by Beacon concerning the meaning of such terms were rebuffed.<sup>23</sup>

Nor is the subpoena overbroad. As noted, Beacon has filed a proof of claim with the liquidating receivership, claiming that Beacon is owed money for services rendered under the TPA Agreement. The Liquidating Receiver is entitled to all of the subpoenaed documents to test Beacon's claim, even apart from determining whether the receivership estates may have claims of their own against Beacon. The adjudication of Beacon's claim necessarily entails determining the scope of Beacon's performance or failures of performance of its duties under the TPA Agreement, including its apparent failures to seek all reimbursements due from excess carriers on SJHSRI's behalf.

**B. It is no valid objection that Beacon previously produced some documents to the Liquidating Receiver**

Beacon's second boilerplate objection is that "the requests in the Subpoena . . . seek information previously produced by Beacon Mutual to the Liquidating Receiver or that already is in the Liquidating Receiver's possession." Both halves of this objection are nugatory.

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<sup>23</sup> The Plan Receiver's counsel's August 30, 2021 letter to Beacon's counsel stated: "Here, if Beacon claims in writing that it does not understand the term 'self-insurance funds or trusts' (or, indeed, any of the other terms used in the subpoenas), we will try to clarify what is requested." Affidavit of Max Wistow ¶ 6.

Clearly it is no valid objection that Beacon has already produced some documents to the Liquidating Receiver. Beacon does not contend the documents it has already produced constitute a complete response to the subpoena. If those prior production(s) were indeed complete, it would undoubtedly be a simple matter for Beacon to reproduce the same documents now in response to the subpoena.

Beacon's latter contention, that the subpoena seeks information that "already is in the Liquidating Receiver's possession," is likewise empty sophistry. Beacon does not contend that the Liquidating Receiver already possesses all of the subpoenaed documents. The fact that Beacon has previously produced some documents is no grounds for withholding other potentially relevant documents.

The Liquidating Receiver only possesses a small fraction of the documents that may have once belonged to SJHSRI<sup>24</sup>, much less belonged to Beacon. For example, the Receivers do not have Beacon's report to Albert Risk Management Consultants that the excess carriers were paying all of SJHSRI's open workers' compensation claims as of August 31, 2011. See supra at 5. Nor do the Receivers have Beacon's "excess insurance recoveries analysis" given to Albert Risk Management Consultants. Id. That report and that analysis fall within several of the subpoena's document requests (including requests nos. 1, 2, 3, 4, and 5). Beacon is impermissibly withholding these obviously relevant documents from the Receivers.

The Receivers' need for Beacon's documents is also all the more pressing here, where many of the requested documents (including documents relating to Beacon's

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<sup>24</sup> As the Court may recall, most of SJHSRI's business records were acquired by the Prospect entities in connection with the June 20, 2014 Asset Sale.

communications with excess insurers) are within the exclusive possession of Beacon. For example, although the Receivers have identified three excess carrier payments that Beacon obtained and misdirected to Prospect Chartercare (instead of to SJHSRI), the Receivers do not know: (1) how many excess carrier payments Beacon obtained (including their amounts); (2) which excess carrier payments Beacon remitted to SJHSRI prior to this liquidating receivership; and (3) which excess carrier payments Beacon misdirected to recipients other than SJHSRI or the Liquidating Receiver.

In addition, even if (*arguendo*) the Receivers already possessed all of the subpoenaed documents (which they plainly do not), that would not excuse Beacon's refusal to produce the documents in response to the subpoena. Under Super. R. Civ. P. 45, it is not a valid objection that the same documents are equally available to the subpoenaing party from other sources:

**In connection with the subpoena duces tecum for compensation records in the possession of the Viking Hotel**, the commission tenders the argument that it acted within its discretion in refusing to subpoena those records, inasmuch as they are "irrelevant" **in view of the anticipatedly successful subpoenaing of identical records from Wall**. But as L'Auberge persuasively points out, only production of the Viking's records will show whether they are identical or not. One does not automatically know, for example, whether there are not more records that Wall has failed to produce-as the trial justice himself noted. **A predicted duplicativeness of records without other reasons may not justify nonissuance of a subpoena that has been requested for a lawful purpose and is directed at information relevant to the proceedings at hand.**

[Emphasis supplied]

La Petite Auberge, Inc. v. Rhode Island Comm'n for Hum. Rts., 419 A.2d 274, 283 (R.I. 1980). See In re The Station Fire in W. Warwick, No. M.P. 03-1326, 2003 WL 21688301, at \*1 (R.I. Super. June 25, 2003) (rejecting town's argument that

subpoenaed information could be obtained by non-discovery means pursuant to public access requests). See generally National Academy of Recording Arts & Sciences, Inc. v. On Point Events, LP, 256 F.R.D. 678, 682 (C.D. Cal. 2009) (overruling defendant's objection that interrogatory sought information equally available to plaintiff); Fosselman v. Gibbs, No. C 06–0375, 2008 WL 745122, at \*4 (N.D. Cal. Mar. 18, 2008) (“the objection that information is equally available to the questioner is not a proper objection”); St. Paul Reinsurance Co. v. Commer. Fin. Corp., 198 F.R.D. 508, 514 (N.D. Iowa 2000) (plaintiffs' objection that the information and documents sought are equally available to the propounding parties from their own records or from records which are equally available to the propounding parties is a “meritless” basis for objection); City Consumer Services v. Horne, 100 F.R.D. 740, 747 (D. Utah 1983) (it is “not usually a ground for objection that the information is equally available to the interrogator or is a matter of public record”); Petruska v. Johns–Mannville, 83 F.R.D. 32, 35 (E.D. Pa. 1979) (same); 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure § 2014 (3rd. ed.2010) (same).

**C. The subpoena does not impose undue burden and expense on Beacon**

Beacon's final boilerplate objection is that “the document requests contained in the Subpoena . . . impose undue burden and expense on Beacon Mutual.”

First, Beacon's alleged burden is not undue. As noted, Beacon itself filed a proof of claim in this liquidating receivership. The Liquidating Receiver is entitled to obtain the documents from Beacon necessary to test its own claim.

Second, Beacon has informed the Receivers that, as required by the TPA Agreement and as should be expected of an insurance company, it maintains claims files for each of the claims being administered under the TPA Agreement.<sup>25</sup> It would presumably entail little burden to produce those claims files as they are kept in the usual course of business. See Super. R. Civ. P. 45(d)(1) (“A person responding to a subpoena to produce documents and/or electronically stored information shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.”). Beacon does not contend, for example, that any parts of those files are privileged as against the Liquidating Receiver and require further review prior to production.<sup>26</sup> If additional responsive documents are to be found *outside* Beacon’s claims files, then that simply shows the unfairness and futility of Beacon’s proposal (in its counsel’s letter of September 3, 2021) to search only its claims files for narrow categories of documents.<sup>27</sup>

### CONCLUSION

Beacon should be compelled to comply fully with the subpoena duces tecum. The Court need not decide at this time whether Beacon’s non-compliance constitutes contempt or the appropriate sanction therefor.

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<sup>25</sup> See Wistow Affidavit ¶ 7.

<sup>26</sup> Beacon’s Objections do not assert any claim of privilege, much less a claim of privilege supported by a privilege log.

<sup>27</sup> See Affidavit of Thomas Hemmendinger ¶ 28.

Respectfully submitted,

Stephen Del Sesto as Receiver of the St.  
Joseph Health Services of Rhode Island  
Retirement Plan,  
By his Attorneys,

/s/ Max Wistow

Max Wistow, Esq. (#0330)  
Stephen P. Sheehan, Esq. (#4030)  
Benjamin Ledsham, Esq. (#7956)  
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[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

and

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

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger, Esq. (#3122)  
Brennan, Recupero, Cascione,  
Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909  
Tel. (401) 453-2300  
Fax (401) 453-2345  
[themmendinger@brscsm.com](mailto:themmendinger@brscsm.com)

Dated: September 28, 2021

### CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of September, 2021, I filed and served the foregoing document through the electronic filing system on the following users of record:

Thomas S. Hemmendinger, Esq.  
Sean J. Clough, Esq.  
Lisa M. Kresge, Esq.  
Ronald F. Cascione, Esq.  
Brennan, Recupero, Cascione, Scungio &  
McAllister, LLP  
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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Benjamin Ledsham

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# Exhibit 1

### **THIRD PARTY ADMINISTRATION AGREEMENT**

This THIRD PARTY ADMINISTRATION AGREEMENT (the "Agreement") is made and entered into as of the first day of November, 2010, by and between THE BEACON MUTUAL INSURANCE COMPANY, a Rhode Island mutual insurance company ("BEACON") and ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, a Rhode Island corporation (hereinafter referred to as "ST. JOSEPH").

#### **WITNESSETH:**

WHEREAS, ST. JOSEPH desires for BEACON to provide certain third party administrative services to ST. JOSEPH and BEACON desires to provide such services, subject to the terms and conditions contained herein; and

WHEREAS, BEACON and ST. JOSEPH desire to enter into an agreement whereby third party administrative services are provided upon the terms and conditions and for the consideration hereinafter set forth;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **I. TERM OF THE AGREEMENT**

**Section 1.1. Term of Agreement.** The term of this Agreement shall be continuous so long as ST. JOSEPH remains an insured of BEACON (the "Term of this Agreement").

**Section 1.2. Termination.** Notwithstanding anything to the contrary contained in Section 1.1 hereof, this Agreement shall terminate immediately upon not less than sixty (60) days' prior written notice of termination at any time by either party without cause, setting forth the date of termination. The written notice of termination shall be provided in accordance with the provisions of Section 6.3 of this Agreement.

#### **II. SERVICES TO BE PROVIDED**

During the Term of this Agreement BEACON shall provide claims administration services as more fully set forth in Exhibit A attached hereto and incorporated herein for those specific claims set forth in Exhibit B attached hereto and incorporated herein (the Covered Claims). Such services shall be collectively referred to herein as the "Services."

#### **III. COMPENSATION**

**Section 3.1.** During the Term of this Agreement, ST. JOSEPH shall pay BEACON fee of One Thousand Dollars (\$1,000.00) within thirty (30) days of the date of the execution of this Agreement.

#### **IV. STATUS AND RESPONSIBILITIES**

**Section 4.1. Independent Contractor.** BEACON expressly acknowledges and represents that it is and shall be acting as an independent contractor, and not as an employee, partner or joint venturer of ST. JOSEPH, for all purposes.

**Section 4.2. Control.** BEACON has full and exclusive control over its time, affairs, the conduct of its operations, its agents, its business relationships with other entities and the selection of persons or entities. BEACON may, at any time, contract with third parties to provide any and/or all of the Services. With respect to all Services rendered by BEACON herein which require an exercise of judgment by BEACON, BEACON shall take such action as in its sole judgment are necessary or appropriate in light of the circumstances known to BEACON at the time such services are rendered. BEACON shall, however, endeavor to consult with ST. JOSEPH with respect to actions necessary or appropriate to providing the Services.

**Section 4.3. Responsibilities of ST. JOSEPH.** ST. JOSEPH shall at all times remain fully responsible for all coverage, payment, and/or insurance of the Covered Claims, and shall reimburse Beacon for all payments made by Beacon on behalf of ST. JOSEPH. By providing the Services pursuant to this Agreement, BEACON assumes no responsibility to cover, pay, and/or insure any Covered Claim for which BEACON provides the Services or to pay any third party for services provided to ST. JOSEPH for Covered Claims. ST. JOSEPH shall ensure that complete claims files for all Covered Claims are turned over to Beacon, together with all necessary historical financial data for each Covered Claim.

**Section 4.4. Responsibilities of BEACON.** BEACON shall provide the Services in accordance with this Agreement. Nothing in this Agreement shall be interpreted to create any duty, obligation, or responsibility for BEACON in addition to those specifically identified in Section 2 of this Agreement and the attachments related thereto. BEACON does not hereunder undertake to provide insurance coverage to ST. JOSEPH with respect to the Covered Claims.

#### **V. CONFIDENTIAL HEALTH CARE INFORMATION**

**Section 5.1.** The parties acknowledge and agree that they may not request, and they will not disclose to each other or to any third party, any confidential health care information (as such term is defined under any applicable law with respect to confidentiality of such health care information, under federal and state laws and regulations (collectively "Confidential Health Care Information")) except in accordance with applicable law. The parties agree to establish and maintain those security procedures required by laws applicable to Confidential Health Care Information for third parties receiving Confidential Health Care Information.

ST. JOSEPH shall hold harmless and indemnify BEACON and its directors, officers, employees and affiliates from and against any and all liability for any unauthorized or unlawful disclosure of Information, Confidential Health Care Information, or nonpublic personal information provided by BEACON or third party to ST. JOSEPH, or other violation of any applicable law by ST. JOSEPH.

BEACON shall hold harmless and indemnify ST. JOSEPH and its elected and appointed officials, agents and employees from and against any and all liability for any unauthorized or

unlawful disclosure of Information, Confidential Health Care Information, or nonpublic personal information provided by ST. JOSEPH or third party to BEACON, or other violation of any applicable law by BEACON.

The parties agree that a breach by either party of its confidentiality obligations relating to Confidential Health Care Information may cause the other party or any of its directors, officers, employees or affiliates to suffer irreparable harm in an amount that may not be easily quantified. The parties agree that any such breach, whether threatened or actual, will give the non-breaching party the right to immediately terminate this Agreement and any and all other agreements between the parties immediately, obtain equitable relief, including, without limitation, an injunction to restrain such disclosure or use, and pursue all other available remedies at law or in equity.

Section 5.2. The provisions of this Section 5 shall survive the termination of this Agreement.

## **VI. MISCELLANEOUS**

Section 6.1. Entire Agreement. This Agreement, together with such amendments as may from time to time be executed in writing by the parties, constitutes the entire agreement between the parties with respect to the subject matter hereof.

Section 6.2. Modifications and Amendments. This Agreement may be modified or amended only by an agreement in writing and signed by the parties hereto.

Section 6.3. Notices. All notices, statements or requests provided for hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand to an officer of the other party, or when deposited with the U.S. Postal Service, as certified or registered mail, postage prepaid, addressed:

If to BEACON: Clifford J. Parent, Jr.  
Chief Operating Officer  
The Beacon Mutual Insurance Company  
One Beacon Centre  
Warwick, Rhode Island 02886-1373

If to ST. JOSEPH: Christopher Ferraro  
Interim Chief Financial Officer  
St. Joseph Health Services of RI  
200 High Service Avenue  
Providence, RI 02904

**Section 6.4. Waivers.** The failure of any party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder. No term or provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom such waiver is sought to be enforced.

**Section 6.5. Governing Law.** This Agreement is made pursuant to and shall be governed by, interpreted under, and the rights of the parties determined in accordance with, the laws of the State of Rhode Island, without reference to principles of conflicts of law thereof.

**Section 6.6. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be one and the same instrument.

**Section 6.7. Severability Clause.** Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

**Section 6.8. Section Headings.** The headings of the various paragraphs of this Agreement are for convenience only, and shall be accorded no weight in the construction of this Agreement.

**Section 6.9. Indemnification.** ST. JOSEPH agrees to indemnify and hold harmless BEACON from and against losses, damages, liabilities, costs and expenses, including reasonable attorney's fees and other legal expenses, arising directly or indirectly from BEACON's performance of the Services under this Agreement where the Services are rendered pursuant to express direction by ST. JOSEPH or are based upon a negligent act or omission of ST. JOSEPH.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

WITNESS:

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND

By:   
\_\_\_\_\_  
Christopher Ferraro  
Interim Chief Financial Officer

**THE BEACON MUTUAL INSURANCE  
COMPANY**

Donna M. Normand

By: Clifford J. Parent, Jr.  
Clifford J. Parent, Jr.  
Chief Operating Officer

**Exhibit A**

**Services to be Provided to ST. JOSEPH**

- BEACON is a third party administrator employed by ST. JOSEPH to assist in the administration of all pending claims listed on Exhibit B attached hereto and made a part hereof. Such assistance may include investigation, employer contact/interviews, payment of indemnity and medical benefits on behalf of ST. JOSEPH and recommendations to ST. JOSEPH on resolution of claims and return to work issues.
- BEACON will perform medical monitoring of all claims including, but not limited to, communication with treating physicians, and review of medical provider notes and treatment recommendations against protocols, as well as providing medical treatment authorization.
- BEACON will assist ST. JOSEPH in the selection of physicians for impartial medical examinations ("IME") and/or will review and monitor IME reports.
- BEACON will establish and maintain claims files to contain all facts and information necessary for the proper service and administration of claims.
- BEACON will assist in the design, implementation and monitoring of light duty programs, SAE, and return to work issues as appropriate.
- BEACON will communicate with ST. JOSEPH's excess carriers and seek reimbursement of payments beyond retention.
- BEACON will assist ST. JOSEPH's legal counsel with respect to work site issues as appropriate.
- BEACON will maintain electronic recordkeeping as necessary.

**EXHIBIT B**

---

**COVERED CLAIMS**

<b><u>Employee Name</u></b>	<b><u>Date of Injury</u></b>
Anne Sugrue	09/25/1986
Karapet Emdjian	03/05/1987
Jean Reynolds	03/11/1987
Conceicao Silva	11/21/1987
Antoinette Grande	02/28/1988
Linda Vessella	03/20/1989
Maria Lindo	03/31/1989
Lori Bennett	04/09/1989
Sheila Zoglio	06/11/1989
Fansto Andreozzi	06/15/1989
Dianne McCray	04/19/1995
Mary Hicks	06/01/1998

Any closed claims that require further handling that may be identified in the future while this Agreement is in effect.



# Exhibit 2



## **Albert Risk Management Consultants**

THE INDEPENDENT SOLUTION

February 15, 2012

Ms. Kathleen Moore  
Director of Finance  
CharterCARE Health Partners  
825 Chalkstone Avenue  
Providence, Rhode Island 02908

Re: St. Joseph Health Services of Rhode Island  
Section 6.4 and 6.5 of Bond Indenture Certification  
Self-Insured Workers' Compensation Obligations

Dear Ms. Moore:

Albert Risk Management Consultants, an independent insurance and risk management consulting firm, was engaged by St. Joseph Health Services to review its self-insured workers' compensation reserves in accordance with Sections 6.4 and 6.5 of the Bond Indenture Agreement.

St. Joseph now has a fully insured workers' compensation program and the self-insurance program is in run-off. During the policy years 1986 through 1999, St. Joseph's was a licensed self-insurer, subject to the regulation of the State which required excess workers' compensation coverage against catastrophe losses. St. Joseph's exposure to self-insured retention over these years ranged from \$250,000 to \$350,000 per accident. The actuarial estimates incorporate those loss limits. In other words, the estimated reserves are net of excess insurance recoveries. To our knowledge, there are six open claims involving excess recoveries. The excess underwriters in these cases are making payments and are expected to do so until claim closure.

We have reviewed the requirements of the Bond Indenture Agreement and the account balances of your self-insured workers' compensation program to determine whether the self-insurance program is properly funded. Based on our review, it is our opinion that your self-insured workers' compensation obligations are properly reserved and funded.

### Reliances and Limitations

In performing our analysis, we have relied on the loss data supplied by St. Joseph Health Services and their various service providers. We have not independently verified the data. Further, we have not analyzed the security of any available excess insurance or the basis of individual case reserves. As with any "forward looking" statements, actual results may vary from the projections.

Ms. Kathleen Moore

February 15, 2012

Page two

### Findings

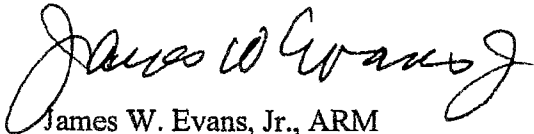
**Loss Report** The current third-party administrator, Beacon Mutual, reports six (6) open claims as of 8/31/11 with no additional exposure as all six claims have reached the attaching point of the specific excess insurance. The excess insurers have accepted responsibility for excess losses and are reimbursing Beacon Mutual for indemnity and medical costs related to these claims. The insurers are highly rated and responsive to these claims.

**Trust Account Balance** The trust account balance is the amount available to fund the outstanding liabilities. The total value of funds held by BoA as of September 30, 2011 was \$4,686.75. The full balance is held in cash and equivalents, and to the extent that there are no open claims without excess insurance recovery, the balance is sufficient for reasonable unreimbursed expenses.

**Conclusion** Based on our review of Beacon Mutual's estimated outstanding liabilities, their excess insurance recoveries analysis and the trust account statement, in conjunction with the Bond Indenture Agreement, it is our opinion that the Trust Account provides adequate funding to meet future workers' compensation obligations. This estimate assumes that St. Joseph Health Services continues to collect excess insurance from the excess insurers in the program where appropriate.

Very truly yours,

**ALBERT RISK MANAGEMENT CONSULTANTS**



James W. Evans, Jr., ARM  
Principal Consultant

# Exhibit 3



**PC004 - Claim Detail Payments (CLM0170)**

**Claim Number: 314597**  
**Claimant: Mccray, Dianne**  
**Insured Name: St Joseph Health Services of Rhode Island, Thomas S Hemmendinger Receiver for**  
**Date of Accident: 04/09/1995**

Claim Payment Type	Payment Date	Payee	Payment Description	Payment Amount	Service Effective Date	Service End Date	Check Number
	06/12/19	Mccray, Dianne	Temporary Total Disability	365.57	06/07/19	06/13/19	1255692
	06/17/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	769.81	04/29/19	04/29/19	MRX2861994
	06/18/19	Higgins, Cavanagh & Cooney, LLP	Attorney Expenses	0.20	05/22/19	05/29/19	1256685
	06/18/19	Higgins, Cavanagh & Cooney, LLP	Counsel Fees	192.00	05/22/19	05/29/19	1256685
	06/19/19	Mccray, Dianne	Temporary Total Disability	365.57	06/14/19	06/20/19	1256716
	06/24/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	19.71	05/03/19	05/03/19	MRX2866207
	06/26/19	Mccray, Dianne	Temporary Total Disability	365.57	06/21/19	06/27/19	1257846
			<b>June 2019 Total</b>	<b>2,078.43</b>			
	<b>7/16/2019</b>		<b>Payment Received</b>	<b>-2,078.43</b>			<b>1209</b>
	07/02/19	Mccray, Dianne	Temporary Total Disability	365.57	06/28/19	07/04/19	1258695
	07/10/19	Mccray, Dianne	Temporary Total Disability	365.57	07/05/19	07/11/19	1259842
	07/17/19	Mccray, Dianne	Temporary Total Disability	365.57	07/12/19	07/18/19	1260886
	07/24/19	Mccray, Dianne	Temporary Total Disability	365.57	07/19/19	07/25/19	1261908
	07/31/19	Mccray, Dianne	Temporary Total Disability	365.57	07/26/19	08/01/19	1262929
			<b>July 2019 Total</b>	<b>1,827.85</b>			
	<b>8/19/2019</b>		<b>Payment Received</b>	<b>-1,827.85</b>			<b>1210</b>
	08/01/19	Higgins, Cavanagh & Cooney, LLP	Counsel Fees	175.00	06/10/19	06/12/19	1263330
	08/07/19	Mccray, Dianne	Temporary Total Disability	365.57	08/02/19	08/08/19	1264004
	08/14/19	Mccray, Dianne	Temporary Total Disability	365.57	08/09/19	08/15/19	1265022
	08/19/19	Mitchell International, Inc.	Mitchell Bill Review Fee	5.50	07/23/19	07/23/19	MIC99999
	08/19/19	University Orthopedics Inc	Impartial Medical Examination - Company Ordered	800.00	07/23/19	07/23/19	248128
	08/21/19	Higgins, Cavanagh & Cooney, LLP	Counsel Fees	132.50	07/10/19	07/19/19	1266260
	08/21/19	Mccray, Dianne	Temporary Total Disability	365.57	08/16/19	08/22/19	1266070
	08/26/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	769.81	05/29/19	05/29/19	MRX2898426
	08/26/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	19.71	05/31/19	05/31/19	MRX2898426
	08/26/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	789.52	06/28/19	06/28/19	MRX2898427
	08/26/19	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	370.95	07/26/19	07/26/19	MRX2902688
	08/28/19	Mccray, Dianne	Temporary Total Disability	365.57	08/23/19	08/29/19	1267148
			<b>August 2019 Total</b>	<b>4,525.27</b>			
	<b>9/10/2019</b>		<b>Payment Received</b>	<b>-4,525.27</b>			<b>1212</b>
	09/04/19	Mccray, Dianne	Temporary Total Disability	365.57	08/30/19	09/05/19	1268168
	09/11/19	Mccray, Dianne	Temporary Total Disability	365.57	09/06/19	09/12/19	1269170
	09/18/19	Mccray, Dianne	Temporary Total Disability	365.57	09/13/19	09/19/19	1270247
	09/25/19	Mccray, Dianne	Temporary Total Disability	365.57	09/20/19	09/26/19	1271304

		Payment Received				
04/01/21	Mitchell International, Inc.	Mitchell Bill Review Fee	5.50	03/08/21	03/08/21	MIC99999
04/01/21	Mitchell International, Inc.	Mitchell PPO Fee	3.75	03/08/21	03/08/21	MIC99999
04/01/21	Eastside Neurology Inc	Physicians (M.D.)	106.25	03/08/21	03/08/21	278069
04/06/21	Mccray, Dianne	Temporary Total Disability	373.98	04/02/21	04/08/21	1347211
04/13/21	Mccray, Dianne	Temporary Total Disability	373.98	04/09/21	04/15/21	1348080
04/20/21	Mccray, Dianne	Temporary Total Disability	373.98	04/16/21	04/22/21	1348984
04/26/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	398.86	04/02/21	04/02/21	MRX3367541
04/26/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	423.36	04/06/21	04/06/21	MRX3367541
04/27/21	Mccray, Dianne	Temporary Total Disability	373.98	04/23/21	04/29/21	1349832
<b>April 2021 Total</b>			<b>2,433.64</b>			
		Payment Received				
05/04/21	Mccray, Dianne	Temporary Total Disability	373.98	04/30/21	05/06/21	1350702
05/11/21	Mccray, Dianne	Temporary Total Disability	160.28	05/07/21	05/09/21	1351535
05/11/21	Mccray, Dianne	Temporary Total Disability	217.77	05/10/21	05/13/21	1351535
05/18/21	Mccray, Dianne	Temporary Total Disability	381.09	05/14/21	05/20/21	1352386
05/24/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	398.86	05/03/21	05/03/21	MRX3395321
05/24/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	390.66	05/04/21	05/04/21	MRX3395321
05/25/21	Mccray, Dianne	Temporary Total Disability	381.09	05/21/21	05/27/21	1353213
<b>May 2021 Total</b>			<b>2,303.73</b>			
		Payment Received				
06/01/21	Mccray, Dianne	Temporary Total Disability	381.09	05/28/21	06/03/21	1354021
06/01/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	19.71	12/11/20	12/11/20	MRX3402751
06/01/21	INJURED WORKERS PHARMACY LLC	Drugs / Pharmaceuticals	6.72	01/14/21	01/14/21	MRX3402751
<b>June 2021 Total</b>			<b>407.52</b>			
		Payment Received				
		<b>Total Payments made by Beacon</b>	<b>61,145.10</b>			
		<b>Total Payments Received by St. Joe's PRE-receivership</b>	<b>-16,144.18</b>			
		<b>Total Payments Received by St. Joe's POST-receivership</b>	<b>-13,404.70</b>			
		<b>Total Payment Received from State of RI DLT Second Injury Fund 6/7/19-11/12/20 and Medical 6/28/19-10/7/20 (Ck# 2769239)</b>	<b>-34,918.37</b>			
	<b>Payment rec'd 1/15/21 - ck# 0002769239</b>					
		<b>Remaining balance due</b>	<b>-3,322.15</b>			



**PC004 - Claim Detail Payments (CLM0170)**

**Claim Number: 314579**  
**Claimant: Zoglio, Sheila**  
**Insured Name: St Joseph Health Services of Rhode Island, Thomas S Hemmendinger Receiver for**  
**Date of Accident: 06/11/1989**

Claim Payment Type	Payment Date	Payee	Payment Description	Payment Amount	Service Effective Date	Service End Date	Check Number
	11/05/18	Zoglio, Sheila	Permanent Partial Disability	245.93	10/25/18	10/31/18	1221488
	11/06/18	Zoglio, Sheila	Permanent Partial Disability	245.93	11/01/18	11/07/18	1221676
	11/13/18	Zoglio, Sheila	Permanent Partial Disability	245.93	11/08/18	11/14/18	1222753
	11/19/18	Zoglio, Sheila	Permanent Partial Disability	245.93	11/15/18	11/21/18	1223669
	11/26/18	PMOA INC	Drugs / Pharmaceuticals	72.80	11/12/18	11/12/18	MRX2751767
	11/27/18	Zoglio, Sheila	Permanent Partial Disability	245.93	11/22/18	11/28/18	1224809
			<b>November 2018 Total</b>	<b>1,302.45</b>			
	<b>12/11/2018</b>		<b>Payment Received</b>	<b>-1,302.45</b>			<b>1197</b>
	12/03/18	PMOA INC	Drugs / Pharmaceuticals	443.06	11/16/18	11/16/18	MRX2755826
	12/04/18	Zoglio, Sheila	Permanent Partial Disability	245.93	11/29/18	12/05/18	1225968
	12/11/18	Zoglio, Sheila	Permanent Partial Disability	245.93	12/06/18	12/12/18	1227047
	12/17/18	PMOA INC	Drugs / Pharmaceuticals	72.80	12/05/18	12/05/18	MRX2764126
	12/18/18	Zoglio, Sheila	Permanent Partial Disability	245.93	12/13/18	12/19/18	1228201
	12/19/18	Mitchell International, Inc.	Mitchell Bill Review Fee	5.50	11/01/18	11/01/18	MIC99999
	12/19/18	MOHAMMAD ZAMAN MD	Physicians (M.D.)	181.68	11/01/18	11/01/18	232668
	12/20/18	Zoglio, Sheila	Permanent Partial Disability	245.93	12/20/18	12/26/18	1228670
	12/31/18	Zoglio, Sheila	Permanent Partial Disability	245.93	12/27/18	01/02/19	1230211
	12/31/18	PMOA INC	Drugs / Pharmaceuticals	445.95	12/17/18	12/17/18	MRX2772313
			<b>December 2018 Total</b>	<b>2,378.64</b>			
	<b>1/18/2019</b>		<b>Payment Received</b>	<b>-2,378.64</b>			<b>1198</b>
	01/04/19	Mitchell International, Inc.	Mitchell Bill Review Fee	5.50	12/18/18	12/18/18	MIC99999
	01/04/19	Orthopaedic Associates, Inc.	Physicians (M.D.)	147.06	12/18/18	12/18/18	233662
	01/08/19	Zoglio, Sheila	Permanent Partial Disability	245.93	01/03/19	01/09/19	1231359
	01/14/19	PMOA INC	Drugs / Pharmaceuticals	72.80	01/07/19	01/07/19	MRX2779931
	01/15/19	Zoglio, Sheila	Permanent Partial Disability	245.93	01/10/19	01/16/19	1232491
	01/22/19	Zoglio, Sheila	Permanent Partial Disability	245.93	01/17/19	01/23/19	1233482
	01/22/19	PMOA INC	Drugs / Pharmaceuticals	13.51	01/10/19	01/10/19	MRX2784386
	01/22/19	PMOA INC	Drugs / Pharmaceuticals	428.37	01/11/19	01/11/19	MRX2784386
	01/29/19	Zoglio, Sheila	Permanent Partial Disability	245.93	01/24/19	01/30/19	1234586

05/17/21	Zoglio, Sheila	Permanent Partial Disability	245.93	05/13/21	05/19/21	1352233
05/24/21	Zoglio, Sheila	Permanent Partial Disability	245.93	05/20/21	05/26/21	1353055
05/24/21	PMOA INC	Drugs / Pharmaceuticals	33.63	05/03/21	05/03/21	MRX3390746
05/24/21	PMOA INC	Drugs / Pharmaceuticals	59.36	05/14/21	05/14/21	MRX3402434
05/24/21	PMOA INC	Drugs / Pharmaceuticals	82.84	05/14/21	05/14/21	MRX3402435
05/31/21	Zoglio, Sheila	Permanent Partial Disability	245.93	05/27/21	06/02/21	1353918
		<b>May 2021 Total</b>	<b>1,678.97</b>			
		<b>Payment Received</b>				
06/01/21	Mitchell International, Inc.	Mitchell Bill Review Fee	5.50	05/11/21	05/11/21	MIC99999
06/01/21	Orthopaedic Associates Inc	Physicians (M.D.)	152.40	05/11/21	05/11/21	281255
06/01/21	PMOA INC	Drugs / Pharmaceuticals	131.29	05/14/21	05/14/21	MRX3404949
		<b>June 2021 Total</b>	<b>289.19</b>			
		<b>Payment Received</b>				
		<b>Total Indemnity, Medical &amp; Expense Payments</b>	<b>62,333.06</b>			
		<b>Total Payments Received by St. Joe's PRE-receivership</b>	<b>-25,306.25</b>			
		<b>Total Payments Received by St. Joe's POST-receivership</b>	<b>-7,006.19</b>			
		<b>4/19/21 Funds paid by Swiss Re Reimbursement for Indemnity 1/31/19-11/15/20 and Medical 11/1/18 -11/20/15-ck # 1022</b>	<b>-46,630.07</b>			
		<b>Remaining balance due</b>	<b>-16,609.45</b>			



# Exhibit 4



Insurance -  
Reinsurance  
Recovery

June 18, 2015

Prospect CharterCARE, Inc.  
ATTN: Finance Department  
200 High Service Avenue  
North Providence, RI 02904

RE:   Employer:   St. Joseph Health Services  
      Employee:   Sheila Zoglio  
      D/A:         6/11/89  
      File #:      314579

Dear Finance:

Enclosed please find a check in the amount of \$11,162.77 which represents reimbursement from the Excess Carrier for Indemnity payments, medical costs, and expenses.

Should you have any questions please feel free to contact me at 401-825-2904.

Sincerely,

Elizabeth Salhany, MBA, AIC  
Sr. Claim Representative

Enclosure  
Check #770452

One Beacon Centre  
Warwick, RI 02886-1378

ph: 401.825.2667(COMP)  
Claims fx: 401.825.2980  
Underwriting fx: 401.825.2855

www.beaconmutual.com

06/12/15

770452

TR  
PAY TO THE  
ORDER OF:

\*\*\*\*\*  
\$11,162.77  
\*\*\*\*\*

\*\*\*\*\*\$11,162.77

ST JOSEPHS HOSPITAL RI  
C/O BEACON MUTUAL INSURANCE CO

*Joseph Makin*  
*Brian Foley*

⑈00770452⑈ ⑆061112788⑆ 3299770638⑈

Westport Insurance Corporation

5200 Metcalf, PO Box 2991  
Overland Park KS 66201  
913-676-5200

770452

ST JOSEPHS HOSPITAL RI (SDQ)  
C/O BEACON MUTUAL INSURANCE CO  
ONE BEACON CENTRE  
WARWICK RI 02886

PAYEE: ST JOSEPHS HOSPITAL RI CHECK DATE: 06/11/2015  
TAX ID: 00-0000000 AMOUNT: 11,162.77 U.S.DOLL  
299124 PARTIAL REINS RECOVERY

TREATY	CLAIM	LOSS DATE	REFERENCE	AMOUNT
0001539-91	0299124	06/11/89	RHJOE88C0005	35.00
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: ZOGLIO SHEILA				
0001539-91	0299124	06/11/89	RHJOE88C0005	3,934.88
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: ZOGLIO SHEILA				
0001539-91	0299124	06/11/89	RHJOE88C0005	7,192.89
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: ZOGLIO SHEILA				



June 16, 2015

Prospect CharterCARE, Inc.  
ATTN: Finance Department  
200 High Service Avenue  
North Providence, RI 02904

RE:   Employer:    St. Joseph Health Services  
      Employee:    Maria Lindo  
      D/A:         3/31/89  
      File #:      314594

Dear Finance:

Enclosed please find a check in the amount of \$3,653.98 which represents reimbursement from the Excess Carrier for medical expenses, general expenses and indemnity.

Should you have any questions please feel free to contact me at 401-825-2904.

Sincerely,

Elizabeth Sathany, MBA, AIC  
Sr. Claim Representative

Enclosure  
Check #770399

One Beacon Centre  
Warwick, RI 02886-1378

ph: 401.825.2667(COMP)  
Claims fx: 401.825.2980  
Underwriting fx: 401.825.2855

[www.beaconmutual.com](http://www.beaconmutual.com)

**Westport Insurance Corporation**

06/11/15

770399

5200 Metcalf, PO Box 2991  
Overland Park KS 66201  
913-676-5200

Bank of America NA  
Atlanta Dekalb County Georgia

\*\*\*\*\***\$3,653.98**\*\*\*\*\*

\*\*\*\*\*\$3,653.98

TR  
PAY TO THE  
ORDER OF:

ST JOSEPHS HOSPITAL RI  
C/O BEACON MUTUAL INSURANCE CO

*Angela Mahon*  
*Ben Saly*

⑈00770399⑈ ⑆061112788⑆ 3299770638⑈

**Westport Insurance Corporation**

770399

5200 Metcalf, PO Box 2991  
Overland Park KS 66201  
913-676-5200

ST JOSEPHS HOSPITAL RI (SDQ)  
C/O BEACON MUTUAL INSURANCE CO

ONE BEACON CENTRE  
WARWICK RI 02886

PAYEE: ST JOSEPHS HOSPITAL RI CHECK DATE: 06/10/2015  
TAX ID: 00-000000 AMOUNT: 3,653.98 U.S.DOLL  
478167 PARTIAL REINS RECOVERY

TREATY	CLAIM	LOSS DATE	REFERENCE	AMOUNT
0001539-91	0478167	03/31/89	314594	248.50
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: LINDO MARIA				
0001539-91	0478167	03/31/89	314594	3,405.48
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: LINDO MARIA				



June 16, 2015

Prospect CharterCARE, Inc.  
ATTN: Finance Department  
200 High Service Avenue  
North Providence, RI 02904

RE:    Employer:    St. Joseph Health Services  
       Employee:    Conceicao Silva  
       D/A:           11/2/87  
       File #:       314640

Dear Finance:

Enclosed please find a check in the amount of \$5,991.90 which represents reimbursement from the Excess Carrier for medical expenses, general expenses and indemnity.

Should you have any questions please feel free to contact me at 401-825-2904.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Salhany", written over a faint, illegible typed name.

Elizabeth Salhany, MBA, AIC  
Sr. Claim Representative

Enclosure  
Check #770398

One Beacon Centre  
Warwick, RI 02886-1378

ph: 401.825.2667(COMP)  
Claims fx: 401.825.2980  
Underwriting fx: 401.825.2855

[www.beaconmutual.com](http://www.beaconmutual.com)

Overland Park KS 66201

913-676-5200

Bank of America NA  
Atlanta Dekalb County Georgia

06/11/15

770398

\*\*\*\*\*\$5,991.90

\*\*\*\*\*\$5,991.90

TR  
PAY TO THE  
ORDER OF

ST JOSEPHS HOSPITAL RI  
C/O BEACON MUTUAL INSURANCE CO

*Joseph Mahon*  
*Ben Saly*

⑈00770398⑈ ⑆061112788⑆ 3299770638⑈

Westport Insurance Corporation

5200 Metcalf, PO Box 2991  
Overland Park KS 66201  
913-676-5200

770398

ST JOSEPHS HOSPITAL RI (K01)  
C/O BEACON MUTUAL INSURANCE CO

ONE BEACON CENTRE  
WARWICK RI 02886

PAYEE: ST JOSEPHS HOSPITAL RI CHECK DATE: 06/10/2015  
TAX ID: 00-0000000 AMOUNT: 5,991.90 U.S.DOLL  
429586 PARTIAL REINS RECOVERY

TREATY	CLAIM	LOSS DATE	REFERENCE	AMOUNT
0001539-91	0429586	11/02/87	RHJOE87C0005	9.92
REINSURED: DIRECT				MEDICAL
INS: ST JOSEPHS HOSP				
CLMT: SILVA CONCEICAO (CONNIE)				
0001539-91	0429586	11/02/87	RHJOE87C0005	1,532.10
REINSURED: DIRECT				
INS: ST JOSEPHS HOSP				
CLMT: SILVA CONCEICAO (CONNIE)				
0001539-91	0429586	11/02/87	RHJOE87C0005	4,449.88
REINSURED: DIRECT				INDEMNITY
INS: ST JOSEPHS HOSP				
CLMT: SILVA CONCEICAO (CONNIE)				

# Exhibit 5





Amy C. Vitale  
Vice President, General Counsel  
and Assistant Secretary

December 22, 2020

VIA EMAIL AND CERTIFIED MAIL

Mr. Matthew P. Carey, Chief Administrator  
RI Department of Labor & Training  
Workers' Compensation Unit  
1511 Pontiac Avenue, P.O. Box 20190  
Cranston, Rhode Island 02920-0629

Thomas S. Hemmendinger, Esq.  
Brennan, Reccupero, Cascione, Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909

Re: St. Joseph Health Services of Rhode Island ("St. Joseph")

Dear Matt and Tom:

Please accept this notice of termination of the Third Party Administration Agreement between St. Joseph and The Beacon Mutual Insurance Company ("Beacon") dated as of November 1, 2020 (the "Agreement"). The term of the Agreement is continuous for so long as St. Joseph remained an insured of Beacon. St. Joseph is no longer a Beacon policyholder and for several months, has failed to reimburse Beacon for workers' compensation benefits paid to St. Joseph employees. Through Nov. 30, 2020, St. Joseph owes Beacon a total of \$61,418.07, and that balance increases as Beacon continues to make such benefit payments.

Beacon has provided information regarding St. Joseph claims to Crum & Forster, agent for North River Insurance Company, which issued Self Insurers' Bond # 610-177709-09 in favor of the DLT on behalf of St. Joseph. Based on information received from Crum & Forster, the vast majority of St. Joseph claims predate the effective date of the Bond. I understand that DLT is currently reviewing its records for other self insurance coverage for St. Joseph. Beacon will pursue all available remedies to collect the amount that it is owed under the Agreement.

We will work with you to transition the administration of St. Joseph claims as quickly as possible, including assistance with notifying the claimants' counsel that such claims will no longer be administered by Beacon. Beacon will require your input in order to provide claimants with information on the continued administration of their benefits.

I look forward to resolving these issues with you, and request that we schedule a call to discuss this matter soon after January 1<sup>st</sup>.

Thank you and Happy Holidays,

Amy C. Vitale  
cc: Bernard Healy, RI DLT Legal

# Exhibit 6

*R.G. S/2021*



**STATE OF RHODE ISLAND**

**SUPERIOR COURT  
 SUBPOENA - CIVIL**

<b>Plaintiff/Petitioner</b> In re: CharterCARE Community Board, et al.	<b>Civil Action File Number</b> PC-2019-11756
<b>Defendant/Respondent</b>	

<input type="checkbox"/> Murray Judicial Complex Newport County 45 Washington Square Newport, Rhode Island 02840-2913 *(401) 841-8330	<input type="checkbox"/> Noel Judicial Complex Kent County 222 Quaker Lane Warwick, Rhode Island 02886-0107 *(401) 822-6900
<input type="checkbox"/> McGrath Judicial Complex Washington County 4800 Tower Hill Road Wakefield, Rhode Island 02879-2239 *(401) 782-4121	<input checked="" type="checkbox"/> Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence, Rhode Island 02903-2719 *(401) 222-3230

**TO:** Keeper of records, The Beacon Mutual Insurance Company  
 of c/o Brian J. Spero, Esq., One Beacon Centre, Warwick, RI 02886

**YOU ARE HEREBY COMMANDED** to appear in the Superior Court listed above at the date, time, and courtroom specified below to testify in the above-entitled case and bring with you:

\_\_\_\_\_

\_\_\_\_\_

Courtroom	Date	Time

If you need language assistance, please contact the Office of Court Interpreters at (401) 222-8710 or by email at [interpreterfeedback@courts.ri.gov](mailto:interpreterfeedback@courts.ri.gov) before your court appearance.

\* If an accommodation for a disability is necessary, please contact the Superior Court Clerk's Office at the telephone number listed above as soon as possible. TTY users can contact the Superior Court through Rhode Island Relay at 7-1-1 or 1-800-745-5555 (TTY) to voice number.



**STATE OF RHODE ISLAND  
 SUPERIOR COURT**

**YOU ARE HEREBY COMMANDED** to appear at the location, date, and time specified below to testify at the taking of a deposition in the above-entitled case.

Location of Deposition	Date	Time

**YOU ARE HEREBY COMMANDED** to produce and permit inspection and copying of the following documents or objects at location, date, and time specified below (list documents or objects):

See attached Schedule B for documents requested

Location	Date	Time
61 Weybosset St, Providence, RI 02903	August 24, 2021	9:30 A.M.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. (Rule 30(b)(6) of the Superior Court Rule of Civil Procedure).

/s/ <u>[Signature]</u> , Liquidating Receiver Attorney for the <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent or <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent Liquidating Receiver	Rhode Island Bar Number: 3122
	Date: <u>8/6/21</u>
Telephone Number: 401.453.2300	

Issued by <input type="checkbox"/> Clerk, <input type="checkbox"/> Notary, or <input type="checkbox"/> Issuing Official pursuant to G.L. 1956 § 9-17-3	Date:
--	-------

/s/ \_\_\_\_\_  
 Clerk

\_\_\_\_\_  
 Name of Notary

\_\_\_\_\_  
 Signature of Notary

Notary commission expires: \_\_\_\_\_

Notary identification number: \_\_\_\_\_

\_\_\_\_\_  
 Name of Issuing Official

\_\_\_\_\_  
 Signature of Issuing Official



STATE OF RHODE ISLAND

SUPERIOR COURT

<b>Plaintiff/Petitioner</b> In re CharterCARE Community Board et al.	<b>Civil Action File Number</b> PC-2019-11756
<b>Defendant/Petitioner</b>	

PROOF OF SERVICE	
<input checked="" type="checkbox"/> I hereby certify that on the date below I served a copy of this Subpoena on <u>The Beacon Mutual Ins. Co. &amp; 1 Beacon (for Warwick, RI</u> personally. <u>(c/o Brian Spivack)</u>	
<input type="checkbox"/> I hereby certify that I was unable to make service after the following reasonable attempts: _____	
SERVICE DATE: <u>8 / 10 / 21</u> Month Day Year <u>01:44pm</u>	SERVICE FEE \$ <u>45</u>
Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE	<u>Kyle R. Norigian</u> Constable #6137
SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED.  Signature _____ State of _____ County of _____	
On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ <input type="checkbox"/> personally known to the notary or <input type="checkbox"/> proved to the notary through satisfactory evidence of identification, which was _____, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge.	
Notary Public: _____ My commission expires: _____ Notary identification number: _____	

## SCHEDULE B

### Definitions

- a. The word "documents" as used herein is meant in the broad and liberal sense and includes hand-written, typed, recorded, electronically stored, or graphic material of any kind and description, and whether a draft, copy, original, or master, including, but not limited to, e-mails, electronic versions of documents, accounts, advertisements, letters, memoranda, prospectuses, resolutions, legislation, notes of conversations, contracts, agreements, drawings, tape recordings, inter-office and intra-office memoranda, studies, working papers, corporate records, minutes of meetings, checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type, and documents stored on data storage modules, databases, servers, computers, tapes, discs or other memory devices, or other information retrievable from storage systems. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the requesting party in a reasonably usable form.
- b. The term "any" and the term "all" are intended to mean "any and all."
- c. Any word in the singular also includes the plural and vice versa.
- d. The term "RWH" refers to Roger Williams Hospital or Roger Williams Medical Center.
- e. The term "SJHSRI" refers to St. Joseph Health Services of Rhode Island.
- f. The term "Beacon" refers to The Beacon Mutual Insurance Company or BMIC Service Corp.
- g. The term "DLT" means the Rhode Island Department of Labor & Training.
- h. The term "TPA Agreement" refers to the Third-Party Administration Agreement entered into as of November 1, 2010, between **Beacon** and **SJHSRI**.
- i. The term "TPA Claims" refers to the workers' compensation claims pertaining to Anne Sugrue, Karapet Emdjian, Jean Reynolds, Conceicao Silva, Antoinette Grande, Linda Vessella, Maria Lindo, Lori Bennett, Sheila Zoglio, Fausto Andreozzi, Dianne McCray, and Mary Hicks. The term **TPA Claims** also includes any closed claims that required further handling that were identified while the **TPA Agreement** was or has been in effect.

Documents Requested

1. All documents relating to insurance policies (including umbrella and excess policies) under which SJHSRI was provided with any insurance coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive.
2. All documents relating to self-insurance funds or trusts under which SJHSRI had/has coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive.
3. All documents relating to communications to or from any excess insurer concerning **TPA Claims**, including but not limited to demands for payment.
4. All documents relating to payments by any excess insurer relating to **TPA Claims**.
5. All documents relating to payments to **Beacon** relating to **TPA Claims**.
6. All documents relating to any bond relating to **SJHSRI** and workers' compensation matters, including but not limited to North River Insurance Company Bond No. 610-177709-9.
7. All documents relating to efforts to collect payment on North River Insurance Company Bond No. 610-177709-9, including but not limited to (a) **Beacon**'s efforts to collect payment from Crum & Forster on or about November 12, 2020; and (b) **DLT**'s efforts to collect payment from Crum & Forster on or about September 23, 2020.

# Exhibit 7





**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>RD</sup> day of September 2021, a copy of the foregoing document was served through the Rhode Island ECF system and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing

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

*/s/ Michelle Potts* \_\_\_\_\_

# Exhibit 8

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

In re:

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

C.A. No. PC-2019-11756

**AFFIDAVIT OF THOMAS S. HEMMENDINGER, LIQUIDATING RECEIVER**

Thomas S. Hemmendinger, having been duly sworn, states as follows:

1. I am the duly appointed, qualified, and acting liquidating receiver of CharterCARE Community Board, St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital in this proceeding.

2. The statements in this affidavit are based on my personal knowledge or on the books and records of SJHSRI made and kept in the ordinary course of SJHSRI’s business and known to me.

3. Beacon Mutual Insurance Company (“Beacon”) has filed a claim against SJHSRI in this liquidating receivership. (Exhibit 1). The claim relates to advances that Beacon has made to former employees of SJHSRI in Beacon’s capacity as third-party administrator under a self-insured workers’-compensation program for SJHSRI (the “Program”) pursuant to a Third Party Administration Agreement between Beacon and SJHSRI dated November 1, 2010 (the “TPA Agreement”).

4. Pursuant to the Program, Beacon was tasked with advancing payments to workers compensation claimants. Beacon would invoice SJHSRI on a monthly basis for its advances, and SJHSRI would reimburse Beacon. Beacon was also supposed to seek payment on behalf of SJHSRI from secondary sources under the Program (such as excess insurance or the State of Rhode Island’s Second Injury Fund), and remit such payments to SJHSRI to make SJHSRI whole.

5. This arrangement continued after the sale of SJHSRI’s operating assets in June 2014

and its engagement of Richard Land, Esq. in late 2014 to manage its wind-down and other affairs.

6. To the best of my knowledge, Beacon has continued to make advances to workers'-compensation claimants under the Program.

7. In order to evaluate Beacon's claim for reimbursement under the Program and to ascertain whether the liquidating receivership has claims against Beacon, including for possible failure to obtain full payment from secondary sources, I need certain documents from Beacon, including the complete excess insurance policies and surety bonds, as well as a full accounting of advances made by Beacon under the Program, reimbursement from SJHSRI, and reimbursement from excess insurance or surety bonds.

8. On January 6, 2021, I received three checks payable to SJHSRI from Swiss Re totaling \$46,630.07 as partial payment of a former employee's workers'-compensation claim under the Program. Believing that these funds represented reimbursement for payments that SJHSRI had made to Beacon, I deposited the checks in the SJHSRI receivership checking account.

9. On March 8, 2021, Amy Vitale, Esq., Beacon's General Counsel, confirmed to me by letter (Exhibit 2) that:

Beacon requested payment from reinsurer, Swiss Re for the Zoglio claim. Swiss Re paid Beacon \$ [sic] \$46,630.07 for the Zoglio claim. Beacon inadvertently forwarded the \$46,630.07 to Attorney Rick Land. Mr. Land advised me his office forwarded the Zoglio reinsurance funds (\$46,630.07) to you.

10. I understood Ms. Vitale's statement that the payment was inadvertently sent to Mr. Land to be Beacon's representation to me that the funds covered payments made by Beacon under the Program for which the liquidating receivership had not reimbursed Beacon.

11. On April 11, 2021, at the request of Patricia Antonelli, Esq., outside counsel for Beacon, I agreed to remit the \$46,630.07 to Beacon under a reservation of rights.

12. On April 19, 2021, I sent Ms. Vitale a \$46,630.07 receivership check payable to Beacon with a cover letter (Exhibit 3) stating in relevant part:

Reserving all right on open issues between or among Beacon Mutual, the receivership, the Department of Labor and Training, and existing or potential workers compensation claimants, enclosed is my receiver's check for \$46,630.07 for the funds paid by Swiss Re to the receivership in connection with [employee claimant] Sheila Zoglio.

13. On April 22, 2021, I participated in a conference call with Ms. Vitale, Ms. Antonelli, my associate Sean Clough, Esq., and Rhode Island Department of Labor and Training ("DLT") representatives Matthew Carey, Esq., Bernard Healy, Esq., and Sean Fontes. During that call, I asked Beacon for documentation of all secondary sources of payment, including excess insurance, and asked the DLT representatives for copies of any surety bonds. Ms. Vitale stated that Beacon had no insurance policy documentation, but she agreed to give me what information Beacon had on the excess insurance policies.

14. On April 26, 2021, I emailed Ms. Vitale a request for information on the Swiss Re policy discussed in her letter of March 8, 2021, as well as for an accounting of all open claims during the receivership, including periods covered by the \$46,630.07 in payments from Swiss Re. In that email, I also stated that Beacon should make all secondary funding sources pay in full within their contractual limits. I also stated:

Patty Antonelli and I discussed some time ago having Beacon file a formal proof of claim. This was on the understanding that, despite the passage of the Court's bar date for claims, I would treat it as timely filed and merely reserve my rights on the merits. At this point, I suggest that Beacon file that proof of claim with me by May 31, 2021.

15. On April 28, 2021, Ms. Vitale emailed me the Swiss Re policy number and the contact information for a representative of Swiss Re, but she did not give me any documentation

related to the policy itself.

16. Beacon failed to file its proof of claim by the May 31, 2021 deadline I had set.

17. On June 2, 2021, I wrote to Ms. Antonelli and set a final deadline for Beacon's proof of claim:

Patty, in addition to the documents and information I have requested in order to evaluate each receivership's workers comp issues, I also need a proof of claim by Beacon. In April I suggested May 31, 2021 as a deadline for a proof of claim, but have not received one. At this point, I'm setting a firm deadline of June 16, 2021 for Beacon to file a claim. If a proof of claim is not submitted to me by then, I will have to consider Beacon to have no claim and to consider any later-submitted claim as out of time.

18. On June 3, 2021, Ms. Vitale told me she would send me an accounting of the five SJHSRI claims open as of that date and a proof of claim on behalf of Beacon by June 11, 2021.

19. On June 10, 2021, Beacon finally submitted its proof of claim to me. The amount of the claim was \$22,398.88 for advances through May 31, 2021. The proof of claim did not include any secondary payment source documentation.

20. On June 13, 2021, Ms. Vitale emailed me various correspondence, reports, and other documents related to claims or to excess insurance. However, these documents did not include any parts of any insurance policy. The email stated:

Attached please find correspondence/notes relating to the reinsurance and Second Injury Fund (SIF) for the Grande, Emdjian, Reynolds and McCray claims. **We are unable to locate reinsurance policy documents for the St. Joseph claims, the application/acceptance of the McCray claim by the SIF, or any reinsurance correspondence for the Zoglio claim.**

[Emphasis supplied]

21. On June 14, 2021, Ms. Vitale emailed me an accounting on the five open claims, but the accounting covered the time period only from December 2019 (the start of the liquidating

receivership) to June 7, 2021, and it failed to include the time periods covered by the \$46,630.07 Swiss Re payment.

22. On June 29, 2021, I participated in a conference call with Ms. Vitale, Ms. Antonelli, Max Wistow, Esq. and Benjamin Ledsham, Esq. (the latter two being special counsel for Stephen Del Sesto, Esq., the receiver of the St. Joseph Health Services of Rhode Island Retirement Plan).

23. During this conference call:

(a) Mr. Wistow and I requested copies of all of SJHSRI's excess policies. Ms. Vitale answered that Beacon did not have any of these policies.

(b) Mr. Wistow asked about the terms of any self-insured retention provisions under the insurance policies and whether any self-insured retention was annual or cumulative. Ms. Vitale stated that the policies had annual, not cumulative, retentions. Ms. Vitale also stated that Beacon did not have any summaries of the self-insurance retention terms. Ms. Vitale further stated that Beacon had only obtained limited information concerning SJHSRI's excess coverages when Beacon came on as third-party administrator in 2010.

(c) Mr. Wistow asked how Beacon could be certain that the policies had annual self-insured retentions rather than cumulative self-insured retentions, if Beacon did not have the policies or any summaries thereof. There was no satisfactory response, and at that point the conference deteriorated into a shouting match among Mr. Wistow, Ms. Vitale, and Ms. Antonelli.

(d) I asked for a full accounting on each claim from the beginning of each claim, so that the receivers could ascertain the total amounts that Beacon had advanced, the total amounts SJHSRI had reimbursed, and the total amounts that had been or should have been recovered from excess insurance.

24. Not having received any of these items from Beacon, on August 6, 2021, I issued a



subpoena duces tecum to Beacon. My constable served the subpoena on August 10, 2021.

25. Thereafter, Stacey Nakasian, Esq. replaced Ms. Antonelli as outside counsel for Beacon.

26. On August 27, 2021, I participated in a conference call with Ms. Nakasian, Mr. Wistow, Mr. Ledsham, and my partner Ronald Cascione, Esq. During this call, Ms. Nakasian stated that Beacon had only some endorsements and some summaries of the self-insured retention terms, but not the policies themselves. She agreed to produce these documents that day. Later that day, Ms. Nakasian emailed us various correspondence, endorsements, policy terms, and summaries of self-insured retention terms (Bates stamped Beacon00001 to Beacon00057). None of these documents had been previously produced by Beacon to the Receivers.

27. On August 31, 2021, I participated in a three-minute conference call with Ms. Nakasian, Mr. Cascione, and Mr. Ledsham. During this call, Ms. Nakasian stated that she would be responding in writing to an August 30, 2021 letter (Exhibit 4) sent to her by Mr. Wistow.

28. On September 3, 2021, Ms. Nakasian wrote a letter to Max Wistow with copy to me. In that letter, she proposed that Beacon produce limited categories of documents for only four SJHSRI employees of my choosing, i.e. fewer employees than were encompassed by Beacon's own proof of claim. We considered this proposal unacceptable.

29. On September 13, 2021, Ms. Nakasian emailed us copies of additional policy-related documents (Bates stamped Beacon00058 to Beacon00064), consisting of a worksheet, an unsigned policy schedule, an endorsement, and an unsigned insurance binder. None of these documents had been previously produced by Beacon to the Receivers.

  
\_\_\_\_\_  
Thomas S. Hemmendinger #3122  
Liquidating Receiver

In re CharterCARE Community Board et al.

C.A. No. PC-2019-11756

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

Subscribed and sworn to before me under penalties of perjury on this 24<sup>th</sup> day of September, 2021, by Thomas S. Hemmendinger, who proved to me through satisfactory evidence of identification to be the person who appeared before me.



*Jo-Ann Lawson*

Notary Public

Name: Jo Ann Lawson # 39718

My commission expires: \_\_\_\_\_

# Exhibit 1

**Send proof of claim form to:**

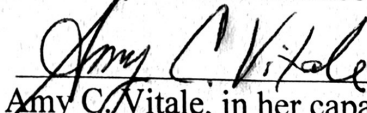
**Thomas S. Hemmendinger, Liquidating Receiver  
Brennan, Recupero, Cascione, Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909**

**RECEIVERSHIP PROOF OF CLAIM FORM – CHARTERCARE  
COMMUNITY BOARD, ST. JOSEPH HEALTH SERVICES OF RHODE  
ISLAND, AND/OR ROGER WILLIAMS HOSPITAL**

I, Amy C. Vitale, being duly sworn, depose and say:

1. I am the Vice President and General Counsel of the claimant herein.
2. The full address of the claimant is: The Beacon Mutual Insurance Company, One Beacon Centre, Warwick, RI 02886.
3. That on the 10<sup>th</sup> day of June, 2021, St. Joseph Health Services of Rhode Island did owe and does still owe the claimant a balance of **\$22,398.88**, a statement of which account is attached hereto.
4. No part thereof has been paid or satisfied as of this date, and there may be a recovery for a portion of the claim to be paid by certain secondary insurers and funds. There are no counterclaims thereto, to the knowledge or belief of claimant, and no security exists for said debt.
5. Such account is just, approximate and correct, and said balance is due claimant as an administrative claim as of the date of the within Proof of Claim, and said administrative claim shall increase as long as claimant continues to provide services under the Third Party Administration Agreement described in the attached explanation of claim.

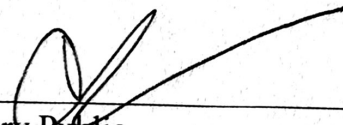
That I affirm that such account is just, true and correct, and said balance is now due from debtor.

  
\_\_\_\_\_  
Amy C. Vitale, in her capacity as Vice President  
and General Counsel to The Beacon Mutual  
Insurance Company

STATE OF RHODE ISLAND,  
COUNTY OF PROVIDENCE

Subscribed and sworn to before me on this 10th day of June, 2021.

**TRICIA C. MARLAR  
Notary Public, State of Rhode Island  
Commission # 764669**

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 10/15/2023

## **Attachment to Proof of Claim of The Beacon Mutual Insurance Company**

1. The Beacon Mutual Insurance Company (“Beacon”) is a party to the attached Third Party Administration Agreement (the “TPA Agreement”), dated November 1, 2010, between St. Joseph Health Services of Rhode Island (“St. Joseph”), an employer which for a certain period was self-insured for workers’ compensation benefits. The TPA Agreement provides that Beacon shall administer the workers’ compensation benefits for certain identified claimants that were employees of St. Joseph when it was self-insured (the “Self-Insured Claimants”). The TPA Agreement further provides that Beacon shall be reimbursed by St. Joseph for the workers’ compensation benefits Beacon paid to the Self-Insured Claimants on behalf of St. Joseph. The TPA Agreement specifically states that Beacon does not provide insurance coverage to St. Joseph for the Self-Insured Claimants. The term of the TPA Agreement was to be continuous so long as St. Joseph remained an insured of Beacon under a workers’ compensation policy issued following its period of self-insurance. The workers’ compensation insurance policy between Beacon and St. Joseph terminated (or was cancelled) on June 20, 2014.

2. For certain, but not all, of the Self-Insured Claimants, whose open claims are being administered by Beacon, reimbursement is available either through an excess insurance policy purchased by St. Joseph or through the Secondary Injury Fund administered by the Rhode Island Department of Labor & Training (the “Secondary Sources”). In its role under the TPA Agreement, Beacon regularly submits claims to such Secondary Sources, and thereafter Beacon manages any funds that are paid from those Secondary Sources.

3. Beacon asserts its claim is an administrative claim for services provided and funds paid on behalf of the receivership estate. Rhode Island does not have a statute that sets forth the priority of claims in receivership proceedings. This leaves Rhode Island courts deciding issues involving priority of claims to consult federal bankruptcy law. *Reynolds v. E. & C Assocs.*, 693 A.2d 278, 281-82 (R.I. 1977); *United States v. F.D.I.C.*, 899 F.Supp. 50, 54 (D.R.I. 1995); *Leonard Levin C. v. Star Jewelry Co., Inc.*, 54 R.I. 465, 175 A. 651 (R.I. 1934). Administrative expenses are described in Section 503(b)(1)(A) of the Bankruptcy Code as the actual, necessary costs and expenses of preserving the estate. *In re Cosi, Inc.* 597 B.R. 1 (Bankr. D. Mass. 2018). In a liquidation context, the administrative expense priority exists to compensate those who contribute to the preservation, protection, or liquidation of the estate. In the instant case, Beacon’s services in continuing to manage and pay the St. Joseph claims also included actions taken by Beacon which were necessary to obtain and manage reimbursement payments from the Secondary Sources, and to otherwise continue to administer the statutory workers’ compensation benefits to the Self-Insured Claimants, of which there are only four (4) with open claims.

4. Beacon seeks payment of its administrative claim in the amount of **\$22,398.88** for the payments Beacon made on behalf of the St. Joseph Self-Insured Claimants through May 31, 2021 for which it has not been reimbursed in the receivership, and with respect to any payments made by Beacon after May 31, 2021 under the TPA Agreement, Beacon shall provide the Receiver with monthly invoices for payment.

5. **Distributions**: Please send distributions paid on this Proof of Claim to:

The Beacon Mutual Insurance Company  
One Beacon Centre  
Warwick, RI 02886

6. **Objections:** Please send any objection to this Proof of Claim to:

Patricia Antonelli, Esquire  
Salter McGowan Sylvia & Leonard, Inc.  
56 Exchange Terrace  
Providence, RI 02903  
pantonelli@smsllaw.com  
401-274-0300

7. **Reservation of Rights/Amended Claim:**

**NOTE:** Beacon hereby expressly reserves all of its rights to amend this proof of claim through the filing of a further or modified claim. Beacon also expressly reserves all of its rights and claims against any other parties, and nothing herein shall be considered a waiver of or be in derogation of any such rights and claims.

# Exhibit 2



Amy C. Vitale  
*Vice President, General  
Counsel and Assistant  
Secretary*

March 8, 2021

VIA EMAIL ([themmendinger@brcsm.com](mailto:themmendinger@brcsm.com))

Thomas S. Hemmendinger, Esq.  
Brennan, Reccupero, Cascione, Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909

Re: St. Joseph Health Services of Rhode Island ("St. Joseph")

Dear Tom:

In furtherance of our ongoing attempts to resolve the outstanding balance owed to The Beacon Mutual Insurance Company ("Beacon") under the Third Party Administration Agreement between St. Joseph and Beacon dated as of November 1, 2010 (the "TPA"), we are providing you with an update on the current claims and reimbursements from secondary sources, as well as additional information regarding Beacon's third party administrative services on behalf of St. Joseph.

### Claim Payments

As indicated in the enclosed TPA Claims Statement through the end of February 2021, the outstanding reimbursements owed to Beacon pursuant to the TPA total \$84,434.24. There are currently four open claims identified in the enclosed TPA Report, three of which may be eligible for reimbursement through reinsurer Swiss Re or the Rhode Island Second Injury Fund ("SIF").

1. **Claim #314581 - Antonetta Grande**

Payments have discontinued for Ms. Grande who passed away on January 8, 2021. Beacon has requested payment from St. Joseph's reinsurer, Swiss Re, for the Grande claim in the amount of \$13,660.65. Beacon's request is still pending with Swiss Re.

2. **Claim #314579- Sheila Zoglio**

Beacon requested payment from reinsurer, Swiss Re for the Zoglio claim. Swiss Re paid Beacon \$ \$46,630.07 for the Zoglio claim. Beacon inadvertently forwarded the \$46,630.07 to Attorney Rick Land. Mr. Land advised me his office forwarded the Zoglio reinsurance funds (\$46,630.07) to you.



Thomas S. Hemmendinger, Esq.  
March 8, 2021  
Page 2

**3. Claim #314597 - Dianne McCray**

Beacon received funds totaling \$34,918.37 from the SIF for the McCray claim. Beacon is holding the McCray funds of \$34,918.37.

In light of the reimbursements due to Beacon under the TPA in the amount of \$84,434.24, Beacon proposes that the Receiver authorize return to Beacon of the \$46,630.07 Beacon received from Swiss Re for the Zoglio claim. Beacon also requests that the Receiver authorize Beacon to keep the \$34,918.37 it received from SIF for the McCray claim. Those funds would reduce the \$84,434.24 in reimbursements Beacon is owed under the TPA. Beacon also requests that Beacon be allowed to keep future reimbursements from Swiss Re and the SIF for claims under the TPA, with the condition that Beacon notify the Receiver and provide details about the funds received and the applicable claim prior to taking such funds.

**Third Party Administration**

We are aware that you have issued subpoenas to the RI DLT and Crum & Forster for records relating to St. Joseph's self-insurance program. In order to assist you in your review of such requested records, we would like to share with you details regarding Beacon's role as St. Joseph's workers' compensation third party administrator.

Effective November 1, 2010, Beacon entered into the TPA with St. Joseph to administer the open claims identified in Exhibit B to the TPA (as well as any closed claims that required further handling during the agreement term of the TPA). Such claims were based on injuries dated September 25, 1986 through June 1, 1998. (Please note that the subpoenas issued to DLT and Crum & Forster request records during the period from January 1, 2000 to present.) Beacon previously provided you with a copy of the TPA, and we enclose another copy. It is our understanding that prior to 2010, St. Joseph's self-insured workers' compensation claims were administered under a different third party agreement with an entity named "Claims Strategies" as the third party administrator. Beacon had no involvement in the Claims Strategies agreement.

Beacon has provided information regarding St. Joseph's claims to Crum & Forster, agent for North River Insurance Company, which issued Self Insurers' Bond # 610-177709-09 in favor of the DLT on behalf of St. Joseph. Based on information received from Crum & Forster, the vast majority of St. Joseph's claims predate the effective date of the Crum and Forster bond. We understand that you have requested records from DLT and Crum & Forster in order to identify other excess coverage or secondary payment sources for St. Joseph. We enclose copies of all records that we have shared with Crum & Forster, as well as all correspondence between Beacon and DLT and Crum & Forster regarding this matter.

Thomas S. Hemmendinger, Esq.

March 8, 2021

Page 3

Termination of the TPA

As stated in my prior correspondence to you, Beacon intends to terminate the TPA, and Beacon will work with you to transition the administration of the remaining St. Joseph claims to a new third party administrator as quickly as possible, including assistance with notifying the claimants' counsel that such claims will no longer be administered by Beacon. Beacon seeks your input on how to provide claimants with information on the continued administration of their benefits, and we welcome your input as to how Beacon should seek approval of the Superior Court for the termination of the TPA and transition of the claims.

I look forward to hearing from you soon. Thank you for your attention to this matter.

Sincerely,



Amy C. Vitale

cc (without enclosures):

Bernard Healy, Esq., Legal Counsel, RI DLT

Matthew P. Carey, Chief Administrator, RI DLT

Sarah Stas, Executive Specialist, WC Claims, Crum & Forster

Patricia Antonelli, Esq., Legal Counsel to Beacon

Enclosures

# Exhibit 3



**B R C S M**

Brennan / Recupero / Cascione /  
Scungio / McAllister LLP

Attorneys at Law

Thomas S. Hemmendinger, of counsel  
E-mail [themmendinger@brscsm.com](mailto:themmendinger@brscsm.com)

April 19, 2021

Amy C. Vitale, Esq.  
Beacon Mutual Insurance Co.  
One Beacon Centre  
Warwick, RI 02886-1378

Re: St. Joseph Health Services of Rhode Island  
Sheila Zoglio

Dear Amy:

Reserving all right on open issues between or among Beacon Mutual, the receivership, the Department of Labor and Training, and existing or potential workers compensation claimants, enclosed is my receiver's check for \$46,630.07 for the funds paid by Swiss Re to the receivership in connection with Ms. Zoglio.

I look forward to our meeting with DLT on Thursday.

Cordially,

Thomas S. Hemmendinger

TSH:jl

# Exhibit 4

WISTOW, SHEEHAN & LOVELEY, PC

ATTORNEYS AT LAW  
61 WEYBOSSET STREET  
PROVIDENCE, RHODE ISLAND 02903

MAX WISTOW  
STEPHEN P. SHEEHAN  
A. PETER LOVELEY  
BENJAMIN G. LEDSHAM  
KENNETH J. SYLVIA

TELEPHONE  
401-831-2700

FAX  
401-272-9752

E-MAIL  
MAIL@WISTBAR.COM

August 30, 2021

*VIA E-MAIL*

Stacey P. Nakasian, Esq.  
Duffy & Sweeney, LTD  
321 South Main Street, Suite 400  
Providence, Rhode Island 02903

Re: Third Party Administration Agreement between The Beacon Mutual Insurance Company and St. Joseph Health Services of Rhode Island

Dear Stacey:

We have the documents you sent on behalf of Beacon on Friday, August 27, 2021, bates-stamped Beacon00001 through Beacon00057. These documents raise more questions than they answer.

The pages bates-stamped Beacon00001 through Beacon00025 appear to be endorsement pages for an excess policy (not itself included) that was issued and renewed by Employers Reinsurance (now Swiss Re). Some pages are undated. Others correspond to policy years beginning in 1987, 1988, and 1990, but not 1989 or years after 1990. These papers are, on their face, incomplete. Most glaringly, these documents do not include any policy jacket as the term is used in the insurance industry.

Notwithstanding their incompleteness, these Employers Reinsurance documents do confirm one thing. The representations made by Amy Vitale, at the June 29, 2021 Zoom meeting attended by Patricia Antonelli, Tom Hemmendinger, Benjamin Ledsham, and me, were plainly incorrect. Ms. Vitale represented that the self-insured retention limits applicable to each employee applied annually as to each claimant, not cumulatively. These endorsements, however, provide that the self-insured retention limits were "subject to a maximum retention" of \$250,000 (see Beacon00022) or

Stacey P. Nakasian, Esq.  
August 30, 2021

\$300,000 (see Beacon00006, Beacon00014).<sup>1</sup> In other words, the Employers Reinsurance policies had *cumulative* self-insured retentions.

In addition, you provided pages bates-stamped Beacon00026 through Beacon00057, which appear to relate to an excess policy issued by General Reinsurance for a period from 1986 to 1987. Although these pages are bates-stamped, they have been produced in a completely jumbled fashion. For example, the first page of the document entitled "Endorsement No. 1" is bates-stamped Beacon00027, but what appears to be its second page, as far as we can tell, is bates-stamped Beacon00045. Likewise, the first page of the document entitled "Endorsement No. 5" is bates-stamped Beacon00026, but what appears to be its second page is bates-stamped Beacon00040. We have reassembled the pages for ourselves as best we can in what we believe to be the correct order. This problem underscores the importance of Beacon's providing bates-stamped documents, as we requested.

There are other anomalies with the General Reinsurance policy documents. For example, the declarations page (Beacon00046) does not refer to any endorsements by form number. It is therefore not possible to determine if the problematic endorsements even relate to this declaration page and the policy it represents. In addition, most of the endorsement pages are stamped "GRC-11" at the upper right corner, but the first pages only of Endorsements 1 and 2 (Beacon00027 and Beacon00043, respectively) are stamped "GRC-12", indicating they very well may not correspond to the executed second

---

<sup>1</sup> For example, the page bates-stamped Beacon00006 states:

6. Retention each accident or each employee for disease:
  - (a) As respects loss comprised of medical and rehabilitation expenses:
    - (i) The first \$ 90,000 Incurred during the first retention period
    - (ii) The first \$ 50,000 incurred during the second retention period
    - (iii) The first \$ 45,000 Incurred during the third retention period
    - (iv) The first \$ 45,000 incurred during each other retention period
  - (b) As respects loss comprised of periodic income benefits: The first \$ 25,000 due during each retention period
  - (c) \$ 300,000, as respects loss:
    - (i) comprised of liability imposed by law for damages
    - (ii) comprised of lump sum benefits (including lump sum benefits payable in installments) rather than periodic income benefits
    - (iii) for which you purchase an annuity or make other financial arrangement to discharge your liability for payment of periodic income benefits
    - (iv) for which any governmental entity requires you to make a deposit to fund the payment of periodic income benefits
  - (d) subject to a maximum retention of \$ 300,000**

[Emphasis supplied]

According to this language, under item (d), all of the annual retentions for a given employee would be cumulatively subject to the same maximum retention of \$300,000.

Stacey P. Nakasian, Esq.  
August 30, 2021

pages of those endorsements. This anomaly is of perhaps critical importance, as the first page of Endorsement 1 contains information pertinent to the self-insured retention limits.

Furthermore, the Liquidating Receiver tells us that he never received a policy in the informal exchange that has been taking place for many, many months. Notwithstanding the representations in the June 29, 2021 Zoom conference reported to us that Beacon has none, we have now received what appears to be a General Reinsurance policy—albeit incomplete.

Accordingly, we will still need to conduct the Rule 30(b)(6) deposition to probe these anomalies. We will also need Beacon to provide the claims-related documents for each of the twelve claimants identified in the TPA Agreement (including for the three claimants identified as having injury dates under the General Reinsurance policy, as well as any claimants whose previously closed claims may have required further handling) to determine whether the cumulative or annual retentions were met. In other words, we will still need Beacon to comply fully with our subpoenas.

During our phone conference on Friday, you raised an issue as to the meaning of certain terms used in the subpoena (e.g., “self-insurance funds or trusts”). We are using terms that are universally understood by TPAs administering workers compensation self-insurance programs. If we were subpoenaing Boeing for all “design and shop drawings for ailerons used on Boeing 747 aircraft manufactured in 2013,” we would direct the subpoena to Boeing and not to counsel who may or may not know what an aileron is, or the difference between a shop drawing and a design drawing. If Boeing itself did not understand the meaning of these terms, then it might be appropriate to give an explanation or revise such subpoenas. Here, if Beacon claims in writing that it does not understand the term “self-insurance funds or trusts” (or, indeed, any of the other terms used in the subpoenas), we will try to clarify what is requested.

We would like to work these issues out with Beacon.

I previously proposed, in my email to you of August 18, 2021, that Beacon produce all of its documents by October 4, 2021. I still believe that remains a reasonable, indeed, generous, date for compliance (i.e., eight weeks since the subpoenas were served). If you believe it more suitable, however, to produce documents on a different date, or perhaps in tranches on multiple dates, please make a proposal. We will make every effort to come to a reasonable accommodation that protects your interests and ours.

Beacon has been the beneficiary of numerous indulgences. For example, Beacon was given an extension totaling approximately one year to file its proof of claim while it was trying to resolve these issues with Tom Hemmendinger. We are nowhere near a resolution of the fundamental question: who owes what to whom. The subpoenas were



Stacey P. Nakasian, Esq.  
August 30, 2021

intended to provide the necessary information in a rational process so as to break the logjam.

You originally asked for a one-week extension to respond to the subpoenas originally due on August 24 and 27, 2021. That extension was given to you as an ordinary courtesy. As that extension was coming to an end, this past Friday you suggested the present production as a possible shortcut that might conceivably make further productions and depositions unnecessary. As you can plainly see, that is not the case. Indeed, the production has made it even clearer to us that we must get to the bottom of whether the Liquidating Receiverships owe Beacon, or, as we are increasingly convinced, Beacon owes the Liquidating Receiverships.

We are all busy. As you can see, we worked over the weekend to get a quick response to you. If we can work something out by close of business on Tuesday, September 7, 2021, that would be great. If not, we will file a contempt motion to enforce the subpoenas (as extended as a courtesy to you).

Under the settlement agreement between (*inter alia*) the Plan and the three entities now in Liquidating Receivership, which was approved by both the Superior Court and U.S. District Court, those entities "agree[d] to cooperate with and follow the requests of the [Plan] Receiver and to take all reasonable measures in the Liquidation Proceedings to . . . oppos[e] and seek[ ] to limit the claims of other creditors where appropriate."<sup>2</sup> The Superior Court has ordered Tom Hemmendinger as Liquidating Receiver to perform those tasks.<sup>3</sup> The pendency of this issue in the Liquidating Receiverships has long-term implications for the thousands of Plan Participants and their beneficiaries. It is in their best interest to get this issue resolved.

Very truly yours,



Max Wistow

CC: Thomas Hemmendinger, Esq. (by email)  
Ron Cascione, Esq. (by email)  
Stephen Del Sesto, Esq. (by email)

<sup>2</sup> See Settlement Agreement (entered into as of August 31, 2018) ¶ 24 ("24. The Settling Defendants agree to cooperate with and follow the requests of the [Plan] Receiver and to take all reasonable measures in the Liquidation Proceedings to obtain court approval of the Petitions for Judicial Liquidation, including but not limited to marshalling the Settling Defendants' Other Assets and other rights of the Settlement Defendants and opposing and seeking to limit the claims of other creditors where appropriate.").

<sup>3</sup> See Order Appointing Permanent Liquidating Receiver (entered January 17, 2020) ¶ 7 ("[I]t is hereby ORDERED: . . . 7. That the Liquidating Receiver on behalf of the Petitioners shall perform and continue to perform their obligations under the Settlement Agreement, including, but not limited to paragraph 24 . . . .").

# Exhibit 9

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

In re:

CharterCARE Community Board,

St. Joseph Health Services of  
Rhode Island,

And

Roger Williams Hospital

PC-2019-11756

**AFFIDAVIT OF MAX WISTOW**

Max Wistow, Esq., being duly sworn, hereby deposes and says:

1. I am, together with Stephen Sheehan, Esq. and Benjamin Ledsham, Esq., Special Counsel appointed in the receivership action St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the "Plan Receivership").

2. The statements in this affidavit are based on my personal knowledge.


3. On June 29, 2021, I participated in a conference call with Amy Vitale, Esq. (general counsel to The Beacon Mutual Insurance Company ("Beacon")), Patricia Antonelli, Esq. (Beacon's outside counsel), Mr. Ledsham, and Thomas Hemmendinger, Esq. (the last being the Liquidating Receiver in this liquidation proceeding), concerning services Beacon Mutual Insurance Company ("Beacon") has been providing to St. Joseph Health Services of Rhode Island ("SJHSRI") under a Third Party Administration agreement for its workers' compensation self-insurance program for which SJHSRI had obtained certain excess insurance.

4. During this conference call:
  - (a) Mr. Hemmendinger and I requested copies of all of SJHSRI's excess policies. Ms. Vitale answered that Beacon did not have any of these policies.
  - (b) I asked about the terms of any self-insured retention provisions under the insurance policies and whether any self-insured retention was annual or cumulative. Ms. Vitale stated that the policies had annual, not cumulative, retentions. Ms. Vitale also stated that Beacon did not have any summaries of the self-insurance retention terms. Ms. Vitale further stated that Beacon had only obtained limited information concerning SJHSRI's excess coverages when Beacon came on as third-party administrator in 2010.
  - (c) Mr. Hemmendinger asked for a full accounting on each claim from the beginning of each claim, so that the receivers could ascertain the total amounts that Beacon had advanced, the total amounts SJHSRI had reimbursed, and the total amounts that had been or should have been recovered from excess insurance.
  - (d) I asked how Beacon could be certain that the policies had annual self-insured retentions rather than cumulative self-insured retentions, if Beacon did not have the policies or any summaries thereof. There was no satisfactory response, and at that point the conference deteriorated into a shouting match among Ms. Vitale, Ms. Antonelli, and me.

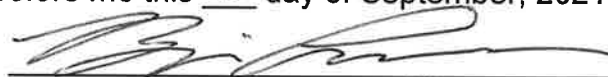
5. On August 18, 2021, I sent an email (Exhibit 1 hereto) to Stacey Nakasian, Esq., who had replaced Ms. Antonelli as Beacon's outside counsel.

6. On August 30, 2021, I sent a letter (Exhibit 2 hereto) to Ms. Nakasian.

7. On September 3, 2021, Ms. Nakasian sent me a letter enclosing Beacon's "Objection" to the Subpoena Duces Tecum dated August 6, 2021. In this letter, Beacon proposed to search Beacon's claims files for four SJHSRI employees and produce only certain categories of documents concerning only those four SJHSRI employees (i.e. fewer employees than even the five who were encompassed by Beacon's own proof of claim).

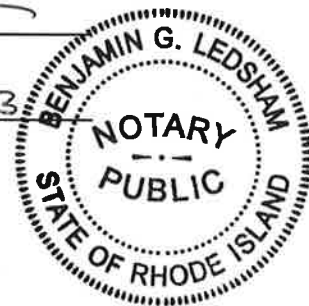
  
Max Wistow

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of September, 2021



NOTARY PUBLIC # 753498

My Commission Expires: 11/9/2023



# Exhibit 1

**From:** [Max Wistow](#)  
**To:** [snakasian@duffysweeney.com](mailto:snakasian@duffysweeney.com)  
**Cc:** [Thomas S. Hemmendinger](#); [Ronald F. Cascione](#); [Stephen P. Sheehan](#); [carmaxabbey@gmail.com](mailto:carmaxabbey@gmail.com); [Benjamin Ledsham](#)  
**Subject:** In re Chartercare Community Board; Beacon subpoenas  
**Date:** Wednesday, August 18, 2021 6:48:22 PM

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Stacey,

Thank you for talking with me today regarding the Liquidating Receivership subpoenas that were served on Beacon. As a personal courtesy, we are postponing the two deposition dates by a week in order to give you more time to get up to speed. (Although I understand you were just engaged by Beacon, we have been discussing these issues for months with both Beacon, a sophisticated insurance company, and its outside counsel Patty Antonelli.) Those subpoenas were served on August 10 and would have given Beacon 14 days for compliance for documents and 17 days for compliance for Rule 30(b)(6) testimony.

By way of background: for more than a decade, Beacon has been providing TPA services to SJHSRI under a TPA Agreement (dated as of November 1, 2010), for workers' compensation claims of employees who were injured during the period (approximately 1986 to 1999) when SJHSRI was self-insured for workers' compensation claims. When Beacon came on as TPA in 2010, it understood that it was to handle at minimum twelve named claims, for which SJHSRI had applicable excess insurance, over SJHSRI's self-insured retentions. The TPA Agreement promises: "BEACON will communicate with ST. JOSEPH's excess carriers and seek reimbursement of payments beyond retention."

At our Zoom conference on June 29 (attended by Patty Antonelli, Amy Vitale, Tom Hemmendinger, Benjamin Ledsham, and me), Beacon informed us that us that it has been administering SJHSRI's workers' compensation claims based on the understanding that the self-insured retention limits applicable to each employee (a) varied in amount before the SIR was satisfied; and (b) applied annually as to each claimant, not cumulatively.

We believe Beacon's understanding to have been incorrect, and that at least some of the excess insurance policies had cumulative self-insured retentions. Beacon informed us, however, that it never obtained copies of the actual excess policies. We do not understand how Beacon could have complied with its obligations under the TPA Agreement without obtaining the policies in order to determine when coverage kicked in as to each claimant.

Beacon has also indicated it obtained at least one payment (of approximately \$46,000) from one excess carrier (Swiss Re) in April 2021. We do not understand why this would be the only excess insurance payment. If an excess carrier made a payment, that is clear evidence that there was coverage. And if there was coverage, that suggests there should have been more payments.

We are focusing on three categories of employees:

1. The five employees (Grande, Emdjian, Reynolds, McCray, and Zoglio) whose open claims Beacon has been handling this year (one of whom has died);

2. The seven employees who, in addition to those five, are expressly named in Exhibit B to the TPA agreement.
3. Additional employees (if any) who fall within the following category also enumerated in Exhibit B to the TPA Agreement: "Any closed claims that require further handling that may be identified in the future while this [TPA] Agreement is in effect."

We will agree that no new subpoenas are necessary. Instead, Beacon will produce all the subpoenaed records on October 4, and the Rule 30(b)(6) deposition will be on October 7. That will end up having given Beacon 8 weeks since the time of service to accomplish this (and 7 weeks since today). In addition, we previously provided Ms. Antonelli with a form of Keeper of Records affidavit, for production of documents pursuant to R.I. Gen. Laws § 9-17-5.1. If Beacon executes that affidavit and provides it with the documents prior to the October 4 deposition, it will not be necessary to depose the keeper of records.

If you don't want to agree to the foregoing, then, as we discussed, please file a motion for a protective order on or before August 31 (i.e. a week from when the records were previously due).

Please confirm Beacon's agreement.

Thanks,

Max

Max Wistow  
Wistow Sheehan & Loveley PC  
61 Weybosset Street  
Providence, RI 02903  
401-831-2700  
401-272-9752 (fax)  
[mw@wistbar.com](mailto:mw@wistbar.com)



# Exhibit 2

WISTOW, SHEEHAN & LOVELEY, PC

ATTORNEYS AT LAW  
61 WEYBOSSET STREET  
PROVIDENCE, RHODE ISLAND 02903

MAX WISTOW  
STEPHEN P. SHEEHAN  
A. PETER LOVELEY  
BENJAMIN G. LEDSHAM  
KENNETH J. SYLVIA

TELEPHONE  
401-831-2700

FAX  
401-272-9752

E-MAIL  
MAIL@WISTBAR.COM

August 30, 2021

*VIA E-MAIL*

Stacey P. Nakasian, Esq.  
Duffy & Sweeney, LTD  
321 South Main Street, Suite 400  
Providence, Rhode Island 02903

Re: Third Party Administration Agreement between The Beacon Mutual Insurance Company and St. Joseph Health Services of Rhode Island

Dear Stacey:

We have the documents you sent on behalf of Beacon on Friday, August 27, 2021, bates-stamped Beacon00001 through Beacon00057. These documents raise more questions than they answer.

The pages bates-stamped Beacon00001 through Beacon00025 appear to be endorsement pages for an excess policy (not itself included) that was issued and renewed by Employers Reinsurance (now Swiss Re). Some pages are undated. Others correspond to policy years beginning in 1987, 1988, and 1990, but not 1989 or years after 1990. These papers are, on their face, incomplete. Most glaringly, these documents do not include any policy jacket as the term is used in the insurance industry.

Notwithstanding their incompleteness, these Employers Reinsurance documents do confirm one thing. The representations made by Amy Vitale, at the June 29, 2021 Zoom meeting attended by Patricia Antonelli, Tom Hemmendinger, Benjamin Ledsham, and me, were plainly incorrect. Ms. Vitale represented that the self-insured retention limits applicable to each employee applied annually as to each claimant, not cumulatively. These endorsements, however, provide that the self-insured retention limits were "subject to a maximum retention" of \$250,000 (see Beacon00022) or

Stacey P. Nakasian, Esq.  
August 30, 2021

\$300,000 (see Beacon00006, Beacon00014).<sup>1</sup> In other words, the Employers Reinsurance policies had *cumulative* self-insured retentions.

In addition, you provided pages bates-stamped Beacon00026 through Beacon00057, which appear to relate to an excess policy issued by General Reinsurance for a period from 1986 to 1987. Although these pages are bates-stamped, they have been produced in a completely jumbled fashion. For example, the first page of the document entitled "Endorsement No. 1" is bates-stamped Beacon00027, but what appears to be its second page, as far as we can tell, is bates-stamped Beacon00045. Likewise, the first page of the document entitled "Endorsement No. 5" is bates-stamped Beacon00026, but what appears to be its second page is bates-stamped Beacon00040. We have reassembled the pages for ourselves as best we can in what we believe to be the correct order. This problem underscores the importance of Beacon's providing bates-stamped documents, as we requested.

There are other anomalies with the General Reinsurance policy documents. For example, the declarations page (Beacon00046) does not refer to any endorsements by form number. It is therefore not possible to determine if the problematic endorsements even relate to this declaration page and the policy it represents. In addition, most of the endorsement pages are stamped "GRC-11" at the upper right corner, but the first pages only of Endorsements 1 and 2 (Beacon00027 and Beacon00043, respectively) are stamped "GRC-12", indicating they very well may not correspond to the executed second

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<sup>1</sup> For example, the page bates-stamped Beacon00006 states:

6. Retention each accident or each employee for disease:
  - (a) As respects loss comprised of medical and rehabilitation expenses:
    - (i) The first \$ 90,000 Incurred during the first retention period
    - (ii) The first \$ 50,000 incurred during the second retention period
    - (iii) The first \$ 45,000 Incurred during the third retention period
    - (iv) The first \$ 45,000 incurred during each other retention period
  - (b) As respects loss comprised of periodic income benefits: The first \$ 25,000 due during each retention period
  - (c) \$ 300,000, as respects loss:
    - (i) comprised of liability imposed by law for damages
    - (ii) comprised of lump sum benefits (including lump sum benefits payable in installments) rather than periodic income benefits
    - (iii) for which you purchase an annuity or make other financial arrangement to discharge your liability for payment of periodic income benefits
    - (iv) for which any governmental entity requires you to make a deposit to fund the payment of periodic income benefits
  - (d) subject to a maximum retention of \$ 300,000**

[Emphasis supplied]

According to this language, under item (d), all of the annual retentions for a given employee would be cumulatively subject to the same maximum retention of \$300,000.

Stacey P. Nakasian, Esq.  
August 30, 2021

pages of those endorsements. This anomaly is of perhaps critical importance, as the first page of Endorsement 1 contains information pertinent to the self-insured retention limits.

Furthermore, the Liquidating Receiver tells us that he never received a policy in the informal exchange that has been taking place for many, many months. Notwithstanding the representations in the June 29, 2021 Zoom conference reported to us that Beacon has none, we have now received what appears to be a General Reinsurance policy—albeit incomplete.

Accordingly, we will still need to conduct the Rule 30(b)(6) deposition to probe these anomalies. We will also need Beacon to provide the claims-related documents for each of the twelve claimants identified in the TPA Agreement (including for the three claimants identified as having injury dates under the General Reinsurance policy, as well as any claimants whose previously closed claims may have required further handling) to determine whether the cumulative or annual retentions were met. In other words, we will still need Beacon to comply fully with our subpoenas.

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We would like to work these issues out with Beacon.

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Beacon has been the beneficiary of numerous indulgences. For example, Beacon was given an extension totaling approximately one year to file its proof of claim while it was trying to resolve these issues with Tom Hemmendinger. We are nowhere near a resolution of the fundamental question: who owes what to whom. The subpoenas were

Stacey P. Nakasian, Esq.  
August 30, 2021

intended to provide the necessary information in a rational process so as to break the logjam.

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Very truly yours,



Max Wistow

CC: Thomas Hemmendinger, Esq. (by email)  
Ron Cascione, Esq. (by email)  
Stephen Del Sesto, Esq. (by email)

---

<sup>2</sup> See Settlement Agreement (entered into as of August 31, 2018) ¶ 24 ("24. The Settling Defendants agree to cooperate with and follow the requests of the [Plan] Receiver and to take all reasonable measures in the Liquidation Proceedings to obtain court approval of the Petitions for Judicial Liquidation, including but not limited to marshalling the Settling Defendants' Other Assets and other rights of the Settlement Defendants and opposing and seeking to limit the claims of other creditors where appropriate.").

<sup>3</sup> See Order Appointing Permanent Liquidating Receiver (entered January 17, 2020) ¶ 7 ("[I]t is hereby ORDERED: . . . 7. That the Liquidating Receiver on behalf of the Petitioners shall perform and continue to perform their obligations under the Settlement Agreement, including, but not limited to paragraph 24 . . .").

# Exhibit 10

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

In re:

CharterCARE Community Board,

St. Joseph Health Services of  
Rhode Island,

And

Roger Williams Hospital

PC-2019-11756

**AFFIDAVIT OF BENJAMIN LEDSHAM**

Benjamin Ledsham, Esq., upon affirmation, hereby deposes and says:

1. I am, together with Max Wistow, Esq. and Stephen Sheehan, Esq., Special Counsel appointed in the receivership action St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the "Plan Receivership").

2. The statements in this affidavit are based on my personal knowledge.

3. On June 29, 2021, I participated in a conference call with Amy Vitale, Esq. (general counsel to The Beacon Mutual Insurance Company ("Beacon")), Patricia Antonelli, Esq. (Beacon's outside counsel), Mr. Wistow, and Thomas Hemmendinger, Esq. (the last being the Liquidating Receiver in this liquidation proceeding), concerning services Beacon Mutual Insurance Company ("Beacon") has been providing to St. Joseph Health Services of Rhode Island ("SJHSRI") under a Third Party Administration agreement for its workers' compensation self-insurance program for which SJHSRI had obtained certain excess insurance.


4. During this conference call:
  - (a) Mr. Wistow and Mr. Hemmendinger requested copies of all of SJHSRI's excess policies. Ms. Vitale answered that Beacon did not have any of these policies.
  - (b) Mr. Wistow asked about the terms of any self-insured retention provisions under the insurance policies and whether any self-insured retention was annual or cumulative. Ms. Vitale stated that the policies had annual, not cumulative, retentions. Ms. Vitale also stated that Beacon did not have any summaries of the self-insurance retention terms. Ms. Vitale further stated that Beacon had only obtained limited information concerning SJHSRI's excess coverages when Beacon came on as third-party administrator in 2010.
  - (c) Mr. Hemmendinger asked for a full accounting on each claim from the beginning of each claim, so that the receivers could ascertain the total amounts that Beacon had advanced, the total amounts SJHSRI had reimbursed, and the total amounts that had been or should have been recovered from excess insurance.
  - (d) Mr. Wistow asked how Beacon could be certain that the policies had annual self-insured retentions rather than cumulative self-insured retentions, if Beacon did not have the policies or any summaries thereof. There was no satisfactory response, and at that point the conference deteriorated into a shouting match among Mr. Wistow, Ms. Vitale, and Ms. Antonelli.



5. On August 31, 2021, I participated in a brief conference call with Ms. Nakasian, Mr. Hemmendinger, and Ron Cascione, Esq. During this call, Ms. Nakasian stated that she would be responding in writing to an August 30, 2021 letter sent to her by Mr. Wistow.

  
Benjamin Ledsham

SUBSCRIBED AND AFFIRMED to before me, under penalties of perjury, this 28<sup>th</sup> day of September, 2021

  
NOTARY PUBLIC # 21379  
My Commission Expires: 6/11/25

