

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

vs.

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
as amended

In re:

CHARTERCARE COMMUNITY BOARD,  
ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND and ROGER  
WILLIAMS HOSPITAL

C.A. No: PC-2017-3856

**Hearing Date: Oct. 2, 2023  
@ 11:00 A.M.**

C.A. No.: PC-2019-11756

**PETITION OF STEPHEN DEL SESTO AS PLAN RECEIVER AND LIQUIDATING  
RECEIVER FOR SETTLEMENT INSTRUCTIONS AND APPROVAL**

NOW COMES Stephen F. Del Sesto, Esq. (“Receiver”), solely in his capacities (a) as the Permanent Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) and (b) as the Permanent Liquidating Receiver (“Liquidating Receiver”) of CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”) and Roger Williams Hospital (“RWH”) (SJHSRI and RWH being collectively referred to as the “Heritage Hospitals”), and hereby Petitions this Court to approve the proposed settlement (“Proposed Settlement”)<sup>1</sup> of claims the Plan Receiver has asserted against Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation,

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<sup>1</sup> See Exhibit A (Settlement Agreement dated as of August 24, 2023).

and Diocesan Service Corporation (collectively the “Diocesan Defendants”), in lawsuits concerning the alleged underfunded status of the Plan.

Served and filed herewith are the following four affidavits or declarations, all signed under penalties of perjury:

- The Affidavit of the Hon. Frank J. Williams, C.J. (Ret.) (Exhibit B), concerning the mediation and terms of the Proposed Settlement, and the fees to be awarded to the Plan Receiver’s Special Litigation Counsel under the Retainer Agreement approved by the Court;
- The Affidavit of Arlene Violet, Esq. (Exhibit C), who represents over 285 Plan participants, in support of approval of the Proposed Settlement and the requested attorneys’ fees of Special Litigation Counsel;
- The Affidavit of Christopher Callaci, Esq. (Exhibit D), who in his capacity as General Counsel for United Nurses and Allied Professionals (“UNAP”) represents the approximately 400 Plan participants who are members of UNAP, in support of approval of the Proposed Settlement and the requested attorneys’ fees of Special Litigation Counsel; and
- The Declaration of Jeffrey W. Kastle, Esq. (Exhibit E), who represents 247 Plan participants, in support of approval of the Proposed Settlement and the requested attorneys’ fees of Special Litigation Counsel.

If the Proposed Settlement is approved by the Court and by the United States District Court for the District of Rhode Island in the case of Del Sesto, et al. v. Prospect Chartercare, LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (the “Federal Court Action”), and the conditions<sup>2</sup> and the prospective obligations of the parties to the settlement are satisfied, then the claims against the Diocesan Defendants will be dismissed. Plaintiffs will continue to assert claims against CCCB, SJHSRI, and RWH, to the extent of their assets in the Liquidations Proceedings.

Attached hereto as Exhibit A is the settlement agreement (“Settlement Agreement”) to which the Receiver has agreed, subject to obtaining the approval of this

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<sup>2</sup> The conditions to the settlement are discussed below at ¶¶ 70–71.

Court and the court in the Federal Court Action. The Receiver believes that the Proposed Settlement is in the best interests of the Receivership Estates, the Plan, and ultimately the Plan participants, and recommends that this Court approve the Proposed Settlement. In addition, the Receiver requests that he be authorized (subject to the approval of the United States District Court in the Federal Court Action) to pay attorneys' fees to the Receiver's Special Litigation Counsel pursuant to the retainer agreement previously approved by the Court.

If this Court accepts the Receiver's recommendation, the next step will be that the Receiver's Special Litigation Counsel will file a motion in the Federal Court Action asking that the Proposed Settlement and attorneys' fees be approved by that court.

As grounds for this Petition, the Receiver hereby states as follows:

1. This case was commenced on August 17, 2017, upon the Petition of SJHSRI.
2. That Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, the Petition sought the following relief:
  - (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.
3. As a result of the Petition, the Court appointed Stephen F. Del Sesto, Esq. as temporary Receiver of the Plan.
4. On October 11, 2017, the Plan Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage the firm of

Wistow, Sheehan & Loveley, PC (“WSL”), as Special Litigation Counsel. On October 17, 2017, the Court granted the Emergency Petition. The Order granting the Emergency Petition states in pertinent part:

That for the reasons stated in the Receiver’s Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC (“WSL”) to act as the Receivership Estate’s special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement . . . .

The “Engagement” (WSL’s Retainer Agreement) is attached as Exhibit F. The Engagement sets forth the fee agreement and provides that “[i]f suit is brought, the [Plan] Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3%) of the gross of any amount thereafter recovered by way of suit, compromise, settlement, or otherwise.”

5. On October 27, 2017, the Court appointed the Temporary Receiver as Permanent Receiver of the Plan.

6. The Plan Receiver has regularly reported to the Court concerning his activities and the activities of Special Litigation Counsel. Indeed, the Plan Receiver has filed twenty-eight (28) interim reports. Those reports provide extensive detail of the activities of the Plan Receiver and Special Litigation Counsel concerning all aspects of the Plan Receivership, much of which is not relevant to the claims against the Diocesan Defendants. This Petition for Settlement Instructions addresses only those activities that are relevant to settlement approval, and only summarizes those activities, as the Court has already been informed of the details thereof in connection with the Plan Receiver’s interim reports.

7. With the approval of the Plan Receiver, Special Litigation Counsel were also retained by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (collectively the “Individual Named Plaintiffs”) to investigate and assert claims on their behalf. The Individual Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in a class action (the “Class Action”). Each of the Individual Named Plaintiffs entered into a separate retainer agreement with Special Litigation Counsel which each stated as follows:

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants’ beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants’ beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

8. Each such retainer agreement further provided as follows:

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL’s compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL’s application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys’ fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to with the Receiver as set forth in WSL’s fee agreement with the Receiver....

9. The pre-suit investigation entailed the production and review of over 1,000,000 pages of documents over an eight-month period.

10. The Complaints in both the Federal Court Action and the State Court Action<sup>3</sup> were filed on June 18, 2018. These Complaints were filed by Special Litigation Counsel on behalf of the Plan Receiver, the Individual Named Plaintiffs, and the proposed class consisting of the Plan participants. The Complaints named as Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively referred to herein as “Prospect”), The Angell Pension Group, Inc. (“Angell”), CharterCARE Foundation, The Rhode Island Community Foundation, CCCB, SJHSRI, RWH, and the Diocesan Defendants.

11. The complaint in the State Court Action omitted the federal law claims and stated that suit “was brought solely for the purposes of protecting Plaintiffs from the possible expiration of any time limitations during the pendency of the proceedings in the Federal Action, should the Federal Court for any reason decline to exercise supplemental jurisdiction over those state law claims.” Pursuant to Plaintiffs’ motion, that action was stayed pending the adjudication of the Federal Court Action.

12. Plaintiffs filed their First Amended Complaint in the Federal Court Action on October 5, 2018.<sup>4</sup> That Complaint consists of 165 pages and 558 numbered paragraphs.

13. The Plan Receiver subsequently entered into two settlements, in August of 2018 and November of 2018 respectively.

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<sup>3</sup> Stephen Del Sesto et al. v. Prospect Chartercare, LLC, et al., PC-2018-4386 (the “State Court Action”).

<sup>4</sup> A copy is available from the Plan Receiver’s website at <https://www.pierceatwood.com/sites/default/files/First%20Amended%20Complaint%2010.05.18.pdf>.

14. The first settlement was of the Plan Receiver's claims against CCCB, SJHSRI, and RWH, and involved an initial gross cash recovery of \$12,681,202.91. The second settlement was of the Plan Receiver's claims against CharterCARE Foundation and involved a gross recovery of \$4,500,000. Those proposed settlements were approved by the Court and the court in the Federal Court Action. Thus, the gross initial recovery from those settlements (before fees and expenses) was \$17,181,202.91.

15. The Plaintiffs sought the necessary court approvals for the two settlements, over the extensive objections of the then-non-settling defendants (including Prospect) who alleged collusion and bad faith. In fact, Prospect expressly stated that:

The Court should deny the Settlement Petition and reject the Settlement Agreement because it violates the Settlement Statute as it plainly evidences collusion among the Receiver, Special Counsel, and the Settling Parties.

Prospect's Objection at 8. The then-non-settling defendants in the Federal Court Action, including Prospect and Angell, also filed motions to dismiss the entirety of Plaintiffs' claims against them. The motions to dismiss were initially filed on September 14, 2018 and were re-filed on December 4, 2018 to address the Plaintiffs' First Amended Complaint which was filed on October 5, 2018.

16. Over the next several months the parties in the Federal Court Action intensively litigated the validity of the two settlements and the motions to dismiss filed by Prospect and Angell.

17. After hearing, in connection with the approval of the settlement with CharterCARE Foundation, this Court approved WSL's fee for representing the Plan

Receiver pursuant to the WSL Retainer Agreement, subject to further approvals in the United States District Court.<sup>5</sup>

18. The court in the Federal Court Action appointed Deming Sherman, Esq. as Special Master to make a recommendation concerning the fees the Plan Receiver's Special Litigation Counsel would receive in connection with both settlements for representing the Class. The Special Master's Report and Recommendation on Award of Attorneys' Fees is attached hereto as Exhibit G. The Special Master noted that WSL sought no fees for representing the Class in addition to the fees to which WSL was entitled under the Retainer Agreement, "[s]ince WSL was working toward a common goal for both the Receiver and the class members for the ultimate benefit of the Plan participants...."

19. The Special Master recommended that WSL's fee application be accepted without revision, for two reasons: a) it was consistent with the Retainer Agreement; and b) it was below the benchmark of 25% regularly approved in the First Circuit for attorneys' fees in connection with class action settlements involving recovery of a common fund.

20. With respect to the first reason, the Special Master noted as follows:

The Fee Agreement is a significant factor in support of WSL's request. The Fee Agreement between WSL and the Receiver was negotiated by the Receiver and approved by the Superior Court. Wistow Declaration, Ex. 5, ECF No. 65-5. Judge Stern of the Superior Court is, to my knowledge, a highly capable judge, sophisticated in complex litigation, and his approvals of both the Fee Agreement and the fees awarded in Settlement B are noteworthy. While his approvals are not necessarily binding on this Court,

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<sup>5</sup> See Order dated December 27, 2018 ¶ 3 ("ORDERED, ADJUDGED, AND DECREED...3. That Special Litigation Counsel's contingent fee of 23 1/3% as set forth in the Petition for Settlement Approval is fair, reasonable, and a benefit to the Plan Receivership estate;").



they are entitled to considerable deference.... The Receiver has a fiduciary responsibility to the Plan as well as obligations to the Court as an officer thereof. Therefore, it makes a difference that the Receiver negotiated the Fee Agreement, approved the award of fees for both Settlement A and B, and obtained the blessing of the Superior Court for both the Fee Agreement as well as for the award of fees pursuant to that Agreement.

21. With respect to the second reason, the Special Master noted as follows:

There is First Circuit authority for the proposition that the benchmark percentage for POF cases is 25% of the common fund. "Within the First Circuit, courts generally award fees 'in the range of 20-30%, with 25% as 'the benchmark.'" ' ' Bezdek v. Vibram USA Inc., 79 F. Supp. 3d 324, 349-350 (D. Mass. 2015) (quoting Latorraca v. Centennial Techs., Inc., 834 F. Supp. 2d 25, 27-28 (D. Mass. 2011), *aff'd*, 809 F. 3d 78, 85 (1st Cir. 2015).

22. The court in the Federal Court Action accepted the Special Master's recommendation in its entirety and granted WSL's fee application.<sup>6</sup>

23. The first settlement (of the Plan Receiver's claims against CCCB, SJHSRI, and RWH) involved the transfer to the Plan Receiver of certain rights of CCCB, which ultimately would increase the gross recovery from that settlement, in addition to the initial gross cash recovery of \$12,681,202.91. Specifically, the Plan Receiver obtained the beneficial interest of CCCB in Prospect Chartercare, LLC. That included CCCB's membership interest (nominally of 15%) in Prospect Chartercare, LLC. It also included claims that CCCB had against Prospect Chartercare, LLC, as is more fully described herein. The settlement agreement included the then yet to be determined fair market

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<sup>6</sup> See Exhibit H (Docket Entry dated October 24, 2019 in Del Sesto et al. v. Prospect Chartercare, LLC et al.) ("TEXT ORDER adopting [165] Report and Recommendations, granting [64] Motion for Attorney Fees, and, granting [78] Motion for Attorney Fees: After considering the Report and Recommendations of the Special Master, and having heard no objections, the Court ACCEPTS and ADOPTS [165] Report and Recommendations in full. Accordingly, the Court GRANTS [64] Motion for Attorneys' Fees and [78] Second Motion for Attorneys' Fees. So Ordered by Chief Judge William E. Smith on 10/24/2019.").

value of CCCB's interest in Prospect Chartercare, LLC in the "Gross Settlement Proceeds" paid in connection with the settlement.

24. On March 21, 2019, CCCB commenced a civil action in the Rhode Island Superior Court, initially captioned Chartercare Community Board, individually and derivatively, as member of Prospect Chartercare, LLC and as trustee of the beneficial interest of its membership interest in Prospect Chartercare, LLC v. Samuel Lee, et al., C.A. No. PC-2019-3654 ("CCCB v. Lee").

25. The complaint asserted several claims, including that Prospect East Holdings, Inc. had breached its obligation to contribute \$50 million in long-term capital contributions to Prospect Chartercare, LLC, and that Prospect Chartercare, LLC was refusing to provide CCCB with financial information necessary for CCCB to intelligently determine whether to exercise its option to sell its membership interest in Prospect Chartercare, LLC to Prospect East Holdings, Inc., pursuant to a valuation procedure agreed to in the LLC Agreement between and among CCCB, Prospect East Holdings, Inc. and Prospect Chartercare, LLC.

26. On April 25, 2019, the Court in CCCB v. Lee entered a Stipulation and Consent Order which provided, inter alia, for limited discovery by CCCB and the Plan Receiver from Prospect to obtain the information and documents that CCCB and the Plan Receiver required to make an informed decision whether or not to exercise the Put option.

27. The motions to dismiss in the Federal Court Action were extensively briefed and were the subject of oral argument on September 10, 2019.

28. At that oral argument, counsel for Prospect and certain other defendants suggested that the court should entertain a motion for summary judgment on the issue

of whether the Employees Retirement Security Act of 1974 (“ERISA”) applied to the Plan in June of 2014 when Prospect acquired certain of the assets of St. Joseph Health Services of Rhode Island, including Our Lady of Fatima Hospital (the “2014 Asset Sale”). The court agreed and deferred determination of the pending motions to dismiss to allow submission of the motion for summary judgment on that issue.

29. On December 17, 2019, Plaintiffs in the Federal Court Action filed their motion for summary judgment, seeking a declaration that that by April 29, 2013 at the latest, the Plan was not an exempt Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA.

30. The parties in the Federal Court Action then undertook intensive discovery over a ninety (90) day period, later enlarged upon Prospect’s motion to one hundred thirty five (135) days, limited to the issues raised by Plaintiffs’ motion for summary judgment.

31. Unbeknownst (at the time) to the Plan Receiver, Special Litigation Counsel, or the Liquidating Receiver, and without notice to any of them, certain applications (“CEC Applications”) were filed in November of 2019 with the Center for Health Systems Policy and Regulation, Rhode Island Department of Health, in the proceeding captioned In re: Change in Effective Control Applications by Prospect Chartercare RWMC, LLC and Prospect Chartercare SJHSRI, LLC, et al., concerning *inter alia* Fatima and Roger Williams Hospital.

32. Also unbeknownst (at the time) to the Plan Receiver, Special Litigation Counsel, or the Liquidating Receiver, and also without notice to any of them, certain applications (“HCA Applications”) were filed thereafter with the Office of the Rhode Island Attorney General and the Rhode Island Department of Health in the proceeding

captioned Hospital Conversion Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc. [sic]; Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC.

33. On December 19, 2019, and pursuant to their obligations under the settlement agreement with the Plan Receiver, CCCB, SJHSRI, and RWH filed their petition for liquidation in the Liquidation Proceedings.

34. Also on December 19, 2019, Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc. filed a complaint in the Chancery Court of Delaware against CCCB. That complaint asserted that CCCB's transfer of its beneficial interest in Prospect Chartercare LLC to the Plan Receiver in connection with the previously approved settlement was invalid and in breach of CCCB's obligations under the LLC Agreement with Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc., and sought a judicial determination that the transfer was void.

35. In addition, Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc. asserted in the Delaware lawsuit that CCCB was obligated to indemnify them for all losses incurred in the Federal Court Action and the companion state court proceeding, pursuant to the provision in the LLC Agreement that purported to obligate CCCB to indemnify Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc. for any expenses arising out a claim that Prospect had any liability under the Plan, and which provided that CCCB's interest in Prospect Chartercare, LLC would be reduced *pro rata* for any such expenses. Thus, Prospect both directly attacked the validity of the Plan Receiver's beneficial interest in Prospect Chartercare, LLC, and sought to reduce the

value of that interest to zero by setting off an indemnity claim against it, thereby reducing the assets of CCCB.

36. On January 17, 2020 Thomas Hemmendinger was appointed the initial permanent Liquidating Receiver in the Liquidation Proceedings.

37. On April 21, 2020, the Plan Receiver subsequently intervened in CCCB v. Lee as a party plaintiff and joined in the filing of a First Amended Complaint in CCCB v. Lee.

38. Thereafter the Plan Receiver and the Liquidating Receiver engaged in months of document discovery and motion practice before the court in the Liquidation Proceedings to obtain the information needed to intelligently determine whether to exercise CCCB's option to sell its interest in Prospect Chartercare, LLC.

39. The Plan Receiver and the Liquidating Receiver first learned of the CEC Applications and the HCA Applications in March of 2020. The Plan Receiver and the Liquidating Receiver filed formal objections in both proceedings. In particular, the Plan Receiver's Special Litigation Counsel and the Liquidating Receiver objected to the applicants' proposal that Prospect Medical Holdings, Inc. would pay a private investment fund affiliated with Leonard Green & Partners an undetermined sum (but which was at least \$11,900,000) for the private investment fund's interest in a parent company of Prospect Medical Holdings, Inc.

40. The Plan Receiver's Special Litigation Counsel and the Liquidating Receiver objected on the grounds that such transfer would deprive Prospect Medical Holdings, Inc. of assets without any benefit to Prospect Medical Holdings, Inc. The Plan Receiver's Special Litigation Counsel and the Liquidating Receiver objected that such a transfer would be a fraudulent transfer prejudicial to the potential recovery of the

Plaintiffs and CCCB against Prospect Medical Holdings, Inc., which had guaranteed Prospect East Holdings, Inc.'s obligation to contribute \$50 million to Prospect Chartercare, LLC, and against whom the Plan Receiver had asserted direct claims in the Federal Court Action.

41. The Plan Receiver's Special Litigation Counsel made several additional written submissions and participated in public hearings in connection with both proceedings on several occasions.

42. On June 27, 2020, in the Federal Court Action, Prospect filed its opposition to Plaintiffs' motion for summary judgment and filed a cross-motion for summary judgment asking the court to enter an Order "finding that the Plan lost its church plan status on, and as of, December 15, 2014, but in any event no later than April 15, 2019." In other words, Prospect alleged that the Plan lost church plan status only *after* Prospect acquired the assets of SJHSRI in June of 2014.

43. The parties in the Federal Court Action then undertook discovery over another ninety (90) day period, limited to the issues raised by Prospect's cross-motion for summary judgment.

44. On July 10, 2020, the Plan Receiver's Special Litigation Counsel filed a motion to disqualify Prospect's counsel from representing Prospect in connection with the CEC and HCA Applications, based on their conflict of interest arising from their prior representation of SJHSRI. Over the next several months, Special Litigation Counsel submitted four supplemental memoranda in support of that motion. The Court denied the motion on October 10, 2020, whereupon the Liquidating Receiver applied for and was granted leave to file a petition for *certiorari* with the Rhode Island Supreme Court. On December 20, 2020, the Plan Receiver's Special Litigation Counsel filed a motion

for reconsideration of the Court's denial of the motion to disqualify Prospect's counsel, on the grounds of newly discovered evidence concerning the adversity between Prospect's counsel's representation of Prospect and Prospect's counsel's prior representation of SJHSRI. The Receivers allege this evidence had been improperly withheld from Plaintiffs and the Court. These matters were pending when the Plaintiffs entered into a proposed settlement with Prospect and Angell.

45. On September 1, 2020, Plaintiffs filed their memorandum in reply to the memorandum submitted by Prospect in opposition to Plaintiffs' motion for summary judgment.

46. On September 29, 2020, Prospect filed a motion in the Receivership Proceedings to adjudge the Plan Receiver in contempt for the Plan Receiver's and Special Litigation Counsel's filing of opposition to the CEC and HCA Applications.

47. On October 30, 2020, the Plan Receiver and the Liquidating Receiver submitted an extensive objection to Prospect's CEC and HCA Applications to the Rhode Island Attorney General and Department of Health.

48. On November 23, 2020, in the Federal Court Action, Plaintiffs filed their memorandum in opposition to Prospect's cross-motion for summary judgment.

49. On December 8, 2020, Prospect filed their memorandum in reply to the memorandum submitted by Plaintiffs in opposition to Prospect's cross-motion for summary judgment.

50. In early November of 2020, Plaintiffs, Prospect and Angell agreed to participate in a settlement mediation with retired Rhode Island Supreme Court Chief Justice Frank A. Williams as mediator. Over the next eight weeks, and with the support

of the Mediator, the parties negotiated settlement terms and exchanged draft settlement documents.

51. On December 30, 2020, Plaintiffs, Prospect, and Angell agreed on the terms set forth in their settlement agreement (the "Prospect/Angell Settlement"). In summary, the agreement provided for payment of thirty million dollars (\$30,000,000) upon final approval of the Proposed Settlement in the Federal Court Action, a portion of which was to be paid by or on behalf of Prospect and a portion of which was to be paid by or behalf of Angell. Prospect's contribution to the settlement was the sum of twenty-seven million two hundred fifty thousand dollars (\$27,250,000). Angell's contribution was the sum of two million seven hundred fifty thousand (\$2,750,000).

52. Five million dollars of Prospect's contribution to the settlement was allocated to what the Prospect/Angell Settlement referred to as "CCCB's Hospital Interests," which consisted of CCCB's membership interest (of nominally 15%) in Prospect Chartercare, LLC and CCCB's other claims against Prospect Chartercare, LLC. The Prospect/Angell Settlement provided that of such sum, four million dollars was allocated to the purchase price for CCCB's membership interest in Prospect Chartercare, LLC, and the remaining balance of one million dollars was allocated to the rest of CCCB's Hospital Interests.

53. The entirety of that \$30 million was to be (and later was) paid to the Plan Receiver, for payment into the Plan after the payment of attorneys' fees and expenses. As was the case in connection with the prior settlements approved by the Court, no payment was made from the settlement directly to any of the Plan participants.

54. On January 25, 2021, the Receiver and the then Liquidating Receiver filed petitions for instructions concerning the Prospect/Angell Settlement. This Court heard



those petitions on February 12, 2021. On March 4, 2021, this Court issued its written Decision granting the petitions.

55. Following this Court's granting of the Receivers' petitions for settlement instructions, the Plan Receiver's Special Counsel filed a motion for preliminary settlement approval with the U.S. District Court for the District of Rhode Island (the "Federal Court") on March 11, 2021. The Federal Court subsequently granted preliminary settlement approval on March 26, 2021 and set down the hearing on final approval for July 20, 2021.

56. On July 29, 2021, the Federal Court issued its written Order Granting Final Approval to Settlement, approving both the Prospect/Angell Settlement and WSL's fee.

57. At the conclusion of the Fairness Hearing on the Prospect/Angell Settlement on July 20, 2021, the Federal Court had inquired of counsel concerning how the remaining case between Plaintiffs and the Diocesan Defendants would proceed, and a discussion ensued. During that discussion, counsel for the Diocesan Defendants suggested that the Federal Court should decide the Plaintiffs' motion for partial summary judgment and Prospect's cross motion for partial summary judgment. However, counsel for Plaintiffs took the position that the motion and cross-motion had been mooted by the Prospect/Angell Settlement. The Federal Court directed Plaintiffs and the Diocesan Defendants to submit memoranda on the issue of mootness.

58. On August 31, 2021, Plaintiffs and the Diocesan Defendants filed their memoranda in the Federal Court Action concerning mootness, with Plaintiffs contending the motion and cross motion were moot, and the Diocesan Defendants contending they were not moot. On September 3, 2021, Plaintiffs filed their Reply to the Diocesan Defendants' memorandum concerning mootness, and on September 7, 2021, the

Diocesan Defendants filed its Reply to the Plaintiffs' memorandum concerning mootness.

59. On September 8, 2021, the court in the Federal Action conducted a Zoom chambers conference. During this conference, the court inquired whether Plaintiffs were withdrawing their motion for summary judgment. Plaintiffs' counsel advised that while that was probably unnecessary since the motion was moot, Plaintiffs were withdrawing their motion and would file a formal motion seeking leave to withdraw their motion for summary judgment if the Court considered that to be necessary. The court indicated that if a then-upcoming mediation proved unsuccessful, Plaintiffs should file a motion to withdraw their motion for partial summary judgment.

60. On September 29, 2021, Plaintiffs and the Diocesan Defendants participated in the first of what was supposed to be three scheduled days of mediation. The mediation ended after one day and did not resume.

61. On October 13, 2021, Plaintiffs' filed a motion to withdraw their motion for partial summary judgment. On November 10, 2021, the Diocesan Defendants filed their objection to that motion to withdraw, to which Plaintiffs filed their reply on December 7, 2021.

62. On December 10, 2021, the court in the Federal Action heard oral argument on Plaintiffs' motion to withdraw and granted the motion. The court directed the Diocesan Defendants to file their own motion for partial summary judgment.

63. On February 11, 2022, in the Federal Court Action, the Diocesan Defendants filed their Motion for Partial Summary Judgment seeking a declaration that the Plan ceased to be exempt from ERISA by April 29, 2013. That same day, the

Diocesan Defendants also filed a renewed Motion to Dismiss the operative First Amended Complaint.

64. On April 18, 2022, in the Federal Court Action, Plaintiffs filed their objections (with supporting memoranda, statements of facts, and affidavits) to the the Diocesan Defendants' Motion for Partial Summary Judgment and Motion to Dismiss. Plaintiffs also filed a conditional Rule 56(d) motion seeking leave to conduct discovery concerning whether the Diocesan Defendants should be estopped from contending the Plan was an ERISA plan prior to its being placed into receivership.

65. On June 29, 2022, in the Federal Court Action, the Diocesan Defendants filed replies in support of their Motion for Parital Summary Judgment and their Motion to Dismiss, and an objection to Plaintiffs' Rule 56(d) motion to conduct discovery. Plaintiffs filed a reply to the latter on July 20, 2022.

66. On September 13, 2022, the court in the Federal Court Action issued a twenty-four (24) page Memorandum and Order granting the Diocesan Defendants' Motion for Partial Summary Judgment, denying Plaintiffs' Rule 56(d) motion to conduct discovery, denying the Diocesan Defendants' Motion to Dismiss without prejudice, and ordering the parties to return to mediation.

67. On December 16, 2022, this Court appointed Stephen Del Sesto, Esq. as the Liquidating Receiver of CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital, in the place of Attorney Hemmendinger.

68. Following the Federal Court's Memorandum and Order, Plaintiffs and the Diocesan Defendants conducted a long series of mediation sessions before Chief Justice Frank A. Williams (Ret.), including sessions on November 28, 2022, December

23, 2022, March 23, 2023, May 22, 2023, and June 19, 2023. These mediation sessions ultimately culminated in the Settlement Agreement dated as of August 24, 2023.

69. Pursuant to the Settlement Agreement, Plaintiffs and the Diocesan Defendants on August 30, 2023 filed in the Federal Court Action their Stipulation and Consent Order Staying Action, which the court entered on August 31, 2023. The order provides that the Federal Court Action is stayed except for matters incidental to or required by the Settlement Agreement, provided, however, that if Plaintiffs and/or the Diocesan Defendants at any time conclude that any of the contingencies to which the settlement is subject will not occur, they may file a motion with the court explaining the grounds for that conclusion and request that the stay be lifted.

#### **TERMS OF SETTLEMENT**

70. The terms of settlement are set forth in the Settlement Agreement.<sup>7</sup> Under the agreement, the Diocese will make a \$2.5 million payment to the Plan Receivership, upon the occurrence of the following events:

- First, the Federal Court agrees to stay<sup>8</sup> the pending litigation pending the action by Pension Benefit Guaranty Corporation (“PBGC”);
- Second, as of an appropriate time (expected to be no sooner than the Spring of 2024) the Plan's Receiver will seek to have PBGC terminate the Plan, and PBGC agrees to take over the Plan;

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<sup>7</sup> Attached hereto as Exhibit A.

<sup>8</sup> As noted, that condition has already been satisfied.

- Third, PBGC agrees, upon Plan termination and trusteeship, to release, or to not assert, any claims against any Diocesan-related entities;
- Fourth, PBGC agrees to provide the maximum statutory guaranteed benefits; and
- Fifth, this Court and the court in the Federal Court Action approve the settlement terms, including complete releases of all claims by the settlement class, with the federal court certifying a settlement class.

71. Should any of these conditions not be met, the Settlement Agreement will become void, no payments will be made, and all claims and defenses will remain outstanding.

#### **RISK OF NOT SETTLING**

72. The risks to the Plan if the settlement is not approved justify this settlement as being in the best interest of the Plan (as well as, indirectly, in the best interest of the Plan participants).

73. The litigation risks involving the Diocesan Defendants arise out of the unique facts of this case and the novelty and complexity of the legal issues involved, which could result in a verdict in favor of the Diocesan Defendants on liability. Moreover, as discussed below, because of the limited remedies available under ERISA, Plaintiffs could succeed in proving their claims against the Diocesan Defendants but receive limited or even no recovery.

74. Plaintiffs principally contend the Diocesan Defendants became liable for the Plan by improperly participating (in violation of fiduciary duties they owed to the Plan participants) in the 2014 Asset Sale concerning assets of CCCB, SJHSRI, and RWH

(including, most notably, the hospitals known as Our Lady of Fatima Hospital and Roger Williams Hospital, as well as other medical facilities).

75. Those claims involve highly contested factual issues. Notably, the Diocese of Providence contends it ceased acting as Plan Sponsor and Plan Administrator in 1995, nineteen (19) years before the Asset Sale. Beginning in 1995, the Plan Sponsor and Administrator was purportedly SJHSRI, and the Diocese of Providence contends it had no formal role in connection with the Plan. The Diocesan Defendants claim, therefore, that they are not liable for any irregularities that occurred in connection with the Asset Sale in 2014.

76. Moreover, the Diocesan Defendants dispute that the Asset Sale was improper. Plaintiffs' claim that the Asset Sale was improper would have to overcome the fact that the Asset Sale was approved by the Rhode Island Attorney General and the Rhode Island Department of Health, after voluminous filings and public hearings.

77. Those claims also involve legal issues that affect Plaintiffs' potential recovery. Plaintiffs asserted overlapping (a) ERISA and (b) state law claims for breaches of fiduciary duty. As noted, on September 13, 2023, the United States District Court granted the Diocesan Defendants partial summary judgment. The court held that the Plan ceased to qualify as a Church Plan by April 29, 2013 at the very latest, which, if not vacated by the trial court or on appeal, would likely result in many (and possibly all) of the Plaintiffs' state law claims against the Diocesan Defendants being dismissed under ERISA preemption.

78. In that event, Plaintiffs would be allowed to proceed with their claims under ERISA. However, ERISA allows only equitable remedies and the law is unclear whether any such remedies would result in Plaintiffs obtaining a recovery from the

Diocesan Defendants. Thus, Plaintiffs might succeed in proving their claims against the Diocesan Defendants but still receive little or even no recovery.

### **ATTORNEYS' FEES**

79. Pursuant to the WSL Retainer Agreement, the attorneys' fees to which Special Litigation Counsel is entitled in connection with the proposed settlement is 23 1/3% of the gross settlement amount,<sup>9</sup> based on the WSL Retainer Agreement.

80. This Court previously approved WSL's fee pursuant to the WSL Retainer Agreement, in connection with the approval of three earlier settlements that were approved by both this Court and the court in the Federal Court Action.

81. Also, the court in the Federal Court Action approved attorneys' fees to WSL pursuant to and consistent with the Retainer Agreement in connection with the three prior settlements.

### **NOTICE TO PLAN PARTICIPANTS**

82. The Receiver will give notice of both the Petition and the hearing date by posting the Petition on his dedicated web site on the date of filing and mailing a notice by first class mail to all Plan participants in advance of the hearing date.

### **CONCLUSION**

83. Although the Rhode Island Supreme Court has not addressed the standard for settlement approval in the context of a receivership, the Court has directed the Superior Court to "look to the Bankruptcy Act for guidance' in receivership proceedings." St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health

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<sup>9</sup> See Exhibit F (WSL Retainer Agreement) at 2.

Services of Rhode Island Retirement Plan, C.A. No. PC-2017-3856 (October 29, 2019), 2018 WL 5792151, at \*3 (Stern, J.) (quoting Reynolds v. E & C Assocs., 693 A.2d 278, 281 (R.I. 1997)).

84. The First Circuit has held that in a bankruptcy proceeding, “[a] settlement agreement should be approved as long as it does not ‘fall below the lowest point in the range of reasonableness.’” In re Heathco Int’l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)). See also In re Mailman Steam Carpet Cleaning Corp., 212 F.3d 632 (1st Cir. 2000) (stating that the test is whether the trustee’s actions fall within the universe of reasonable actions, as opposed to whether pressing forward might yield more funds).

85. According to the First Circuit, in determining whether to approve a settlement, the Court should consider the following factors:

- a) The probability of success in the litigation being compromised;
- b) The difficulties to be encountered in the matter of collection;
- c) The complexity of the litigation involved and the expense, inconvenience and delay in pursuing the litigation; and
- d) The paramount interest of the creditors and a proper deference to their reasonable views.

Jeffrey v. Desmond, 70 F.2d 183, 185 (1st Cir. 1995) (bankruptcy context). See St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, *supra*, 2018 WL 5792151, at \*4 (citing Jeffrey v. Desmond, *supra*, and its progeny and referring to the “Jeffrey Factors”).

86. The Jeffrey Factors were applied by the Rhode Island Superior Court in this very matter in connection with prior settlements. See St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan,



*supra*, 2018 WL 5792151, at \*12 (“Finally, this Court will address whether the PSA satisfies the Jeffrey Factors for this Court's approval.”); St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, 2021 WL 869586, at \*4 (R.I. Super. Mar. 04, 2021) (“In its determination of whether the proposal is in the best interest of the estate, the Court considers the following factors: . . . (Jeffrey Factors)”). See also Brook v. The Education Partnership, Inc., No. PB 08-4185, 2010 WL 1456787, at \*3 (R.I. Super. Apr. 8, 2010) (Silverstein, J.).

87. The Receiver believes that the Proposed Settlement advances the interests of the Plan Receivership Estate, the Plan, the Plan participants, and the Liquidation Receivership Estate, and that the terms of the Proposed Settlement are fair and reasonable given the risks of litigation and the extraordinary complexity of the matter.

88. A fee of 23 1/3% of the \$2.5 million recovery from the Diocesan Defendants is less than the presumptively reasonable “benchmark” fee for even a settlement in a “pure” class action in the First Circuit. See Bezdek v. Vibram USA Inc., 79 F. Supp. 3d 324, 349 (D. Mass. 2015) (“Within the First Circuit, courts generally award fees in the range of 20–30%, with 25% as ‘the benchmark.’”), *aff'd*, 809 F.3d 78 (1st Cir. 2015). Here, of course, the recovery (subject to the final approval of the United States District Court) is not to the class directly but rather to the Plan and falls expressly within the retainer agreement previously approved by this Court on October 17, 2017.

**WHEREFORE** the Receiver recommends that the Court approve the Proposed Settlement as in the best interests of the Plan Receivership Estate, the Plan, the Plan participants, and the Liquidation Receivership Estate, and approve the award of

attorneys' fees of 23 1/3% of the settlement amount of \$2.5 million, and authorize and direct the Receiver to proceed to the court in the Federal Court Action for final approval.

Respectfully submitted,

Stephen F. Del Sesto, Esq. (#6336),  
Solely in His Capacities as Permanent Plan  
Receiver of the St. Joseph Health Services of  
Rhode Island Retirement Plan, and as  
Permanent Liquidating Receiver of St. Joseph  
Health Services of Rhode Island, Roger  
Williams Hospital, and CharterCARE  
Community Board,

By his Attorneys,

/s/ Max Wistow

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Dated: September 22, 2023

## **CERTIFICATE OF SERVICE**

I hereby certify that, on the 22nd day of September, 2023, I filed and served the foregoing document through the electronic filing system on the following users of record:

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

/s/ Benjamin Ledsham

# Exhibit A

## SETTLEMENT AGREEMENT

This settlement agreement ("Settlement Agreement") is entered into as of the 24<sup>th</sup> day of August, 2023, between and among Stephen Del Sesto (the "Plan Receiver") (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") and as Liquidating Receiver of St. Joseph Health Services of Rhode Island), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and<sup>1</sup> on behalf of all Class Members as defined herein (the Plan Receiver and said persons are collectively referred to as "Plaintiffs"), on the one hand, and Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively the "Diocesan Defendants"), on the other hand. The Plaintiffs, Stephen Del Sesto as Liquidating Receiver of St. Joseph Health Services of Rhode Island, and the Diocesan Defendants are collectively referred to as the "Settling Parties."

WHEREAS St. Joseph Health Services of Rhode Island ("SJHSRI") filed a petition to place the Plan into receivership in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Plan Receivership"), requesting the appointment of a receiver and the reduction of benefits to participants under the Plan by 40%, and the Plan Receiver was appointed by the State Court (as defined herein) in that proceeding;

---

<sup>1</sup> Contingent upon the Federal Court (as defined herein) certifying the Settlement Class as provided herein.

WHEREAS the Plan Receiver has also been appointed Liquidating Receiver of St. Joseph Health Services of Rhode Island in that certain civil action entitled *In re: CharterCare Community Board, St. Joseph Health Services of Rhode Island, And Roger Williams Hospital*, C.A. No. PC-2019-11756, filed in Providence County Superior Court in the State of Rhode Island (the "Liquidating Receivership") (the Plan Receivership and the Liquidating Receivership being collectively the "Receivership Proceedings");

WHEREAS Plaintiffs asserted claims against the Diocesan Defendants and others in a lawsuit filed in the United States District Court for the District of Rhode Island, captioned *Stephen Del Sesto et al. v. Prospect Chartercare, LLC et al.*, (C.A. No: 1:18-CV-00328-WES-LDA) (the "Federal Court Action"), and in a lawsuit filed in the Rhode Island Superior Court also captioned *Stephen Del Sesto et al. v. Prospect Chartercare, LLC et al.*, (C.A. NO.: PC-2018-4386) (the "State Court Action"), which lawsuits concern the alleged underfunded status of the Plan;

WHEREAS, the Settling Parties recognize that the claims of the Plaintiffs against the Diocesan Defendants are disputed and uncertain, the Parties desire to settle such claims so as to avoid the cost, risk and uncertainty of litigation, and believe that settlement on the terms set forth herein are in the best interests of the parties and the Plan participants, with no party admitting any fault or liability in entering into this Settlement Agreement;

NOW, THEREFORE, in consideration for the mutual exchange of promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Settling Parties hereby agree as follows:

1. For purposes of this Settlement Agreement, and in addition to other terms that are defined elsewhere in this Settlement Agreement, the following terms shall have the meanings specified herein:
  - a. "CAFA Notice" means the notice of the proposed settlement in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 et seq.
  - b. "Class Members" means the members of the Settlement Class.
  - c. "Class Notice" means the notice to be provided to Class Members of the Final Approval Hearing, in the form to be approved by the Court.
  - d. "Class Representatives" mean Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, who will first seek to be appointed as representatives of the Settlement Class for settlement purposes in connection with this Settlement Agreement.
  - e. "Dismissal of the Federal Court Action" means a stipulation of dismissal of Plaintiffs' claims against the Diocesan Defendants with prejudice and without costs.
  - f. "Dismissal of the State Court Action" means a stipulation of dismissal of Plaintiffs' claims against the Diocesan Defendants with prejudice and without costs.
  - g. "Diocesan Defendants' Counsel" means the law firm of Partridge Snow & Hahn LLP and the attorneys of said firm.



- h. "Federal Court" means the court in the Federal Court Action.
- i. "Final Approval Hearing" means the hearing at which the Federal Court will make a final determination as to whether the terms of the Settlement are fair, reasonable, and adequate, as to the Settlement Class, such that the Settlement should be finally approved by the Federal Court and such other and further relief as the Federal Court may direct.
- j. "Joint Statement" means the statement attached hereto as Exhibit 1.
- k. "Motion for Preliminary Settlement Approval" means the motion, supporting memorandum, and the exhibits thereto that the Plaintiffs will file with the Federal Court seeking preliminary approval of the Settlement.
- l. "Motion for Final Settlement Approval" means the motion, supporting memorandum, and the exhibits thereto that the Plaintiffs will file with the Federal Court seeking final approval of the Settlement.
- m. "Notice Plan" means the form, contents, and method of delivery of the Class Notice to be provided to Class Members.
- n. "Order Granting Preliminary Settlement Approval" means, unless otherwise ordered by the Federal Court, the order 1) certifying the Settlement Class for purposes of determining whether the Settlement is fair, reasonable, and adequate; 2) appointing Plaintiffs' Counsel to represent the Settlement Class, 3) preliminarily approving the Settlement; and 4) approving the Notice Plan.

- o. "Order Granting Final Settlement Approval" means the order approving the Settlement as fair, reasonable, and adequate and such other and further relief as the Federal Court may direct.
- p. "PBGC" means Pension Benefit Guaranty Corporation.
- q. "Petition for Settlement Authority and Instructions" means the petition and the exhibits thereto that the Plan Receiver will file in the Receivership Proceedings for an order ratifying his joining in this Settlement Agreement and authorizing him to seek approval thereof in the Federal Court Action and pay attorneys' fees to Plaintiffs' Counsel pursuant to the retainer agreement subject to the approval of the Federal Court.
- r. "Plaintiffs' Counsel" means the law firm of Wistow, Sheehan & Loveley, P.C. and the attorneys of said firm.
- s. "Proceedings for Settlement Approval" means:
  - i. the Petition for Settlement Authority and Instructions and the proceedings in connection therewith;
  - ii. the Motion for Preliminary Settlement Approval in the Federal Court and the proceedings in connection therewith; and
  - iii. the Motion for Final Settlement Approval in the Federal Court and the proceedings in connection therewith.
- t. "Settlement Class" means all participants of the Plan, including:
  - i. all surviving former employees of SJHSRI who are entitled to benefits under the Plan; and

- ii. all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.
  - u. "Settlement" means the settlement between and among the Settling Parties pursuant to this Settlement Agreement.
  - v. "Settlement Funds" means the sum of two million five hundred thousand and 00/100 dollars (\$2,500,000) which is to be paid to the Plan Receiver by or on behalf of the Diocesan Defendants.
  - w. "State Court" means the court in the State Court Action.
  - x. "Stipulation and Consent Order Staying Action" means the pleading attached hereto as Exhibit 2.
2. Plaintiffs by their counsel and the Diocesan Defendants will issue and make public the Joint Statement upon the filing of any document in either the Federal Court Action, the State Court Action, or the Receivership Proceedings that makes the existence of the Settlement public.
  3. The Settling Parties agree that within five (5) business days of the execution of this Settlement Agreement, Counsel for the Plan Receiver will file the Stipulation and Consent Order Staying Action in the Federal Court Action with the request on behalf of all the Settling Parties that it be entered as an order of the Federal Court.
  4. The Plan Receiver agrees that, within fifteen (15) business days of the entry by the Federal Court of the Stipulation and Consent Order Staying Action, the Plan

Receiver will file the Petition for Settlement Authority and Instructions in the Receivership Proceedings

5. The Plan Receiver agrees that within five (5) business days of the entry of an order granting the Petition for Settlement Authority and Instructions in the Receivership Proceedings, Plaintiffs will file their Motion for Preliminary Settlement Approval in the Federal Court Action.
  
6. Within fifteen (15) calendar days of the execution of this Settlement Agreement and entry of an order granting the Petition for Settlement Authority and Instructions in the Receivership Proceedings, Plaintiffs will execute and deliver to the Diocesan Defendants' Counsel the executed release of the Settling Defendants and certain other individuals and entities as identified therein, in the form attached hereto as Exhibit 3, which is to be held in escrow by the Diocesan Defendants' Counsel until 15 days after Settlement Funds have been paid to the Plan Receiver so long as such funds have cleared the Plan Receivership bank account.
  
7. Within fifteen (15) calendar days of the execution of this Settlement Agreement, the Diocesan Defendants will execute and deliver to Counsel for the Plaintiffs the executed release of the Plaintiffs and certain other persons and entities as identified therein, in the form attached hereto as Exhibit 3, to be held in escrow by Plaintiffs' Counsel until fifteen days after the Settlement Funds have been paid to the Plan Receiver so long as such funds have cleared the Plan Receivership bank account.

8. The Plan Receiver agrees that prior to the filing of the Motion for Preliminary Settlement Approval, he will provide Counsel for the Diocesan Defendants with a list of all known Class Members, including the states in which they are believed to reside. Within ten (10) calendar days following the filing of the Motion for Preliminary Settlement Approval, the Diocesan Defendants agree to have their counsel serve the CAFA Notice, with the exhibits referred to therein, by mailing a copy thereof through the United States Postal Service, First Class Mail, to the Rhode Island Attorney General, the Director of the Rhode Island Department of Business Regulation, the Attorney General for every other State where a Class Member is believed to reside, and to the Attorney General of the United States, and, no later than fourteen (14) days prior to the Final Approval Hearing, to provide the Court and the Plan Receiver with a sworn declaration or affidavit confirming that they have done so, which shall list each recipient and the address to which the CAFA Notice was sent.
  
9. In their Motion for Preliminary Settlement Approval, Plaintiffs will request that the Federal Court certify the Settlement Class pursuant to Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, on the grounds that prosecuting separate actions by or against individual Class Members would create a risk of adjudications with respect to individual Class Members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

10. The Settling Parties agree to cooperate and to take all reasonable measures so that the conditions of this Settlement Agreement, including those in Paragraph 12 are met, and this Settlement Agreement will be fully effectuated.
11. The Plan Receiver agrees that, subject to the approval of the Rhode Island Superior Court in the Plan Receivership and at a time that the Plan Receiver deems in his sole discretion to be an appropriate time (expected to be no sooner than the Spring of 2024), the Plan Receiver will seek to have PBGC terminate and take over the Plan, it being understood and agreed that the Plan Receiver will do so as soon as the Plan Receiver reasonably believes that PBGC will terminate and take over the Plan and provide the maximum statutory guaranteed benefits under the Employee Retirement Income Security Act of 1974 ("ERISA") to all Plan participants.
12. This Settlement Agreement will be null and void, as if this Settlement Agreement had never been entered into, if for any reason (other than the breach of this Settlement Agreement by any of the Settling Parties), the following conditions are not met:
  - a. the Federal Court enters the Stipulation and Consent Order Staying the Action;
  - b. the Plan Receiver in the Receivership Proceedings receives authority to proceed with this Settlement;
  - c. the Motion for Preliminary Settlement Approval and the Motion for Final Settlement Approval are granted;

- d. The Plan Receiver in the Receivership Proceedings receives authority to seek PBGC termination and takeover of the Plan;
  - e. PBGC initiates or accepts the termination of the Plan;
  - f. PBGC agrees to take over the Plan and to provide the maximum statutory guaranteed benefits under ERISA to all Plan participants; and/or
  - g. PBGC agrees to release (or that it will not assert) any claims against the Diocesan Defendants and any other Diocesan Releasees described in Exhibit 3.
13. Within fifteen (15) days of the occurrence of the last of all of the events referred to in paragraph twelve (12) of this Settlement Agreement, the Diocesan Defendants will pay the Settlement Funds to the Plan Receiver. If all of the events referred to in paragraph 12 of this Settlement Agreement do not occur, there is no obligation under this Settlement Agreement for the payment referenced in this Paragraph to be paid and this Settlement Agreement will be null and void.
14. The Settling Parties agree that the Dismissal of the Federal Court Action, and the Dismissal of the State Court Action will be filed with the respective courts within 15 days of the payment of the Settlement Funds as set forth in paragraph thirteen (13) to the Plan Receiver.
15. The Settling Parties agree that, in connection with the Settlement, Plaintiffs' Counsel will apply for an award of attorneys' fees and expenses from the

Settlement Funds. The Settling Defendants agree not to object to such award or the requested amount of the award.

16. The drafting of this Settlement Agreement and Exhibits 1-3 hereto (collectively "Settlement Documents") is a result of lengthy and intensive arm's-length negotiations, and the presumption that ambiguities shall be construed against the drafter does not apply. None of the Settling Parties will be deemed the drafter of the Settlement Documents for purposes of construing their provisions.
17. This Settlement Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature to this Settlement Agreement made or delivered by electronic means is deemed to be an original signature.
18. The Settling Parties further agree that no promise or inducement has been offered, except as herein set forth, and that this Settlement Agreement contains the entire agreement between and among the Settling Parties and supersedes any and all prior agreements, understandings, representations, and discussions, whether written or oral, between the Settling Parties. The Settling Parties represent that each Settling Party is voluntarily entering into this Settlement Agreement, based on advice and recommendations of each Settling Party's own judgments, beliefs and knowledge, and the advice and recommendations of their own independently selected counsel, and not based on any representation from any other party (other than the representations included in the Settlement Documents) including, for the avoidance of ambiguity, any representation as to



the tax consequences of any payment hereunder. The Settling Parties by entering into this Agreement, do not admit to the truth of any allegation contained in any of the actions identified and do not admit any fault, liability or wrongdoing whatsoever.

19. The Settling Parties further agree that Rhode Island law (excluding its conflict of laws rules) shall govern this Settlement Agreement.
20. Nothing in this Agreement is intended, or shall be construed, to give any person, other than the Settling Parties and their respective successors, any legal or equitable right, remedy or claim under, or in respect to, this Settlement Agreement, or any provisions contained herein. The Settling Parties each represent that they have not assigned any interest in the claims settled herein, and each Settling Party has full authority to release the claims released by such Party.

IN WITNESS WHEREOF, I have hereunto set my hand this 17<sup>th</sup> day of August, in the year 2023.



Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, and as Liquidating Receiver of St. Joseph Health Services of Rhode Island

Witness



IN WITNESS WHEREOF, I have hereunto set my hand this 16<sup>th</sup> day of August, in the year 2023.

Gail Major  
GAIL J. MAJOR

Witness Steph P. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 15 day of Aug, in the year 2023.

Nancy Zompa  
NANCY ZOMPA

Witness Steph P. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 16 day of  
August, in the year 2023.

Ralph Bryden  
RALPH BRYDEN

Witness Steph P. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 14<sup>th</sup> day of  
August, in the year 2023.

Dorothy Willner  
DOROTHY WILLNER

Witness Steph P. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of  
August, in the year 2023.

Carroll M Short  
CAROLL SHORT

Witness Step D. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of  
August, in the year 2023.

Donna Boutelle  
DONNA BOUTELLE

Witness Step D. Paul

IN WITNESS WHEREOF, I have hereunto set my hand this 16 day of August, in the year 2023.

Eugenia Levesque  
EUGENIA LEVESQUE

Witness [Signature]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2023.

\_\_\_\_\_  
Most Reverend Richard G. Henning, D.D.,  
S.T.D.  
Bishop of Providence  
Roman Catholic Bishop of Providence, a  
corporation sole.

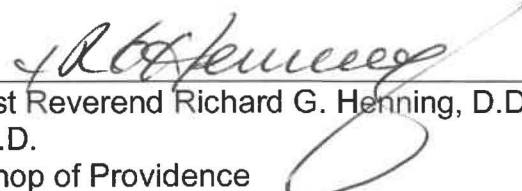
Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2023.

\_\_\_\_\_  
EUGENIA LEVESQUE

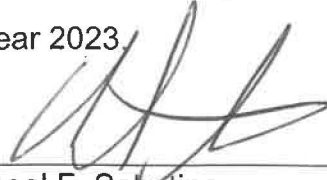
Witness \_\_\_\_\_

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 17th day of August, in the year 2023.

  
\_\_\_\_\_  
Most Reverend Richard G. Henning, D.D.,  
S.T.D.  
Bishop of Providence  
Roman Catholic Bishop of Providence, a  
corporation sole.

Witness  \_\_\_\_\_

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 17th day of August, in the year 2023.

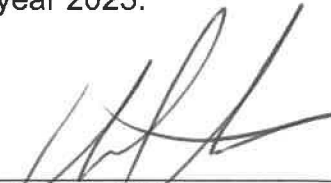


\_\_\_\_\_  
Michael F. Sabatino  
Assistant Treasurer  
Diocesan Administration Corporation.

Witness



IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 17th day of August, in the year 2023.



\_\_\_\_\_  
Michael F. Sabatino  
Assistant Treasurer  
Diocesan Service Corporation.

Witness



4495847.1/1444-35

# EXHIBIT 1



The remaining parties in the state and federal lawsuits involving the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") have reached an agreement to resolve the cases. All parties believe that the agreed-upon framework best positions the Plan for submission to Pension Benefit Guaranty Corporation ("PBGC"), the federal agency which protects pension benefits in private-sector defined benefit pension plans. The parties are hopeful that this settlement along with settlements previously reached with other defendants will increase the likelihood of PBGC taking over the Plan and also guaranteeing payment of future retiree benefits up to the statutory maximum. In reaching the settlement, the parties acknowledged that the underlying allegations remain intensely disputed and there was no admission of fault by the Bishop or any diocesan-related entity in entering into the resolution.

Under the agreement, the Diocese will make a \$2.5 million payment to the Plan Receivership, upon the occurrence of the following events:

First, the Federal Court agrees to stay the pending litigation pending the action by PBGC as discussed below;

Second, as of an appropriate time (expected to be no sooner than the Spring of 2024) the Plan's Receiver will seek to have PBGC terminate the Plan and PBGC agrees to take over the Plan;

Third, PBGC agrees, upon Plan termination and trusteeship, to release, or to not assert, any claims against any diocesan-related entities;

Fourth, PBGC agrees to provide the maximum statutory guaranteed benefits; and

Fifth, the Federal and State courts approve the settlement terms, including complete releases of all claims by the settlement class, with the Federal court certifying a settlement class.

Should any of these conditions not be met, the settlement agreement is void, no payments will be made, and all claims and defenses will remain outstanding.

Both the Receiver and plaintiffs' counsel expressed appreciation for the Diocese's cooperation in assisting them to position the Plan so that it has an opportunity for PBGC to take over the Plan and make payments to the Plan participants up to the maximum statutory guarantee. While both sides believe they have strong claims and defenses, they agree that ending the lawsuit and taking those steps necessary to hopefully secure full coverage for the Plan participants is in the best interests of everyone.

# EXHIBIT 2

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

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

Plaintiffs,

v.

PROSPECT CHARTERCARE, LLC; ET AL.,

Defendants.

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

**STIPULATION AND CONSENT ORDER STAYING ACTION**

WHEREAS Plaintiffs and the Diocesan Defendants have agreed to a settlement of their disputes pursuant to a settlement agreement (the “Settlement Agreement”) for which they will seek approval from the Court and from the Rhode Island Superior Court, and

WHEREAS the Settlement Agreement provides that the settlement is subject to certain contingencies over the coming months failing which the settlement will be void, including that the Pension Benefit Guaranty Corporation (“PBGC”) agrees to take over the Plan and to provide the maximum statutory guaranteed benefits under ERISA to all Plan participants, and

WHEREAS PBGC is not expected to make that determination for some time, probably not before April 1, 2024, and

WHEREAS it is in the interests of the parties and judicial economy that the captioned proceeding be stayed except for matters incidental to or required by the Settlement Agreement ,  
and

WHEREAS the Settlement Agreement provides that the settlement is also subject to the entry of this Stipulation and Consent Order,

NOW, THEREFORE, Plaintiff Stephen Del Sesto (the “Receiver”) and the individual named plaintiffs (individually and as putative class representatives) (with the Receiver, “Plaintiffs”) and Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively the “Diocesan Defendants”) hereby stipulate and agree as follows, and request entry of this stipulation as an Order of the Court.

1. The captioned proceeding is stayed except for matters incidental to or required by the Settlement Agreement.

2. Provided, however, that if Plaintiffs and/or the Diocesan Defendants at any time conclude that any of the contingencies to which the settlement is subject will not occur, they may file a motion with the Court explaining the grounds for that conclusion and request that the stay be lifted.

IT IS SO ORDERED

---

Hon. William E. Smith  
United States District Judge

Dated: July , 2023

So stipulated as of July \_\_, 2023,

By:

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, et al.

ROMAN CATHOLIC BISHOP OF PROVIDENCE, A CORPORATION SOLE, DIOCESAN ADMINISTRATION CORPORATION and DIOCESAN SERVICE CORPORATION

By Their Attorneys,  
WISTOW, SHEEHAN & LOVELEY, PC

By Their Attorneys,  
PARTRIDGE SNOW & HAHN LLP

/s/

---

Max Wistow, Esq. (#0330)  
Stephen P. Sheehan, Esq. (#4030)  
Benjamin Ledsham, Esq. (#7956)  
61 Weybosset Street  
Providence, RI 02903  
(401) 831-2700  
(401) 272-9752 FAX  
mwistow@wistbar.com  
spsheehan@wistbar.com  
bledsham@wistbar.com

/s/

---

Howard Merten (#3171)  
Eugene G. Bernardo (#6006)  
Paul M. Kessimian (#7127)  
Christopher M. Wildenhain (#8619)  
40 Westminster Street, Suite 1100  
Providence, RI 02903  
(401) 861-8200  
(401) 861-8210 FAX  
hmerten@psh.com  
ebercardo@psh.com  
pkessimian@psh.com  
cwildenhain@psh.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the    day of July, 2023, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

4502206.1/1444-35

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

# EXHIBIT 3

### **MUTUAL RELEASE [EXHIBIT 3]**

This mutual release (“Mutual Release”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, between and among STEPHEN DEL SESTO (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) and as Liquidating Receiver of St. Joseph Health Services of Rhode Island) (the “Receiver”), and GAIL J. MAJOR, NANCY ZOMPA, RALPH BRYDEN, DOROTHY WILLNER, CAROLL SHORT, DONNA BOUTELLE, AND EUGENIA LEVESQUE<sup>1</sup> (the Receiver and said persons are collectively referred to as the “Receiver and Individual Plaintiffs”), on the one hand, and Defendants ROMAN CATHOLIC BISHOP OF PROVIDENCE, A CORPORATION SOLE, DIOCESAN ADMINISTRATION CORPORATION, and DIOCESAN SERVICE CORPORATION (collectively the “Diocesan Defendants”), on the other hand.

In consideration for the mutual releases contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Receiver and Individual Plaintiffs and Diocesan Defendants (collectively, the “Settling Parties”) hereby agree as follows:

The Receiver and Individual Plaintiffs, on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the “Joint Tortfeasor Release”) and do hereby release and forever discharge the Diocesan Defendants, and all entities or corporations organized and existing to conduct the temporal affairs of the Roman Catholic Church within the Diocese of Providence, and all of its and their predecessors, successors, parent companies, subsidiaries and affiliated entities, together with all of their past and present officers, directors, principals, members, shareholders, employees, agents,<sup>2</sup> insurers and attorneys, and their heirs, executors, administrators, successors and assigns (collectively, the “Diocesan Releasees”), of and from the Released Claims as defined herein.

Diocesan Defendants, on behalf of themselves and their predecessors, successors, and assigns, grant this Joint Tortfeasor Release and do hereby release and forever discharge the Receiver and Individual Plaintiffs, and all of their predecessors, successors, parent companies, subsidiaries and affiliated entities, together with all of their past and present officers, directors, principals, members, shareholders, employees, agents, insurers and attorneys, and their heirs, executors, administrators, successors and assigns (collectively, the “Receiver and Individual Plaintiffs Releasees”), of and from the Released Claims as defined herein.

“Released Claims” means any and all actions, claims and demands of every kind and nature, both at law and in equity:

---

<sup>1</sup> Said persons acting individually and on behalf of all Class Members, contingent upon the Federal Court, as defined in the Settling Parties’ Settlement Agreement, certifying the Settlement Class as provided in said Settlement Agreement.

<sup>2</sup> While the Diocesan Defendants have maintained that St. Joseph Health Services of Rhode Island was at times associated with the Roman Catholic Church, the Diocesan Defendants have denied and continue to deny that St. Joseph Health Services of Rhode Island was an agent of the Diocesan Defendants or any of them. For the avoidance of doubt and out of an abundance of caution, St. Joseph Health Services of Rhode Island is hereby expressly excluded from the term “Diocesan Releasees.”



a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode Island Retirement Plan (“the Plan”);

b) that were or could have been asserted by direct claim or counterclaim in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect Chartercare LLC, et al.*, C.A. No. PC-2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Action”);

c) that were or could have been asserted by direct claim or counterclaim in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect CharterCare LLC, et al.*, C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the “Federal Court Action”);

d) that were or could have been asserted by direct claim or counterclaim in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC- 2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the “Plan Receivership”);

e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the “2015 Cy Pres Action”) if Diocesan Defendants were permitted to intervene in such action.

Notwithstanding the foregoing, the following claims or obligations are not released:

a) any claims the Receiver and Individual Plaintiffs or the Diocesan Defendants may have arising out of or relating to any breach of the Settlement Agreement between the parties hereto (the “Settlement Agreement”), including the payment of \$2,500,000 by the Diocesan Defendants to the Receiver;

b) any claims the Receiver and Individual Plaintiffs may have arising out of or relating to any breach of the Settlement Agreement dated as of August 31, 2018, the Settlement Agreement dated as of November 21, 2018, or the Settlement Agreement dated as of December 30, 2020;

c) any claims the Receiver and Individual Plaintiffs may have against CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Roger Williams Hospital, CharterCARE Foundation, The Rhode Island Community Foundation, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, Prospect East Hospital Advisory Services, LLC, Ivy Holdings, Inc., Ivy Intermediate Holdings, Inc., David & Alexa Topper Family Trust, Green Equity Investors V, LP, Green Equity Investors Side V, LP, JPMorgan Chase Bank, N.A., Samuel Lee, David Topper, Thomas Reardon, Von Crockett, Edwin Santos, Edward Quinlan, Joseph DiStefano, Andrea Doyle, or The Angell Pension Group, Inc. that are not derivative of the Receiver and Individual Plaintiffs’ claims against the Diocesan Defendants;

d) any contractual claims the Receiver and Individual Plaintiffs may have against CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Roger Williams Hospital, CharterCARE Foundation, The Rhode Island Community Foundation, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, Prospect East Hospital Advisory Services, LLC, Ivy Holdings, Inc., Ivy Intermediate Holdings, Inc., David & Alexa Topper Family Trust, Green Equity Investors V, LP, Green Equity Investors Side V, LP, JPMorgan Chase Bank, N.A., Samuel Lee, David Topper, Thomas Reardon, Von Crockett, Edwin Santos, Edward Quinlan, Joseph DiStefano, Andrea Doyle, or The Angell Pension Group, Inc.

e) any rights to payments due pursuant to any orders of the U.S. District Court in the Federal Court Action or of the Superior Court in either the Plan Receivership or the action captioned *In re: CharterCare Community Board, St. Joseph Health Services of Rhode Island, And Roger Williams Hospital*, C.A. No. PC-2019-11756 (“Liquidating Receivership”).

The following persons or entities are expressly not released by the Receiver and Individual Plaintiffs: CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Roger Williams Hospital, CharterCARE Foundation, The Rhode Island Community Foundation, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, Prospect East Hospital Advisory Services, LLC, Ivy Holdings, Inc., Ivy Intermediate Holdings, Inc., David & Alexa Topper Family Trust, Green Equity Investors V, LP, Green Equity Investors Side V, LP, JPMorgan Chase Bank, N.A., Samuel Lee, David Topper, Thomas Reardon, Von Crockett, Edwin Santos, Edward Quinlan, Joseph DiStefano, Andrea Doyle, and The Angell Pension Group, Inc.

The Receiver and Individual Plaintiffs reduce their claims or potential future claims against any party deemed a joint tortfeasor under Rhode Island General Laws § 23-17.14-35 in the amount of \$2,500,000 only.

This Mutual Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

This Mutual Release shall be null and void unless it has been approved in form and substance both by the Superior Court in the Plan Receivership and Liquidating Receivership and by the U.S. District Court in the Federal Court Action as part of the overall approval of the Settlement Agreement, and unless all of the conditions in the subparagraphs of Paragraph 12 of the Settlement Agreement have been met.

Rhode Island law (excluding conflict of laws) shall govern this Mutual Release.

[SIGNATURE BLOCKS FOLLOW]

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
Stephen Del Sesto, as Receiver for the St. Joseph  
Health Services of Rhode Island Retirement Plan  
and as Liquidating Receiver of St. Joseph Health  
Services of Rhode Island

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
GAIL J. MAJOR

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
NANCY ZOMPA

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
RALPH BRYDEN

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
DOROTHY WILLNER

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
CAROLL SHORT

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
DONNA BOUTELLE

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
EUGENIA LEVESQUE

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
Most Reverend Richard G. Henning, D.D., S.T.D.  
Bishop of Providence  
Roman Catholic Bishop of Providence, a  
corporation sole

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
Michael F. Sabatino  
Assistant Treasurer  
Diocesan Administration Corporation

Witness \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year 2023.

\_\_\_\_\_  
Michael F. Sabatino  
Assistant Treasurer  
Diocesan Service Corporation

Witness \_\_\_\_\_  
4496068.1/1444-35



# Exhibit B

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

v.

ST. JOSEPH'S HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
AS AMENDED

In re:

CHARTERCARE COMMUNITY BOARD,  
ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND and ROGER  
WILLIAMS HOSPITAL

C.A. No.: PC-2017-3856

C.A. No.: PC-2019-11756

**AFFIDAVIT OF FRANK J. WILLIAMS, C.J. (RET.)**

Frank J. Williams, C.J. (Ret.) hereby deposes and says as follows:

1. I am submitting this affidavit in connection with the Petition for Settlement Instructions and Approval, which is presently scheduled for hearing on October 2, 2023. The statements in this affidavit are based upon my personal knowledge and are true and correct.

2. I received my undergraduate degree from Boston University in 1962 before serving for five years in the U.S. Army. I served as an Army captain in Vietnam, earning the Bronze Star, the Combat Infantry Badge, and, from the Republic of Vietnam, the Gallantry Cross with Silver Star for Valor. Following my honorable discharge, I received a juris doctorate from Boston University, was admitted to the Rhode Island Bar in 1970, and was in private practice from 1970 to 1995. I was elected a delegate to the 1986 Rhode Island Constitutional Convention and twice elected town moderator of Richmond, Rhode Island.

3. In 1995, I was appointed Associate Justice of the Rhode Island Superior Court. In 2001, I was elevated to Chief Justice of the Rhode Island Supreme Court, in which capacity I served until my retirement in 2008.

4. Since my admission to the bar, I have been involved in thousands of cases, including mediation of many hundreds of matters. In my capacity as mediator, I act as a neutral, representing neither plaintiff nor defendant. I drew on all my experience in mediating this action in an attempt to bring the parties to a resolution of the disputes between them.

5. I was selected by the settling parties to act as mediator in this action. I was able to mediate the settlement between Plaintiffs, the Prospect Entities, and The Angell Pension Group, Inc. On September 29, 2021, my mediation of the dispute between Plaintiffs and Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (“Diocesan Defendants”) came to an impasse. On September 13, 2022, United States District Judge William Smith ordered Plaintiffs and the Diocesan Defendants to return to mediation before me.

6. This is the fourth settlement in this case. These settling parties are: Stephen Del Sesto (the “Plan Receiver”) (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) and as the Liquidating Receiver for CharterCARE Community Board), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (“Diocesan Defendants”).

7. Based on my more than fifty years of experience, as a lawyer, judge, and mediator, it is my opinion that the proposed settlement in the case was reached after arm’s-length negotiations and represents a reasonable and fair outcome for all parties involved.

8. As the independent mediator, I presided over the settlement discussions and negotiations between the settling parties. To prepare myself for that role, I reviewed the progress of the dispute in the state and federal court actions and the arguments made by the parties in connection with their motions to dismiss and for summary judgment. Many of the contentions advanced by the settling parties involve completely novel and unsettled issues of law.

9. This matter represents one of the most complex, if not the most complex, matters in which I have been involved in all my years as a lawyer, judge, or mediator. I submitted affidavits in support of the prior settlement involving the Prospect Entities. As I said then, I believe that this litigation is unique within the United States. This is, to my knowledge, the first “church plan” case to involve even one state court appointed receiver, much less two. Other “church plan” cases typically involve one employer, perhaps a hospital, continuously operating an employee benefits plan. The instant litigation involved more than a dozen defendants, each of which Plaintiffs contended had liability for the shortfall in the funding of the Plan. All the other Defendants have settled, leaving the Diocesan Defendants as the sole remaining defendants to this litigation. The Diocesan Defendants deny any responsibility whatsoever. Notably, the Diocese of Providence claims it ceased acting as Plan Sponsor and Plan Administrator in 1995 and the vast majority of the allegations upon which Plaintiffs claims are based involve subsequent events.

10. The specific claims being settled are also complex. Plaintiffs have asserted overlapping (a) ERISA and (b) state law claims for breaches of fiduciary duty. The United States District Court has granted the Diocesan Defendants partial summary judgment that the Plan ceased to qualify as a Church Plan by April 29, 2013, at the very latest, which, if not vacated by the trial court or on appeal, would likely result in many (and possibly all) of the Plaintiffs’ state law claims against the Diocesan Defendants being dismissed under ERISA preemption.

11. The mediation process involved extensive analysis of the settling parties' positions including, for instance, the value of Plaintiffs' claims and the Diocesan Defendants' defenses to liability and damages. The mediation negotiations included sessions on November 28, 2022, December 23, 2022, March 23, 2023, May 22, 2023, and June 19, 2023, as well as many telephone and email communications. These negotiations exhibited the highest standards of professionalism on all sides, notwithstanding the deep-seated feelings on all sides as to the correctness of their respective positions. It was often a challenge to contain the enthusiasm felt by counsel for each side. Nevertheless, we succeeded in breaking all impasses and achieved a unified compromise that I believe represents a just and fair result for all sides.

12. Based on my knowledge of the actions, all of the materials provided to me, the efforts of counsel, the rigor of the negotiations, the extent of discovery already conducted, the litigation risks, the risks of collectability of any judgment obtained by Plaintiffs, and the benefits achieved in the settlement, I believe this is a fair and adequate settlement of all the claims against the Diocesan Defendants, and that the settlement should be approved by the Court.

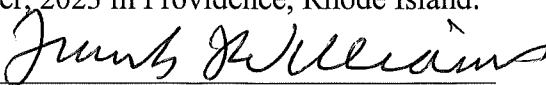
13. The settlement with the Diocesan Defendants is especially favorable to the Plaintiffs inasmuch as it requires as a condition, *inter alia*, that Pension Benefit Guaranty Corporation ("PBGC") take over the Plan and pay benefits up to the maximum statutory allowance. If such condition is satisfied, then the Plan participants will receive their benefits directly from PBGC. If that condition is not satisfied, the settlement with the Diocesan Defendants will be void, the stay in the Federal Court action will be lifted, and Plaintiffs will be entitled to seek to recover their full damages from the Diocesan Defendants.

14. In evaluating the fairness of the settlement, I took into account the amount that will be netted by the Plan from the settlement. I understand that the Plan Receiver, in connection with his request for approval of the settlement, will be asking the U.S. District Court for final approval

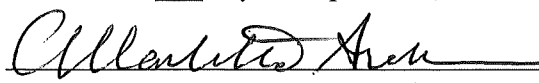
for the settlement and a fee to be paid to Wistow, Sheehan & Loveley, PC (“WSL”), pursuant to the Engagement and Fee Agreement previously approved by the Court on October 17, 2017. It is my opinion that substantial work and effort was performed by WSL in litigating the federal action and the parallel Superior Court actions, and in presenting their claims in such a way to produce a valuable settlement for all participants by increasing the assets of the Plan and the likelihood of PBGC taking over the Plan. Based upon my experience as a judge and as a mediator, it is my opinion that a request by WSL for an attorneys’ fee in the amount of twenty-three and one-third percent (23 & 1/3%) of the \$2,500,000 settlement fund, in accordance with their Court-approved fee agreement with the Plan Receiver, is reasonable and appropriate given the complexity of this matter and the significant relief recovered by WSL if the settlement is consummated.

15. A fee of 23 & 1/3% is less than the presumptively reasonable “benchmark” fee for this type of settlement in the First Circuit. *See Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 349 (D. Mass. 2015) (“Within the First Circuit, courts generally award fees in the range of 20–30%, with 25% as ‘the benchmark.’”), *aff’d*, 809 F.3d 78 (1st Cir. 2015). That reasonableness is further amplified here, where the settlement enhances the likelihood that PBGC will take over the Plan and pay Plan participants many millions of dollars in addition to the Plan assets. Moreover, recovery is principally on behalf of the Plan (which through its Receiver has contractually agreed to the fee) instead of on behalf of class members other than through the Plan.

Executed on this 19<sup>th</sup> day of September, 2023 in Providence, Rhode Island.

  
\_\_\_\_\_  
Hon. Frank J. Williams, C.J. (Ret.)

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 9/16/2027

# Exhibit C





Loveley, PC have been pursuing. I have been following the filings in the various suits. I have been doing this on a pro bono basis and expect no fees in connection with this matter.

6. I have spoken and met with numerous members of this group during the course of this litigation to discuss their thoughts concerning the underfunded status of the Retirement Plan and how it impacts them, their viewpoint regarding the pending settlements. Accordingly, I can say with great confidence that the plan participants whom I have been advising wholeheartedly and unequivocally support Plaintiffs' Petition to proceed with the proposed settlement (the "Proposed Settlement") between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan, and also as Liquidating Receiver of St. Joseph Health Services of Rhode Island), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, on the one hand, and Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (the "Diocesan Defendants"), on the other hand.

7. I was consulted with by Plaintiffs' counsel during the negotiations. During those consultations I indicated I would generally support a settlement of \$2,500,000 contingent on obtaining coverage from Pension Benefit Guaranty Corporation ("PBGC") up to the maximum statutory limits, but would need to be informed of the terms of the final settlement.

8. I am familiar with the settlement terms. Under the agreement, the Diocese will make a \$2.5 million payment to the Plan Receivership, upon the occurrence of the following events:

- First, the Federal Court agrees to stay the pending litigation pending the action by PBGC;
- Second, as of an appropriate time (expected to be no sooner than the Spring of 2024) the Plan's Receiver will seek to have PBGC terminate the Plan and PBGC agrees to take over the Plan;
- Third, PBGC agrees, upon Plan termination and trusteeship, to release, or to not assert, any claims against any Diocesan-related entities;
- Fourth, PBGC agrees to provide the maximum statutory guaranteed benefits; and
- Fifth, this Court and the federal court approve the settlement terms, including complete releases of all claims by the settlement class, with the federal court certifying a settlement class.

Should any of these conditions not be met, the settlement agreement will become void, no payments will be made, and all claims and defenses will remain outstanding.

9. I understand that the Plan Receiver and his Special Counsel, Wistow, Sheehan & Loveley, PC, will be asking for approval of attorneys' fees of 23 1/3 % pursuant to the original retainer agreement approved by this Court on October 17, 2017.

10. On behalf of my clients, I urge the Court to approve the Proposed Settlement (including attorneys' fees) with the aforesaid entities. The settlement, in my view, is beneficial to my clients and is a further excellent step in attempting to secure full protection for the pension of my clients who are present participants in the Plan.

*Arlene Violet*

\_\_\_\_\_  
Arlene Violet

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of September, 2023.

*Daria Souza*  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires 5-9-2026  


# Exhibit D

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

v.

ST. JOSEPH'S HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
AS AMENDED

C.A. No.: PC-2017-3856

In re:

CHARTERCARE COMMUNITY BOARD,  
ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND and ROGER  
WILLIAMS HOSPITAL

C.A. No.: PC-2019-11756

**AFFIDAVIT OF CHRISTOPHER CALLACI**

Christopher Callaci, Esq. hereby deposes and states as follows:

1. I am general counsel for United Nurses and Allied Professionals and a member of the Rhode Island Bar since 2008. There are approximately 400 union members of United Nurses and Allied Professionals ("UNAP") who are plan participants in the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan").

2. I am submitting this affidavit in connection with the Petition for Settlement Instructions and Approval, which is presently scheduled for hearing on October 2, 2023.

3. I previously addressed the Court in connection with three prior settlements. The first occasion was on October 10, 2018, in connection with the settlement of claims against CharterCARE Community Board, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island. I spoke in favor of that settlement. The second occasion was on December 14, 2018, in support of the settlement of claims against CharterCARE Foundation. On that occasion, I stated:

Good morning Your Honor. Chris Callaci for the United Nurses and Allied Professionals. I thought it would be the worthwhile that the Court hear from the horse's mouth of Special Counsel, Mr. Wistow's, representation and our support. We have about 400 union members who are participants in this plan and they fully trust and are confident in the Receiver's assessment that the settlement

agreement is in the best interest of the receivership estate and the plan, and the plan participants, and we applaud the work that has been done in that regard.

4. The third occasion was via a declaration I provided on January 15, 2021 in support of the settlement of claims against the various Prospect Entities and The Angell Pension Group, Inc.

5. I am in favor of the settlement between Stephen Del Sesto and the seven individual putative class representatives, on the one hand, and Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (“Diocesan Defendants”), on the other. Under the agreement, the Diocese will make a \$2.5 million payment to the Plan Receivership, upon the occurrence of the following events:

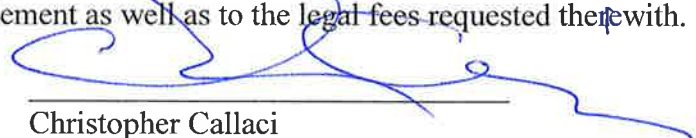
- First, the Federal Court agrees to stay the pending litigation pending the action by PBGC;
- Second, as of an appropriate time (expected to be no sooner than the Spring of 2024) the Plan's Receiver will seek to have PBGC terminate the Plan and PBGC agrees to take over the Plan;
- Third, PBGC agrees, upon Plan termination and trusteeship, to release, or to not assert, any claims against any Diocesan-related entities;
- Fourth, PBGC agrees to provide the maximum statutory guaranteed benefits; and
- Fifth, this Court and the federal court approve the settlement terms, including complete releases of all claims by the settlement class, with the federal court certifying a settlement class.

Should any of these conditions not be met, the settlement agreement will become void, no payments will be made, and all claims and defenses will remain outstanding.

6. I understand that the Plan Receiver and his Special Counsel, Wistow, Sheehan & Loveley, PC, will be asking for approval to bring that settlement to the U.S. District Court, and, in connection therewith, for payment of the contingent legal fee agreed upon in the Engagement and Fee Agreement approved by this Court on October 17, 2017, i.e. 23 & 1/3%.

7. The settlement as finally agreed requires as a condition that PBGC take over the Plan and pay benefits up to the maximum statutory allowance. If that condition is satisfied, then the Plan participants will receive their benefits directly from PBGC. If that condition is not satisfied, the settlement with the Diocesan Defendants will be void, the stay in the Federal Court action will be lifted, and Plaintiffs will be entitled to seek to recover their full damages from the Diocesan Defendants.

8. With regard to the present settlement, I repeat to the Court my above-quoted comments, which apply to the present settlement as well as to the legal fees requested therewith.



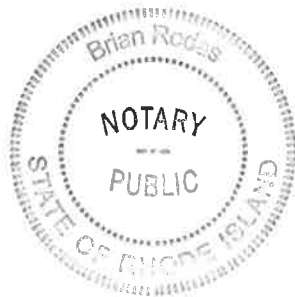
Christopher Callaci

SUBSCRIBED AND SWORN to before me this 19 day of September, 2023.



NOTARY PUBLIC

My Commission Expires: 11-09-2025



ED-761-692

# Exhibit E

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

v.

C.A. No.: PC-2017-3856

ST. JOSEPH'S HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
AS AMENDED

In re:

CHARTERCARE COMMUNITY BOARD,  
ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND and ROGER  
WILLIAMS HOSPITAL

C.A. No.: PC-2019-11756

**DECLARATION OF JEFFREY W. KASLE**

Jeffrey W. Kasle, being duly sworn, hereby deposes and says:

1. I am submitting this declaration in connection with the Petition for Settlement Instructions and Approval, which is presently scheduled for hearing on October 2, 2023.

2. I am a member in good standing on the Bar of Rhode Island since 1981.

3. On October 10, 2018, I informed this Court that the 247 participants in the St. Joseph Health Services of Rhode Island Retirement Plan that I represent (in connection with meetings with the Receiver), fully supported Settlement A (involving claims against CharterCARE Community Board, Roger Williams Hospital and St. Joseph Health Services of Rhode Island).

4. I also fully supported Settlement B (involving claims against CharterCARE Foundation).

5. I also fully supported the third settlement, between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, and Thomas Hemmendinger (then the Liquidating Receiver for CharterCARE Community Board), Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, The Angell Pension Group, Inc., Sam Lee, and David Topper.

6. I am familiar with the terms of the Settlement Agreement between Stephen Del Sesto and the seven individual putative class representatives, on the one hand, and Roman



Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (the “Diocesan Defendants”), on the other hand. Under the agreement, the Diocese will make a \$2.5 million payment to the Plan Receivership, upon the occurrence of the following events:

- First, the Federal Court agrees to stay the pending litigation pending the action by PBGC;
- Second, as of an appropriate time (expected to be no sooner than the Spring of 2024) the Plan's Receiver will seek to have PBGC terminate the Plan and PBGC agrees to take over the Plan;
- Third, PBGC agrees, upon Plan termination and trusteeship, to release, or to not assert, any claims against any Diocesan-related entities;
- Fourth, PBGC agrees to provide the maximum statutory guaranteed benefits; and
- Fifth, this Court and the federal court approve the settlement terms, including complete releases of all claims by the settlement class, with the federal court certifying a settlement class.

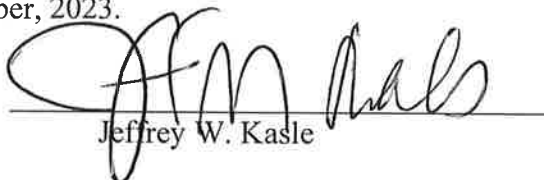
Should any of these conditions not be met, the settlement agreement will become void, no payments will be made, and all claims and defenses will remain outstanding.

7. On behalf of the nearly 250 participants in the St. Joseph Health Services of Rhode Island Retirement Plan whom I represent, I fully support the settlement. I understand that the Plan Receiver and his Special Counsel, Wistow, Sheehan & Loveley, PC, will be asking for approval to bring that settlement to the U.S. District Court, and, in connection therewith, for payment of the contingent legal fee agreed upon in the Engagement and Fee Agreement approved by this Court on October 17, 2017, i.e. 23 & 1/3%, and support that as well.

8. The settlement with the Diocesan Defendants is especially favorable inasmuch as it requires as a condition that Pension Benefit Guaranty Corporation (“PBGC”) take over the Plan and pay benefits up to the maximum statutory allowance. If that condition is satisfied, then the Plan participants will receive their benefits directly from PBGC. If that condition is not satisfied, the settlement with the Diocesan Defendants will be void, the stay in the Federal Court action will be lifted, and Plaintiffs will be entitled to seek to recover their full damages from the Diocesan Defendants.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20<sup>th</sup> day of September, 2023.

  
Jeffrey W. Kasle

# Exhibit F

## ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

### I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

### II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

### III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

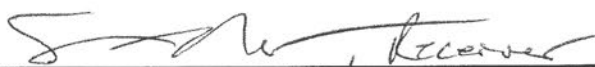
### IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of \$375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."



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Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by



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Max Wistow, Esq.     v

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.
10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.
11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing your fees, costs, and expenses.
12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your attorney has the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.
2. You will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.
3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.
4. You will tell your attorney if you have any concerns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.



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Rhode Island Bar Association

115 Cedar Street • Providence, Rhode Island 02903

## A Client's Statement of Rights & Responsibilities\*

\*For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

#### Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and your attorney.

As the client in a legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• *When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.*

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

• *If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.*

#### NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

##### Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to inform a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

##### Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The

• *If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic statement detailing how it has been spent.*

• *If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.*

3. Your attorney will work diligently for you and pursue the lawful means necessary to present or defend your case.

4. Your attorney will strive to resolve your legal matter promptly and will inform you if for any reason it cannot be resolved in a timely fashion.

5. Your attorney will respond to reasonable questions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:  
*'how to reach your attorney.*

• *when and how your telephone calls will be returned.*

*'how to obtain copies of paper/documents from your legal file.*

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

# Exhibit G



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

\_\_\_\_\_  
STEPHEN DEL SESTO, AS RECEIVER )  
AND ADMINISTRATOR OF THE ST. )  
JOSEPH HEALTH SERVICES OF RHODE )  
ISLAND RETIREMENT PLAN, et al. )

Plaintiffs, )

v. )

C. A. No. 18-328 WES

PROSPECT CHARTERCARE, LLC, et al. )

Defendants. )

**SPECIAL MASTER’S REPORT AND RECOMMENDATION**  
**ON AWARD OF ATTORNEYS’ FEES**

This Report and Recommendation is filed pursuant to the Order Appointing Special Master entered September 5, 2019, ECF No. 152. In the Order, p. 4, this Court stated:

The role of the Special Master is limited. The Special Master’s objective is to review the motions for attorneys’ fees and make a recommendation as to those requests. The Special Master is directed to review the attorney fee motions, ECF Nos. 64 and 78, the objections, the declarations related thereto, and any other document the Special Master deems necessary to perform the scope of his duties.

In compliance with the Order, I have reviewed the Motions for Award of Attorneys’ Fees filed by the plaintiffs’ counsel, the Objections thereto filed by certain non-settling defendants, and the several related declarations, settlements, and other relevant documents. I also met with interested parties on September 26, 2019.

## Background

This case arises out of a 2017 receivership proceeding in the Rhode Island Superior Court for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, C.A. No. PC-2017-3856. Declaration of Max Wistow in Support of Joint Motion for Class Certification, etc. (hereinafter “Wistow Declaration”), Ex. 1, ECF No. 65-1. According to the petition, the Plan was seriously underfunded<sup>1</sup> and insolvent at the time of the sale of assets of Roger Williams Hospital and Our Lady of Fatima Hospital in 2014. *Id.* ¶¶8-10; First Amended Complaint, ¶54. The Plan had more than 2700 participants, and, because of the underfunding, the petitioner sought a 40% reduction in retirement benefits. Petition ¶15, ECF No. 65-1; Wistow Declaration ¶3, ECF No. 65. The Plan, at least until some point prior to the receivership, was a “church plan” associated with the Catholic Diocese, Petition ¶6, ECF No. 65-1, but had not received contributions from St. Joseph Health Services since 2008 except for a \$14 Million contribution in 2014 from the sale the hospital assets. Plaintiffs’ Counsel’s Final Approval Memorandum (Settlement A), p. 11, ECF No. 150; Wistow Declaration ¶37, Ex. 24, ECF Nos. 65, 65-24. The Receiver who was appointed by Judge Brian Stern of the Superior Court, Stephen Del Sesto, engaged the firm of Wistow Sheehan and Loveley, PC (“WSL”) as special counsel to investigate the matter and commence litigation against potentially liable parties to recover monies for the Plan and its participants. To this end, the Receiver contracted with WSL as special counsel, and agreed to pay WSL based on \$375/hour for the investigative work and on a contingency basis after litigation commenced. Wistow Declaration Exs. 3, 5, ECF Nos. 65-3, 65-5; Declaration of Stephen Del Sesto, Ex. 1, ECF No. 144. Specifically, the engagement letter

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<sup>1</sup> The Plan was allegedly underfunded by some \$91 Million as of April 30, 2013. First Amended Complaint, ¶253, ECF No. 60.

(hereinafter the “Fee Agreement”) was approved by the Superior Court and provided for a fee of 23.3% of funds recovered for the Plan after commencement of litigation.<sup>2</sup> WSL also entered into similar fee agreements with the individual plaintiffs. Wistow Declaration, Exs. 12-18, ECF Nos. 65-12 to 65-18. The investigation involved the issuance of 12 *subpoenas duces tecum* by the Receiver, some of which were contested, and the obtaining and review of more than a million documents.<sup>3</sup> Plaintiffs’ Counsel’s Memorandum in Support of Motion for Award of Attorneys’ Fees, pp. 3-4, ECF No. 64-1; Wistow Declaration ¶16, ECF No. 65. For this work, WSL was paid \$552,281.25 (1472 hours @ \$375/hour). Wistow Declaration ¶18, ECF No. 65.

On June 18, 2018, WSL filed in this Court a class action Complaint on behalf of the Receiver and seven Plan participants, as representatives of a class of participants, against fourteen corporate defendants<sup>4</sup> alleging a federal claim under ERISA and state claims of fraud and breach of fiduciary duty, among others.<sup>5</sup> Wistow Declaration, Ex. 7, ECF No. 65-7. The plaintiffs filed a First Amended Complaint on October 5, 2018. ECF No. 60. Thereafter, the action was approved as a class action, with the individual plaintiffs as class representatives, and WSL as class counsel. Memorandum of Decision, pp. 13-14, ECF No. 162; Memorandum and Order, pp. 18-19, ECF No. 164.

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<sup>2</sup> The Fee Agreement also provided for WSL to receive 10% of any recovery between the end of the investigation and commencement of litigation, but there was no recovery of funds during this period, so no fees are requested under this provision. Fee Agreement §II, ECF No. 144.

<sup>3</sup> Plaintiffs’ counsel also received a substantial number of additional documents after the litigation commenced. Plaintiffs’ Counsel’s Memorandum, p. 6, ECF No. 64-1.

<sup>4</sup> The plaintiffs are seven participants in the Plan and the Receiver. The defendants are Prospect Chartercare, LLC; CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect Chartercare SJHSRI, LLC; Prospect Chartercare RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; the Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administrative Corporation; Diocesan Service Corporation, and the Angell Pension Group, Inc.

<sup>5</sup> A companion complaint was filed in the Superior Court in the event that the ERISA claim was dismissed, thereby depriving this Court of jurisdiction.

In addition, WSL, on behalf of the Receiver and the individual plaintiffs, sought and was granted intervention in a *cy pres* proceeding in the Superior Court<sup>6</sup> that involved the alleged fraudulent transfer of some \$8.2 Million of charitable assets by St. Joseph Health Services of Rhode Island and Roger Williams Hospital into a foundation, CharterCARE Foundation, LLC (“CCF”), to the detriment of the Plan and its participants. Plaintiffs’ Counsel’s Memorandum (Settlement A), pp. 10-11, ECF No. 64-1; Plaintiffs’ Counsel’s Final Approval Memorandum (Settlement B), p. 6, ECF No. 140; Wistow Declaration ¶21, ECF No. 65; Wistow Supplemental Declaration, Ex. 3, ECF No. 79-3. In the Superior Court there was also related litigation concerning settlement instructions the Receiver sought from the Court. Plaintiffs’ Counsel’s Memorandum (Settlement A), pp. 6-9, ECF No. 64-1.

Not long after the litigation commenced, WSL, consistent with the instructions of the Superior Court, Wistow Declaration ¶¶33-34, Ex. 21, ECF No. 65, Wistow Supplemental Declaration, Ex. 7, ECF No. 79-7, negotiated two settlement agreements with certain defendants, the first on August 31, 2018, Wistow Declaration, Ex. 25, ECF No. 64-1, and the second approved by the Rhode Island Superior Court on October 2, 2018. Wistow Supp. Declaration, Ex. 7, ECF No. 79-7. In the settlement agreements, the settling defendants agreed to WSL seeking attorneys’ fees to be paid out of the settlement fund. Settlement Agreement (A), p. 21, ¶36, ECF No. 63-2; Settlement Agreement (B), p. 26, ¶9, ECF No. 77-2.

#### The Settlements

The two settlements, designated A and B, reached in this case are:

**Settlement A:** The settling defendants, namely CharterCARE Community Board (“CCCB”) (the parent of the heritage St. Joseph and Roger Williams Hospitals), St. Joseph

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<sup>6</sup> In re: Chartercare Heath Partners Foundation, Roger Wiliams Hospital and St. Joseph health Services of Rhode Island, C. A. No. KM-2015-0035.

Health Services of Rhode Island, and Roger Williams Hospital, have agreed to pay \$11,150,000 to the Receiver (that will be paid into the Plan), and also agreed to the assignment of interests of CCCB's interest as a member of CharterCARE Foundation, LLC ("CCF") and CCCB's interest (about 15%) in Prospect Chartercare, the entity that currently directly or indirectly operates the Roger Williams Hospital and Fatima Hospital. The former assignment is of questionable value if the settlements are approved; the latter could be of significant value, but the value is not known at this time and the assignment is contested. Plaintiffs' Counsel's Memorandum (Settlement A), pp. 11-15, ECF No. 64-1.

**Settlement B** ("the CCF Settlement"): The principal settling defendant here is CCF, the recipient of certain assets of Roger Williams Hospital and St. Joseph Health Services of Rhode Island. The other settling defendants are CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital, but they are not making any monetary contributions. Plaintiffs' Counsel's Memorandum (Settlement B), p. 1, fn 2, ECF No. 78-1. CCF has agreed to pay \$4,500,000 to the Receiver, almost half of its charitable assets that were valued at approximately \$9,108,334 as of April 30, 2018. Plaintiffs' Counsel's Memorandum (Settlement B), p. 6, ECF No. 78-1. The Superior Court approved this settlement as in the best interests of the Plan on December 27, 2018, Plaintiffs' Counsel's Memorandum (Settlement B), pp. 6-7, ECF No. 78-1, at which time the Court found the contingent fee of 23.3% of the recovery to be "fair, reasonable, and very much a benefit to the receivership estate." Wistow Supp. Declaration, Ex. 6, p. 16, ECF No. 79-6.

With respect to the non-settling defendants, the litigation against them will continue. The WSL may have to defend additional litigation relating to the dissolution and liquidation of the settling defendants for which no further compensation would be due. *Id.*, pp. 16-17.

This Court has approved both Settlements A and B. Memorandum and Order, ECF No. 164; Memorandum of Decision, ECF No. 162.

#### Fees Requested

The Receiver retained plaintiff's counsel pursuant to an Order of the Superior Court dated October 17, 2017, and the Superior Court approved the Engagement and Fee Agreement between the Receiver and WSL. ECF Nos. 65-3, 65-5. Under that Agreement, as noted, WSL was paid on an hourly basis of \$375/hour<sup>7</sup> for investigation of the potential claims related to the transaction in question, and is to be paid 23.3% of monies recovered for the Plan after the commencement of litigation. *Id.* WSL was paid for 1472 hours of work at \$375/hour, for a total of \$552,281.25. Wistow Declaration ¶18, ECF No. 65.

WSL has stated that it was not prepared to take this case on a pure contingency basis because of the substantial investigation required in order to evaluate the litigation risk. As a result, WSL agreed to a hybrid arrangement with the Receiver that provided for discounted hourly compensation for the investigation and contingent compensation for the litigation. Wistow Second Supplemental Declaration ¶¶9-10, ECF No. 145. WSL seeks an award of fees consistent with the Fee Agreement, that is, fees based on a percentage of the funds recovered for the Plan.

The individual plaintiffs' retainer agreements with WSL that mirror the Agreement with the Receiver and provide for the payment of fees to plaintiffs' counsel essentially on the same basis as the agreement with the Receiver. Wistow Declaration, Exs. 12-18, ECF Nos. 65-12 to 65-19.

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<sup>7</sup> WSL states that \$375/hour is a discounted rate and that WSL's usual blended rate is \$600 in non-contingent fee cases. Plaintiffs' Counsel's Final Approval Memorandum (Settlement B), p. 36, ECF No. 140; Wistow Second Supplemental Declaration ¶¶8-10, ECF No. 145; Declaration of Stephen P. Sheehan, ECF No. 161.

WSL does not break down the fees for the class as opposed to the Receiver. Since WSL was working toward a common goal for both the Receiver and the class members for the ultimate benefit of the Plan participants, it is difficult to distinguish hours spent for the class versus the Receiver. Plaintiffs' Counsel's Memorandum (Settlement A), p. 28, ECF No. 64-1. This is understandable and is reasonable.

With respect to Settlement A, the fee requested is 23.3% of \$11,150,000, or \$2,597,950. With respect to Settlement B, the fee requested is 23.3% of \$4,500,000, or \$1,048,500. In addition, WSL seeks 23.3% of additional sums recovered.

These fees total \$3,646,450. While the Fee Agreement does not require this, WSL has agreed that the \$552,281.25 that it received for the investigation should be deducted from the contingent fees awarded.<sup>8</sup> Plaintiffs' Counsel's Memorandum (Settlement A), p. 18, ECF 64-1; Plaintiffs' Counsel's Memorandum (Settlement B), p. 3, ECF No. 78-1. Thus, the net fees requested are **\$3,094,168.75**. Declaration of Stephen P. Sheehan, ECF No. 161 (corrected for a minor mathematical error).

WSL advises that its costs have been reimbursed by the Receiver, hence, there is no request for costs in this case. Plaintiffs' Counsel's Final Approval Memorandum (Settlement A), p. 26, ECF No. 150.

#### Hours Spent

In considering the reasonableness of an award of attorneys' fees, it is instructive to review the hours spent by counsel in order to calculate a lodestar and to check on the reasonableness of an award based on a percentage of the fund. They are as follows:

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<sup>8</sup> The Receiver commended WSL for this credit. Declaration of Stephen Del Sesto ¶17, ECF No. 144.

Hours spent during the investigative stage:	1472
Hours spent after the commencement of litigation to date	<u>3022<sup>9</sup></u>
Total hours	<b>4494</b>

Declaration of Stephen P. Sheehan, Ex. 1, ECF No. 161.

Plaintiff’s counsel has not submitted any backup to these hours – just the gross number – therefore it is not possible to examine the quality of the hours spent. However, there does not appear to be any dispute as to the number of hours that WSL has spent. In addition, given the complexities of this case, the number of parties, the issues presented and the reams of documents produced, it is not surprising that this litigation required a substantial number of hours.

#### Oppositions

As noted, Settlement Agreements A and B both provide that WSL may apply for attorneys’ fees and the settling defendants will not object. The “Diocesan Defendants”<sup>10</sup> have filed Oppositions to both settlements and to the award of WSL’s requested attorneys’ fees. ECF Nos. 73, 75, 80 136, 146. The “Prospect Defendants”<sup>11</sup> have joined in the Objections. Joint Opposition of Prospect Defendants, ECF No. 75. The non-settling defendants do not object to the 23.3% contingency applied to any future recovery. Diocesan Defendants’ Opposition (Settlement A), p. 11, ECF No. 146. These defendants raise a number of issues, most of which go to whether the Court should approve the settlements, although there is some overlap. I will

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<sup>9</sup> This figure includes time spent on settlements (legal memoranda, hearings, etc.) as well as state court proceedings. Declaration of Stephen P. Sheehan, Ex. 1, ECF No. 161.

<sup>10</sup> Roman Catholic Bishop of Providence, Diocesan Administrative Corporation, and Diocesan Service Corporation.

<sup>11</sup> Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC.



not address the issues that relate to the settlements generally that are outside the scope of my charge.<sup>12</sup> They are generally addressed in this Court's Memoranda approving the settlements.

No other party or member of the class has filed an objection to the award of fees.<sup>13</sup> Plaintiffs' Counsel's Final Approval Memorandum (Settlement A), p. 4, ECF No. 150. In fact, attorneys for many of the participants have filed declarations or affidavits in support of the settlements and the attorneys' fees requested. Declaration of Stephen Del Sesto, ECF No. 144; Affidavit of Arlene Violet (representing 285 participants in the Plan), ECF No. 142; Declaration of Jeffrey W. Kasle (representing some 247 participants in the Plan), ECF No. 143; Declaration of Christopher Callaci (representing 400 participants in the Plan), ECF No. 141. Taken together, these declarations are filed on behalf of nearly 1000 out of the 2700 Plan participants.

The Receiver has stated that WSL's fees for both settlements are "fair and reasonable," and that awarding fees less than what has been agreed upon would be "detrimental" to the receivership estate and will not incentivize plaintiffs' counsel to pursue zealously the Receiver's claims in this complex litigation. Stephen F. Del Sesto Declaration ¶¶17, 18, ECF No. 144.

#### Standing

WSL has questioned the standing of the non-settling defendants to object to the fees requested citing, among other things, Rule 23(h)(2) that states that "a class member, or a party from whom payment is sought may object to the motion [for fees]" and the Advisory Committee's note to that section of the Rule that states that "nonsettling defendants may not object because they lack a sufficient interest in the amount the court awards." WSL argues that

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<sup>12</sup> These include whether the Plan was an ERISA plan, whether the Pension Benefit Guaranty Corporation should be joined as a party, whether there was collusion between the plaintiffs and the settling defendants in reaching the settlements to the detriment of the non-settling defendants, and certain constitutional claims relating to the joint tortfeasor statute, R.I Gen. Laws, §23-17.14-35.

<sup>13</sup> One class member objected to Settlement B. Plaintiffs' Counsel's Final Approval Memorandum, p. 8, ECF No. 140.

since the joint tortfeasor releases to be signed by the settling defendants provide that the non-settling defendants will receive full benefit from the amount of the settlements undiminished by attorneys' fees, they have insufficient interest to object. Plaintiffs' Counsel's Final Approval Memorandum (Settlement B), pp. 30-31, ECF No. 140. The non-settling defendants respond that one of the key claims for relief in the First Amended Complaint is to order these defendants to make the Plan whole, and that whatever amount that does not go into the Plan but goes for attorneys' fees will diminish the assets in the Plan below what they would otherwise be, and if held liable, these defendants will have to make the fund whole. First Amended Complaint, Prayer for Relief, Section D (that defendants "make the Plan whole for all contributions that should have been made pursuant to ERISA funding standards"). ECF No. 60; Diocesan Defendants' Opposition (Settlement A), p. 12, ECF No. 146. These defendants cite no authority to support their position. *Id.*

While I conclude that the position of the non-settling defendants is somewhat speculative given that it is not known how the Plan will perform in the future and the fact that liability has not been established against the non-settling defendants, nevertheless, in my judgment these defendants have sufficient interest to file an opposition to the fees requested. However, as explained *infra*, I find their objections to be without merit.

#### Legal Standard

This is a "common fund" case that, under Rule 23 and First Circuit law insofar as it pertains to class actions, and based on the settlements and Fee Agreement, entitles WSL to attorneys' fees. The U. S. Supreme Court has sanctioned reasonable fees awarded out of a common fund. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). This Court has considerable discretion in the method for determining a "reasonable" fee and determination will

be made on a case-by-case basis. See In re Fidelity/Micron Securities Litigation, 167 F.3d 735, 737 (1<sup>st</sup> Cir. 1999). The First Circuit, in In re Thirteen Appeals Arising out of the San Juan DuPont Plaza Hotel Fire Litigation, 56 F.3d 295 (1994), has held that this Court may review fee requests where there is a common fund either through a lodestar approach or through a percentage of fund “POF”) approach:

We think that a more malleable approach is indicated. Thus, we hold that in a common fund case, the district court, in exercise of its informed discretion, may calculate counsel fees either on a percentage of the fund basis or by fashioning a lodestar. Our decision is driven both by a recognition that use of the POF method in common fund cases is the prevailing praxis and by the distinct advantages that the POF method can bring to bear in such cases.

56 F.3d at 307. In Heien v. Archstone, 837 F.3d 97 100 (1<sup>st</sup> Cir. 2016) (citing In re Thirteen Appeals with approval) the court stated:

The Court recognized [in In re Thirteen Appeals, 56 F.3d at 307] that the percentage-of-fund method ‘in common fund cases is the prevailing praxis’ and acknowledged the ‘distinct advantages that the POF method can bring to bear in such cases.’ *Id.* However, the Court has also noted that the percentage-of-fund approach ‘may result in the overcompensation of lawyers in situations where actions are resolved before counsel has invested significant time or resources. *Id.* If the fee is determined according to the lodestar approach, ‘it is the court’s prerogative (indeed, its duty) to winnow out excessive hours, time spent tilting at windmills, and the like. Gay Officers Action League v. Puerto Rico, 247 F.3d at 296 (internal cite omitted).’

837 F. 3d at 100-101.

In weighing a common fund request for fees, courts will also consider the so-called Goldberger factors: (1) the size of the fund and the number of persons benefitted; the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations.

See In re Neurontin Marketing & Sales Practices Litigation, 58 F. Supp. 3d. 167, 170 (D. Mass. 2014), citing Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2<sup>nd</sup> Cir. 2000).

### Discussion

As noted, WSL requests attorneys' fees based on the percentage-of-fund method, totaling \$3,094,168.75, including the credit for fees paid. There are a number of factors to take into consideration in determining the reasonableness of the fees requested by WSL. It is not merely a matter of a mathematical calculation, tempting as that is.

This is a complex case, both factually and legally. It is not a pure class action; it is a partial class action along with an action by the Receiver. Uncertainty about federal jurisdiction led to the filing of a companion complaint in the Superior Court, although virtually all the actual litigation has been conducted in this Court. The two settlements will not end the case; the litigation will continue against the non-settling defendants, and there will likely be more time spent by WSL in consummating the settlements. There is a Fee Agreement that has been approved by the Superior Court and that is a hybrid in the sense of providing for hourly compensation initially and contingency compensation thereafter based on the success of the litigation. There is a state court *cy pres* proceeding that has great significance with respect to the recovery of funds for the Plan and, in particular, Settlement B. And there is a significant legal issue, yet unresolved, involving ERISA and the so-called "church plan" exemption.

I will review the Goldberger factors, consider the benchmark for fees in common fund cases, review the other factors unique to this case, perform a "lodestar check" on the reasonableness of the fees to be awarded, In re Thirteen Appeals, 56 F.3d at 307, and consider the objections to the award of fees.

The Goldberger factors. (1) *Size of fund/persons benefitted.* Assuming both settlements are approved and carried out, the Receiver will receive in \$15,650,000 to add to the Fund (less attorneys' fees). While this will not make the Fund whole, it is a significant addition to the Fund. More than 2700 participants in the Plan, who were facing a 40% cut in benefits from the substantially underfunded Plan, will benefit. (2) *Skill/efficiency of attorneys.* Plaintiffs' counsel, led by Max Wistow, a senior and highly experienced member of the bar, are skilled at complex litigation such as this, as was attested to by the Receiver. Declaration of Stephen Del Sesto, ¶2, ECF No. 144. Without reviewing the hours, I cannot comment on the efficiency of the time spent, although I have no reason to believe that WSL was inefficient. Sifting through more than a million documents, determining appropriate claims, and achieving these two settlements requires legal skill. (3) *Complexity/duration of litigation.* As noted, this is a complex commercial case that required devoting significant resources of several attorneys, sorting out the numerous parties and their respective roles in this matter, and reviewing reams of documents generated by the several transactions in issue. Because of the significant investigation undertaken by WSL at the outset, which was effectively pre-trial discovery, the duration of this litigation was relatively short between the filing of the complaint and the negotiation of the settlements in issue. (4) *Risks of litigation.* At the outset, there was a significant risk undertaking this case, given the number of parties and the complexity of the facts and the uncertainty of recovery. This risk was partially mitigated by the Fee Agreement that provided for hourly compensation for the investigation of the matter for the Receiver, for which credit is given, but the risks of the litigation thereafter were significant and continue since the plaintiffs still face hurdles to further recovery. (5) *Amount of time.* The total hours spent to date are

approximately 4494 hours, a significant amount of time. In addition, there may be significant other litigation related to the settlements and relating to claims against the non-settling defendants that will require additional time by WSL.<sup>14</sup> Wistow Supplemental Declaration ¶12, ECF No. 79. (6) *Similar awards*. See benchmarks *infra*. (7) *Public policy*. As a matter of public policy, retirement plans should be properly funded for the benefit of the employees who participate in the plans. To recover from responsible parties monies for the underfunded Plan is consistent with public policy. Therefore, in reviewing the contributions of WSL against the Goldberger factors, WSL scores well.

The Fee Agreement. The Fee Agreement is a significant factor in support of WSL's request. The Fee Agreement between WSL and the Receiver was negotiated by the Receiver and approved by the Superior Court. Wistow Declaration, Ex. 5, ECF No. 65-5. Judge Stern of the Superior Court is, to my knowledge, a highly capable judge, sophisticated in complex litigation, and his approvals of both the Fee Agreement and the fees awarded in Settlement B are noteworthy. While his approvals are not necessarily binding on this Court, they are entitled to considerable deference. The plaintiffs and the settling defendants have agreed to the award of fees. No objection has been filed by any clearly interested party, including the Plan participants, only by the non-settling defendants. At least with respect to Settlement B, the Superior Court has found that the 23.3% contingent fee is fair and reasonable. Wistow Supp. Declaration, Ex. 6, p. 16, Ex.7, ECF No. 79-7. I see no reason why Superior Court would see things differently if it were to approve fees for Settlement A, since the fees would be based on the same Fee Agreement previously approved by the Court.

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<sup>14</sup> I am advised that WSL has spent an additional 72.5 hours in this litigation since September 26, 2019. Letter of Stephen P. Sheehan to the Special Master, October 10, 2019.

The Receiver has a fiduciary responsibility to the Plan as well as obligations to the Court as an officer thereof. Therefore, it makes a difference that the Receiver negotiated the Fee Agreement, approved the award of fees for both Settlement A and B, and obtained the blessing of the Superior Court for both the Fee Agreement as well as for the award of fees pursuant to that Agreement. Declaration of Stephen Del Sesto ¶¶3-10; 17, ECF No. 144.

Benchmark. There is First Circuit authority for the proposition that the benchmark percentage for POF cases is 25% of the common fund. “Within the First Circuit, courts generally award fees ‘in the range of 20-30%, with 25% as “the benchmark.” ’ ” Bezdek v. Vibram USA Inc., 79 F. Supp. 3d 324, 349-350 (D. Mass. 2015) (quoting Latorraca v. Centennial Techs., Inc., 834 F. Supp. 2d 25, 27-28 (D. Mass. 2011), *aff’d*, 809 F. 3d 78, 85 (1<sup>st</sup> Cir. 2015)).

Here, using a 25% benchmark implies a total fee of \$3,912,500 (\$15,650,000 x 25%). Subtracting the credit of \$552,281.25, the result is \$3,360,218.75. This is about \$266,00 more than the fees sought.

The fees requested here, 23.3% of the common fund, or \$3,646,450, falls below the benchmark. Giving credit to the fees already paid, the percentage drops to 19.78%. Unlike most other cases where fees are awarded, this case is not over and may well result in significant additional hours for which WSL may not be paid, including processing the settlements and pursuing other non-settling defendants. Plaintiffs’ Counsel’s Memorandum (Settlement A), p. 27, ECF No. 64-1. While the recovery of additional funds for the Plan against non-settling defendants would be subject to the contingency of 23.3%, the recovery of additional sums is by no means certain.

Lodestar. Because of the unique Fee Agreement, there are several ways to calculate the lodestar. The simplest way is this: As noted, WSL has stated that its usual blended hourly fee in non-contingent matters is \$600/hour.<sup>15</sup> Using that rate times the total hours spent to date, 4494, the lodestar is \$2,696,400.<sup>16</sup> Thus the fees requested are about \$400,000 more than the lodestar (\$3,094,168.75 – \$2,696,400 = \$397,768.75). Applying the credit of \$552,281.25 results in a modified lodestar amount of \$2,144,118. If one divides the total fees sought, \$3,646,450 by the total hours to date, the result is \$811/hour. This effectively amounts to a premium over WSL's usual rate of \$600/hour, a premium that I find fair and reasonable in the circumstances of this case, a premium that is likely to diminish. If the investigative hours (1472) and the payment based on hours (\$552,281.25) are backed out, then the result is \$3,094,168.75/3022 or \$1,023.88/hour. While this is a very high rate, I am not convinced that this is the way to view the lodestar here because of the Fee Agreement.

The Diocesan defendants have calculated a “creative” lodestar as follows: They would compensate WSL for the difference between the WSL's \$600/hour rate and the discounted \$375 rate for the 1472 hours expended during the investigative stage, or  $1472 \times \$600/\text{hour} = \$883,200$  less the \$552,281.25 paid or \$330,918.75. Diocesan Defendants' Opposition (Settlement A), p. 11, ECF No. 146; see also Diocesan Defendants' Response (Settlement B), p. 29, EFC No. 73, using another approach that does not reflect the time spent on this case. These defendants would discount all other post-litigation time because it is not broken down as to time spent litigating with the defendants or reaching the settlements. Underpinning this approach is the contention that the settlements were collusive and that the litigation was unnecessary. Diocesan

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<sup>15</sup> There is no affidavit from other Rhode Island counsel about the reasonableness of this rate, but no objection has been lodged, and I will take notice that this rate is in the range for experienced attorneys in Rhode Island.

<sup>16</sup> Using the so-called cross-check multiplier, the factor is 1.35; stated another way, the total fee requested, before the credit, is about 35% higher than the lodestar.



Defendants' Opposition (Settlement A), pp. 7-9, ECF No. 146. Given this Court's approval of the settlements, I find no merit to this approach, which I also think does not properly reflect the work performed by WSL or the result achieved.

The Fee Application is Unreasonable. The Diocesan Defendants contend that WSL did not pursue efforts to settle this case prior to commencement of litigation and that the settling defendants essentially laid down and died once the Complaint was filed. Diocesan Defendants' Opposition (Settlement A), pp. 4-7, ECF No. 146. This argument, which effectively amounts to a charge of collusion, was advanced in opposition to the settlements generally and has been rejected by this Court. Memorandum and Order, pp. 12-14, ECF No. 164. It is true that the settlements were achieved within months of the filing of the Complaint. However, this overlooks the fact that for the eight months prior to the filing of the Complaint, the Receiver issued numerous subpoenas duces tecum generating in excess of 1 million documents that were produced and used to commence an action based on fraud, breach of fiduciary duty and violation of ERISA, among other claims. In effect, this investigation was the discovery phase of this case, at least insofar as it pertained to the settling defendants. Further, the Settlement Agreements themselves recite that they were "the result of lengthy and intensive arms-length negotiations." Settlement Agreement B, p. 26, ¶10, ECF No. 73-1.

This Suit was Unnecessary. The non-settling defendants contend that the assets of the settling defendants would have poured into the Plan anyway and, therefore, this suit was unnecessary. Diocesan Defendants' Opposition to Final Approval, p. 3, ECF No. 146; Diocesan Defendants' Response, p. 26, ECF No. 73. This is pure speculation, especially given the facts that, among other things, (a) the Plan was dramatically underfunded in the first place due to a lack of contributions from St. Joseph Health Services, and St. Joseph Health Services actually

filed the receivership petition with the intention of reducing the benefits to the participants that could be supported by the existing assets; (b) allegations of wrongdoing by the settling defendants with respect to cutting loose the Plan as set forth in the First Amended Complaint; and (c) funds that should have been paid into the Plan were transferred to CCF, which was the reason the Receiver sought to intervene in the *cy pres* proceeding to have those assets redirected to the Plan. Plaintiffs' Counsel's Final Approval Memorandum (Settlement A), pp. 9-15, ECF No. 150. The Receiver has stated that ". . . I believed, and I continue to believe today, that there would have been no meaningful settlement discussions until after a suit had been brought." Declaration of Stephen Del Sesto ¶16, ECF No. 144. Furthermore, Richard J. Land, counsel to CCB and the so-called Heritage Hospitals, filed an affidavit that stated that "[t]he Settlement Agreement [B] resulted from contested and often-times heated negotiations between the Heritage Hospitals and the Receiver and his Special Counsel" and that absent the settlement "the Heritage Hospitals will be compelled to litigate all claims, including denying liability..." Affidavit of Richard J. Land, Ex. 2 to Plaintiffs' and Defendants' Post-Hearing Memorandum, ¶¶2, 7, ECF 109-2.

The Nature of the Plan. Some consideration should be given to the fact that the Plan is non-profit retirement plan for the benefit of some 2700 hospital and other workers that was badly underfunded and, therefore, the fees should be reduced in some fashion. This notion is balanced by the fact that absent the efforts of the Receiver and WSL, and the risks undertaken, the Plan would likely have remained underfunded and the participants would have received a substantial cut in their benefits. Of note is the fact that the several representatives of the participants do not object to the settlements or the attorneys' fees requested.

Recommendation

Based on the applicable legal standard and on all the factors discussed, I recommend that WSL be awarded fees consistent with the Fee Agreement negotiated with the Receiver in 2017, that is, 23.3% of the common fund less the credit for work in the investigative stage, or \$3,094,168.75, plus 23.3% of any additional funds recovered. In my judgment, all the factors – the Goldberger criteria, the pre-existing Fee Agreement, the approval of the Receiver and the settling defendants, the absence of objections from anyone other than the non-settling defendants, the time spent and to be spent by WSL, the risk undertaken in a highly complex case, and the fact that the award would be significantly below the First Circuit benchmark of 25% of the common fund – all justify this recommendation.

No costs should be awarded because they have been waived by WSL.

/s/ Deming E. Sherman

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Special Master

October 14, 2019

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# Exhibit H

**U.S. District Court  
District of Rhode Island (Providence)  
CIVIL DOCKET FOR CASE #: 1:18-cv-00328-WES**

Del Sesto et al v. Prospect CharterCARE, LLC et al  
Assigned to: Chief Judge William E. Smith  
Cause: 29:1132 E.R.I.S.A.—Employee Benefits

Date Filed: 06/18/2018  
Jury Demand: Both  
Nature of Suit: 791 Labor: E.R.I.S.A.  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
10/24/2019		TEXT ORDER adopting <u>165</u> Report and Recommendations, granting <u>64</u> Motion for Attorney Fees, and, granting <u>78</u> Motion for Attorney Fees: After considering the Report and Recommendations of the Special Master, and having heard no objections, the Court ACCEPTS and ADOPTS <u>165</u> Report and Recommendations in full. Accordingly, the Court GRANTS <u>64</u> Motion for Attorneys' Fees and <u>78</u> Second Motion for Attorneys' Fees. So Ordered by Chief Judge William E. Smith on 10/24/2019. (Jackson, Ryan) (Entered: 10/24/2019)