

cooperated fully with the Liquidating Receiver's many and varied requests for assistance, including, most significantly, by continuing to pay tens of thousands of dollars in workers' compensation benefits to claimants despite the Receiver's failure to reimburse Beacon as required by the Third-Party Administration Agreement between Beacon and St. Joseph Health Services of Rhode Island ("SJHSRI") (the "TPA"). The Liquidating Receiver has held Beacon hostage by delaying for almost two years his decision whether to adopt or reject the TPA while, at the same time, insisting that Beacon continue to pay claims without reimbursement. As justification for withholding reimbursement, the Liquidating Receiver now alleges that that Beacon failed to seek payments from secondary sources and/or misdirected such payments. No such allegations were ever made by SJHSRI during its ten-year relationship with Beacon, or by the Liquidating Receiver in the many months Beacon has worked with him. Based on the new allegations, the Liquidating Receiver now claims he must review all of the payments and reimbursements made throughout the eleven-year TPA agreement (until recently, the Liquidating Receiver had never indicated a need for an accounting for any period before to the Receivership). The new allegations are contradicted by documents and facts known to the Liquidating Receiver. Nonetheless, under Beacon's proposal, Beacon would produce documents from which the Liquidating Receiver can test his theory and, if warranted, seek additional information.

Beacon's Administration of Claims under the TPA

From approximately 1986 to 1999, SJHSRI was self-insured for workers compensation claims.¹ Beacon entered into the TPA with SJHSRI on November 1, 2010. Affidavit of Amy Vitale, Esquire, ("Vitale Aff."), attached as Exhibit 1, ¶ 3. Under the TPA, Beacon agreed to provide claims administration services for twelve claims that arose during SJHSRI's self-insured

¹ Liquidating Receiver's and Plan Receiver's Motion to Enforce Subpoena Duces Tecum ("Receivers' Mot.") p. 4.

period (the “covered claims”). *Id.*² All but two of the covered claims originated between 1986 and 1989; the other two originated in 1995 and 1998. *Id.* ¶ 4. Thus, when the TPA began, most of the covered claims had been in process for over twenty years.

The following describes the claims administration process Beacon followed under the TPA prior to the Receivership. Beacon would make all required payments for the covered claims. *Id.* ¶ 5. Beacon would provide a Claims Paid Report monthly to SJHSRI listing the payments made per claimant. *Id.* ¶ 5. SJHSRI would then remit reimbursement by check or wire to Beacon for the amounts Beacon paid. *Id.* ¶ 5. Beacon also would apply periodically (2-4 times per year) to applicable secondary payment sources to secure reimbursement to SJHSRI for payments covered by those sources. *Id.* ¶ 5. The secondary sources include excess insurance carriers and the Rhode Island Department of Labor and Training (“DLT”) Second Injury Fund (“SIF”). *Id.* ¶ 5. Payments from the secondary sources generally came in the form of checks payable to St. Josephs Hospital c/o Beacon Mutual Insurance or St. Joseph Health Services c/o Beacon Mutual Insurance, which checks Beacon would forward to SJHSRI. *Id.* ¶ 6. On occasion larger lump sum settlement payments would be transmitted by wire to Beacon. *Id.* ¶ 6. Beacon would then either forward the funds to SJHSRI or, with SJHSRI’s knowledge and approval, apply the funds to reimburse Beacon for claim payments made. *Id.* ¶ 6. Beacon received no compensation from SJHSRI for performing these services other than an initial one-time payment of \$1000.00. *Id.* ¶ 7.

During the period of the Liquidating Receivership, only five of the covered claims being administered by Beacon under the TPA remained open. *Id.* ¶ 8. Of the five open claims (the “Open Claims”), two arose between August 1987 and August 1992, a period for which SJHSRI carried

² Beacon also agreed to administer any closed claims that required further handling that may be identified while the Agreement is in effect. Vitale Aff. ¶ 3. One additional claim was added which closed prior to the Liquidating Receivership. *Id.*

excess insurance coverage from Employers Reinsurance Corporation, which was assumed by SwissRe (“SwissRe”). *Id.* ¶8. Two other Open Claims arose between August 1986 and August 1987, a period for which SJHSRI carried excess insurance coverage from General Reinsurance Corporation (“GenRe”). *Id.* ¶ 8. The fifth Open Claim arose in 1995 and qualifies for payment by the SIF. *Id.* ¶ 8.

The files provided to Beacon at the outset of the TPA did not include a complete copy of the SwissRe excess insurance policy. *Id.* ¶ 9. However, the policy documents Beacon received confirm that the SwissRe coverage is subject to a cumulative retention per claim. *Id.* ¶ 9. Ex. 2. The two Open Claims within the SwissRe coverage both met their applicable cumulative retention prior to the Liquidating Receivership, and excess insurance payments have been obtained by Beacon for the benefits paid prior to and during the Liquidating Receivership on those claims. *Id.* ¶ 10. The GenRe excess insurance policy applicable to two other Open Claims is subject to annual, as opposed to, cumulative retentions in the amount of \$17,000 for annual indemnity payments per claim and over \$25,000 in annual medical benefits paid per claim. *Id.* ¶ 11 Ex. 3. For one of the Open Claims, the indemnity benefit rate is under \$213 per week, and for the other, the indemnity benefit rate is \$320 per week. *Id.* ¶ 12. Neither claim has accumulated more than a few hundred dollars in medical benefits per year. Therefore, the benefits Beacon has paid each year on each of those Open Claims have been less than the GenRe policy’s annual retention amounts. *Id.* ¶ 12. Accordingly, the benefits paid on those claims prior to and during the Liquidating Receivership have not qualified for reinsurance payments. *Id.* ¶ 12.³

³ SJHSRI’s former legal counsel, Richard Land, who was engaged by the Liquidating Receiver to assist with transition matters, corresponded with Beacon in 2018 about the GenRe policy. Beacon forwarded a copy of the policy to Mr. Land on September 17, 2018, together with correspondence from GenRe’s claims administrator explaining that the policy has annual individual retentions for indemnity and medical payments. Vitale Aff. Ex. 11.

Beacon's Interactions with the Liquidating Receiver

In the initial months of the Liquidating Receivership, the Liquidating Receiver and Beacon continued to perform under the TPA as described above. *Id.* ¶ 13. In April 2020, the Liquidating Receiver stopped reimbursing Beacon for payments Beacon made to claimants on the Open Claims. *Id.* ¶ 13. Beacon emailed the Liquidating Receiver repeatedly over the ensuing months asking when reimbursement payments owed to Beacon would be made. *Id.* ¶ 13. The Liquidating Receiver initially did not respond. *Id.* ¶ 13. When he finally did, he asked Beacon to continue paying claims while he considered whether to adopt or reject the TPA. *Id.* ¶ 13.

Over the next several months, Beacon assisted the Liquidating Receiver in his pursuit of information he said he needed to make that decision. *Id.* ¶ 14. Among other things, Beacon helped the Liquidating Receiver research whether SJHSRI ever obtained a bond to secure its self-insured liability. *Id.* 14 Although Beacon had nothing to do with any such bond, it contacted former agents of SJHSRI and undertook other actions to assist the Liquidating Receiver with his inquiry. *Id.* ¶ 14.⁴

In December 2020, the Liquidating Receiver still had not determined whether to adopt or reject the TPA. *Id.* ¶ 15. By that point, Beacon had made tens of thousands of dollars of unreimbursed payments to claimants on behalf of SJHSRI. *Id.* ¶ 15.⁵ Accordingly, Beacon notified

⁴ The Receivers incorrectly suggest in their papers that Beacon had an obligation to collect payments from a bond issued by North River Insurance Company. Receiver's Mot. pp. 9-10. But as the Receivers' motion notes, that bond was issued in favor of the DLT. *Id.* It was not reinsurance available to SJHSRI. In any event, nothing in the TPA required Beacon to pursue recovery under any indemnity bonds issued in favor of the DLT. Vitale Aff. ¶ 14. Nonetheless, Beacon has cooperated fully with the Liquidating Receiver and provided all information it has to assist him in researching that bond. *Id.* ¶ 14.

⁵ Beacon's responsibilities with regard to claims administration are expressly limited to those identified in the TPA and do not include any obligation to provide insurance coverage to SJHSRI. Vitale Aff. Ex 1 Sec. 4.4. Yet, by failing to reimburse Beacon for claims payments, the Liquidating Receiver has essentially converted Beacon from a third-party administrator to an insurer, in breach of the express limitations in the TPA.

the Liquidating Receiver that it was terminating the TPA. *Id.* ¶ 16. Ex. 10.⁶ The Liquidating Receiver took the position that Beacon could not terminate the TPA without Court approval and asked Beacon to continue performing under the agreement. *Id.* ¶ 15. By the end of February 2021, Beacon had made over \$84,000 in unreimbursed payments to claimants. *Id.* ¶ 15.

In late April 2021, the Liquidating Receiver requested that Beacon provide him with information to allow him to contact SwissRe directly to obtain a full copy of that insurance policy. *Id.* ¶ 16, and Ex. 11. Beacon provided the information requested and the Liquidating Receiver subsequently obtained information directly from SwissRe about the policy. *Id.* ¶ 16. In late April 2021, the Liquidating Receiver also asked Beacon to provide an accounting on open claims for the period of the Liquidating Receivership as well as the period covered by specific excess insurance payments received on two claims during the Liquidating Receivership. *Id.* ¶ 17; see also Affidavit of Thomas S. Hemmendinger (“Hemmendinger Aff”) ¶ 4. Beacon provided the requested accounting on June 10, 2021.⁷ *Id.* ¶ 17, Ex. 12. The accounting shows all claim payments made and reimbursements paid to by Beacon for the period requested. *Id.* Ex. 12.

At this time, the Liquidating Receiver also pursued discussions with the DLT regarding the Open Claims. *Id.* ¶ 18. At the Liquidating Receiver’s request, Beacon attended meetings and assisted the Liquidating Receiver in his efforts to have DLT assume responsibility for administering and paying those claims. *Id.* ¶ 18. The Liquidating Receiver acknowledged that it

⁶ The TPA, which has no set term, provides that it can be terminated by either party without cause upon sixty days’ prior written notice. Vitale Aff. Ex 1 Sec. 1.2.

⁷ Mr. Hemmendinger suggests in his Affidavit that Beacon did not provide the accounting he requested, stating that the accounting “covered the time period only from December 2019 (the start of the liquidating receivership) to June 7, 2021, and it failed to include the time periods covered by the \$46,630.07 Swiss Re payment.” Hemmendinger Aff. ¶ 21. But Mr. Hemmendinger only requested an accounting for the period of the Liquidating Receivership and the accounting provided covered the period of the Swiss Re payment. *Id.* ¶ 14, Vitale Aff. ¶ 17. Thus, Beacon fully met his request. It was not until the issuance of the subpoena that the Liquidating Receiver for the first time sought an accounting for the entire 11-year period of the TPA. Vitale Aff. ¶ 27.

was very helpful to have Beacon's General Counsel Amy Vitale present for his meetings with the DLT. *Id.* ¶ 18.

Meanwhile, Beacon continued to press the Liquidating Receiver to reimburse Beacon for the mounting balance of unreimbursed claims payments that Beacon had accrued. *Id.* ¶ 19. The Liquidating Receiver indicated that he would not object to Beacon filing a late claim for the unreimbursed amount. *Id.* ¶¶ 19. In late April the Receiver "suggest[ed]" that the Receiver file a proof of claim by May 31, 2021. *Id.* ¶ 19, Ex. 11. Beacon did not understand the May 31 date to be a firm deadline, particularly in light of their ongoing efforts to reach an agreement with the DLT. *Id.* ¶ 19. On June 2, 2021, the Liquidating Receiver told Beacon that he needed it to file a proof of claim in order to evaluate the Receivership's workers compensation issues and he set a "firm deadline" of June 16. *Id.* ¶ 20, Ex. 12. Up to that point, Beacon had understood that a claim might not be necessary if talks with the DLT resulted in an agreement. *Id.* ¶ 20. Beacon filed its proof of claim on June 10, just eight days after the Liquidating Receiver made his request and six days before the deadline.⁸ *Id.* ¶ 20.

On June 29, Beacon's General Counsel Amy Vitale and outside counsel Patricia Antonelli participated in a ZOOM conference call with the Liquidating Receiver, the Liquidating Receiver's Special Counsel and others. *Id.* ¶ 21; Affidavit of Patricia Antonelli, ("Antonelli Aff.") ¶ 3. This was the first time Special Counsel had met with Beacon about this matter. Vitale Aff. ¶ 4. On the call, Special Counsel stated his belief that every one of the covered claims under the TPA should have been covered by excess insurance. Antonelli Aff. ¶ 4. According to the Receivers' papers, Beacon stated in the call that it believed that the self-insured retentions applicable to the Open Claims were annual and not cumulative. Receivers' Mot. p. 9 As explained below, no such

⁸ To the extent the Receivers suggest in their papers that Beacon somehow was dilatory in filing its proof of claim, the suggestion is belied by these facts, including the content of Mr. Hemmendinger's own emails.

statement was made and, in any event, the Liquidating Receiver knew that the SwissRe policy had a cumulative retention and that SwissRe was paying on covered claims. Nonetheless, beginning in this ZOOM call, Special Counsel doggedly latched on to this false narrative to pursue a groundless theory that Beacon failed to seek excess insurance payments over the course of the TPA worth “many hundreds of thousands of dollars, perhaps more.” Receivers’ Mot. p 8.

Ms. Vitale and Ms. Antonelli recall the June 29 conference call vividly because during the call the Special Counsel became very animated and belligerent. Vitale Aff. ¶ 22; Antonelli Aff. ¶ 5.⁹ Special Counsel repeatedly interrupted and spoke over Beacon’s representatives when they attempted to respond to his statements. Vitale Aff. ¶ 22; Antonelli Aff. ¶ 5. Ms. Vitale did **not** state in that conference that the self-insured retentions applicable to the Open Claims were all annual and not cumulative. Vitale Aff. ¶ 23; Antonelli Aff. ¶ 6. As the Liquidating Receiver and his counsel knows and knew at the time of the call, the SwissRe policy has a cumulative retention per claim. Beacon provided the Liquidating Receiver with documentation relating to the SwissRe policy long before this call that clearly states the cumulative retention amounts for the relevant years. Vitale Aff. ¶ 23. The Liquidating Receiver also obtained documents directly from SwissRe which likewise confirm the policy’s cumulative retention terms. *Id.* ¶ 23. Beacon has always administered the SwissRe covered claims with the knowledge and understanding that the retention amounts are cumulative and has received reimbursement from Swiss Re based on requests for claim payments that exceeded the applicable self-insured retentions. *Id.* ¶ 24.

⁹ In their affidavits, the Special Counsel Max Wistow and Mr. Hemmendinger state that the ZOOM conference resulted in a “shouting match” between Mr. Wistow, Ms. Vitale, and Ms. Antonelli. Affidavit of Max Wistow ¶ 4(d); Hemmendinger Aff. ¶ 4(c). In fact it was Mr. Wistow who became belligerent and threatening to the Beacon representatives. Vitale Aff. ¶ 22; Antonelli Aff. ¶ 5. Both Mr. Wistow and Mr. Hemmendinger subsequently acknowledged and apologized for how Mr. Wistow acted during that call. Antonelli Aff. ¶ 7,8 .

Notwithstanding Special Counsel's inappropriate conduct on the June 29 call, Beacon continued to cooperate with the Receiver's ongoing requests for assistance. At the Special Counsel's request, Beacon produced copies of the GenRe excess insurance policy and the SwissRe policy documents with Bates Stamps. *Id.* ¶. 25 On June 30, the DLT informed the Liquidating Receiver that it would assume liability for both the administration and payment of the remaining workers' compensation claims. Antonelli Aff. ¶ 7. In a call with Ms. Antonelli on July 8, the Receivers' Special Counsel, after repeatedly apologizing for his prior behavior, demanded that Ms. Antonelli draft the Settlement Agreement with DLT within three business days. *Id.* ¶ 8. Once again, Beacon complied with a request from the Receiver and, at Beacon's expense, had its counsel draft the agreement. *Id.* ¶ 8.¹⁰ Special Counsel then asked Beacon for yet more assistance, this time with his research into a Bank of America account maintained by SJHSRI. Vitale Aff. ¶ 26. As requested, Beacon researched its records to identify the check images for the TPA payments made by SJHSRI to Beacon. *Id.* ¶ 26.

Then, on or about out August 10, 2021, out of the blue, Special Counsel issued subpoenas to Beacon seeking records already produced and adding requests that far exceed any requests ever made previously by the Liquidating Receiver or others. *Id.* ¶ 27. In discussions about the requests, Special Counsel claimed he had evidence that Beacon had not secured all available reinsurance payments for the Receivers, but he would not say what the evidence was. *Id.* ¶ 27. Based on the Receivers' motion, it appears the evidence consists of three reinsurance checks Beacon sent to CharterCARE in 2015 and a consultant's report prepared for SJHSRI in 2012. For the reasons set

¹⁰ Beacon's counsel forwarded the draft to the Receivers' Special Counsel on July 13. Antonelli Aff. ¶ 8. To date, Special Counsel has not acted to finalize the Agreement, *Id.* ¶ 8, and, as a result, DLT's assumption of responsibility for administering and paying the remaining Open Claims (which is in the Receivership Estate's best interest) is delayed.

forth in the next section, those documents do not establish any mishandling of or failure to secure reinsurance payments.

The Receivers' Allegations of Mismanagement are Entirely Unfounded

The Receivers attached to their motion three letters sent by Beacon to the Finance Department at ProspectCharterCARE in June 2015 enclosing reinsurance checks for benefit payments Beacon made pursuant to the TPA. Based on these three documents, the Receivers accuse Beacon of “mishandling” reinsurance payments by forwarding them to ProspectCharterCARE rather than to SJHSRI. The Receivers represent that they have found no evidence that SJHSRI received these funds.

If the Liquidating Receiver or his Counsel had discussed these documents with Beacon before making such accusations, Beacon could have provided the following information. The checks at issue were all payable to St. Josephs Hospital RI c/o Beacon Mutual Insurance, not ProspectCharterCARE. Receivers' Mot. Ex. 4. Beacon forwarded the checks to the address it had on file for SJHSRI's finance department. Vitale Aff. ¶ 28. Upon receiving the checks, ProspectCharterCARE, which had acquired assets of SJHSRI the prior year, forwarded them to Attorney Rick Land's office. *Id.* ¶ 28, Ex. 13. Attorney Land then instructed Beacon's claims representative to send all future checks directly to his office. *Id.* Beacon did so from that point forward. *Id.* ¶ 28. Thus, no evidence exists to suggest that the reinsurance checks were not properly handled by Beacon and, in fact, the evidence shows that the checks at issue were received by SJHSRI's counsel.

The Receivers also accuse Beacon of not seeking other payments from excess carriers. This accusation is particularly disingenuous because the Receiver has the reinsurance documentation from which the following is clear:

- only the SwissRe claims are subject to a cumulative retention;¹¹
- the Receiver has received reimbursement payments from SwissRe on those claims;¹²
- the Open Claims covered by GenRe are subject to annual retentions of \$17,000 in indemnity payments per claim and at least \$25,000 in medical payments per claim;¹³
- based on the minimal medical benefits paid and the weekly indemnity rate on the Open Claims covered by the GenRe excess policy, such claims have not exceeded the applicable per claim annual retention amounts in any payment year;¹⁴ and
- benefit payments on the Open Claim subject to the SIF have been fully reimbursed by the SIF.¹⁵

Notwithstanding these facts, about which the Receivers are aware or should be aware from records in their possession, the Receivers claim that Beacon failed to obtain all reinsurance proceeds. The sole document the Receivers rely on for this allegation – a letter report issued by Albert Risk Management Consultants (“ARMC”) in 2012 that the Receivers also did not discuss with Beacon -- proves no such thing.

The ARMC letter report, which is addressed to the Director of Finance of CharterCARE Health Partners and dated February 15, 2012, recites that ARMC was engaged by SJHSRI “to review its self-insured workers’ compensation reserves in accordance with Sections 6.4 and 6.5 of the Bond Indenture Agreement.” Receivers’ Mot. Ex. 2. Beacon is not copied on the letter and has no record of having any involvement in the engagement or resulting letter. Vitale Aff. ¶ 29 . The letter addresses six open claims involving excess recoveries. Receivers’ Mot. Ex. 2 p. In the “Findings” section, the letter states:

¹¹ Vitale Aff. ¶ 9, Ex. 2.

¹² Hemmendinger Aff. ¶ 8.

¹³ Vitale Aff. ¶ 9, Ex. 3.

¹⁴ *Id.* ¶, Ex. 12.

¹⁵ *Id.*

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

Id. ¶ 2. As of August 31, 2011, SJHSRI had thirteen open claims, only certain of which had exceeded the applicable retention and were being reimbursed from excess insurance. Vitale Aff.

¶ 30. Beacon is unable to explain the statements attributed to it in the letter report, which are contrary to information that Beacon provided to SJHSRI as well as information in the TPA. *Id.* ¶ 30.

The Receivers rely entirely on these 2015 and 2012 documents to justify their allegations that Beacon failed to secure all available excess insurance payments, but those documents do not establish that Beacon either failed to secure or misdirected any reinsurance payments. The Receivers have other more directly relevant documents that would indicate if any such failures occurred, including the claims payment accounting Beacon provided for period of the Liquidating Receivership, copies of the GenRe and SwissRe excess insurance policies which clearly state the retention limits, and records maintained by SJHSRI of the excess insurance payments it received. SIF. In addition, at the outset of the Receivership, the Receivers engaged SJHSRI's former legal counsel to assist with transition matters and had access to information regarding reimbursement payments SJHSRI received prior to the Receivership.¹⁶ Despite having all these records and information, the Receivers have not identified any specific reinsurance payments that Beacon has failed to secure during the Liquidating Receivership or earlier. In fact, the issue was never raised by SJHSRI before the Receivership or by the Liquidating Receiver in the many months he worked

¹⁶ Liquidating Receiver's First Interim Report and Request for Interim Compensation, attached as **Exhibit A**, ¶24(f).

with Beacon. Vitale Aff. ¶ 31. The issue was raised for the first time in June 29 by Special Counsel. He did not then, and has not since, provided any valid substantiation for his assertion.

It is for the Court, not Beacon, to determine if the Receivers and their Special Counsel, as agents of the Court, are warranted in spending time and resources pursuing allegations about uncollected excess insurance payments. But these facts are relevant to the Court's determination of whether, in issuing the subpoena, the Receivers have complied with their obligation under Rule 45(c)(1) to take reasonable steps to avoid imposing undue burden or expense on the person subject to the subpoena. Beacon respectfully submits that the Receivers have not fulfilled that duty.

The Subpoena Imposes an Undue Burden and Expense

Beacon served an Objection to the Subpoena on September 3, 2021.¹⁷ The Receivers argue that the Objection was untimely because it was filed after August 31. However, the Receivers' Special Counsel extended that deadline to September 7, as confirmed in an email dated August 31.¹⁸ Accordingly, the Objection was timely served.

As stated in Beacon's Objection, and the detailed letter sent with it, the subpoena is vague and overbroad in a number of ways. Request Number 2 seeks the production of "[a]ll documents relating to self-insurance funds or trusts under which **SJHSRI** had/has coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive." Receivers' Mot. Ex. 6. The TPA relates to SJHSRI self-insured claims. Accordingly, the request appears to call for each and every document generated over the course of the TPA relationship as well as all documents that Beacon received when it took over as administrator. If that is the intention, the

¹⁷ Copies of the Objection and cover letter are attached as **Exhibit B**.

¹⁸ A true and accurate copy of the email is attached as **Exhibit C**.

request is vastly overbroad. Beacon’s counsel attempted to confer with the Special Counsel about the scope of the subpoena, but without success.¹⁹

The Subpoena also requests a number of other categories of documents going back over twenty years, including, “[a]ll documents relating to communications to or from any excess insurer concerning **TPA Claims**,” “[a]ll documents relating to payments by any excess insurer relating to **TPA Claims**,” and “[a]ll documents relating to payments to Beacon relating to **TPA Claims**.”²⁰ Identifying and collecting these documents would require a manual search of voluminous claims files associated with each of the thirteen claimants identified in the subpoena. Vitale Aff. ¶ 23. Beacon began this process for one of the claimants. The process took over thirty hours and, after that time, was still not completed. *Id.* ¶ 33. Based on that exercise, Beacon expects that searching the files associated with the other eleven claimants will take 10 weeks and hundreds of manhours of work. *Id.* ¶ 33. But that is not the end of the process. Before responsive documents can be produced, Beacon would have to carefully review each document to ensure that medical and other personal information about the claimants be redacted. *Id.* ¶ 33; R.I. Gen. Laws §5-37.3-6.1.

Beacon’s counsel explained this to the Receivers’ Special Counsel in a letter dated September 3, 2021. In that letter, Beacon made a reasonable proposal that would both preserve the Receivers’ rights and avoid undue burden on Beacon:

Beacon proposes an incremental approach to your request. Specifically, Beacon proposes to respond to the subpoena for documents as follows. The Receiver may choose any four of the claimants whose claims fell within the TPA period. Beacon will review the claims files for those claimants and produce the records sought in categories 1, 3, 4 and 5 as to those claims. Beacon will also produce documents in response to requests 2, 6 and 7. If the Receiver identifies the four claimants by September 7, Beacon will produce the documents as outlined above on or before October 4. Under this proposal, the Receiver may reserve his rights to seek additional documents and/or a deposition and Beacon reserves the right to object to any such further discovery.

¹⁹ See **Exhibit B**, p. 4.

²⁰ Receiver’s Mot. Ex. 6, Request Nos. 3-5.

See **Exhibit B** p. 4. The Receivers summarily rejected this proposal and, although acknowledging the proposal in their motion papers, have not explained why the proposal is unacceptable.

Beacon's proposal allows the Receivers to obtain information to test their theory that excess insurance payments were not collected **and** preserves their right to pursue additional information if, after reviewing the documents obtained, such further discovery is warranted. The proposal reasonably balances the Receivers' asserted need for information with the extreme burden and expense that the subpoena imposes on Beacon. Beacon respectfully submits that this is a fair and appropriate process for the Court to impose pursuant to Rule 45.

CONCLUSION

Based on the foregoing, Beacon respectfully requests, pursuant to Rule 45(c), that the Receiver be directed to explain the intended scope of Request No. 2 and limit the scope of Request Nos. 1, 3, 4, and 5 of the Subpoena to four claimants selected by the Receivers, and that Beacon be given 45 days to produce the documents requested.

Respectfully submitted,

The Beacon Mutual Insurance Company,

By its Attorney,

/s/ Stacey P. Nakasian
Stacey P. Nakasian, Esq. (#5069)
snakasian@duffysweeney.com
Duffy & Sweeney, LTD
321 South Main Street, 4th Floor
Providence, RI 02903
(401) 455-0700
(401) 455-0701 facsimile

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October 2021, a copy of the foregoing document was filed and served through the Rhode Island ECF system and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing

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

/s/ Michelle Potts _____

EXHIBIT A

Hearing date: May 22, 2020 at 11:00 a.m.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re:

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

C.A. No. PC-2019-11756

**LIQUIDATING RECEIVER'S FIRST REPORT
AND REQUEST FOR INTERIM COMPENSATION**

Thomas S. Hemmendinger (the "Liquidating Receiver"), the permanent liquidating receiver of CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (each also, individually, a "Petitioner" and, collectively, the "Petitioners"), hereby reports as follows:

1. On December 18, 2019, this Court appointed the Liquidating Receiver as temporary liquidating receiver of the Petitioners and their respective assets. On January 17, 2020, this Court appointed the Liquidating Receiver as permanent liquidating receiver. The Liquidating Receiver has qualified by posting the surety bond required by this Court.

2. The Liquidating Receiver has to date performed all duties required by law or by orders of this Court.

3. CCCB is the parent of SJHSRI and RWH. Until June 20, 2014, SJHSRI owned and operated Our Lady of Fatima Hospital in North Providence, Rhode Island, and RWH owned and operated Roger Williams Medical Center in Providence, Rhode Island.

4. On June 20, 2014, the Petitioners closed on a transaction involving the sale of these hospitals to subsidiaries of Prospect CharterCARE, LLC. In connection with the transaction:

(a) Prospect East Holdings, Inc., the majority member of Prospect CharterCARE, LLC, was obligated to advance \$50 million in capital contributions to the hospitals (the "Long-Term Capital Contribution") for certain capital projects on or before June 20, 2018.

(b) Prospect CharterCARE, LLC and its subsidiaries were obligated to make at least \$10

million per year in additional capital expenditures related to the hospitals.

(c) CCCB received a 15% membership interest in Prospect CharterCARE, LLC and certain additional rights (collectively, the “Hospital Interests”), including the right to an upward adjustment to CCCB’s membership interest based on any failure by Prospect East to make the Long-Term Capital Contribution.¹

5. Another Prospect affiliate, Prospect Medical Holdings, Inc., guaranteed the Long-Term Capital Commitment.

6. The LLC agreement for Prospect CharterCARE gave CCCB a “put option” to compel Prospect East Holdings to purchase CCCB’s membership interest. Under the LLC agreement, the parties determine the price for the put option through either negotiation or a contractual valuation process. The membership interest and the put option are substantial assets that, as set forth below, this receivership holds in trust for the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”).

7. At the time of the sale in 2014, SJHSRI was the sole sponsor, administrator, and funder of the Plan.

8. In 2017, at the request of SJHSRI, this Court appointed Stephen Del Sesto (the “Plan Receiver”) as receiver of the Plan. At the time, the Plan was substantially underfunded, and the Plan Receiver asserts that the Plan had been substantially underfunded for years before the commencement of the Plan receivership.

9. On June 18, 2018, after an investigation by Wistow, Sheehan & Loveley, PC, special counsel to the Plan Receiver, the Plan Receiver and certain Plan participants as putative class representatives sued the Petitioners, various Prospect entities, various Roman Catholic organizations, and others to recover damages for the benefit of the Plan and its participants. (*Del*

¹ As of the date of this Report, Prospect East has failed to establish that it has funded the Long-Term Capital Commitment.

Sesto et al. v. Prospect CharterCARE, LLC et al., C.A. No. 18-cv-00328-WES (D. R.I.), and *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. PC-2018-4386 (R.I. Super.)).

10. In 2018, subject to approval by this Court and the U.S. District Court for the District of Rhode Island, the Petitioners, and the Plan Receiver, and the putative class-action representatives entered into the following settlement agreements:

(a) Settlement Agreement dated as of August 31, 2018 (the “Settlement ‘A’ Agreement”), under which, among other terms, the Petitioners (1) paid approximately \$12.6 million to the Plan Receiver, (2) agreed to hold the Hospital Interests in trust for the Plan Receiver, (3) assigned to the Plan Receiver their interest in an escrow account at the R.I. Department of Labor and Training in connection with potential workers compensation claims, (4) agreed that they were liable for breach of contract to the Plan Receiver and the putative class representatives for not less than \$125 million, (5) agreed to commence this liquidation proceeding, and (6) agreed to cooperate with the Plan Receiver in efforts to maximize the value of the Hospital Interests.

(b) Settlement Agreement dated November 21, 2018 (the “Settlement ‘B’ Agreement”) relating to certain funds that SJHSRI and RWH had transferred to CharterCARE Community Foundation after the June 20, 2014 transaction. The Plan Receiver has collected \$4.5 million in connection with the settlement.

11. Both this Court and the U.S. District Court approved these settlements. The U.S. District Court has also certified settlement classes for purposes of both Settlement “A” and Settlement “B”, appointed the Plan participant plaintiffs as class representatives of all Plan participants, and appointed Wistow, Sheehan & Loveley, PC as class counsel for the two settlements.

12. Both the temporary and permanent orders appointing the Liquidating Receiver directed him to perform the Petitioners’ obligations under the settlement agreements. Without having assumed the settlement agreements, the Liquidating Receiver has been performing all of the Petitioners’ current obligations under them.

13. On March 11, 2019, CCCB commenced a civil action in this Court (C.A. No. PC-

2019-3654, hereafter “*CCCB v. Lee*”) against Prospect East Hospital Advisory Services, Prospect CharterCARE, LLC, the directors of Prospect CharterCARE, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., various affiliates of theirs, and a number of individual and entity John Does, seeking, among other things:

(a) Specific performance of the entity defendants’ obligations to fund the Long Term Capital commitment, both derivatively and non-derivatively.

(b) Specific performance of the entity defendants’ contractual and statutory obligations to provide access to the business and financial records of Prospect CharterCARE, and information concerning the funding of the Long Term Capital Commitment, including sufficient information for CCCB and the Plan Receiver to evaluate the put option and determine whether to exercise it.

(c) Specific performance and damages against the individual defendants, Prospect East, and Prospect Advisory for breach of fiduciary duty and for aiding and abetting the breach of fiduciary duty, both derivatively and non-derivatively.

(d) Damages and other relief under the Uniform Fraudulent Transfer Act (now the Uniform Voidable Transactions Act) for transfers related to distributions from various Prospect entities and related to obligations incurred to secure the financing that funded those distributions.

(e) Declaratory relief.

14. In November 2019, various Prospect entities applied to the Rhode Island Department of Health for approval of an effective change in control of the Prospect CharterCARE subsidiaries that operate the Our Lady of Fatima Hospital and Roger Williams Medical Center. As of February 19, 2020, the Prospect entities resubmitted their applications.

15. According to the applications, the current owners of the local Prospect entities’ ultimate parent company are Samuel Lee, David Topper (through a family trust), and various private equity funds and investors.² The applications seek approval of transactions that would result in Messrs. Lee and Topper owning 100% of the ultimate parent company in exchange for

² Messrs. Lee and Topper are defendants in *CCCB v. Lee*.

Prospect Medical Holdings—not Lee or Topper—paying the private equity investors almost \$12 million plus an undisclosed amount required to buy out certain options.

16. After a review and investigation by the receivers and Wistow, Sheehan & Loveley, PC of the applications on April 9, 2020 the Liquidating Receiver and the Plan Receiver objected and asked the Department of Health to deny the applications on several grounds, including:

(a) The applications are materially incomplete. For example, they fail to disclose material litigation, including *CCCB v. Lee*, in which Mr. Lee, Mr. Topper, and various Prospect entities are defendants.

(b) The applications misrepresent and fail to disclose material terms of the proposed change in control transactions, including the price to buy out the options referred to above.

(c) The proposed transactions fail to identify any benefit to the paying entity, Prospect Medical Holdings, Inc. As noted above, this entity is also a guarantor of Prospect East's Long-Term Capital Commitment. Therefore, consummation of the change in control transactions would impair the Prospect entities' ability to fund that commitment.

(d) The applications misrepresent the financial condition of Prospect CharterCARE, Prospect Medical Holdings, and the Prospect CharterCARE subsidiaries who own Our Lady of Fatima Hospital and Roger Williams Medical Center (Prospect CharterCARE SJHSRI, LLC and Prospect CharterCARE RWMC, LLC). For example:

(1) According to financial statements submitted with the applications, these entities do not have sufficient current assets to fund their operations, much less the amounts described in the change in control transactions.

(2) These entities are guarantors of loans that were used in part to fund \$457 million in dividends to owners of Prospect Medical Holdings, including Lee and Topper.

17. The applications for approval of effective change in control and the receivers' objections thereto are pending before the Rhode Island Department of Health.

18. Through a series of stipulated orders in *CCCB v. Lee*, CCCB, originally, and now the Plan Receiver, is entitled to receive from Prospect sufficient information and documents so that he can evaluate the put option and ascertain whether to exercise it. These orders extended the

deadline for CCCB to exercise the put option. They also provide that, if the Plan Receiver requests a hearing on CCCB's March 2019 motion for temporary and permanent injunctive and equitable relief (the "Motion for Injunction"), the deadline for CCCB to exercise the put option is further extended until the earlier of 30 days after a hearing on the motion or 20 business days after the Court rules on the motion.

19. However, as of the date of this report, neither the Plan Receiver nor the Liquidating Receiver has received sufficient information and documents. Therefore, after unsuccessful efforts to obtain the information without court intervention, they requested a hearing on the Motion for Injunction, filed a joint supplemental memorandum of law in support of the motion, and filed a joint motion to compel production of documents from Prospect. The receivers and the Prospect entities have agreed to continue the May 11, 2020 hearing on these matters to June 23, 2020 and are coordinating this with chambers.

20. Except for these contested matters as to the provision of information and documents, by stipulated order, *CCCB v. Lee* had largely been stayed since April 2019. However, pursuant to the stipulated stay order, a party could terminate the stay by issuing a 20-day notice. On March 19, 2020, the Liquidating Receiver issued the notice. Since that time, counsel have agreed that the defendants in *CCCB v. Lee* may have until June 1, 2020 to answer or otherwise respond to the complaint.

21. Based on the Prospect applications to the Department of Health, the receivers' investigation thereof, and other investigations, on April 21, 2020 after the expiration of the stay in *CCCB v. Lee* the Liquidating Receiver and the Plan Receiver filed a First Amended and Supplemental Complaint in *CCCB v. Lee*. The amended and supplemental complaint adds facts and causes of action uncovered in the investigations thereof by Wistow, Sheehan & Loveley, PC and the receivers, and adds as defendants: parties to the proposed change in control transaction;

and JPMorgan Chase Bank, the administrative and collateral agent for the lenders who provided the funding for the dividends to owners of Prospect.

22. On December 19, 2019 after this Court appointed the Liquidating Receiver and entered a receivership stay, and shortly after notice of that stay was given to counsel for Prospect Medical Holdings and for Prospect East, Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc. commenced an action in the Delaware Court of Chancery against CCCB for declaratory judgment, injunctive relief and damages (the “Delaware Chancery Action”). On December 19, 2019, the plaintiffs acknowledged that the receivership stay applies to the Delaware Chancery Action and have agreed not to prosecute the action without permission from this Court.

23. In addition to disputing the merits of the Delaware Chancery Action, the Liquidating Receiver asserts that this Court has exclusive jurisdiction of any disputes between CCCB or the Liquidating Receiver on the one hand and the Prospect entities on the other.

24. On other matters:

(a) As stated above, the Liquidating Receiver continues to perform the Petitioners’ current obligations under the settlement agreements with the Plan Receiver.

(b) The Liquidating Receiver continues to collect distributions from various charitable trusts of which SJHSRI or RWH is a beneficiary.

(c) Without assuming any pre-receivership contracts, the Liquidating Receiver continues to reimburse Beacon Mutual Insurance Company for workers compensation payments that Beacon continues to pay former employees of the hospitals who were injured at a time the hospitals were self-insured.

(d) At the Liquidating Receiver’s request, this Court modified the receivership stay to permit tort plaintiffs to prosecute cases against SJHSRI and RWH for claims that arose before June 20, 2014, on condition that the plaintiffs limit their recovery to any insurance proceeds.

(e) The Liquidating Receiver continues to deal with subpoenas and other court process

served on SJHSRI or RWH regarding medical records requests, accounts receivable that predate the sale to Prospect and were sold to Prospect in the 2014 sale, and other matters.

(f) With Court permission, the Liquidating Receiver engaged Chace Ruttenberg & Freedman LLP and Verrill Dana LLP as special counsel. Chace Ruttenberg has assisted the Liquidating Receiver with transition matters and has consulted with the Liquidating Receiver on various matters. Verrill Dana has pursued various Medicare appeals to bring additional revenue into this receivership.

(g) With Court permission, the Liquidating Receiver engaged Kahn, Litwin, Renza & Co., Ltd. to prepare and file IRS form 990's for the Petitioners, in order to maintain their tax-exempt status.

(h) Subject to Court approval, the Liquidating Receiver and the Plan Receiver have agreed that the Plan Receiver may file a proof of claim in this receivership on behalf of all Plan participants, and that individual Plan participants not be required to file separate proofs of claim in their capacity as Plan participants.

Interim Accounting

25. From the date of the Liquidating Receiver's appointment to March 31, 2020, he has made the following collections and disbursements:

	<u>CCCB</u>	<u>SJHSRI</u>	<u>RWH</u>	<u>Aggregate</u>
Receipts	\$ 6,565.63	\$ 463,612.33	\$ 401,059.53	\$ 871,237.49
Disbursements	<u>(428.52)</u>	<u>(35,383.31)</u>	<u>(4,430.51)</u>	<u>(40,242.34)</u>
Net Cash on Hand	\$ 6,137.11	\$ 428,229.02	\$ 396,629.02	\$ 830,995.15

26. Attached hereto as Exhibit 1 is a consolidated income statement for the Petitioners from the date of the Liquidating Receiver's appointment to March 31, 2020.

Request for Interim Compensation and Reimbursement of Expenses

27. From December 16, 2019 to March 31, 2020, the Liquidating Receiver and his counsel put in a total of 239.20 hours and advanced \$308.76 for expenses.

28. The Liquidating Receiver has given this Court a detailed statement of the Liquidating

Receiver's time and expenses, and this statement (redacted for privileged and work-product information) is available to parties in interest on request.

29. The Liquidating Receiver asks this Court to award him compensation for services rendered and award him reimbursement for expenses advanced.

Notice to Parties in Interest

30. The Liquidating Receiver has served this Report and notice of the hearing thereon to counsel of record in this receivership and to counsel of record for the following parties in interest: the Plan Receiver; the named plaintiffs and the defendants in *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. 18-cv-00328-WES (D. R.I.), and *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. PC-2018-4386 (R.I. Super.); the Prospect entities; and the defendants in *CCCB v. Lee*.

31. The Liquidating Receiver believes that this constitutes sufficient notice of this Report and of the Liquidating Receiver's requests for relief.

WHEREFORE, the Liquidating Receiver prays that this Court:

- (a) Accept, approve and ratify this Report.
- (b) Approve and ratify the acts of the Liquidating Receiver.
- (c) Approve the Liquidating Receiver's agreement with the Plan Receiver that the Plan Receiver may file a proof of claim on behalf of all Plan participants, and that individual Plan participants are not required to file separate proofs of claim in their capacity as Plan participants.
- (d) Award to the Liquidating Receiver an interim fee for services rendered and for expenses advanced and authorize the Liquidating Receiver to pay same from cash on hand.
- (e) Award to the Liquidating Receiver such other and further relief as this Court deems appropriate.

Respectfully submitted,

Date: May 6, 2020

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger #3122
Liquidating Receiver
Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909
Tel. (401) 453-2300
Fax (401) 453-2345

CERTIFICATE OF SERVICE

I hereby certify as follows:

- 1) On May 6, 2020, I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.
- 2) The following parties received electronic notice: any parties entered to be notified through EFS
- 3) The document was served by United States Postal Service, postage prepaid, on the following persons: N/A

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger

CharterCARE Community Board et al.
Profit & Loss Detail
 December 1, 2019 through April 27, 2020

11:30 AM
 04/27/20
 Accrual Basis

Exhibit 1

Type	Date	Num	Name	Memo	Split	Amount	Balance
Ordinary Income/Expense							
Income							
interest Income							
Deposit	02/22/2020			Interest	St. Joseph Health Servs. - sav.	0.87	0.87
Deposit	02/29/2020			Interest	Roger Williams - SPECIAL sav.	0.35	1.22
Deposit	02/29/2020			Interest	Roger Williams Hospital - sav.	0.33	1.55
Deposit	03/31/2020			Interest	St. Joseph Health Servs. - sav.	6.78	8.33
Deposit	03/31/2020			Interest	Roger Williams - SPECIAL sav.	2.71	11.04
Deposit	03/31/2020			Interest	Roger Williams Hospital - sav.	2.54	13.58
						13.58	13.58
Total interest Income							
Pre-receivership dep. acct.							
Deposit	12/31/2019		CharterCARE Community Board	Transfer to r'ship account	CharterCARE - ckg	6,565.63	6,565.63
Deposit	12/31/2019		Roger Williams Hospital	xfer to r'ship	Roger Williams - SPECIAL ckg	160,258.84	166,824.47
Deposit	12/31/2019		Roger Williams Hospital	xfer to r'ship	Roger Williams Hospital - ckg	183,600.65	350,425.12
Deposit	12/31/2019		St. Joseph Health Services of RI	xfer to r'ship	St. Joseph Health Servs. - ckg	402,290.14	752,715.26
Check	01/16/2020		Roger Williams Hospital	Debit to zero out pre-r'ship acct	Roger Williams Hospital - ckg	-8,097.00	744,618.26
						744,618.26	744,618.26
Total Pre-receivership dep. acct.							
Trust Income							
Deposit	01/03/2020		Bank of America	Brown and Horton	Roger Williams Hospital - ckg	32,495.68	32,495.68
Deposit	02/21/2020		Bank of America	Townsend	St. Joseph Health Servs. - ckg	61,314.54	93,810.22
Deposit	02/27/2020		Bank of America	Flint & Knight	Roger Williams Hospital - ckg	8,234.00	102,044.22
Deposit	03/16/2020		Bank of America	Miriam Horton Trust	Roger Williams Hospital - ckg	24,561.43	126,605.65
						126,605.65	0.00
						871,237.49	744,631.84
Total Trust Income							
Total Income							
Expense							
Accounting Fees							
Check	03/16/2020	1006	Kahn Litwin Renza & Co., Ltd.		Roger Williams Hospital - ckg	300.00	300.00
						300.00	300.00
Total Accounting Fees							
Bank Service Charges							
Check	01/17/2020		Citizens Bank	Check order	CharterCARE - ckg	134.95	134.95
Check	01/17/2020		Citizens Bank	Check order	Roger Williams Hospital - ckg	134.95	269.90
Check	01/17/2020		Citizens Bank	check order	St. Joseph Health Servs. - ckg	134.95	404.85
Check	01/31/2020		Citizens Bank	Monthly charge	CharterCARE - ckg	25.00	429.85
Deposit	02/10/2020		Citizens Bank	Rebate	CharterCARE - ckg	-25.00	404.85
Deposit	02/16/2020			Deposit	CharterCARE - ckg	-6.00	398.85
Check	02/28/2020		Citizens Bank	stmt delivery	CharterCARE - ckg	3.00	401.85
Check	03/31/2020			Service Charge	CharterCARE - ckg	3.00	404.85
Check	03/31/2020			Service Charge	Roger Williams - SPECIAL ckg	25.00	429.85

CharterCARE Community Board et al.
Profit & Loss Detail
 December 1, 2019 through April 27, 2020

11:30 AM
 04/27/20
 Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance
Total Bank Service Charges							
						429.85	429.85
Court-related Expense							
Check	02/05/2020	1003	Providence Journal	1/3 and 1/31 legal ads	Roger Williams Hospital - ckg	3,540.56	3,540.56
Total Court-related Expense							3,540.56
Filing Fees							
Check	01/21/2020	1001	RI Secretary of State	VOID: Change registered agent	Roger Williams Hospital - ckg	0.00	0.00
Check	01/21/2020	1001	RI Secretary of State	VOID: Change registered agent	St. Joseph Health Servs. - ckg	0.00	0.00
Check	02/04/2020	1001	RI Secretary of State	VOID: Change registered agent	CharterCARE - ckg	0.00	0.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	CharterCARE - ckg	10.00	10.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	Roger Williams Hospital - ckg	10.00	20.00
Check	02/04/2020	1002	RI Secretary of State	Change registered agent	St. Joseph Health Servs. - ckg	10.00	30.00
Check	03/19/2020	1008	ExamWorks Clinical Solutions		St. Joseph Health Servs. - ckg	3,250.00	3,280.00
Total Filing Fees							3,280.00
Insurance Expense							
Check	01/06/2020	99	Starkweather & Shepley	Receiver's bond	CharterCARE - ckg	100.00	100.00
Check	02/05/2020	1003	Beacon Mutual Insurance Co.	Workers comp. self-insurance	St. Joseph Health Servs. - ckg	7,888.96	7,988.96
Check	02/05/2020	1004	Beacon Mutual Insurance Co.	Workers comp. self-insured	St. Joseph Health Servs. - ckg	6,826.71	14,815.67
Check	03/16/2020	1004	Starkweather & Shepley	Permanent receiver's bond	CharterCARE - ckg	100.00	14,915.67
Check	03/16/2020	1007	Beacon Mutual Insurance Co.	Workers comp. self-insurance	St. Joseph Health Servs. - ckg	14,985.19	29,900.86
Check	03/16/2020	1006	Beacon Mutual Insurance Co.	VOID: Workers comp. self-insuran	St. Joseph Health Servs. - ckg	0.00	29,900.86
Total Insurance Expense							29,900.86
Legal Fees							
Deposit	01/09/2020		Verrill Dana LLP	Reimbursement	CharterCARE - ckg	-463.50	-463.50
Check	02/26/2020	1004	Verrill Dana LLP	Invoice	Roger Williams Hospital - ckg	105.00	-358.50
Check	03/16/2020	1005	Verrill Dana LLP		Roger Williams Hospital - ckg	315.00	-43.50
Total Legal Fees							-43.50
Mailing service							
Check	01/09/2020	100	Relevant Discovery	Produce and serve notice of rship	CharterCARE - ckg	264.87	264.87
Check	02/04/2020	1003	Relevant Discovery	Produce and serve notice of perm	CharterCARE - ckg	282.20	547.07
Total Mailing service							547.07
Records Management							
Check	02/26/2020	1005	Xact Data Discovery	database maintenance	St. Joseph Health Servs. - ckg	2,287.50	2,287.50
Total Records Management							2,287.50
Total Expense							40,242.34
Net Ordinary Income							704,389.50

CharterCARE Community Board et al.
Profit & Loss Detail
December 1, 2019 through April 27, 2020

11:30 AM
04/27/20
Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance
						<u>830,995.15</u>	<u>704,389.50</u>

Net Income

EXHIBIT B

DUFFY & SWEENEY, LTD
BUSINESS LAW & LITIGATION

Stacey P. Nakasian, Esq.
snakasian@duffysweeney.com

September 3, 2021

Max Wistow, Esq.
Wistow Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
mw@wistbar.com

Re: Subpoenas Issued to the Beacon Mutual Insurance Company in re CharterCARE Community Board et al; C.A. No.: PC-2019-11756

Dear Max:

I write in response to your letter of August 30, 2021. Before addressing the timing of Beacon's response to the subpoenas issued by your office, I want to respond to certain assertions you have made in our communications to date.

Beacon's Cooperation with the Receiver

In our conversations, you repeatedly have suggested that Beacon has not been forthcoming with information and that the information you seek is something the Receiver has been seeking for many months. In your letter, you add that Beacon has been "the beneficiary of numerous indulgences." I have reviewed the emails and other records of communications between Beacon, its counsel, Mr. Hemmendinger and his colleagues, and they tell a very different story. I understand from those records that you only became involved in matters relating to Beacon in mid-June when, according to Mr. Hemmendinger, the Receivers "allocated" to you "some of the remaining work in the SJHSRI receivership." Here is what transpired before this matter was allocated to you.

In the initial months of the liquidating Receivership, the Receiver and Beacon continued to perform under the TPA. In April 2020, the Receiver stopped reimbursing Beacon for payments Beacon made on behalf of SJHSRI. Beacon discussed with Mr. Hemmendinger the Receiver's intentions regarding the TPA. Mr. Hemmendinger asked Beacon to continue paying claims while he considered whether to adopt or reject the TPA.

Over the next several months, Beacon assisted Mr. Hemmendinger in his pursuit of information he said he needed to make that decision. Among other things, Beacon helped Mr. Hemmendinger research whether SJHSRI ever obtained a bond to secure its self-insured liability. Although Beacon had nothing to do with any such bond, it contacted former agents of SJHSRI and undertook other actions to assist Mr. Hemmendinger with his inquiry.

In December 2021, Mr. Hemmendinger still had not determined whether to adopt or reject the TPA. By that point, Beacon had made tens of thousands of dollars of unreimbursed payments

September 3, 2021

Page 2 of 4

to claimants on behalf of SJHSRI. Accordingly, Beacon notified Mr. Hemmendinger that it was terminating the TPA. Mr. Hemmendinger took the position that Beacon could not terminate the TPA without Court approval and asked Beacon to continue performing under the agreement. In the ensuing weeks, Mr. Hemmendinger indicated that he would not object to Beacon filing a late claim for the unreimbursed amount, but then he later approved Beacon retaining certain re-insurance payments, which substantially reduced Beacon's receivable.

In early 2021, Mr. Hemmendinger pursued discussions with the DLT regarding the remaining workers compensation claims. At his request, Beacon attended meetings and assisted Mr. Hemmendinger in his efforts to have DLT assume responsibility for the claims. Mr. Hemmendinger acknowledged that it was very helpful to have Beacon's General Counsel Amy Vitale present for his meetings with the DLT.

On June 2, 2021, Mr. Hemmendinger told Beacon that he needed it to file a proof of claim in order to evaluate the Receivership's workers compensation issues. He also requested an accounting of claim payments made and reimbursements received from secondary sources. Up to that point, Beacon had understood that a claim might not be necessary if talks with the DLT resulted in an agreement. Beacon filed its proof of claim and summary accounting on June 10, just eight days after Mr. Hemmendinger made his request. On June 30, the DLT informed Mr. Hemmendinger that it was prepared to assume liability for both the administration and payment of the remaining workers compensation claims.

This is the moment that you entered the picture. On July 8 you requested that Beacon's outside counsel draft the Settlement Agreement with DLT, which she did. She provided you the draft on July 13. At that point you asked Beacon for assistance with your research into a Bank of America account maintained by SJHSRI. As you requested, Beacon researched its records to identify the banks from which SJHSRI made TPA payments to Beacon.

Then, on or about out August 10, 2021, out of the blue, you issued subpoenas to Beacon seeking records already produced and adding requests that far exceed any requests ever made by Mr. Hemmendinger or others. You informed Beacon's counsel that you were dissatisfied with how the Receiver had handled things with Beacon and stated your intention to examine all payments and reimbursements made throughout the 11-year history of the TPA. At the same time you issued this vastly expanded demand, you set unrealistic deadlines and assumed a bullying tone with Beacon and its counsel. To justify your deadlines and tone, you claimed that Beacon had failed to provide requested information for several months. That is simply not true.

The parties' emails and communications reflect that that Beacon has cooperated with the Receiver for these many months. They also establish that Beacon has exceeded its contractual obligations by providing services and assistance well beyond the scope of the TPA. For example, for over a year after the Receiver ceased paying its invoices, Beacon continued making payments to SJHSRI workers compensation claimants. Beacon could have sought, and undoubtedly received, Court approval to terminate the TPA (to the extent Court approval was even required). But it refrained from doing so at Mr. Hemmendinger's express request. Also at Mr.

Hemmendinger's request, Beacon assisted in researching the bond issue and facilitated his discussions with the DLT. Beacon was not obligated to do any of these things. Beacon also complied with your request that it draft the DLT settlement agreement for the Receiver and provide information to aid your investigation of the BOA account

Based on these facts, you have no basis to be frustrated with Beacon.

Insurance Documents Produced by Beacon

You have raised an issue about the recovery of reinsurance for payments made to claimants under the TPA. Throughout the Receivership, Beacon has provided the Receiver with monthly statements reflecting claimant payments made and reinsurance payments recovered. In addition, Beacon provided Mr. Hemmendinger an accounting for open claims for the period of the liquidating receivership. At no point, even now, has anyone on behalf of the Receiver notified Beacon of any issues with those statements or accountings.

You have asked to see the reinsurance policies. We have provided you with policy documents regarding the open claims, many of which were provided months ago to Mr. Hemmendinger. You have expressed consternation that Beacon does not have complete copies of each of the policies. Once again, your frustration is misplaced. The policies at issue were written over eighteen years before Beacon entered into the TPA. What we have produced to you are the documents provided to Beacon at the outset of the TPA. Beacon also forwarded SwissRe's contact information to Mr. Hemmendinger last April so that Mr. Hemmendinger could contact SwissRe directly. He did so and received additional historic documentation.

Your letter mischaracterizes statements made by Ms. Vitale in the June 29 Zoom conference. Ms. Vitale and Beacon's outside counsel Patty Antonelli recall that meeting well, as you became quite animated and belligerent during the conference. Both you and Mr. Hemmendinger subsequently acknowledged and apologized for how you acted. In any event, Ms. Vitale did not state in that conference that the SwissRe policy lacks a cumulative retention. Beacon has never taken that position in its communications with the Receiver. The policy terms, which are clear from the endorsements produced to you last week and previously to Mr. Hemmendinger, include a maximum retention per claim. The accountings provided by Beacon reflect the reimbursement that SJHSRI has received on the claims covered by SwissRe. There is no basis to believe that SJHSRI was not fully reimbursed for payments on claims that met the applicable maximum retention amount. You certainly have not pointed to any evidence that that is the case.

On the other hand, the GenRe policy does not include a cumulative retention. The claims covered by that policy are the claims for which Mr. Hemmendinger was hoping to find bond coverage. Beacon has previously discussed with Mr. Hemmendinger the limits on the GenRe coverage. Fortunately, DLT is prepared to assume payment for these claims.

September 3, 2021
Page 4 of 4

Our Phone Conversation Last Friday

Your letter also mischaracterizes my discussion with you in our conference call last week. The purpose of that call was to discuss the scope of the subpoenas. In the course of that call I raised a question about the following request:

2. All documents relating to self-insurance funds or trusts under which **SJHSRI** had/has coverage for workers' compensation claims for any or all of the period from 1985 through 2021, inclusive.


As I explained in our call, since the TPA relates to claims for which SJHSRI is self-insured, the request appears to call for each and every document generated over the course of the TPA relationship. I assumed you intended a narrower request and hoped to confirm that in our call. You did not respond to my inquiry, instead stating (as you have in your letter) that Beacon should understand what a self-insured fund or trust is, which was not my question. As I was unable to get you to respond to my question, I gave up on trying to get clarification.

Beacon's Response to the Subpoenas

To compile the documents sought in the subpoena would take many weeks and hundreds of manhours. Such an effort is unwarranted because, among other things, there is no evidence that any issue exists with how claimants were paid or whether all reinsurance proceeds were collected. Indeed, neither the Receiver nor SJHSRI prior to the Receivership ever demonstrated any deficiency in payments or collections. Accordingly, Beacon proposes an incremental approach to your request. Specifically, Beacon proposes to respond to the subpoena for documents as follows. The Receiver may choose any four of the claimants whose claims fell within the TPA period. Beacon will review the claims files for those claimants and produce the records sought in categories 1, 3, 4 and 5 as to those claims. Beacon will also produce documents in response to requests 2, 6 and 7. If the Receiver identifies the four claimants by September 7, Beacon will produce the documents as outlined above on or before October 4. Under this proposal, the Receiver may reserve his rights to seek additional documents and/or a deposition and Beacon reserves the right to object to any such further discovery.

Beacon believes that this incremental approach is reasonable to all parties. Although Beacon hopes you will agree and that we can proceed accordingly, in light of your threat of a "contempt motion to enforce", Beacon encloses an objection to the subpoena pursuant to Rule 45(c)(2)(B).

Sincerely,



Stacey P. Nakasian

SPN/mmp

Cc: Amy Vitale, Esq. (by email)
Thomas Hemmendinger, Esq. (by email)
Ron Cascione, Esq. (by email)
Stephen Del Sesto, Esq. (by email)

CERTIFICATE OF SERVICE

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

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

/s/ Michelle Potts

EXHIBIT C

Stacey P. Nakasian

From: Benjamin Ledsham <bledsham@wistbar.com>
Sent: Tuesday, August 31, 2021 10:06 AM
To: Stacey P. Nakasian
Cc: Ronald F. Cascione; Thomas S. Hemmendinger; Max Wistow; Max Wistow
Subject: Re: Beacon documents.

WARNING: The sender of this email could not be validated and may not match the person in the "From" field.

Just to be clear, by way of errata, "Sept. 30" in Max's email below should be "Sept. 7".

Benjamin

From: Max Wistow <carmaxabbey@gmail.com>
Sent: Tuesday, August 31, 2021 9:58 AM
To: Stacey P. Nakasian <snakasian@duffysweeney.com>
Cc: Ronald F. Cascione <rcascione@brcsm.com>; Thomas S. Hemmendinger <themmendinger@brcsm.com>; Benjamin Ledsham <bledsham@wistbar.com>
Subject: Beacon documents.

When I called in at 9:03 or 9:04 there was no one else on the line. I apologize for running late. I've spoken to Benjamin since and he told me that it was your plan to respond in writing to my email letter sent to you at 3:49 pm yesterday.

I can understand why you may not have had adequate time to digest its contents and make a proposal in response. That is why I extended the time to reply to us until next Tues. Sept. 30. Bear in mind, please, that we had only received on the previous Friday, the documents you hoped might moot this matter,

As we made clear in that letter, those documents included materials that had been represented by Beacon, as recently as June 29, to not be in Beacon's custody or control. That statement, while incorrect, was consistent with the responses that Tom H received during the months he was trying to get a handle on this. Further the documents you sent make it clear that at least one of the excess carriers (and possibly both) were on a cumulative basis to determine the SIR. This established the inaccuracy of Beacon's statements made as late as June 29. (viz. that all of the SIR's were on an annual basis).

Benjamin tells me that you indicated that you would respond in writing. I heartily agree that for the time being this is not only the best, but the only way to go. The attempts to work this out in a more or less informal manner, have failed. Going forward in a more structured way will certainly help prevent confusion, and make a record that doesn't depend on "he said, she said". Also, I am convinced that it will actually save time in the long run.

Looking forward to hearing from you.

Max