UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

PLAINTIFFS' MOTION FOR PRELIMINARY SETTLEMENT APPROVAL, SETTLEMENT CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND A FINDING OF GOOD FAITH SETTLEMENT

Plaintiffs,
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March 11, 2021

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INTRODUCTION

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Plan Receiver"), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (the "Individual Named Plaintiffs") and on behalf of all class members[1] as defined herein (collectively "Plaintiffs") submit this memorandum in support of their motion for preliminary approval of a class action settlement (the "Proposed Settlement") with Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, (collectively referred to herein as "Prospect"), and The Angell Pension Group, Inc. ("Angell") (Prospect and Angell being collectively the "Settling Defendants").

In addition to Plaintiffs and the Settling Defendants, the parties to the Proposed Settlement include Thomas Hemmendinger in his capacity as liquidating receiver (the "Liquidating Receiver") of CharterCARE Community Board, having been so appointed in the Rhode Island Superior Court matter captioned In re: CharterCare CharterCARE Community Board, St. Joseph Health Services of Rhode Island And Roger Williams Hospital (C.A. No. PC-2019-11756) (the "Liquidation Proceedings"). The Liquidating Receiver is aligned with the Plaintiffs in the Proposed Settlement. In addition to Plaintiffs, the Settling Defendants, and the Liquidating Receiver, the parties to the Proposed Settlement include Sam Lee, and David Topper. They are shareholders in

[1] Contingent upon the Court certifying the Settlement Class and appointing them Class Representatives.

the entity at the top of the corporate chain of Prospect companies and both of them are aligned with Prospect (all parties to the Proposed Settlement being collectively referred to as the "Settling Parties").

Plaintiffs seek judicial approval both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because it is required by the Rhode Island statute specifically addressed to settlements involving the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), R.I. Gen. Laws § 23-17.14-35 (the "Settlement Statute").

In support of this motion, Plaintiffs herewith file the Declaration of Stephen P. Sheehan dated March 11, 2021 ("Sheehan Dec.") and the exhibits attached thereto, including the settlement agreement (the "Settlement Agreement").[2]

Plaintiffs also submit herewith the following five declarations, which were initially filed in the Rhode Island Superior Court on January 25, 2021 in connection with seeking the Rhode Island Superior Court's approval of the Proposed Settlement, as exhibits to the Plan Receiver's Petition for Settlement Instructions and Approval:

- The Declaration of the Hon. Frank J. Williams, C.J. (Ret.) ("Williams Dec."), sworn to on January 19, 2021, concerning the mediation and terms of the Proposed Settlement, and the fees to be awarded to Plaintiffs' counsel Wistow, Sheehan & Loveley, PC ("WSL");[3]

[2] Sheehan Dec. Exhibit 1.

[3] Sheehan Dec. Exhibit 2.

- The Declaration of Arlene Violet, Esq. ("Violet Dec."), sworn to on January 21, 2021, who represents over 285 Plan participants,[4] in support of the Proposed Settlement and the fees to be awarded to WSL;[5]

- The Declaration of Christopher Callaci, Esq. ("Callaci Dec."), sworn to on January 15, 2021, 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 fees to be awarded WSL;[6]

- The Declaration of Jeffrey W. Kasle, Esq. ("Kasle Dec."), sworn to on January 18, 2021, who represents 247 Plan participants, in support of approval of the Proposed Settlement and the fees to be awarded WSL;[7] and

- The Declaration of the Plan Receiver ("Del Sesto Dec."), sworn to on January 22, 2021, concerning the fees to be awarded WSL.[8]

If this Proposed Settlement is approved, the remaining defendants against whom Plaintiffs will be asserting claims in this case will be the Roman Catholic Bishop of Providence, a corporation sole, the Diocesan Administration Corporation, and the Diocesan Service Corporation (the "Diocesan Defendants"). The Court has stayed all other proceedings in this case between the Settling Parties during the pendency of the proceedings for settlement approval, but the stay does not apply to Plaintiffs' claims against the Diocesan Defendants.[9]

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[4] Attorneys Violet, Kasle and Callaci were originally retained by certain Plan participants in connection with negotiations with the Plan Receiver and advocacy in the Plan Receivership Proceedings concerning possible cuts in benefits. That is an issue in which Plaintiffs' Counsel has not been and will not be involved.

[5] Sheehan Dec. Exhibit 3.

[6] Sheehan Dec. Exhibit 4.

[7] Sheehan Dec. Exhibit 5.

[8] Sheehan Dec. Exhibit 6.

[9] Text Order entered February 16, 2021 ("The stay does not apply to Plaintiffs' claims against the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, or the Diocesan Service Corporation.").

TRAVEL OF THE CASE AND THE PROPOSED SETTLEMENT

I. Prior to Commencement of Suit

The Plan is a defined benefit plan established by Defendant St. Joseph Health Services of Rhode Island ("SJHSRI") with 2,733 participants.[10] In August 2017, Defendant SJHSRI petitioned ("the "Receivership Petition") the Rhode Island Superior Court to place the Plan into receivership, in the case captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the "Plan Receivership Proceedings").

The Receivership Petition alleged that the Plan was insolvent and requested an immediate reduction of 40% in benefits under the Plan.[11] Attorney Stephen Del Sesto was appointed Receiver of the Plan by the Superior Court.[12] He thereafter obtained permission from the Superior Court to retain WSL as his "Special Litigation Counsel" to investigate and assert possible claims that may benefit the Plan, pursuant to Special Counsel's retainer agreement which was approved by the Superior Court prior to its execution.[13] The Order granting the Plan Receiver's petition to retain WSL stated 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 & Love[e]ly PC ("WSL") to act as

[10] Sheehan Dec. ¶ 8.

[11] Sheehan Dec. ¶ 9, Exhibit 7 (Petition for Receivership) (without exhibits for purposes of brevity) at 7.

[12] Sheehan Dec. ¶ 11, Exhibits 8 & 9 (Orders appointing Attorney Stephen Del Sesto as Temporary and then Permanent Receiver).

[13] Sheehan Dec. ¶ 12, Exhibit 10 (Order authorizing Receiver to retain WSL as Special Counsel).

> the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement . . . .[14]

The Engagement (WSL's Retainer Agreement) 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."[15]

On October 27, 2018, the Court appointed the Attorney Del Sesto as Permanent Receiver of the Plan.[16]

With the approval of the Plan Receiver, WSL was also retained by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque (the aforementioned Individual Named Plaintiffs) to investigate and assert claims on their behalf.[17] 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").[18] Each of the Individual Named Plaintiffs entered into a separate retainer agreement with WSL which stated in pertinent part 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

[14] Sheehan Dec. ¶ 10, Exhibit 11 (Order granting emergency petition).

[15] Sheehan Dec. ¶ 14, Exhibit 12 (WSL Retainer Agreement).

[16] Sheehan Dec. ¶ 11, Exhibit 9 (Order Appointing Permanent Receiver).

[17] Sheehan Dec. ¶ 15.

[18] Sheehan Dec. ¶ 15.

> 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.[19]

In other words, because the damages in the case concerned underfunding of the Plan and the remedy sought was payment into the Plan, it was believed that the Plan Receiver was the proper and sufficient party to assert all claims. The Individual Named Plaintiffs and the putative class were included notwithstanding that they would receive no recovery apart from the benefit they derive from the increase to the assets of the Plan, to moot any argument to the contrary.[20]

II. Commencement of Suit and Subsequent Proceedings

The Complaints in both this case and in the Rhode Island Superior Court (the "State Court Action") were filed on June 18, 2018.[21] Plaintiffs' First Amended Complaint was filed in this case on October 5, 2018.[22] That Complaint consists of 165 pages and 558 numbered paragraphs.[23]

These Complaints were filed by WSL on behalf of the Plan Receiver, the Individual Named Plaintiffs, and the proposed class consisting of the Plan participants.

The complaint in the State Court Action did not include 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

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[19] Sheehan Dec. ¶ 16, Exhibits 13-19 (WSL Retainer Agreements with the seven Individual Named Plaintiffs).

[20] Sheehan Dec. ¶ 17.

[21] ECF # 1 (original Complaint); ECF # 65-7 (Rhode Island Superior Court Complaint).

[22] ECF # 60 (Plaintiffs' First Amended Complaint).

[23] ECF # 60 (Plaintiffs' First Amended Complaint).

supplemental jurisdiction over those state law claims."[24] Pursuant to the parties' stipulation, that action was stayed pending the adjudication of this case in the United States District Court.

The Plan Receiver subsequently entered into two settlement agreements, in August of 2018 and September of 2018 respectively, both of which were subject to the approval of the Court and the Rhode Island Superior Court.[25]

The first settlement ("Settlement A") was of the Plan Receiver's claims against CharterCARE Community Board ("CCCB"), SJHSRI, and Roger Williams Hospital ("RWH"), and involved an initial gross cash recovery of $12,681,202.91 and certain additional transfers, commitments and stipulations, which were intended to position the Plan Receiver for additional recoveries on behalf of the Plan, which included the following:

- CCCB's percentage interest (initially 15%) in Prospect Chartercare, LLC[26] and CCCB's claims against Prospect (which were collectively identified as "CCCB's Hospital Interests") would be held by CCCB in trust for the Plan Receiver;
- CCCB's membership interest in Defendant Chartercare Foundation ("CCF") was assigned to the Plan Receiver to further support the Plan Receiver's claim against CCF;[27]
- SJHSRI, CCCB and RWH stipulated to liability at least for breach of contract and to damages of $125 million; and
- SJHSRI, RWH and CCCB committed to file petitions for liquidation in the Rhode Island Superior Court with the Plan Receiver as the sole secured

[24] ECF # 65-7 (Rhode Island Superior Court Complaint) ¶ 51.

[25] Sheehan Dec. ¶ 20.

[26] Which was the sole member of the entities that owned and operated Our Lady of Fatima Hospital and Roger Williams Hospital.

[27] This interest was ultimately assigned by the Plan Receiver to CCF in connection with Settlement B (which involved the payment of $4.5 million).

> creditor with priority to all of their assets up to the amount of the unpaid balance of the $125 million.[28]

The second settlement ("Settlement B") was of the Plan Receiver's claims against CCF (concerning an allegedly fraudulent transfer from CCCB, SJHSRI and RWH to CCF) and involved a gross recovery of $4.5 million.[29]

The gross recovery from these settlements (before fees and expenses) to date has been $17,181,202.91. As discussed below, Prospect's $27,250,000 contribution to the Proposed Settlement includes $5 million[30] for CCCB's Hospital Interests (which CCCB was holding in trust for the Plan Receiver). The Proposed Settlement includes Prospect's release of any claims in the Liquidation Proceedings, and the assets of CCCB, RWH and SJHRI in liquidation have not yet been distributed.

The Plaintiffs sought the necessary court approvals for these two settlements, from both this Court and the Rhode Island Superior Court, over the extensive objections of the then-non-settling defendants (which then included Prospect and the Diocesan Defendants) who alleged collusion and bad faith in connection with the settlement between Plaintiffs and SJHSRI, RWH, and CCCB. In fact, Prospect expressly stated that:

> Regardless of whether the Settlement Agreement is analyzed under the Settlement Statute, or under federal common law, the Court should not approve the Settlement Agreement because it plainly evidences collusion among the Receiver, Special Counsel, and the Settling Defendants.[31]

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[28] Sheehan Dec. ¶ 21.

[29] Sheehan Dec. ¶ 22, Exhibit 21 (Settlement Agreement in Settlement B).

[30] The $5 million is allocated $4 million to CCCB's membership interest in Prospect Chartercare, LLC and $1 million to CCCB's claims against Prospect. See Sheehan Dec. Exhibit 1 (Settlement Agreement) ¶ 11.

[31] ECF # 75-1 at 21.

In addition, the non-settling defendants in both settlements contended that the Settlement Statute was both preempted by ERISA and unconstitutional.[32]

Over Plaintiffs' objection, the non-settling defendants were permitted to conduct limited discovery, including depositions, on the issues of good faith and alleged collusion.[33] That discovery yielded no evidence of bad faith and the Court ultimately entered the good faith finding required by the Settlement Statute as discussed below.

The then-non-settling defendants in this case, including Prospect, Angell, and the Diocesan Defendants, also filed motions to dismiss the entirety of Plaintiffs' claims against them. The motions to dismiss were initially filed on September 14, 2018[34] and were re-filed on December 4, 2018[35] to address the Plaintiffs' First Amended Complaint which had been filed on October 5, 2018.

Over the next ten months the parties in this case intensively litigated the validity of the two settlements and the motions to dismiss filed by Prospect, Angell, and the Diocesan Defendants.[36]

The Court granted preliminary and then final approval to both Settlements A and B and, in connection with both settlements, made the statutory finding of good faith and the absence of collusion required under the Settlement Statute,[37] while expressly

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[32] Plaintiffs, on the other hand, maintained that the Settlement Statute was neither preempted by ERISA nor unconstitutional.

[33] Sheehan Dec. ¶ 24.

[34] ECF ## 49, 51, 54.

[35] ECF ## 67, 68, 70.

[36] Sheehan Dec. ¶ 25.

[37] See Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *3 (D.R.I. Sept. 30, 2019) (granting final approval for Settlement B) ("The Court finds that this settlement has been entered into in good faith and that its terms are fair, adequate, and reasonable.") and Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *5 (D.R.I. Oct. 9, 2019)

reserving decision on the issue of whether the Settlement Statute was preempted by ERISA or unconstitutional.[38]

After hearing, in connection with the approval of the settlement with CCF (Settlement B), the Rhode Island Superior Court approved WSL's contingent fee of 23 1/3% for representing the Plan Receiver pursuant to the WSL Retainer Agreement, subject to further approvals in the United States District Court.[39]

This Court then appointed Deming Sherman, Esq. as Special Master to make a recommendation concerning the fees WSL would receive in connection with both settlements for representing the Class.[40] The Special Master submitted his Report and Recommendation on Award of Attorneys' Fees on October 14, 2019.[41] 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

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(granting final approval for Settlement A) ("For these reasons, the Non-Settling Defendants objections as to collusion are overruled.").

[38] See Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *4 (D.R.I. Sept. 30, 2019) (granting final approval for Settlement B) ("The Court is satisfied that it need not address questions related to the applicability of ERISA in order to approve this settlement. Similarly, the Court need not determine the constitutionality or potential preemption of the Settlement Statute, and therefore expressly declines to rule on these issues at this time. The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings.") (citation omitted) (emphasis in original) and Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *6 (D.R.I. Oct. 9, 2019) (granting final approval for Settlement A) ("Similarly, the Court need not determine the potential preemption or constitutionality of the Settlement Statute, and therefore expressly declines to rule on these issues at this time. The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings.") (emphasis in original).

[39] Sheehan Dec. ¶ 26, Exhibit 22 (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;").

[40] Text Order dated September 5, 2019.

[41] ECF # 165.

benefit of the Plan participants…."[42] The Special Master noted that, pursuant to the Retainer Agreement approved by the Rhode Island Superior Court, WSL had been paid fees totaling $552,281.25 for time charges incurred in connection with pre-suit investigation. The Special Master also noted that, notwithstanding that WSL's Retainer Agreement as approved by the Rhode Island Superior Court "did not require this," WSL had voluntarily agreed to reduce the amount of its contingent fee by $552,281.25, giving a credit for its hourly time charges against its contingent fee.[43]

The Special Master recommended "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."[44] The reference to "any additional funds recovered" referred to any future recovery pursuant to the aforementioned transfers, commitments and stipulations in Settlement A which were intended to position the Plan Receiver for additional recoveries on behalf of the Plan.

The Special Master offered two reasons for his recommendation: a) the fee was in accordance 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.[45]

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

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[42] ECF # 165 at 7.

[43] ECF # 165 at 7 ("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.").

[44] ECF # 165 at 19.

[45] ECF # 165 at 19.

> 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 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.[46]

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).[47]

The Court accepted the Special Master's recommendation in its entirety and granted WSL's fee application.[48]

On March 21, 2019, CCCB commenced a civil action in the Rhode Island Superior Court, initially captioned Chartercare Community Board, individually and

[46] ECF # 165 at 14-15.

[47] ECF # 165 at 15.

[48] 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.").

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").[49]

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 (the "Put 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.[50]

On April 25, 2019, the Superior 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.[51]

The motions to dismiss in this case were extensively briefed and were the subject of oral argument on September 10, 2019.[52]

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[49] Sheehan Dec. ¶ 28.

[50] Sheehan Dec. ¶ 29.

[51] Sheehan Dec. ¶ 30.

[52] See Minute Entry for proceedings held before U.S. District Judge William E. Smith: Motion Hearing held on 9/10/2019.

At that oral argument, counsel for Prospect and certain other defendants suggested that the Court should entertain a motion for partial summary judgment on the issue of whether and, if so, when the Employees Retirement Security Act of 1974 ("ERISA") applied to the Plan prior to 2017, e.g. whether it applied in June of 2014 at the time Prospect acquired certain of the assets of St. Joseph Health Services of Rhode Island, including Our Lady of Fatima Hospital (the "2014 Asset Sale").[53] The Court agreed and denied the pending motions to dismiss, without prejudice, to allow submission of the motion for summary judgment on that issue.[54]

On December 17, 2019, Plaintiffs filed their motion for partial summary judgment in this case, seeking a declaration that that by April 29, 2013 at the latest, the Plan had not been a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA, at least by that date.[55] If proven, this finding would be a step toward establishing Prospect's successor liability for the Plan and other liabilities under ERISA.

The parties in this case then undertook intensive discovery over a ninety (90) day period pursuant to the Stipulation and Order, limited to the issues raised by Plaintiffs' motion for summary judgment.[56] That period was subsequently enlarged upon Prospect's motion.[57]

Unbeknownst (at the time) to the Plan Receiver, WSL, or the Liquidating Receiver, and without notice to any of them, certain applications ("CEC Applications")

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[53] ECF # 169 at 40.

[54] ECF # 169 at 69-75; Text Order dated October 29, 2019.

[55] ECF # 173 at 4.

[56] Sheehan Dec. ¶ 33; ECF # 170 (Stipulation and Order entered October 22, 2019).

[57] ECF # 188 (order).

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.[58]

Also unbeknownst (at the time) to the Plan Receiver, WSL, 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.[59]

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 a liquidating receivership in the Liquidation Proceedings.[60]

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.[61] 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

[58] Sheehan Dec. ¶ 34.

[59] Sheehan Dec. ¶ 35.

[60] Sheehan Dec. ¶ 36.

[61] Sheehan Dec. ¶ 37 (Exhibit 24) (complaint).

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.[62]

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 this case and the companion State Court Action, 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 of 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.[63] Thus, in that Delaware Chancery Court case, Prospect a) directly attacked the validity of the Plan Receiver's beneficial interest in Prospect Chartercare, LLC, b) sought to reduce the value of that interest to zero by setting off an enormous indemnity claim against it, and c) sought an affirmative recovery of any losses for which Prospect was entitled to indemnity that exceeded the value of CCCB's interest in Prospect Chartercare, LLC.

On January 17, 2020 Thomas Hemmendinger was appointed permanent Liquidating Receiver in the Liquidation Proceedings.[64]

[62] Sheehan Dec. ¶ 37 (Exhibit 24) (complaint).

[63] Sheehan Dec. ¶ 37 (Exhibit 24).

[64] Sheehan Dec. ¶ 38 (Exhibit 25) (Order appointing Permanent Liquidating Receiver).

On April 21, 2020, the Plan Receiver subsequently joined in CCCB v. Lee as a party plaintiff and together with CCCB filed a First Amended Complaint in CCCB v. Lee.[65]

Thereafter the Plan Receiver and the Liquidating Receiver engaged in months of document discovery and motion practice before the court in CCCB v. Lee to obtain the information needed to intelligently determine whether to exercise CCCB's Put Option to sell its interest in Prospect Chartercare, LLC.[66] Said efforts to obtain court-ordered discovery were still ongoing when the parties entered into the Proposed Settlement.

The Plan Receiver, WSL, and the Liquidating Receiver first learned of the CEC Applications and the HCA Applications in March of 2020.[67] WSL on behalf of the Plan Receiver, together with the Liquidating Receiver, filed formal objections in both proceedings.[68] In particular, they objected to the applicants' proposal that Prospect Medical Holdings, Inc. would pay private investment funds affiliated with Leonard Green & Partners an undisclosed sum (but which was at least $11,900,000) for the private investment funds' interest in a parent company of Prospect Medical Holdings, Inc. That transfer would leave Messrs. Topper and Lee as 100% owners of the entity at the top of the corporate chain of the Prospect group of companies, with no cost to Messrs. Topper and Lee.[69]

[65] Sheehan Dec. ¶ 39.

[66] Sheehan Dec. ¶ 40.

[67] Sheehan Dec. ¶ 41.

[68] Sheehan Dec. ¶ 41.

[69] Sheehan Dec. ¶ 41.

They also objected on the grounds that such transfer would deprive Prospect Medical Holdings, Inc. of assets without any benefit to Prospect Medical Holdings, Inc.[70] They objected that such a transfer would be a fraudulent transfer for the benefit of Messrs. Topper and Lee, that would be 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 in capital improvements, and against whom the Plan Receiver had asserted direct claims in this case.[71]

WSL on behalf of the Plan Receiver made several additional written submissions and participated in public hearings in connection with both proceedings on several occasions.[72]

On June 26, 2020, Prospect filed its opposition to Plaintiffs' motion for partial summary judgment and filed a cross-motion for partial 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."[73] In other words, Prospect alleged that the Plan lost church plan status only *after* Prospect acquired the operating assets of SJHSRI in June of 2014. This was in contrast to Plaintiffs' motion for summary judgment, which sought the declaration that the Plan had become subject to ERISA *prior* to the 2014 Asset Sale. If proven, the finding Prospect was seeking

[70] Sheehan Dec. ¶ 42.

[71] Sheehan Dec. ¶ 42.

[72] Sheehan Dec. ¶ 43.

[73] ECF # 193-1 at 69.

would tend to support its defense against successor liability and other liabilities under ERISA.

The parties in this case then undertook discovery over another ninety (90) day period, pursuant to the Stipulation and Order, limited to the issues raised by Prospect's cross-motion for summary judgment.

On July 10, 2020, in the Liquidation Proceedings, WSL on behalf of the Plan Receiver filed a joint motion with the Liquidating Receiver to disqualify Prospect's counsel Adler Pollock & Sheehan P.C. from representing Prospect in connection with the CEC and HCA Applications, based on their conflict of interest arising from their prior representation of CCCB and SJHSRI in connection with the 2014 Asset Sale.[74] Over the next several months, the movants submitted four supplemental memoranda in support of that motion.[75]

The Rhode Island Superior Court denied the motion on October 10, 2020,[76] whereupon the Liquidating Receiver applied for and was granted leave to file a petition for issuance of a writ of *certiorari* with the Rhode Island Supreme Court.[77] On December 20, 2020, the movants filed a motion for reconsideration of the Superior 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.[78]

[74] Sheehan Dec. ¶ 46.

[75] Sheehan Dec. ¶ 47.

[76] Sheehan Dec. ¶ 47.

[77] Sheehan Dec. ¶ 47.

[78] Sheehan Dec. ¶ 47.

The Receivers allege this evidence had been improperly withheld from Plaintiffs and the Superior Court.[79] These matters were pending when the parties entered into the Proposed Settlement.

On September 1, 2020, Plaintiffs filed their memorandum in reply to the memorandum submitted by Prospect in opposition to Plaintiffs' motion for summary judgment.[80]

On September 29, 2020, Prospect filed a motion in the Plan Receivership Proceedings to adjudge the Plan Receiver in contempt for the Plan Receiver's filing of opposition to the CEC and HCA Applications.[81]

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.[82] That objection reveals the complexity of the issues pending before the regulators and the interrelatedness of the judicial and regulatory proceedings.[83]

On November 23, 2020, Plaintiffs filed their memorandum in opposition to Prospect's cross-motion for summary judgment.[84]

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[79] Sheehan Dec. ¶ 47.

[80] ECF # 196.

[81] Sheehan Dec. ¶ 48.

[82] Sheehan Dec. ¶ 49, Exhibit 21 (Objection dated October 30, 2020 without exhibits except its Exhibit 1 (Wisehart Report)).

[83] See Sheehan Dec. ¶ 49, Exhibit 21.

[84] ECF # 202.

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.[85]

III. The Proposed Settlement

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 Williams as mediator.[86] Over the next eight weeks, and with the support of the Mediator, the parties negotiated settlement terms and exchanged draft settlement documents.[87]

As of December 30, 2020, Plaintiffs and the Settling Defendants agreed on the terms set forth in the Settlement Agreement.[88] In summary, the agreement provides for payment of thirty million dollars ($30,000,000) upon final approval of the Proposed Settlement by the Court in this case, a portion of which is to be paid by or on behalf of Prospect and a portion of which is to be paid by or behalf of Angell.[89] Prospect's contribution to the settlement is twenty-seven million two hundred fifty thousand dollars ($27,250,000).[90] Angell's contribution is the sum of two million seven hundred fifty thousand dollars ($2,750,000).[91]

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[85] ECF # 203.

[86] Sheehan Dec. ¶ 50.

[87] Sheehan Dec. ¶ 50.

[88] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 1.

[89] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 11–12.

[90] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 11.

[91] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 11.

Five million dollars of Prospect's contribution to the settlement is allocated to what the Settlement Agreement refers to as "CCCB's Hospital Interests," that the Plan Receiver obtained in connection with Settlement A. These interests consist of both CCCB's membership interest (of nominally 15%) in Prospect Chartercare, LLC and CCCB's other claims against Prospect Chartercare, LLC.[92] The Settlement Agreement provides that of such sum, four million dollars is allocated to the purchase price for CCCB's membership interest in Prospect Chartercare, LLC, and the remaining balance of one million dollars is allocated to the rest of CCCB's Hospital Interests.[93]

The entirety of the $30 million is to be paid through letters of credit and from the Superior Court Registry directly to the Plan Receiver, for payment into the Plan after the payment of attorneys' fees and expenses.[94] As was the case in connection with the prior settlements approved by the Court, no settlement payment will be made directly to any of the Plan participants.

Pursuant to the terms of the Settlement Agreement, the parties filed a Stipulation and Consent Order in the Plan Receivership Proceedings, which the Superior Court entered on January 4, 2021.[95] The Stipulation and Consent Order provides, *inter alia*, that Prospect's contribution of $27.25 million to the settlement would be funded by two letters of credit issued by JPMorgan Chase Bank, N.A. with the Plan Receiver as the sole beneficiary (the "Prospect Medical LOC" and the "Prospect East LOC"), and

[92] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 15.

[93] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 15.

[94] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 12-13.

[95] Sheehan Dec. ¶ 52, Exhibit 27 (Stipulation and Consent Order). See Sheehan Dec. Exhibit 1 (Settlement Agreement) at 15-16.

Angell's contribution to the settlement of $2.75 million would be deposited into the Registry of the Superior Court.[96]

On January 8, 2021, in accordance with the Settlement Agreement, the Plan Receiver and the Liquidating Receiver advised the Rhode Island Attorney General and the Rhode Island Department of Health as follows:

> Pursuant to paragraph 16 of the Settlement Agreement (enclosed), we hereby notify the Center for Health Systems Policy and Regulation, the Rhode Island Department of Health, and the Office of the Rhode Island Attorney General that our objections to the HCA Applications and the CEC Applications are withdrawn, and that we have no objection to such applications being granted.
>
> Pursuant to paragraph 17 of that same Settlement Agreement, you have received or will be receiving the Applicants and Transacting Parties' request that in the event of an approval of all or any of the pending CEC Applications and HCA Applications, that approval be expressly conditioned upon 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 fulfilling their obligations under the Settlement Agreement.[97]

On January 11, 2021, Angell deposited $2,750,000.00 into the Registry of the Rhode Island Superior Court.[98]

On January 20, 2021, the Prospect Medical LOC and the Prospect East LOC were delivered to the Plan Receiver by JPMorgan Chase Bank, N.A.[99]

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[96] Sheehan Dec. Exhibit 1 (Settlement Agreement) at 15–16.

[97] Sheehan Dec. ¶ 53, Exhibit 28 (Notification to RIDOH and RIAG).

[98] Sheehan Dec. ¶ 54.

[99] Sheehan Dec. ¶ 55.

The Settlement Agreement obligates the Plaintiffs to provide the Settling Defendants with releases in the form attached thereto, which preserve any claims concerning breach of the Settlement Agreement by the Settling Defendants, and any claims arising out of the Prospect Medical LOC or the Prospect East LOC.[100] The Settlement Agreement also obligates the Settling Defendants to provide the Plaintiffs with releases in the form attached to the Settlement Agreement, which include, *inter alia*, releases of claims that the Prospect Defendants and Angell had asserted in the Liquidation Proceedings, of more than $3 million (which amount the Prospect Defendants contend continues to increase) and $675,000, respectively.[101] These latter releases remove those obstacles to Plaintiffs' obtaining the assets of CCCB, RWH, and SJHSRI in the Liquidation Proceedings. The parties have exchanged releases which are being held in escrow pending this Court's final approval of the Proposed Settlement.

IV. Superior Court Approval of the Proposed Settlement

On January 25, 2021, the Plan Receiver filed his Petition for Settlement Instructions and Approval with the Rhode Island Superior Court, with notice to all parties who had participated in the Plan Receivership Proceedings, including the Diocesan Defendants.[102] At the same time the Liquidating Receiver filed his Petition for Settlement Instructions Regarding Settlement with Prospect Parties and the Angell

[100] Sheehan Dec. Exhibit 1 (Settlement Agreement) ¶ 13 (Exhibit 10 to the Settlement Agreement).

[101] Sheehan Dec. Exhibit 1 (Settlement Agreement) ¶ 13.

[102] Sheehan Dec. ¶ 56, Exhibit 29 (Plan Receiver's Affidavit of Notice).

Pension Group in the Liquidation Proceedings. There was no objection asserted to either petition.[103]

Both petitions were heard in the Rhode Island Superior Court on February 12, 2021. At the conclusion of the hearing Judge Stern put on the record his reasons for granting both petitions, including the following:

> The Court finds after reviewing the entire record, that there was certainly a probability of success in terms of settling and compromising the litigation, but the Court is in complete agreement that this wasn't something that was a hundred percent that the Plan Receiver and Liquidating Receiver were going to prevail on the merits a large part due to not only the issues of first impression, but also some of the transactional documents involved and certainly that is in favor of approving the settlement. The difficulties encountered in the matter of collection, certainly in any case there are issues in terms of where we may be down the road which in this case may have been several years down the road in terms of collection of debt. Certainly, money in the hand today many times is worth the possibility of getting more money down the road and having to deal with the issues of collection.
>
> I did read in the papers in terms of the issues that the Receiver raised. As far as this Court is concerned, in a case where we're dealing with hospitals and a variety of entities, it's certainly in the Receiver's interest to have a bird in the hand, so to speak, of a substantial amount of settlement rather than taking any risk that may be down the road.
>
> The complexity of the litigation involved: I would confer [*sic recte* concur] with everyone who mentioned this is an extremely complex litigation with both some federal questions that are involved, litigation not only in Rhode Island but in Delaware, and a potential that it could have been in other jurisdictions as well. I would concur with what was said. This very much is one of the most, if not the most complicated issue in litigation the Court has before it at this time. The only one that I can think of that may have been more complex was the case before my predecessor, Justice

[103] Sheehan Dec. ¶ 56.

> Silverstein, in another very large case involving Attorney Wistow. But there was a large amount of complexity and a large amount of risk in this case.
>
> And finally, which I think is extremely important, is the interest of creditors in deference to their reasonable use. This is a case from the beginning that there was a huge amount of uncertainty by the pensioners, who as far as I'm concerned are the creditors in this case or the main creditors in this case. To get to a settlement and to be able to put dollars back into the plan that will give them some comfort in terms of certain payments that can be made for a period of time in the future while this case is not over is a large, large consideration. And that is made that much clearer to the Court by the declarations of Attorney Calacci, Kasle, and Attorney Violet. And the Court really focuses on not only the reasonableness of the settlement but the impact on those retirees. And for those reasons, the Court approves the petition by both the Liquidating Receiver and the Plan Receiver.[104]

Judge Stern also addressed the appropriateness of WSL's contingent fee of 23 1/3%, as follows:

> As the Liquidating Receiver spoke about, he is compensated on an hourly basis and those fees, costs, and expenses will come before the Court in due course for approval. However, the Special Counsel to the Plan Receiver is paid at this point on a contingency fee basis. That contingency fee which was negotiated between the Plan Receiver and Special Counsel was previously approved by this Court and was approved by this Court in the prior settlement as well. With respect to the case presently before the Court and the petition, the Court finds that the contingency fees and costs are fair, reasonable, and certainly for the benefit of the plan receivership estate and that contingency fee as well as reasonable costs are approved.
>
> I understand completely that this Court only has the ability to grant the petition that is before the Court which includes allowing this case to proceed before the United States District Court with respect to the class actions and other claims. I understand that Judge Smith and Chief Judge Smith had appointed Attorney Deming Sherman as a special master to look at the fees, costs, and expenses in the prior application, and my understanding is that Attorney Sherman concurred that those fees were, in

[104] Sheehan Dec. ¶ 57, Exhibit 30 (Transcript of hearing on February 12, 2021) at 29-31.

> fact, fair and reasonable. I certainly understand that Judge Smith is going to need to consider these fees with respect to the class action. And that is one of the main reasons, as I mentioned before, that while the Court is giving a decision from the bench at this point so we can proceed forward, I will issue a set of findings as well to supplement the decision.[105]

WSL will file its motion for attorneys' fees in connection with Plaintiffs' motion for final settlement approval, if and when the Court grants Plaintiffs motion for preliminary approval.

On March 4, 2021, Judge Stern issued his written Decision (amended March 8, 2021)[106] setting forth the relevant facts and the court's reasoning in support of the court's finding that the Settlement Agreement "is fair, equitable, and in the best interests of the receivership estate" and "that the attorneys' fees [of 23 1/3%] are reasonable."[107] In evaluating the proposed settlement, the court adopted and applied the factors used by the First Circuit in Jeffrey v. Desmond, 570 F.3d 183 (1st Cir. 1995) (the "Jeffrey Factors") for determination whether to approve a settlement of a claim of the estate of a debtor in bankruptcy, i.e.:

(i) "the probability of success in the litigation being compromised;

(ii) "the difficulties, if any, to be encountered in the matter of collection;

(iii) "the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and,

[105] Sheehan Dec. ¶ 57, Exhibit 30 (Transcript of hearing on February 12, 2021) at 31-32.

[106] The amended (and operative) Decision is attached hereto as Exhibit A.

[107] St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan (C.A. No. PC-2017-3856) and In re: Chartercare Community Board; St. Joseph Health Services of Rhode Island; and Roger Williams Hospital (C.A. No. PC-2019-11756) (Rhode Island Superior Court, March 8, 2021) (attached hereto as Exhibit A) at 23.

(iv) "the paramount interest of the creditors and a proper deference to their reasonable views in the premise."[108]

In his determination that the contingent fee of 23 1/3% was reasonable, Judge Stern noted both that the fee was pursuant to the WSL Retainer Agreement approved by the court,[109] and that the fee was also reasonable under the criteria applied in the federal courts to evaluate attorneys' fees in connection with class action settlements that produce a common fund for the class, i.e.:

> "'(1) the size of the fund and the number of persons benefitted; (2) 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.'"[110]

On March 4, 2021, Judge Stern also issued his order[111] granting the Plan Receiver's Petition, which stated that it is hereby ordered as follows:

1. That the Petition for Settlement Instructions and Approval is granted;

2. That notice of the Petition for Settlement Instructions and Approval and of the hearing thereon was given to all parties in interest, including all of the Plan's participants and beneficiaries;

3. That the Proposed Settlement including specifically the Settlement Agreement is fair and reasonable, was made in good faith, and is in the best interests of the Receivership estate and the Plan's participants and beneficiaries, and that all actions of the Plan Receiver in connection with the negotiation, execution, and

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[108] Exhibit A (Amended Decision) at 9 (quoting Jeffrey, *supra*, 70 F.3d at 185) (internal citation omitted).

[109] Exhibit A (Amended Decision) at 17.

[110] Exhibit A (Amended Decision) at 19 (quoting In re Neurontin Marketing & Sales Practices Litigation, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) and In re Lupron Marketing & Sales Practices Litigation, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005) and citing Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000)).

[111] Attached hereto as Exhibit B (March 4, 2021 Order). Although the Order states "[t]hat the Settlement Agreement constitutes a good-faith settlement under R.I. Gen. Laws § 23-17.14-35," Plaintiffs also seek such a finding from the Court.

implementation of the Proposed Settlement are approved and ratified;

4. That the Plan Receiver may seek approval of the Proposed Settlement by the United States District Court in 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 is directed to take all necessary and appropriate actions in connection therewith;

5. That Special Counsel's contingent fee for representing the Plan Receiver of 23 1/3% (as set forth in the Petition for Settlement Instructions and Approval and which the Court has previously approved) is fair, reasonable, and a benefit to the Receivership estate and, subject to the approval of the Proposed Settlement and the fee by the court in the Federal Court Action, the Plan Receiver is authorized to pay said fee to Special Counsel from the proceeds of the Proposed Settlement and to pay the entire remaining proceeds to the Plan; and

6. That the Settlement Agreement constitutes a good-faith settlement under R.I. Gen. Laws § 23-17.14-35.

Exhibit B (March 4, 2021 Order).

V. Over 1,000 Plan Participants Support the Proposed Settlement

The Proposed Settlement has the support of all of the Plan participants that are represented by counsel in the Receivership Proceedings.[112] Over one thousand (1,000) of the Plan participants are represented by counsel in the Plan Receivership Proceedings: Attorneys Arlene Violet represents 357 Plan participants;[113] Attorney Jeffrey Kasle represents 247 Plan participants;[114] and Attorney Christopher Callaci, as General Counsel of for the United Nurses & Allied Professionals ("UNAP"), represents

[112] See *supra* at 3 n.4, concerning the role of Attorneys Violet, Kasle and Callaci.

[113] Sheehan Dec. ¶ 6, Exhibit 3 (Violet Dec.) at 1.

[114] Sheehan Dec. ¶ 6, Exhibit 5 (Kasle Dec.) at 1.

400 Plan participants.[115] All of these Plan participants through their counsel have affirmatively indicated their support for the Proposed Settlement.[116]

THE RISKS OF NOT SETTLING

The risks to the Plan if the settlement is not approved involve both litigation risk and collection risk, both of which are significant. Each risk, standing alone, would justify this settlement as being in the best interest of the Plan (as well as, indirectly, the best interests of the Plan participants).

I. Litigation Risk Involving Prospect

The litigation risks involving Prospect arise out of the unique facts of this case and the novelty and complexity of the legal issues involved.

Prospect's liability for the Plan was expressly disclaimed in connection with Prospect's acquisition in 2014 (the "2014 Asset Sale") of certain of the assets and certain 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).[117] That disclaimer is set forth in the operative document for that transaction,

[115] Sheehan Dec. ¶ 6, Exhibit 4 (Callaci Dec.) at 1.

[116] Sheehan Dec. ¶ 6, Exhibit 3 (Violet Dec.) at 2; Exhibit 5 (Kasle Dec.) at 2; Exhibit 4 (Callaci Dec.) at 2.

[117] Sheehan Dec. ¶ 60, Exhibit 33 (Asset Purchase Agreement ("APA") between and among CCCB, SJHSRI, RWH, and Prospect) at 8 (exhibits omitted except Schedule 2.4) ("Notwithstanding anything herein to the contrary, the Company and/or the Company Subsidiaries are assuming only the Assumed Liabilities and are not assuming and shall not become liable for the payment or performance of any other Liability of Sellers (collectively, the °'Excluded Liabilities") & Schedule 2.4 (excluding "All liabilities related to the Retirement Plan").

the Asset Purchase Agreement ("APA") between and among CCCB, SJHSRI, RWH, and Prospect.[118]

Moreover, the APA and specifically Prospect's disclaimer of liability for the Plan were the subject of factual submissions and several public hearings before the Center for Health Systems Policy and Regulation of the Rhode Island Department of Health and the Office of the Rhode Island Attorney General, whose approval was required under the Hospital Conversions Act, R.I. Gen. Laws § 23.17-14, et seq. in connection with the 2014 Asset Sale.[119]

Furthermore, both the Center for Health Systems Policy and Regulation of the Rhode Island Department of Health and the Office of the Rhode Island Attorney General issued approvals of that transaction (which Plaintiffs contend were based on inadequate and misleading representations) adopting Prospect's position that it would have no liability for the Plan.[120]

In addition, the submissions of the parties to both the Center for Health Systems Policy and Regulation of the Rhode Island Department of Health and the Office of the Rhode Island Attorney General represented that:

a. SJHSRI sponsored the Plan;

b. the Plan had historically been treated as, and was considered by all parties to the transaction to be, a "church plan," which was, therefore, exempt from the requirements of ERISA, including the obligation to adequately fund the Plan;

[118] See n.117, *supra*.

[119] Sheehan Dec. ¶ 61.

[120] Sheehan Dec. ¶ 62.

c. following the 2014 Asset Sale, SJHSRI would continue to retain all responsibility for the Plan, with the financial support of CCCB and RWH;

d. the Diocese of Providence would continue to sponsor SJHSRI after the 2014 Asset Sale, so as to preserve the "church plan" exemption; and

e. SJHSRI, RWH, and CCCB anticipated having sufficient revenues to meet the needs of the Plan.[121]

Plaintiffs' claims against Prospect are set forth in Plaintiffs' First Amended Complaint in this case.[122] In essence, Plaintiffs' claims against Prospect contradict the key elements upon which the 2014 Asset Sale was based and approved. Plaintiff's claims in this regard also depend, in part, on allegations that the state regulators were mistaken and misled.

Specifically, Plaintiffs allege that, in fact and law, the Plan ceased to be a "church plan" prior to the 2014 Asset Sale.[123] Plaintiffs contend that, as a result, the Plan was already subject to ERISA when Prospect acquired the assets of St. Joseph Health Services of Rhode Island.[124] Plaintiffs further assert that Prospect has liability for the Plan under the federal law of successor liability applicable under ERISA, regardless of the express provisions in the APA providing that Prospect had no such liability.[125]

Thus, Plaintiffs' claims against Prospect (both under ERISA and under Plaintiffs' state law claim for successor liability) depended upon Plaintiffs persuading the trier of the facts and the Court in this case that a key term in the APA should be disregarded,

[121] Sheehan Dec. ¶ 63.

[122] ECF # 60.

[123] ECF # 60 ¶¶ 68-69.

[124] ECF # 60 ¶ 69.

[125] ECF # 60 ¶ 429.

so as to allow the imposition of liability on Prospect for the Plan. Both these facts and the outcome Plaintiffs are seeking in this case are unique.

Also, many legal issues raised by Plaintiffs claims against Prospect under ERISA involved issues of first impression. They include the following:

a. whether the federal law of successor liability (which originated in collective bargaining disputes) applies in the context of single employer defined benefit plans;

b. whether the requirement for successor liability under ERISA that the putative successor have knowledge of the predecessor's liability for the pension plan is satisfied when the pension plan is contended to be a church plan exempt from ERISA; and

c. whether an entity that formerly operated as a Catholic hospital but then is divested of all operating assets and has no ongoing religious role or other connection with the Catholic Church has sufficient association with the Catholic Church to be qualified for listing in the Catholic Directory as under the sponsorship of the Catholic Church.

In addition to claims under ERISA, Plaintiffs asserted claims against Prospect based upon fraud, over alleged misrepresentations and omissions that concealed the underfunded status of the Plan.[126] These claims also involved novel factual and legal issues, including the following:

a. whether Plan participants have to show individual reliance on Prospect's misrepresentations and omissions;

b. whether Plan participants are entitled to recover in fraud based on Prospect's alleged misrepresentations and omissions to state regulators, e.g., whether third party reliance is sufficient; and

c. whether Prospect intended to deceive Plan participants through alleged misrepresentations and omissions, if, indeed, full disclosure (in large measure through non-public and allegedly proprietary and confidential submissions) was made to state regulators.

[126] ECF # 60 ¶¶ 477-502.

In addition, Plaintiffs assert that, notwithstanding that it was approved by the state regulators, the 2014 Asset Sale was part of a fraudulent scheme, which sought to insulate the new owners of the assets of Fatima Hospital and Roger Williams Hospital from any liability for the Plan, and to leave responsibility for the Plan with St. Joseph Health Services of Rhode Island operating as a shell corporation with no operating assets.[127]

As noted *supra*, Prospect filed a motion to dismiss the entirety of Plaintiffs' complaint in this case.[128] That motion was the subject of extensive written submissions by Prospect and the Plaintiffs, and oral argument.[129] The Court denied Prospect's motion to dismiss without prejudice, and directed the parties to address in summary judgment proceedings the applicability of ERISA to the Plan.[130] Thousands of pages of legal argument and factual submissions were then filed in connection with Plaintiffs' motion for summary judgment, Prospect's opposition, and Prospect's cross-motion for summary judgment that the Plan was not subject to ERISA at the time of the 2014 Asset Sale. Briefing concluded on December 8, 2020 and the Proposed Settlement was entered into before this Court heard oral argument and ruled on the motion and cross-motion for summary judgment.

It is impossible to fully summarize either the scope or complexity of the various lawsuits (and the legal and factual issues) between the Plan Receiver and the Settling Defendants without making this memorandum even more lengthy. One measure is that

[127] ECF # 60 ¶¶ 136, 498-502, 521.

[128] ECF # 70.

[129] ECF ## 70, 99, 100, 113, 169.

[130] ECF # 169 at 69-75; Text Order dated October 29, 2019.

the parties have made over 700 separate filings in state courts and in this Court.[131] These court filings total nearly 23,000 pages.[132] In addition to the court filings, submissions to state regulators in connection with the CEC and HCA Applications and the objections thereto of the Plan Receiver and the Liquidating Receiver involve many more thousands of pages.[133]

If the Court were to grant Prospect's cross-motion for summary judgment and conclude that the Plan was not subject to ERISA at the time of the 2014 Asset Sale, Plaintiffs' claims would be dealt a serious blow. Under those circumstances, it would be unlikely that Prospect would make any meaningful settlement offer. It would also be unlikely that Plaintiffs would prevail against Prospect on their ERISA claims. In that event, the Court would have discretion to dismiss that case pursuant to 28 U.S.C. §1367(c) and, if the Court exercised that discretion, Plaintiffs would have to begin anew with the State Court Action, which until now has been completely stayed.

An additional litigation risk for the Plan Receiver was that if Prospect prevailed in this case, Prospect's claim for indemnity against CCCB would be much more likely to be enforceable, in which event Prospect would have been able to set off CCCB's liability against the value of CCCB's Hospital Interests, including both CCCB's interest in Prospect Chartercare, LLC and any potential recoveries on CCCB's other claims against Prospect Chartercare, LLC, which would significantly reduce (and, more likely, entirely eliminate) the value of CCCB's Hospital Interests.

[131] Sheehan Dec. ¶ 64.

[132] Sheehan Dec. ¶ 64.

[133] Sheehan Dec. ¶ 64.

As previously noted, the Settlement Agreement stipulates that the value of CCCB's Hospital Interests is $5 million.[134] Thus, one of the risks of not settling with the Prospect Entities was that the value of a substantial asset that Plaintiffs obtained in connection with the prior settlement with CCCB would be lost by the Plan. Moreover, Prospect would continue to assert claims in the Liquidation Proceedings to recover the assets of CCCB, RWH, and SJHSRI in liquidation, which, if successful, would be to the detriment of the Plan Receiver's claims against those assets.

II. Litigation Risk Involving Topper and Lee

Plaintiffs have certain asserted and (as yet) unasserted claims against Sam Lee and David Topper, arising out of their receipt of dividends from various entities in the Prospect group of companies, which Plaintiffs assert constituted fraudulent or voidable transfers. (These claims are subject to the tolling agreement that is Exhibit 14 to the Settlement Agreement.) To recover on those claims, Plaintiffs would have to prove both the merits of their claims against Prospect and that the dividends to Topper and Lee were fraudulent transfers. Moreover, if the Prospect entities were to go into bankruptcy prior to Plaintiffs obtaining a judgment against Prospect, and a bankruptcy trustee were appointed, Plaintiffs would likely have to compete with the claims of the trustee against Messrs. Lee and Topper. The trustee could be expected to assert the superior status of a hypothetical judgment creditor as of the date of the bankruptcy. In addition to potentially depriving Plaintiffs of any recovery, such proceedings would drain Plan

[134] Sheehan Dec., Exhibit 1 (Settlement Agreement) ¶ 11.

assets through the payment of attorneys' fees and expenses of bankruptcy counsel for litigation in one or more out-of-state proceedings.

III. Litigation Risk Involving Angell

Angell was retained by SJHSRI to provide actuarial services in connection with the Plan and to act on behalf of SJHSRI in dealing directly with Plan participants in connection with their benefits under the Plan. Plaintiffs' claims against Angell are also detailed in the Complaint.[135] Plaintiffs alleged that Angell was liable for professional negligence in failing to disclose to Plan participants that Plan was underfunded, and that SJHSRI was not making the contributions to the Plan required to enable the Plan to pay all benefits to which the Plan participants were entitled.[136] Plaintiffs also alleged that Angell breached its fiduciary duties and was liable in fraud for those omissions and certain alleged misrepresentations that suggested that the Plan participants could count on receiving the benefits to which they were entitled.[137]

Angell also moved to dismiss Plaintiffs' complaint against Angell, on the grounds, *inter alia*, that Angell had no duty to the Plan participants, that Angell's alleged omissions and representations were not fraudulent, and that the Plan participants could not show detrimental reliance.[138] This Court also denied Angell's motion to dismiss, without prejudice, pending the motions for summary judgment on the issue of whether the Plan was governed by ERISA.[139]

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[135] ECF# 60 *passim*.

[136] ECF# 60 ¶¶ 506–510 (Count X).

[137] ECF# 60 ¶¶ 494–497 (Count VII) & 498–502 (Count VIII).

[138] ECF# 68.

[139] See Text Order dated October 29, 2019.

Plaintiffs' claims against Angell also involved certain novel legal issues, including whether an actuary retained by an employer/plan sponsor owed a duty of care to the Plan or the Plan participants, and how detrimental reliance could be proved in the context of representations and omissions to Plan participants. Angell could be expected to reassert its right to a pretrial determination of these issues, either by a renewed motion to dismiss or a motion for summary judgment. Plaintiffs could not be certain that such efforts for pre-trial dismissal of Plaintiffs' claims would fail, or that Plaintiffs would prevail at trial if those efforts were unsuccessful.

IV. **Collection Risk Involving Prospect**

The Prospect group of companies are privately owned and do not make public disclosure of their finances. Moreover, Prospect contests Plaintiffs' right to conduct asset discovery against Prospect prior to obtaining a judgment. However, in connection with the CEC and HCA Applications, Plaintiffs obtained Prospect's financial statements and had them reviewed by a CPA and business valuation expert, Donald Wisehart. Mr. Wisehart provided a report which Plaintiffs submitted in connection with their opposition to the CEC and HCA Applications.[140] Mr. Wisehart concluded that, in his opinion, "bankruptcy is imminent unless there is a significant infusion of capital and a return of all dividends previously paid out."

WSL retained nationally known insolvency counsel to review the settlement documents and advise on how to best structure the Proposed Settlement to mitigate

[140] Sheehan Dec. ¶ 49, Exhibit 26 (letter enclosing Memorandum of Donald Wisehart as Exhibit 1 thereto).

against the risks of a potential bankruptcy by Prospect.[141] Their recommendations are incorporated in the Settlement Agreement, including the requirement for issuance of letters of credit by JPMorgan Chase Bank, N.A. to the Plan Receiver. As noted, the original letters of credit were delivered to the Plan Receiver on January 20, 2021.[142] If the Proposed Settlement is not approved, those letters of credit must be returned to Prospect and there will be no assurance that Plaintiffs will be able to collect from Prospect the $27,250,000 they represent (or any other recovery) even if Plaintiffs prevail.

V. Risk of Delay

This case is very complex, involves many Defendants, as well as the additional complications of proceeding as a class action, and, therefore, could take years to litigate to conclusion absent settlement. During that time, Plaintiffs would have no security for their claims, and the assets of the Settling Defendants might be significantly diminished if not fully expended, or otherwise rendered unavailable to satisfy a judgment. Indeed, an insolvency proceeding would likely result in the imposition of an automatic stay of the pending litigation and require that the Plan Receiver and the Individual Named Plaintiffs litigate their claims in distant fora, such as bankruptcy courts in Delaware or California.

[141] Sheehan Dec. ¶ 68.

[142] Sheehan Dec. ¶ 55.

ARGUMENT

I. The Court Should Preliminarily Approve the Settlement

The requirements for approval of class action settlements are set forth in Rule 23(e) of the Federal Rules of Civil Procedure, which states in pertinent part as follows:

> (e) **Settlement, Voluntary Dismissal, or Compromise**. The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> (1) Notice to the Class.
>
> (A) Information That Parties Must Provide to the Court. The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.
>
> (B) Grounds for a Decision to Give Notice. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:
>
> (i) approve the proposal under Rule 23(e)(2); and
>
> (ii) certify the class for purposes of judgment on the proposal.
>
> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;

> > > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> > >
> > > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> > >
> > > (iv) any agreement required to be identified under Rule 23(e)(3); and
> >
> > (D) the proposal treats class members equitably relative to each other.
>
> (3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
>
> (4) New Opportunity to be Excluded. If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
>
> (5) Class-Member Objections.
>
> > (A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.
> >
> > (B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:
> >
> > > (i) forgoing or withdrawing an objection, or
> > >
> > > (ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

Fed. R. Civ. P. 23(e).

Thus, the procedure for approval of a class settlement involves an initial, preliminary determination by the Court in connection with the decision whether to direct

notice to the class. "[T]he goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement's fairness. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase." Newberg on Class Actions § 13:13 (citations omitted). "At the preliminary approval stage, on motion of the plaintiffs, the court reviews the proposed terms of the settlement and makes a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms." McLaughlin on Class Actions § 6:7 (14th ed.) (citations omitted). "At this stage, the court can only determine whether the proposed settlement appears to fall within the range of possible final approval. . . . All findings and rulings for purposes of preliminary approval are contingent on the parties achieving successful final approval of the Settlement Agreement." Trombley v. Bank of America Corp., No. 08-CV-456-JD, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011) (citing Am. Int'l Group, Inc. v. ACE INA Holdings, Inc., 2011 WL 3290302, at *6 (N.D. Ill. July 26, 2011)).

As noted, if the Proposed Settlement is approved, it will be the third settlement in this case. In connection with the preliminary approval of Settlement A, the Court described the legal criteria for approval as follows:

> Rule 23(e)(2) permits the Court to approve a class action settlement only if the proposed agreement is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2); In re Pharma. Indus. Average Wholesale Price Litig., 588 F.3d 24, 32 (1st Cir. 2009). At the preliminary approval stage, however, a less rigorous standard applies: the Court need only determine whether the settlement "appears to fall within the range of possible final approval." Trombley v. Bank of Am. Corp., Civil No. 08-cv-456-jd, 2011 WL 3740488, at *4 (D.R.I. Aug. 24, 2011); see also Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee, 616 F.2d 305, 314 (7th Cir. 1980), overruled in part on other

> grounds by Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1998). Preliminary approval should not be confused for a final finding of reasonableness or fairness. The first step is merely to "ascertain whether notice of the proposed settlement should be sent to the class ...." 4 William B. Rubenstein, Newberg on Class Actions § 13:13 (5th ed. 2018); see also Flynn v. N.Y. Dolls Gentlemen's Club, No. 13 Civ. 6530(PKC)(RLE), 2014 WL 4980380, at *1 (S.D.N.Y. Oct. 6, 2014) ("Preliminary approval requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties.") (quoting Clark v. Ecolab, Inc., No. 07 Civ. 8623(PAC), 04 Civ. 4488(PAC), 06 Civ. 5672(PAC), 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (quotation marks omitted)).

Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 2394251, at *1 (D.R.I. June 6, 2019).

Since in making the decision whether to direct notice, the Court must decide whether it "will likely be able to: (i) approve the proposal under Rule 23(e)(2)," the Court must make a preliminary determination of whether the proposed settlement will meet the requirements for final approval. "There is no single litmus test for a settlement's approval; it is instead examined as a gestalt to determine its reasonableness in light of the uncertainty of litigation." Gulbankian v. MW Mfrs., Inc., No. CIV.A. 10-10392-RWZ, 2014 WL 7384075, at *1 (D. Mass. Dec. 29, 2014) Id. (citing Bussie v. Allmerica Fin. Corp., 50 F. Supp. 2d 59, 72 (D. Mass. 1999)). See Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 4758161, at *3 ("However, although '[t]he case law offers 'laundry lists of factors' pertaining to reasonableness... 'the ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.'") (quoting Bezdek v. Vibram USA,

Inc., 809 F.3d 78, 82 (1st Cir. 2015) (quoting Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund, 582 F.3d 30, 44 (1st Cir. 2009)).

As the Court previously noted:

> Some of the factors in this consideration include:
>
> > (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 4758161, at *3 (citing Baptista v. Mutual of Omaha Ins. Co., 859 F. Supp. 2d 236, 240-41 (D.R.I. 2012) (citing City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974)).

> Additionally, "[i]f the parties negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable." *Id.* (quoting In re Pharm. Indus. Average Wholesale Price Litig., 588 F.3d 24, 32-33 (1st Cir. 2009)). "[T]he lack of any serious objection to the settlement agreement from members of the class weighs in favor of approving the settlement." Medoff v. CVS Caremark Corp., No. 09-cv-554-JNL, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016); see Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 118 (2d Cir. 2005) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.")(internal citation omitted).

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 4758161, at *3.

The Proposed Settlement meets the requirements for preliminary approval. In other words, the Settling Parties have provided the Court with "a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." Fed. R. Civ. P. 23, 2018 Advisory Committee Note.

That "solid record" includes Judge Stern's Decision approving the Proposed Settlement, including the analysis thereof under the Jeffrey Factors. Indeed, in his Decision, Judge Stern identifies and addresses essentially the same issues as the Court listed in Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 4758161, at *3 (which are quoted above) as governing preliminary settlement approval of class actions.

With respect to the first Jeffrey Factor, *i.e.*, the probability of success in the litigation being compromised, Judge Stern discussed the applicability *vel non* of ERISA to the Plan at the time of Prospect's acquisition on June 20, 2014, and noted that "[t]his very issue is subject to a pending motion for summary judgment in the Federal Action;" and that "if the U.S. District Court were to grant Prospect's motion, any possibility for settlement and Plaintiffs' ERISA claims could be jeopardized."[143] Judge Stern concluded that "[w]ith the viability of the Plaintiffs' claims uncertain, the Court finds that the first *Jeffrey* Factor weighs in favor of PSA [Proposed Settlement Agreement] as being in the best interest of the estate."[144]

With respect to the second factor, *i.e.*, the difficulties to be encountered in collection, Judge Stern noted that "the Receiver expressed concern over Prospect's ability to satisfy its commitment under the PSA, which could only strengthen as the proceedings continue"; that "to mitigate against Receiver's concerns of risk…Receiver obtained advice of counsel on how to best structure the PSA and better secure

[143] Exhibit A at 10.

[144] Exhibit A at 12.

Prospect's obligations thereunder"; and that "[p]ursuant to this advice, JPMorgan Chase Bank, N.A. issued two LOCs to the Receiver."[145] Judge Stern concluded as follows:

> Because of concerns involved in the collection of a judgment—if one is to be obtained—and the risks involved in collection under the PSA have been considered and mitigated against, the Court gives deference to the Receiver's judgment that the benefits to the estate of settling outweigh the risks in collection and finds that the second *Jeffrey* Factor weighs in favor of PSA as in the best interest of the estate.[146]

With respect to the third Jeffrey Factor, *i.e.*, the complexity of the litigation and the expense, inconvenience and delay associated with not settling, Judge Stern summarized the evidence in the record concerning these issues, noting specifically retired Chief Justice William's statement that he found this matter to be "'[o]ne 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'";[147] that "the PSA requires the resolution of related claims in five judicial proceedings and two administrative proceedings..[and] [e]ach of these claims is complex"; and the Receiver's statement "that there have been, without inclusion of the administrative proceedings, 'over 700 separate filings in the state and federal courts . . . total[ing] nearly 23,000 pages.'"[148] Judge Stern concluded as follows:

> The Court finds that the complexity of these interrelated cases, including the number of parties involved, the pendency of complex, intricate, and

[145] Exhibit A (Amended Decision) at 12-13.

[146] Exhibit A (Amended Decision) at 13.

[147] Exhibit A (Amended Decision) at 14 (quoting Williams Declaration ¶ 7). See also Sheehan Dec. ¶ 57, Exhibit 30 (Transcript of hearing on February 12, 2021) at 29-31 (Judge Stern's statement at the hearing on February 12, 2021 that "[t]his very much is one of the most, if not the most complicated issue in litigation the Court has before it at this time.").

[148] Exhibit A (Amended Decision) at 15 (quoting the Plan Receiver's Petition for Settlement Instructions and Approval ¶ 72).

> novel legal and factual issues, in addition to the potential costs in continuation of litigation, weigh in favor of the PSA as in the best interest of the estate.[149]

With respect to the fourth (and final) Jeffrey Factor, *i.e.*, the paramount interest of the creditors, Judge Stern noted that the "creditors" here consist of the Plan participants themselves.[150] That is especially significant to the issue *sub judice* of preliminary settlement approval, since those "creditors" are the proposed Settlement Class. Thus, in evaluating whether the Proposed Settlement was in the interests of the creditors of the Plan Receivership estate, Judge Stern was also addressing whether it was in the interests of the proposed Settlement Class.

Judge Stern referred to the supporting Declarations of Attorneys Violet, Callaci, and Kasle on behalf of over 1,000 Plan participants, which Judge Stern found "suggest a wide scale support of the PSA on the part of the Plan participants," and the absence of any objection by any Plan participant (after notice was given in the Receivership Proceedings), and concluded:

> In light of the overall support for the PSA by the Plan participants, the Court finds that the fourth *Jeffrey* Factor weighs in favor of approving the PSA as in the best interests of the Plan participants. As a result of all four factors weighing in favor of approval, the Court finds that the PSA is fair, equitable, and in the best interest of the receivership estate.[151]

These findings, together with Plaintiffs other submissions, amply provide a "solid record" in support of preliminary settlement approval.

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[149] Exhibit A (Amended Decision) at 15.

[150] Exhibit A (Amended Decision) at 15.

[151] Exhibit A (Amended Decision) at 15.

II. The Proposed Settlement Class Should Be Preliminarily Certified to Participate in the Settlement

It should be noted at the outset that the Settling Parties seek certification of the Settlement Class solely for the purpose of permitting the Settlement Class to participate in the settlement of Plaintiffs' claims against Defendants Prospect and Angell, and Messrs. Topper and Lee, without prejudice to the rights of the remaining Defendants to oppose class certification in connection with any claims asserted or to be asserted against them.

The requirements for certification of a *litigation class* are set forth in the Manual on Complex Litigation:

> To obtain an order to prevail in their efforts to certify a class, proponents must satisfy two sets of requirements: those set forth in Rule 23(a) and those contained in Rule 23(b). Rule 23(a) requires that (1) the proposed class be sufficiently numerous; (2) there is at least one common question of fact or law; (3) the named plaintiff's claims are typical of the class as a whole; and (4) the named plaintiff will adequately represent the class.
>
> Rule 23(b) permits maintenance as a class action if the action satisfies Rule 23(a)'s prerequisites and meets one of three alternative criteria for maintainability. First, Rule 23(b)(1)(A) permits certification to prevent inconsistent rulings regarding defendants' required conduct. Standards for certifying a class under Rule 23(b)(1)(B) relate primarily to limited fund settlements and are discussed below in section 21.132. Second, Rule 23(b)(2) permits a class action if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Third, Rule 23(b)(3) permits a class action if "the court finds that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Manual on Complex Litigation § 21.131 (Certifying a Litigation Class) (4th Ed. 2004) (citations omitted).

The standard for certifying a *settlement class* is similar, with one difference:

> Rule 23(a) and (b) standards apply equally to certifying a class action for settlement or for trial, with one exception. In *Amchem Products, Inc. v. Windsor*, the Supreme Court held that because a settlement class action obviates a trial, a district judge faced with a request to certify a settlement class action "need not inquire whether the case, if tried, would present intractable management problems" under Rule 23(b)(3)(D).

Manual on Complex Litigation, *supra*, § 21.132 (Certifying a Settlement Class) (citing Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997)).

"Just as the settlement approval unfolds through two levels of judicial review (preliminary and final), so, too, does the motion for settlement class certification." Newberg on Class Actions, *supra*, § 13:16. "If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." Manual on Complex Litigation, *supra*, § 21.632. See also 2018 Advisory Committee Note to Fed R. Civ. P. Rule 23 ("The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement.").

A. Under Rule 23(a)

The Complaint and the additional submissions in connection with this motion adequately set forth the reasons why such certification is appropriate based upon the following factors which support class certification for purposes of settlement under Rule 23(a) of the Federal Rules of Civil Procedure.

1. Numerosity

There are 2,733 Plan participants.[152] All of those persons are members of the Settlement Class, and, thus, the Settlement Class is so numerous that joinder of all members is impracticable. See Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *4 ("First, there are 2,729[153] Plan participants, rendering joinder of all members of the proposed settlement class impracticable.").

2. Commonality

The issues raised by Plaintiffs' claims against Defendants Prospect and Angell and Messrs. Lee and Topper present common issues of law and fact, with answers that are common to all members of the Settlement Class, including but not limited to the determination of (1) the Plan participants' rights under the Plan, and whether those obligations were breached and those rights violated; (2) whether Prospect has successor liability for the Plan; (3) whether Prospect and Angell committed fraud; (4) whether Angell was negligent; and (5) whether the transfers of assets by Prospect Medical to Messrs. Topper and Lee were fraudulent transfers. See Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *4 ("Second, the issues raised by Plaintiffs' claims present issues of law and fact common to the class. These include, but are not limited to: (1) when and whether the Plan became subject to ERISA; (2) a determination of the Plan participants' rights and any defendants' obligations under the Plan and whether any participant's rights were violated by any defendant;

[152] Sheehan Dec. ¶ 9.

[153] The number is now 2,733.

(3) whether any defendant committed fraud, engaged in the fraudulent transfer of assets, or participated in an unlawful civil conspiracy; and (4) whether any defendant violated the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14 et seq.").

The issues regarding the relief Plaintiffs seek from Defendants Prospect and Angell and Messrs. Topper and Lee are also common to the members of the Class, as the relief will include, but is not limited to (1) whether Plaintiffs have suffered damages if their benefits under the Plan are insured by the Pension Benefit Guaranty Corporation; and (2) whether Plaintiffs are entitled to recover money damages or, rather, are limited to equitable remedies under ERISA.

3. Typicality

The Proposed Class Representatives' claims are typical of the claims of the other members of the Settlement Class because their claims arise from the same events, practices and/or courses of conduct. The Proposed Class Representatives' claims are also typical because all Class members are similarly affected by the alleged wrongful conduct of Defendants Prospect and Angell and Messrs. Topper and Lee. As the Court noted in analyzing this issue in connection with Settlement A:

> Third, the claims of the named plaintiffs arise from the same set of events and allegations as those of the other proposed class members. The defendants' conduct also allegedly affected the named plaintiffs in the same manner as the proposed class members. Consequently, the Court finds there is typicality among the proposed class representatives' claims and the claims of the proposed class.

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *4

4. Adequacy

The Proposed Class Representatives through the Proposed Settlement will fairly and adequately represent and protect the interests of all members of the Class. The Proposed Class Representatives do not have any interests antagonistic to or in conflict with the interests of the Class. Moreover, Plaintiff's Counsel's Retainer Agreements with each of the Proposed Class Representatives obligates them to act fairly on behalf of the class:

> In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.[154]

One possible area of conflict between and among the Proposed Class Representatives and the Settlement Class has been obviated by the terms of Plaintiffs' Counsel's Retainer Agreements with the Proposed Class Representatives, each of which contain the following provision, to prevent conflicting interests from interfering with Plaintiffs' Counsel's representation of the class in connection with a settlement involving aggregated payments, such as the Proposed Settlement *sub judice*:

> An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients,

[154] Sheehan Dec. ¶¶ 15 & 16, Exhibits 13-19 (WSL Retainer Agreements with the seven Individual Named Plaintiffs) at 3.

> there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the [Plan] Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.[155]

Thus, it is clear the proposed class representatives adequately represent the interests of the settlement class. As the Court also noted in analyzing this issue in connection with Settlement A:

> Fourth, the proposed class representatives are aligned with the proposed class members. There is no evidence that named plaintiffs have any interests that conflict with those of other class members. In addition, the retainer agreements for the proposed class counsel sets forth each representative's duty to act fairly and in the best interests of the class and provides that class counsel will not advise or represent any client concerning any dispute about how to allocate any aggregate settlement proceeds… The Court thus concludes that the proposed representatives will fairly and adequately protect the interests of the class.

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *4 (citation to record omitted).

The Proposed Class Representatives have engaged counsel experienced in complex litigation, who have already reviewed over 1,000,000 pages of documents,[156] and litigated their claims in this case, several cases in the Rhode Island Superior Court and in regulatory proceedings involving the CEC and HCA Applications. Moreover, WSL (a) with the approval of the Rhode Island Superior Court, represent the Plan

[155] Sheehan Dec. ¶ 16, Exhibits 13-19 (WSL Retainer Agreements with the seven Individual Named Plaintiffs) at 3. This provision applies to a conflict that could arise if, at some point, the funding of the Plan is such that a reduction in benefits is required, and the beneficiaries' other counsel cannot agree as to how any reduction should apply.

[156] Sheehan Dec. ¶ 18.

Receiver whose interests in the Proposed Settlement are identical to the interests of the Proposed Class Representatives, (b) have presented the Proposed Settlement to the Superior Court in the Receivership Proceedings and obtained that court's approval of the Proposed Settlement, (c) have twice already been certified as class counsel in connection with Settlements A & B,[157] and, perhaps most importantly, (d) have negotiated the Proposed Settlement of the case against Defendants Prospect and Angell and Messrs. Lee and Topper that is fair and reasonable. As the Court further noted in analyzing this issue in connection with Settlement A:

> Lastly, the Court recognizes that the proposed class counsel are highly qualified and able to carry out their corresponding duties. Among other things, counsel are experienced in complex litigation, appear to have engaged in significant pre-suit investigation, and presented the proposed settlement to the Rhode Island Superior Court in related receivership proceedings to obtain that court's required approval.

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *5.

B. Class Certification Is Proper under Rule 23(b)(1)(B)

The Settling Parties seek class certification under Fed. R. Civ. P. 23(b)(1)(B), which does not permit class members to opt out of the settlement. Fed. R. Civ. P. 23(b)(1)(B) states as follows:

> (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:
>
> > (1) prosecuting separate actions by or against individual class members would create a risk of:
> >
> > * * *

[157] See Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *5 ("The Court also preliminarily appoints…Wistow, Sheehan & Loveley, P.C. as class counsel.").

> (B) 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. . . .

Plaintiffs' claims are such that "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." Indeed, the law is clear that claims based upon ERISA should be certified under Rule 23(b)(1). See Newberg on Class Actions (5th Ed.) § 4:21 (The "'derivative nature of ERISA breach of fiduciary duty claims' makes them 'paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class.' ") (quoting In re Schering Plough Corp. ERISA Litigation, 589 F.3d 585, 604 (3d Cir. 2009)).

> This is so because "any decision regarding whether the defendants breached their fiduciary duties would necessarily affect the interests of other participants." Indeed, the Supreme Court noted in *Ortiz* that Rule 23(b)(1)(B) explicitly aimed to cover actions charging "a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of beneficiaries, requiring an accounting or similar procedure to restore the subject of the trust."

Newberg on Class Actions, *supra* (quoting Thomas v. SmithKline Beecham Corp., 201 F.R.D. 386, 397 (E.D. Pa. 2001) and Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999)). See Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *5 ("As for the criteria set forth in Rule 23(b)(1)(B) for so-called 'limited fund' class actions, Plaintiffs' claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., are 'paradigmatic examples of claims appropriate

for certification as a Rule 23(b)(1) class ....'") (quoting In re Schering Plough Corp. ERISA Litig., *supra*, 589 F.3d at 604).

Even if ERISA were inapplicable to Plaintiffs' claims (because the Plan is a "church plan" excepted from ERISA or for any other reason), this would still be a situation for which certification is proper under Rule 23(b)(1)(B). The Plan was originally established, and continues to operate, as a trust.[158] Accordingly, if not subject to ERISA, the Plan is governed by the law of trusts. See MacNeill v. The Benefits Plan of the Presbyterian Church (U.S.A.), 89 F.Supp.3d 1080, 1083 (D. Wa. 2016)("In this case, as a threshold matter, the Court agrees with defendants' assertion that the plan under which plaintiffs seek reimbursement is an ERISA-exempt church plan governed by Pennsylvania trust law."); McAninch-Ruenzi v. Bd. of Pensions of The Presbyterian Church (U.S.A.), No. CIV 06-1040-PA, 2007 WL 1039495, at *5 (D. Or. Apr. 2, 2007) (ERISA-exempted church plan is subject to the state law of trusts); Leacock v. Bd. of Pensions of Presbyterian Church USA, No. CIV.A. 09-754-C, 2010 WL 2653345, at *1 (W.D. Ky. July 1, 2010) ("Because the death and disability plan at issue is structured as a trust, trust law principles guide the standard of review.") (church plan governed by law of trusts). As the Court previously noted in connection with the approval of Settlement A:

> The Court also agrees with the Plaintiffs that, even if Plan was not governed by ERISA during the relevant period, this is a classic "limited fund" action.

[158] See, e.g., Plaintiffs' First Amended Complaint (ECF # 60) ¶¶ 231. 277, 282.

Del Sesto v. Prospect CharterCARE, LLC, *supra*, 2019 WL 2394251, at *5 (citing, as "outlining characteristics of Rule 23(b)(1)(B) class actions", Ortiz v. Fibreboard Corp., *supra*, 527 U.S. at 838).

III. The Court Should Approve the Proposed Notice Plan and Class Notice

Fed. R. Civ. P. 23(e)(1) states as follows:

> (e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> > (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

"But while Rule 23(e) directs the giving of notice, it leaves the form of the notice to the court's discretion; for this reason, courts have sometimes overlooked the absence of notice where there was clearly no prejudice to class members." Navarro-Ayala v. Hernandez-Colon, 951 F.2d 1325, 1337 (1st Cir. 1991) (citations omitted). See also Wright, Miller & Kane, Federal Practice and Procedure § 1797.6:

> **The court has complete discretion in determining what constitutes a reasonable notice scheme, both in terms of how notice is given and what it contains.** As indicated in the discussion of the other notice provisions in Rule 23, subdivision (c)(2) and subdivision (d)(2), there is no single way in which the notice must be transmitted. **Of course, notice by mail to all of the identified class members informing them of the proposed action and indicating that they have a right to participate and voice their objections will suffice.** But other approaches including the use of television, radio, the internet, and various print publications also may be utilized. In some cases, such as in prisoner litigation, when the class members are all in one location, posting or other publication may be deemed sufficient.

Wright, Miller & Kane, Federal Practice and Procedure § 1797.6 (citations omitted) (emphasis supplied).

Plaintiffs have submitted a proposed Class Notice for the Court's approval.[159] The Plan Receiver has already long been acting as the Administrator of the Plan, and, accordingly, has compiled a database that includes the mailing addresses for all of the Plan participants. Under the Notice Plan proposed by the Settling Parties, if the Court grants preliminary settlement approval, then, within ten (10) days after an order granting preliminary approval is entered, the Plan Receiver will mail the Class Notice to all Plan participants via first-class mail.

The proposed Class Notice is sufficiently detailed but not overly legalistic, and written in plain, easily understood language. The proposed Class Notice will inform the Class Members of their rights and the manner and deadline to object to the settlement and request for attorneys' fees.[160] The Class Notice also will inform them of the claims to be released.[161] The Class Notice will further contain a link to a website through which Class Members can access pertinent Court documents, including the Settlement Agreement, and any orders and judgment entered in this matter.[162] The proposed Class Notice also provides the contact information for all counsel in the case, whom the Settlement Class Members may contact if they have questions.[163]

[159] Attached hereto as Exhibit C (Proposed Class Notice).

[160] Exhibit C (Proposed Class Notice).

[161] Exhibit C (Proposed Class Notice).

[162] Exhibit C (Proposed Class Notice).

[163] Exhibit C (Proposed Class Notice).

Plaintiffs recognize the probability that, if the Motion for Preliminary Settlement Approval is granted, and a hearing is scheduled for final settlement approval, that hearing will be conducted by video conference, such that the proposed Class Notice will have to be revised to provide the Settlement Class with the information needed to participate remotely. Plaintiffs request that the Court provide Plaintiffs with that information to be included in the Class Notice.

IV. Plaintiffs' Counsel Should Be Appointed to Represent the Settlement Class

Plaintiffs are seeking the appointment of Plaintiffs' Counsel to represent the Settlement Class in connection with the Proposed Settlement, as occurred in connection with Settlements A and B. Such appointment is proper for the reasons discussed *supra*, concerned Plaintiffs' Counsel's role in this case and related proceedings, including that, with the approval of the Rhode Island Superior Court, they already represent the Plan Receiver in this case, whose interests are identical to the interests of the proposed Class Representatives.

V. Statement Identifying Agreements in Connection with Proposed Settlement.

In compliance with the express requirements of Fed. R. Civ. P. 23(e)(3), the Settling Parties by their undersigned counsel hereby state that there are no agreements between or among the Settling Parties or their counsel made in connection with the

Proposed Settlement other than (1) the Settlement Agreement[164] itself; and (2) the Letter Agreement of January 5, 2021[165] (concerning the issuance of press releases).

VI. The Proposed Settlement Satisfies R.I. Gen. Laws § 23-17.14-35

R.I. Gen. Laws § 23-17.14-35 provides:

> The following provisions apply solely and exclusively to judicially approved good faith settlements of claims relating to the St. Joseph Health Services of Rhode Island Retirement Plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:
>
> > (1) A release by a claimant of one joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release so provides, but such release shall reduce the claim against the other joint tortfeasors in the amount of the consideration paid for the release.
> >
> > (2) A release by a claimant of one joint tortfeasor relieves them from liability to make contribution to another joint tortfeasor.
> >
> > (3) For purposes of this section, a good faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors' proportionate share of liability.

R.I. Gen. Laws § 23-17.14-35. This contrasts to the general rule that joint tortfeasor releases reduce the liability of non-settling defendants "in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid." R.I. Gen. Laws § 10-6-7.

[164] Sheehan Dec. ¶ 3, Exhibit 1.

[165] Sheehan Dec. ¶ 71, Exhibit 35.

In connection with the preliminary approvals for Settlements A & B, the Court deferred making the finding whether those settlements were in good faith until the motion for final settlement approval.[166] However, in connection with this motion for preliminary approval Plaintiffs respectfully request that the Court make the finding of good faith at least preliminarily. The other person or entity possibly disadvantaged[167] by such a finding would be the Diocesan Defendants, and they have the opportunity to object to such a finding in connection with the motion *sub judice*. In this regard it should be noted that Judge Stern's order approving the Proposed Settlement expressly states "[t]hat the Settlement Agreement constitutes a good-faith settlement under R.I. Gen. Laws § 23-17.14-35."[168]

This statute marked the fifth of six times the Rhode Island General Assembly has enacted a statute retroactively amending the law of joint tortfeasor releases for claims pending at the time of enactment. See R.I. Gen. Laws § 42-116-40 ("the DEPCO statute"); R.I. Gen. Laws § 27-1-16.2 (receivers of domestic insurance companies); R.I. Gen. Laws §§ 10-6-7 and 10-6-8 (mass torts resulting in 25 or more deaths from a single occurrence[169]); R.I. Gen. Laws § 42-64-40 (the "38 Studios statute"); R.I. Gen.

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[166] Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 2162083, at *2 (D.R.I. May 17, 2019) ("The Settling Parties have requested that the Court declare the Settlement Agreement to be a "good faith settlement" as defined in this statute. Such a determination is not required for the Court to grant preliminary approval under Rule 23 and the Court declines to make such a ruling here. The Settling Parties' request is, however, denied without prejudice and may be renewed in connection with any final fairness determination.") (citation to record omitted); Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 2394251, at *3 (D.R.I. June 6, 2019) (same).

[167] Disadvantaged, but not "prejudiced," as discussed below.

[168] Sheehan Dec. ¶ 58, Exhibit 31 (Order entered March 4, 2021). Although the Order states "[t]hat the Settlement Agreement constitutes a good-faith settlement under R.I. Gen. Laws § 23-17.14-35," Plaintiffs also seek such a finding from the Court.

[169] Most notably—and, thus far, exclusively—the Station Night Club Fire.

Laws Ann. § 10-6-12 (claims "relating to the Feld Entertainment/Ringling Brothers Circus accident on May 4, 2014"). In order to facilitate settlements of claims falling within their ambits, these statutes eliminate the statutory joint tortfeasor right of set-off based on proportionate liability. See Rhode Island Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 99 (R.I. 1995).

For the benefits of R.I. Gen. Laws § 23-17.14-35 to apply to a settlement, however, it must be a "judicially approved good faith" settlement. As quoted *supra*, R.I. Gen. Laws § 23-17.14-35 defines a "good faith settlement" as "one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), **irrespective of the settling or non-settling tortfeasors' proportionate share of liability**." Id. (emphasis supplied). Thus, approval of the settlement does not depend on whether the settlement payment is consistent with the Settling Defendants' proportionate share of liability.

This statute expressly adopts the standard of "good faith" judicially adopted in cases such as Noyes v. Raymond, 548 N.E.2d 196, 199 (Mass. App. Ct. 1990) and Dacotah Marketing & Research, L.L.C. v. Versatility, Inc., 21 F. Supp. 2d 570 (E.D. Va. 1998). Under the provisions of Massachusetts General Laws c. 231B, § 4(b), "[w]hen a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." The Noyes court concluded that the primary and legitimate objective of the Massachusetts "good faith" settlement statute was to encourage settlements. Noyes, 548 N.E.2d at 189. The term "good faith" was intended to mean the absence of

"collusion, fraud, dishonesty, and other wrongful conduct[,]" and the fact that a settlement might be low in comparison to the plaintiff's estimated damages is not, by itself, material to that question. Id. "A relatively low settlement might reflect uncertainty about whether the settling party would be found liable, the uncertainty of the plaintiff's provable damages, or "the general unpredictability of juries on both liability and the damages issues." Id.

Likewise, the Dacotah Marketing court concluded that Virginia's joint tortfeasor contribution statute barred only releases "based on collusion or other tortious or wrongful conduct such as fraud or dishonesty between the plaintiff and the settling tortfeasor." Dacotah Marketing, 21 F. Supp. 2d at 576. The court explained that a non-collusive, good faith settlement was one negotiated at "arm's length" where "plaintiffs attempt to obtain as much as possible and defendants seek to pay as little as possible." Id. at 577. Collusion in violation of this standard occurs only where "the principal purpose of a release is to facilitate a collusive alliance" against the remaining defendants, id. at 579, and:

> when the release is given with the tortious purpose of intentionally injuring the interests of nonsettling parties, rather than as the product of arm's length bargaining based on the facts of the case and the merits of the claim.

Dacotah Marketing, 21 F. Supp. 2d at 578. In short, "[w]hen an alliance harmful to the nonsettling party is the essential object of a release, that release is not given in good faith." Id. at 579.

Under the "non-collusive, non-tortious" standard, the parties opposing settlement have the burden of proof:

> It is the non-settling Defendants' burden to prove that the settlement was not made in good faith. *See Dacotah Mktg. & Research, L.L.C. v. Versatility, Inc.*, 21 F. Supp. 2d 570, 578 (E.D. Va. 1998); *Gray v. Derderian*, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) ("[T]here is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.").

Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at *2 n.3 (R.I. Super. July 22, 2014) (Silverstein, J.). See also Barmat v. John & Jane Doe Partners A-D*:*

> Once the settling party introduces proof of the settlement and the amount thereof, the burden shifts to the party challenging the settlement to show that the amount paid by the claimant in settlement was not paid in good faith. We note that other jurisdictions that have adopted the Uniform Contribution Among Tortfeasors Act (UCATA) place the burden on the challenging party to prove lack of good faith. . . . We do not assume that parties to an agreement acted collusively. We presume that they acted in good faith and require the challenging party to prove a lack thereof.

Barmat v. John & Jane Doe Partners A-D, 797 P.2d 1223, 1227-28 (Ariz. App. 1990) (citations and quotations omitted). See also Fairfax Radiological Consultants, P.A. v. My Q. Bui, 72 Va. Cir. 570 (2002):

> Analysis begins with the presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct." *Dacotah Marketing and Research, L.L.C. v. Versatility, Inc*., 21 F.Supp.2d 570, 578 (E.D.Va.1998); *see also Smith v. Monongahela Power Co.*, 429 S.E.2d 643 (W.Va.1993) ("Settlements are presumptively made in good faith. A defendant seeking to establish that a settlement made by a plaintiff and a joint tortfeasor lacks good faith has the burden of doing so by clear and convincing evidence."). Accordingly, the burden is on Fairfax Radiological to show that the Benitez–Bui settlement agreement was not a good faith settlement.

See also Gray v. Derderian, No. 03-483L, 2009 WL 1575189 (D.R.I. June 4, 2009) ("Thus, there is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.") (Lagueux, S.D.J., adopting report and recommendation of Martin, Mag. J.); Noyes, 548 N.E. 2d at 191 (same).

The Proposed Settlement so clearly meets this definition of "good faith" that is difficult to conceive how the non-settling Defendants might contend otherwise. Plaintiffs have vigorously litigated their claims against, and certainly have not colluded with, Defendants Prospect and Angell. The Proposed Settlement causes no tortious injury to the non-settling Defendants. Indeed, the only possible disadvantage to the Diocesan Defendants is the lawful elimination of their contribution rights and quantification of the amount of the settlement credit under the Settlement Statute. That does not constitute legal "prejudice" or cause a tortious injury, and does not disprove good faith. Were it otherwise, no settlement could ever qualify as a good faith settlement under the statute, and the statute would be self-negating, because the benefit the statute affords would have the effect of precluding the statute from affording the benefit.

The Plan Receiver and the Individual Named Plaintiffs would face an uncertain outcome if this action were to continue. There is no assurance that the Plan Receiver or the Individual Named Plaintiffs will otherwise secure (or collect) recoveries from any of the Settling Defendants, as well as the Diocesan Defendants. In that case, the Proposed Settlement may be the only remaining opportunity to significantly increase the assets of the pension fund to help pay benefits as and when they are due, and the consequence of not approving the Proposed Settlement would be that the pension fund

runs out of money sooner than if the Proposed Settlement were approved. As stated by Judge Stern:

> As far as this Court is concerned, in a case where we're dealing with hospitals and a variety of entities, it's certainly in the Receiver's interest to have a bird in the hand, so to speak, of a substantial amount of settlement rather than taking any risk that may be down the road.[170]

In summary, the Plan Receiver, the Individual Named Plaintiffs, Prospect, and Angell do not agree on liability. They also do not agree on the amount that would be recoverable even if the Plan Receiver and the Individual Named Plaintiffs were to prevail at trial against them. If this Proposed Settlement had not been agreed to, or if it is not now approved, Prospect and Angell would strongly deny all claims and contentions by the Plaintiffs and deny any wrongdoing with respect to the Plan. Prospect and Angell further would deny that they have liability to the members of the proposed Settlement Class and would contest whether the members of the Settlement Class have suffered any damages for which they could be held legally responsible.

Nevertheless, having considered the uncertainty and expense inherent in any litigation, particularly in a complex case such as this, the Plan Receiver, the Individual Named Plaintiffs, Defendants Prospect and Angell, and Messrs. Lee and Topper have concluded that it is desirable that the action be fully and finally settled as between them, on the terms and conditions set forth in the Settlement Agreement.

The Plan Receiver is a judicially appointed officer of the Rhode Island Superior Court, charged with maximizing the potential recovery for the Plan, and acting under the supervision and with the approval of the Superior Court. The Proposed Settlement itself

[170] Sheehan Dec. ¶ 57, Exhibit 30 (Transcript of hearing on February 12, 2021) at 30.

was reviewed and approved by Judge Stern.[171] Notably, Judge Stern presided over the Plan Receivership Proceedings, CCCB v. Lee, and the Liquidation Proceedings, much of which have been pending for over three and a half years, and thus has extensive familiarity and experience concerning many of the important facts in the case before this Court and concerning the Proposed Settlement. Given this context, it cannot be argued that the Proposed Settlement somehow exhibits "collusion, fraud, dishonesty, or other wrongful conduct," so as to fail the good faith standard set forth in R.I. Gen. Laws § 23-17.14-35.

The Court in connection with the proceedings for preliminary and final approval of Settlements A and B declined to make any ruling on either the constitutionality of the Settlement Statute or whether it is preempted by ERISA.[172] There is no reason not to take the same approach in connection with the Proposed Settlement.

The Settlement Statute will only come into play if the Plaintiffs prevail against the Diocesan Defendants at trial. Until then, the Diocesan Defendants will have no possible injury from the Settlement Statute. The Settlement Statute may never impact the Diocesan Defendants under several possible scenarios, including if 1) the Diocesan

[171] Exhibit A (Amended Decision).

[172] See Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *4 (D.R.I. Sept. 30, 2019) (granting final approval for Settlement B) ("The Court is satisfied that it need not address questions related to the applicability of ERISA in order to approve this settlement. Similarly, the Court need not determine the constitutionality or potential preemption of the Settlement Statute, and therefore expressly declines to rule on these issues at this time. The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings.") (citation omitted) (emphasis in original) and Del Sesto v. Prospect CharterCARE, LLC, C.A. No. 18-328 WES, 2019 WL 4758161, at *6 (D.R.I. Oct. 9, 2019) (granting final approval for Settlement A) ("Similarly, the Court need not determine the potential preemption or constitutionality of the Settlement Statute, and therefore expressly declines to rule on these issues at this time. The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings.") (emphasis in original).

Defendants ultimately settle with Plaintiffs, 2) the Diocesan Defendants are found not liable, or 3) it is determined that the *pro tanto* settlement credit is greater than the *pro rata* settlement credit such that the Diocesan defendants would receive the same settlement credit under the Settlement Statute as they would under Rhode Island's general contribution statute.

In dismissing a premature challenge by Ernst & Young to Rhode Island's DEPCO settlement statute, R.I. Gen. Laws § 42-116-40, Judge Selya traced the long chain of contingencies that would need to be satisfied before Ernst & Young would suffer a concrete legal injury:

> . . . E & Y's [Ernst & Young's] claim lacks the needed dimensions of immediacy and reality. The challenge is not rooted in the present, but depends on a lengthy chain of speculation as to what the future has in store. Tracing the links in this chain demonstrates their fragility. In order for E & Y to be harmed by the operation of the statute, these events must come to pass: (1) at least one person, firm, or corporation other than E & Y must admit fault, or be found to have been at fault, and must have caused recoverable damages arising out of the banking crisis; (2) that other party must settle with Depco; (3) **the settlement must be entered into in good faith and approved by a competent court;** (4) under the bargained terms, the settlor must pay less than its pro rata share, measured by relative fault; (5) **perhaps most critically, E & Y—which, to this date, has steadfastly denied fault—must be found to have been negligent, and its negligence must be found to have caused or contributed to the damages**; (6) Depco must attempt to collect an amount greater than E & Y's pro rata share of the damages; (7) a court must find E & Y liable for, and order it to pay, the tribute demanded; and (8) E & Y must then seek contribution from one or more of the "underpaying" joint tortfeasors (who, presumably, will interpose the statute as a defense). This is a long string of contingencies—so long that E & Y's assertion of fitness for judicial review trips over it and falls.

Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 538 (1st Cir. 1995) (emphasis supplied). In the instant case, if the Court approves the settlement as being

"in good faith", we will be only at step three. The non-settling Defendants would still need to get through at least steps four through eight, including the "most critical" step of being found liable.

Should the Court wish to address the issue, however, we submit that the Settlement Statute is neither unconstitutional nor preempted by ERISA.

The constitutionality of the DEPCO statute was affirmed by the Rhode Island Supreme Court in R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995). R.I. Gen. Laws §§ 10-6-7 and 10-6-8 were construed and applied by the United States District Court for the District of Rhode Island in Gray v. Derderian, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) (Lagueux, S.D.J., accepting Report and Recommendation of Martin, M.J.). The Rhode Island Superior Court upheld the constitutionality of the 38 Studios statute in Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at *13 (R.I. Super. July 22, 2014) (Silverstein, J.), as to which the Rhode Island Supreme Court denied the non-settling defendants' petition for *certiorari*. Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et al., No. 14- 230 M.P. (R.I. Supreme Court, Oct. 20, 2014) (Order).

Federal courts have likewise acknowledged the importance of eliminating contribution claims against settling defendants in order to encourage settlements, notwithstanding that doing so negates proportional liability. For example, when the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq., was amended by the Superfund Amendments Act of 1986 (SARA) to create an express statutory right of contribution, it simultaneously

amended the statute to say that the right of contribution does not run against parties that settle with the government, but that settlement payments to the government reduce the liability of the non-settling defendants. Section 9613(f)(2) provides:

> A person who has resolved its liability to the United States or a State in **an administrative or judicially approved settlement** shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, **but it reduces the potential liability of the others by the amount of the settlement**.

42 U.S.C. § 9613(f)(2) (emphasis supplied). Because only the amount of the settlement, and not the proportionate liability attributable to the settling party, is subtracted from the aggregate liability of the remaining parties, § 9613(f)(2) "envisions that nonsettling parties may bear disproportionate liability." United Technologies Corp. v. Browning-Ferris Indus., Inc., 33 F.3d 96, 103 (1st Cir. 1994). As the First Circuit has noted, "[t]his paradigm is not a scrivener's accident." Id. Rather, it "was designed to encourage settlements" by providing settling parties "a measure of finality in return for their willingness to settle." Id.

> The statute immunizes settling parties from liability for contribution and provides that only the amount of the settlement—not the pro rata share attributable to the settling party—shall be subtracted from the liability of the nonsettlors. This can prove to be a substantial benefit to settling PRPs—and a corresponding detriment to their more recalcitrant counterparts. **Although such immunity creates a palpable risk of disproportionate liability, that is not to say that the device is forbidden. To the exact contrary, Congress has made its will explicit and the courts must defer. Disproportionate liability, a technique which promotes early settlements and deters litigation for litigation's sake, is an integral part of the statutory plan. discouraging "exhaustive litigation" over "who is 'really' responsible for how much**[.]"

United States v. Cannons Engineering Corp., 899 F.2d 79, 91-92 (1st Cir. 1990) (emphasis added) (quoting Akzo Coatings, Inc. v. Aigner Corp., 30 F.3d 761, 773 (7th Cir. 1994)) (other citations omitted). The First Circuit, like other circuits, has upheld the constitutionality of CERCLA's retroactive application. See O'Neil v. Picillo, 883 F.2d 176, 183 n.12 (1st Cir. 1989). In recent years, the U.S. Supreme Court has upheld the constitutionality of other retroactive special legislation directed at pending litigation.[173]

Likewise, the design and purpose of R.I. Gen. Laws § 23-17.14-35 was to reduce the risk of Plan participants or their representatives reaching early settlements with various defendants before the proportionate shares of all defendants' liabilities have been judicially determined. The primary mechanism to achieve that design and purpose was the elimination of the role of proportionate liability in settlements, while providing settling defendants with protection from contribution claims. The risk for plaintiffs of early settlement under R.I. Gen. Laws §§ 10-6-7 and 10-6-8 has now been transformed, under R.I. Gen. Laws § 23-17.14-35, into the risk to defendants of not settling and incurring disproportionate liability.

Preemption is also not before the Court. Rather than further burdening this submission with a discussion of all the reasons why the Settlement Statute is not preempted by ERISA, Plaintiffs refer to their arguments in support of that contention made in connection with the Court's approval of Settlement A.[174]

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[173] See Bank Markazi v. Peterson, 136 S. Ct. 1310, 1326 (2016) (upholding statute that retroactively prescribed a rule for a single pending case identified by caption and docket number); Patchak v. Zinke, 138 S. Ct. 897, 905 (2018) ("[T]he legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.") (upholding a statute that directed that a particular pending lawsuit "shall be promptly dismissed").

[174] See Plaintiffs' Memo. in Reply to the Obj. filed by the Prospect Defendants (ECF # 83) at 49-54.

CONCLUSION

The Court is respectfully requested to enter the proposed order attached hereto as Exhibit D, which:

1. grants preliminary approval of the settlement pursuant to Fed. R. Civ. P. 23(e);

2. preliminarily certifies all of the Plan participants as the Settlement Class;

3. preliminarily appoints Wistow, Sheehan & Loveley, PC to represent the Settlement Class;

4. authorizes the Plan Receiver to issue the Class Notice to the Settlement Class;

5. schedules the submission of Plaintiffs' motion for final settlement approval and WSL's motion for attorneys' fees and the date for objection thereto;

6. schedules the hearing for final approval of the settlement and approval of WSL's motion for an award of attorneys' fees; and

7. grants approval of the settlement between Plaintiffs, Defendants Prospect and Angell, and Messrs. Topper and Lee as a good faith settlement pursuant to R.I. Gen. Laws § 23-17.14-35.

Respectfully submitted,

Plaintiffs,
By their Attorneys,

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Dated: March 11, 2021

Exhibit A

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 HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended et al.;	:	
and	:	
In re:	:	
CHARTERCARE COMMUNITY BOARD; ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; and ROGER WILLIAMS HOSPITAL	:	**C.A. No. PC-2019-11756**

AMENDED DECISION

STERN, J. Stephen Del Sesto, in his capacity as Permanent Receiver (Receiver) for the St. Joseph Health Services of Rhode Island Retirement Plan, petitions this Court (Petition) for approval of a proposed settlement agreement (PSA) of claims Receiver has asserted against Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively Prospect), The Angell Pension Group, Inc. (Angell Pension), Samuel Lee, David Topper, (Prospect, Angell Pension, Lee, and Topper (collectively Settling Defendants)), and certain individuals and entities associated with the Settling Defendants, in lawsuits concerning the alleged underfunded status of the Plan. Thomas Hemmendinger, in his capacity as liquidating receiver (Liquidating Receiver), joins the Receiver in the Petition and simultaneously files the Petition in the matter of *In re CharterCare Community Board*, PC-2019-11756. There are no objections to the Petition.

I

Facts and Travel

On August 8, 2017, St. Joseph Health Services of Rhode Island (SJHSRI) petitioned this Court to place the St. Joseph Health Services of Rhode Island Retirement Plan (Plan) into receivership, alleging that the Plan was insolvent and seeking to reduce the Plan participants' benefits by 40 percent. (Receiver's Pet. Settlement Instr. Approval 3, Jan. 25, 2021 (Pet.).) The instant Petition comes after (1) years of the Plan's financial distress; (2) an affiliation agreement between SJHSRI and Roger Williams Hospital (RWH) that organized into CharterCare Community Board (CCCB); (3) an Asset Purchase Agreement (2014 APA) whereby CCCB transferred substantially all of its operating assets to Prospect Chartercare, LLC (PCC) in exchange for a cash payment and a fifteen-percent interest in PCC; and (4) a multitude of lawsuits that followed and substantially arose from these events. (Pet. Appointment Receiver ¶ 2 n.2 (Aug. 18, 2017); Mem. Supp. Joint Obj. 3-4 (Sept. 27, 2018).)

Nevertheless, in August of 2017, due to its severe undercapitalization, the Court appointed Del Sesto as Temporary Receiver of the Plan, and on October 27, 2017, the Court made that appointment permanent. (Order Appointing Temporary Receiver ¶¶ 1-3 (Aug. 18, 2017); Order Appointing Permanent Receiver (Oct. 27, 2017); Pet. ¶¶ 3, 5.) On October 11, 2017, the Receiver sought leave from this Court, and the Court granted its petition, to engage Wistow, Sheehan & Loveley, PC (WSL) as Receiver's Special Litigation Counsel (Special Counsel). (Order Approving Receiver's Emergency Pet. (Oct. 17, 2017); Pet. ¶ 4.) Special Counsel was retained to "investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan" and pursue claims against those persons or entities. (Pet. Ex. G.) WSL was also retained by seven

individual Plan participants to investigate and pursue claims on their behalf, which fostered into a class action. (Pet. ¶ 7.)

Special Counsel engaged in pre-suit investigation over an eight-month period and filed two complaints one in federal court (Federal Action) and the other in state court.[1] *Id.* ¶¶ 9-10. In June of 2018, these actions led to two settlements—the first settled claims against CCCB, SJHSRI, and RWH, and the second settled claims against CharterCARE Foundation—that grossed $17,181,202.91, whose net proceeds were contributed to fund the Plan. *Id.* ¶¶ 13-14. In connection with the first settlement, Receiver also obtained CCCB's beneficial interest in PCC, including claims that CCCB had against PCC. *Id.* ¶ 23. The transfer of CCCB's beneficial interest to the Receiver is subject to suit in the Chancery Court of Delaware, whereby Prospect claims indemnity and asserts that the transfer was in breach of CCCB's obligations under the LLC Agreement, and, thus, void. *Id.* ¶ 34. Subsequently, CCCB filed an action in this Court asserting various claims against Prospect, Lee, Topper, and others.[2] *Id.* ¶ 24. CCCB claimed, *inter alia*, that Prospect breached its obligations under the 2014 APA and wrongfully withheld the information necessary for CCCB to evaluate its exercise of a put option pursuant to the LLC Agreement executed in connection with the 2014 APA. *Id.* ¶ 25.

Meanwhile, the Federal Action was intensively litigated, as motions to dismiss were converted to those for summary judgment relative to the Plaintiffs'[3] Employees Retirement Security Act of 1974 (ERISA) claims and discovery was enlarged. (Pet. ¶¶ 27-30.) During the

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[1] *Stephen Del Sesto v. Prospect Chartercare, LLC*, C.A. No. 18-328-WES, 2019 WL 4225323 (D.R.I. Sept. 5, 2019), pending in the U.S. District Court for the District of Rhode Island (Federal Action); and *Stephen Del Sesto v. Prospect Chartercare, LLC*, C.A. No. PC-2018-4386, pending in the Rhode Island Superior Court (State Action). The state court action was stayed pending the adjudication of the Federal Action.

[2] *CharterCARE Community Board v. Samuel Lee*, C.A. No. PC-2019-3654 (*CCCB v. Lee*).

[3] "Plaintiffs" means plaintiffs in the Federal Action and State Action, *supra* n.1.

heat of the Federal Action, two administrative proceedings commenced. In the first, entitled *In re Change in Effective Control Applications by Prospect Chartercare RWMC, LLC and Prospect Chartercare SJHSRI, LLC, et al.* (CEC Application), filed with the Center for Health Systems Policy and Regulation, Rhode Island Department of Health, Prospect sought approval for a buyout—funded by Prospect Medical Holdings, Inc.—of a private investment fund's interest in Prospect Medical Holdings, Inc.'s parent company. (Pet. ¶¶ 31, 39.) In the second proceeding, Prospect sought the Attorney General's approval for this same transaction. (Aff. Stephen P. Sheehan ¶ 19 (Oct. 7, 2020).)

In December of 2019, Thomas Hemmendinger was appointed as Temporary Liquidating Receiver of CCCB, SJHSRI, and RWH and in January 2020, was converted to Permanent Liquidating Receiver for the purpose of dissolving and liquidating all assets of those entities. (Order Appointing Temporary Liquidating Receiver (Dec. 18, 2019); Order Appointing Permanent Liquidating Receiver (Jan. 9, 2020).) Special Counsel and Liquidating Receiver later filed formal objections in both administrative proceedings over concerns that any transfers of assets funded by Prospect Medical Holdings, Inc., a guarantor of obligations to PCC in which CCCB maintained an interest, would interfere with CCCB's interest and Receiver's ability to recover for the Plan. *Id.* ¶¶ 39-40.

Indeed, this PSA comes after years of litigation in the various proceedings,[4] including two receiverships, four judicial proceedings, and two administrative proceedings and seeks to resolve

[4] Receiverships: (1) *St. Joseph Health Services of Rhode Island v. St. Joseph Health Services of Rhode Island Retirement Plan, as amended et al.*, C.A. No. PC-2017-3856; (2) *In re CharterCare Community Board*, C.A. No. PC-2019-11756.
Judicial Proceedings: Federal Action: *Stephen Del Sesto v. Prospect Chartercare, LLC*, *supra* n.1. R.I. State Court Actions: (1) *Stephen Del Sesto v. Prospect Chartercare, LLC*, *supra* n.1.; (2) *CCCB v. Lee*, *supra* note 2. Delaware State Court Action: *Prospect Medical Holdings, Inc. v. CCCB*, C.A. No. 2019-1018.

a substantial majority of the claims and further fund the Plan for its participants. The Receiver believes that the PSA is in the best interests of the Receivership Estate, the Plan, and the Plan participants, and recommends that the Court approve the PSA. (Pet. 3 (Jan. 25, 2021).) In addition, Retired Chief Justice Frank J. Williams, who presided over the parties' mediation, Attorney Arlene Violet, who represents over 285 Plan participants, Attorney Christopher Callaci, who represents approximately 400 Plan participants, and Attorney Jeffrey W. Kasle, who represents 247 Plan participants, concur with the Receiver's belief that the PSA is reasonable, fair, and in the best interests of all parties, including the Plan participants. (Decl. Frank J. Williams ¶ 5; Decl. Arlene Violet ¶¶ 6-8; Decl. Christopher Callaci ¶ 2; Decl. Jeffrey W. Kasle ¶ 6.) The Receiver also requests that the Court approve the attorneys' fees, which will be paid to Receiver's Special Litigation Counsel, subject to the terms of the retainer that was previously approved by this Court and subject to approval of the United States District Court for the District of Rhode Island (U.S. District Court). (Pet. at 3; Pet. Ex. G.)

The PSA contemplates that, if it is approved by this Court and the U.S. District Court, the claims against the Settling Defendants will be dismissed.[5] Namely, upon approval of the PSA, claims against the Settling Defendants will be dismissed in the following actions: (1) *Stephen Del Sesto v. Prospect Chartercare, LLC*, 2019 WL 4225323, pending in the U.S. District Court; (2) *Stephen Del Sesto v. Prospect Chartercare, LLC*, C.A. No. PC-2018-4386, pending in this Court; and (3) *CharterCARE Community Board (CCCB) v. Samuel Lee*, C.A. No. PC-2019-3654, pending

Administrative Proceedings: CEC Application and HCA Application.

[5] However, Plaintiffs in the Federal Action will continue to pursue the claims against Roman Catholic Bishop of Providence, Diocesan Administration Corporation, and Diocesan Service Corporation. (Pet. at 2.) Additionally, Liquidating Receiver will continue to "wind[] down the affairs of the Legacy Hospitals[,]" namely CharterCare Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital. (Hr'g Tr. 3:21-25; 4:1-6 (Feb. 12, 2021).)

in this Court. (Pet. Ex. A, ¶ 6.) In addition, an action pending in the Chancery Court of Delaware, *Prospect Medical Holdings, Inc. v. CCCB*, C.A. No. 2019-1018, will be dismissed. *Id.* Likewise, the Receiver and Liquidating Receiver will withdraw the formal objections they have filed in the following administrative proceedings: *In re Change in Effective Control Applications by Prospect Chartercare RWMC, LLC and Prospect Chartercare SJHSRI, LLC, et al.* (CEC Application); and *Hospital Conversion Initial Application of Chamber Inc., Ivy Holdings Inc., Ivy Intermediate Holdings, Inc., 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* (HCA Application).

The PSA also contemplates that the foregoing will be dismissed in consideration for, *inter alia*, $30,000,000, the net proceeds of which will be paid into the Plan after the payment of attorneys' fees and expenses. (Pet. ¶ 53.) The total of $30,000,000 includes a $2,750,000 contribution from Angell Pension and a $27,250,000 contribution from Prospect. *Id.* ¶ 51. Five million of Prospect's contribution is attributed to a buy out of CCCB's Hospital Interests, which is CCCB's fifteen percent interest in PCC and other Hospital Interests. *Id.* ¶ 52. On January 14, 2021, Angell Pension deposited its contribution into the Registry of the Court. *Id.* ¶ 57. Prospect's contribution is funded by two letters of credit (LOC(s)) issued by JPMorgan Chase Bank, N.A., including one LOC funded by Prospect Medical Holdings, Inc. in the amount of $22,250,000 (Prospect Medical LOC) and one LOC funded by Prospect East Holdings, Inc. in the amount of $5,000,000 (Prospect East LOC). (Pet. Ex A, ¶¶ 1(o)-(p).) On January 20, 2021, the LOCs were delivered to the Receiver. (Pet. ¶ 58.)

On February 12, 2021, this Court held a hearing on the Petition. The Receiver explained that the PSA would "bring [into the Plan] a net amount of approximately $23 million" and put the

Plan's value nearly to $93,000,000, which is approximately $6,000,000 more than the pre-Receivership Petition value.[6] (Hr'g Tr. 36:10-14.) All parties involved in the PSA efforts request that the Court approve the proposal pursuant to G.L. 1956 § 23-17.14-35 as a good-faith settlement.[7]

II

Standard of Review

Although the Rhode Island Supreme Court has not firmly articulated a standard for the review of a receiver's recommended settlement for a receivership estate, the Supreme Court has empowered this Court to look to the Bankruptcy Code for guidance in receivership proceedings. *See Reynolds v. E & C Associates*, 693 A.2d 278, 281 (R.I. 1997). In particular, this Court has recognized the Bankruptcy Code as "an appropriate lens through which to analyze a receiver's petition to settle a legal action." Decision 6 (Oct. 29, 2018) (citing *Brook v. The Education Partnership, Inc.*, No. PB 08-4185, 2010 WL 1456787, at *3 (R.I. Super. Apr. 8, 2020)). Pursuant to the Code, the Court shall determine whether the proposed settlement is "fair, equitable, and in the best interest of the [receivership] estate." *In re Dewey & LeBoeuf LLP*, 478 B.R. 627, 640

[6] Receiver stated at the hearing that:

> "As of the filing of the report, your Honor, the plan had approximately $70 million in assets. As your Honor recalls when this case started, it was $85 million, just over $85 million. So as I stated, we have about $70 million right now. The market has helped to slow the erosion of the plan, which is approximately $950,000 a month. That amount is for benefit payments. . . . [A]pprov[al] [of] the settlement . . . will bring a net amount of approximately $23 million into the case, which based on today's numbers . . . puts us at about $93 million, which . . . not only resets that financial clock from 2017, but actually puts us about $6 million ahead of that." (Hr'g Tr. 35:23-25; 36:1-14.)

[7] If approved by this Court, Receiver will then petition the federal court for approval, as is a prerequisite of settling a class action under the federal rules.

(Bankr. S.D.N.Y. 2012); *In re Key3Media Group, Inc.*, 336 B.R. 87, 93 (Bankr. D. Del. 2005), *aff'd*, No. 03-10323 (MFW), 05-828-SLR, 2006 WL 2842462 (D. Del. Oct. 2, 2006). The decision to approve or deny a settlement "is within the sound discretion of the [] court[.]" *In re Robotic Vision Systems, Inc.*, Nos. NH 05-047, 04-14151-JMD, 2006 WL 929322, at *3 (1st Cir. B.A.P. 2006) (citing *Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir. 1995)).

Furthermore, the Court gives deference to a trustee's judgment, as a fiduciary of the estate, relative to a proposed settlement for which the trustee is seeking approval. *See In re Whispering Pines Estates, Inc.*, 370 B.R. 452, 460 (1st Cir. B.A.P. 2007) (citing *In re Moorhead Corp.*, 208 B.R. 87, 89 (1st Cir. B.A.P. 1997)); *see also In re 110 Beaver Street Partnership*, 244 B.R. 185, 187 (Bankr. D. Mass. 2000) ("[T]he Court will defer to the trustee's judgment and approve the compromise, provided the trustee demonstrates that the proposed compromise falls within the 'range of reasonableness' and thus is not an abuse of his or her discretion.").

III

Analysis

A

The PSA

The Court evaluates whether a proposed settlement is in the best interest of the estate by "'assess[ing] and balanc[ing] the value of the claim[s] that [are] being compromised against the value to the estate of the acceptance of the compromise proposal.'" *Jeffrey*, 70 F.3d at 185 (quoting *In re GHR Companies, Inc.*, 50 B.R. 925, 931 (Bankr. D. Mass. 1985); *see also In re Boston & Providence Railroad Corp.*, 673 F.2d 11, 12 (1st Cir. 1982). The Court should not decide the underlying issues of law or fact yet must be apprised of the facts necessary to properly evaluate the settlement. *See In re Dewey & LeBoeuf LLP*, 478 B.R. at 640-41; *see also In re Healthco*

International, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (assessing whether the settlement "falls below the lowest point in the range of reasonableness"). In its determination of whether the proposal is in the best interest of the estate, the Court considers the following factors:

> (i) "the probability of success in the litigation being compromised;
> (ii) "the difficulties, if any, to be encountered in the matter of collection;
> (iii) "the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and,
> (iv) "the paramount interest of the creditors and a proper deference to their reasonable views in the premise." *Jeffrey*, 70 F.3d at 185 (*Jeffrey* Factors) (citing *In re Anolik*, 107 B.R. 426, 429 (D. Mass. 1989)).

1

The Probability of Success in the Litigation Being Compromised

First, the Court considers the viability of the claims, whereby a claim's weakness(es), defense's strength(s), or any circumstance that may present a "serious question" to the claim's viability, place doubt on an estate's "ability to prevail[,]" or jeopardize the best interest of the estate weigh in favor of settlement. *In re Anolik*, 107 B.R. at 430; *see also Jeffrey*, 70 F.3d at 187; *In re Healthco International, Inc.*, 136 F.3d at 52. The purpose of this consideration is to assess the risks and benefits of either proceeding in the litigation or entering into the proposed settlement to ensure that the receiver, as a fiduciary of the estate, has "'endeavor[ed] to realize the largest possible amount for assets of the estate.'" *Golden Pacific Bancorp v. F.D.I.C.*, 375 F.3d 196, 201 (2d Cir. 2004) (quoting *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (2d Cir. 1946)).

Due to the weighty risks and costs involved in continuing with the litigation of the several pending and interrelated proceedings, all of which involve unique facts and novel and complex issues, the benefits of the PSA to the Plan and its participants outweigh the risks involved in

proceeding with the litigation in an attempt to prevail at trial. The PSA presents an opportunity to fund the Plan with the net proceeds of the settlement without further dissipating the assets of the receivership estate in pursuit of claims, the viability of which are seriously questioned, and lawsuits, the finality of which are nowhere in sight.

For example, pursuant to the Hospital Conversions Act (HCA), the 2014 APA—between the Prospect Entities and CCCB, SJHSRI, and RWH—required and was granted approval from the Rhode Island Attorney General and Center for Health Systems Policy and Regulation of the Rhode Island Department of Health. (Pet. ¶ 63 (citing §§ 23-17.14-1, *et seq.*).) Under the 2014 APA, Prospect disclaimed liability for the Plan, and Plaintiffs in the Federal Action asserted that the APA was only approved based on inadequate and misleading information, such as Prospect having no liability for the Plan. *Id.* ¶¶ 62-63. Prospect Entities maintain their lack of responsibility for the Plan. In part, this contention led to the suit in the U.S. District Court and claims that the Plan was subject to ERISA at the time of the 2014 APA, making Prospect successor of and liable for the Plan under federal law, even in light of Prospect's express disclaimer to the contrary. *Id.* ¶¶ 66-67. Plaintiffs in the Federal Action sought to have the terms of the APA reformed to impose liability for the Plan on Prospect. *Id.*

This very issue is subject to a pending motion for summary judgment in the Federal Action; if the U.S. District Court were to grant Prospect's motion, any possibility for settlement and Plaintiffs' ERISA claims could be jeopardized. *Id.* ¶¶ 73-74. In addition, as raised in the Petition and stressed by the Liquidating Receiver and Special Counsel at the hearing on this matter, granting Prospect's motion would have a domino effect on Prospect's claim for indemnity against CCCB and could significantly reduce, if not eliminate, the value of CCCB's Hospital Interests and any opportunity for CCCB to exercise its put option, which has been assigned in the PSA a

presumed value of $4,000,000, with an additional $1,000,000 for other hospital interests. *Id.* ¶ 74; Hr'g Tr. 10:19-25; 11:1.

Pursuant to the PSA, a number of cases involving the settling parties will be dismissed; however, claims that may arise from breaches of the PSA, or from the Prospect Medical LOC or Prospect East LOC, will be preserved. As delineated by the Liquidating Receiver at the hearing, this PSA will resolve a substantial sum of the pension litigation, the controversies over CCCB's put option, *CCCB v. Lee* and the Delaware Action in their entireties, pending Medicare appeals concerning "retroactive adjustments to pre 2014 sale receivables[,]" and controversies with respect to the Category A Directors of PCC. (Hr'g Tr. 4:7-25.) The Settling Defendants will forgo claims against the Liquidating Receivership, amounting to a value of more than $3,000,000 and continually increasing. (Pet. ¶ 59; Hr'g Tr. 8:17-21.) Furthermore, the assets of the Liquidating Receivership, namely those of CCCB, RWH, and SJHSRI, which are not subject to the PSA, will continue to be available to the Receiver to bolster the Plan. (Pet. ¶ 59; Hr'g Tr. 11:1-5.) Finally, the Liquidating Receiver and Special Counsel, pursuant to the PSA, have withdrawn their objections to the administrative proceedings. (Pet. ¶ 56.)

On the other hand, if the parties were to pursue the ongoing cross-jurisdictional litigation, which remains highly contentious and without concession or compromise on any of the claims, a substantial sum of the funds that the Plan would recover pursuant to the PSA would likely be jeopardized through dissipation related to costs and expenses alone.

In weighing the pros and cons of the PSA, a possible danger—yet speculative—of settling the numerous claims, is that the Receiver is foregoing the ability to pursue claims and any possibility of recovering a greater amount if adjudicated through trial. However, "the proverbial bird in the hand is worth two in the bush." *In re Fox*, No. 03-60547 JPK, 2011 WL

10468085, at *9 (Bankr. N.D. Ind. Mar. 16, 2011); *In re Town, LLC*, No. 09-11827 SMB, 2009 WL 2883047, at *2 (Bankr. S.D.N.Y. July 27, 2009). With the viability of the Plaintiffs' claims uncertain, the Court finds that the first *Jeffrey* Factor weighs in favor of PSA as being in the best interest of the estate.

2

The Difficulties to be Encountered in Collection

To assess and balance the value of the pending claim against the value of the settlement to the receivership estate, the Court must consider whether there might be any difficulties in collecting the judgment. The Court looks to whether a defendant "has the ability to satisfy a judgment[,]" such as whether there are limited assets that will further deteriorate through litigation, *In re Aldrich*, 325 B.R. 493, 498 (Bankr. D. Mass. 2005), or whether a judgment creditor would need to maintain a separate action to collect, *In re Fibercore, Inc.*, 391 B.R. 647, 655 (Bankr. D. Mass. 2008) (considering the time and expense that would be required if necessary to pursue "additional legal action by the Trustee in a forum over 2,000 miles away" in order to collect on a judgment).

In the instant case, the Receiver expressed concern over Prospect's ability to satisfy its commitment under the PSA, which could only strengthen as the proceedings continue. Indeed, as any litigation ensues, assets that could contribute to settlement may deteriorate as costs of litigation increase. Naturally, continuation of the various proceedings and the associated costs could only increase Receiver's concerns. Nevertheless, to mitigate against Receiver's concerns of risk involved in its ability to collect under the PSA, Receiver obtained advice of counsel on how to best structure the PSA and better secure Prospect's obligations thereunder. (Pet. ¶ 80.) Pursuant to this advice, JPMorgan Chase Bank, N.A. issued two LOCs to the Receiver. *Id.*

In addition, if the proceedings continued and bankruptcy became imminent, the Receiver or Liquidating Receiver's claims would likely need to be pursued in a distant forum. (Hr'g Tr. 19:19-23.) Thus, not only would a bankruptcy petition place any recovery that the Receiver might obtain for the Plan at risk, it would also increase the cost of pursuing any claims that already bear an uncertain recovery.

Because of concerns involved in the collection of a judgment—if one is to be obtained—and the risks involved in collection under the PSA have been considered and mitigated against, the Court gives deference to the Receiver's judgment that the benefits to the estate of settling outweigh the risks in collection and finds that the second *Jeffrey* Factor weighs in favor of PSA as in the best interest of the estate.

3

The Complexity of the Litigation Involved; the Expense, Inconvenience and Delay

The judgment of a fiduciary of an estate is given great deference in concluding whether the complexity of litigation, including its cost, inconvenience, and delay, weighs in favor of settlement. *See In re Kavlakian*, 403 B.R. 159, 162 (D. Mass. 2009). Where the likelihood that any recovery on the merits would be offset by costs and fees incurred in further pursuit of the litigation, this factor weights in favor of settlement. *See In re Beaver St. Partnership*, 355 F. App'x 432, 437 (1st Cir. B.A.P. 2009). In assessing the complexity and its potential costs, the court looks to the number of parties involved, the pendency of complex, intricate, or novel legal and factual issues yet to be determined, *In re Anolik*, 107 B.R. at 430, and the history of the litigation, *In re Servisense.com, Inc.*, 382 F.3d 68, 72 (1st Cir. 2004).

Retired Chief Justice Frank J. Williams (C.J. Williams) presided over the PSA discussions, reviewed the progress of the disputes in all of the actions, and declared that "[m]any of the

contentions advanced by the settling parties involve completely novel and unsettled issues of law." (Williams Decl. ¶ 6.) C.J. Williams found the litigation to be unique and complex, with more than a dozen defendants, "each of which Plaintiffs contend had liability for the shortfall in the funding of the Plan . . . [and] Defendants [who] deny any responsibility whatsoever." *Id.* ¶ 7. Based on his fifty years of experience, as a lawyer, judge, or mediator, C.J. Williams found this compilation of litigation to be "[o]ne 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." *Id.*

In relation to the "global settlement," the PSA requires the resolution of related claims in five judicial proceedings and two administrative proceedings. *Id.* ¶ 8. Each of these claims is complex. *Id.* ¶ 9. For instance, Plaintiffs asserted overlapping ERISA and state law tort claims against Prospect for failure to fund the Plan, breaches of fiduciary duty, fraudulent transfers, and derivative claims of the Plan, as the beneficial owner CCCB's minority interest in PCC. *Id.* In addition, Prospect asserted that the transfer of the Plan to them was invalid, claims no responsibility for the Plan, and contends that they should be indemnified for costs of litigation. *Id.*

In addition, the Receiver has expressed his judgment that the complexity of the factual and legal issues amongst the pending and interrelated cases warrant settlement rather than continuation. As exemplified in Section A, *supra*, the outcome of pending motions in the Federal Action could have a dire impact on the Plan's ability to recover or the Settling Defendants' willingness to entertain any settlement. Furthermore, the Receiver has opined that the facts and relief the Plaintiffs seek in the Federal Action are unique and the legal issues under ERISA are issues of first impression. (Pet. ¶¶ 67-68.) Likewise, Plaintiffs' claims of fraud involve novel factual and legal issues. *Id.* ¶¶ 69-70. In *CCCB v. Lee*, fraudulent transfer claims against Lee and Topper are further complicated by a tolling agreement and are at risk in the event of Prospect's insolvency. *Id.* ¶ 75.

Claims against Angell Pension—for professional negligence, breach of fiduciary duties, fraud, and misrepresentation—are stayed pending the outcome of the motion for summary judgment and involve novel legal issues. *Id.* ¶¶ 76-78.

Summarizing the complexity of the various pending lawsuits, Receiver stated that there have been, without inclusion of the administrative proceedings, "over 700 separate filings in the state and federal courts . . . total[ing] nearly 23,000 pages." *Id.* ¶ 72. The Receiver expects that the litigation of the Federal Action alone could take years to come to conclusion and could be further complicated by an insolvency proceeding of Prospect. Thus, further delay of resolution of these matters creates great risk to the Plan and its participants' ability to recover under the Plan.

The Court finds that the complexity of these interrelated cases, including the number of parties involved, the pendency of complex, intricate, and novel legal and factual issues, in addition to the potential costs in continuation of litigation, weigh in favor of the PSA as in the best interest of the estate.

4

The Paramount Interest of the Creditors: Namely, the Plan Participants

The Court also gives deference to the creditors' views and interests and considers whether there is wide scale support or resistance to the settlement. *In re Healthco International, Inc.*, 136 F.3d at 50. In the instant case, of concern are the views of the Plan participants. The Court has received no objection; rather, the records suggest a wide scale support of the PSA on the part of the Plan participants.

Attorney Violet, who represents 285 Plan participants, states that she was "thoroughly briefed . . . on the pros and cons of [the] [S]ettlement" and declares that "the plan participants whom [she has] been advising wholeheartedly and unequivocally support Plaintiffs' Petition to

proceed with the proposed settlement" and that, in her opinion, "the benefits to the Plan participants by increasing the assets of the Plan significantly outweigh any detriment[.]" (Hr'g Tr. 23:23-25; 24:1; Violet Decl. ¶¶ 2-3, 6, 8.) Similarly, Attorney Callaci, who is counsel for United Nurses and Allied Professionals which includes approximately 400 union members who are Plan participants, declares on behalf of those participants that "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[.]" (Callaci Decl. ¶¶ 1-2.) Likewise, Attorney Kasle, who represents 247 Plan participants, considers the PSA to be "reasonable and favorable to the interests of [his] clients[.]" (Kasle Decl. ¶¶ 3, 6.)

In light of the overall support for the PSA by the Plan participants, the Court finds that the fourth *Jeffrey* Factor weighs in favor of approving the PSA as in the best interests of the Plan participants. As a result of all four factors weighing in favor of approval, the Court finds that the PSA is fair, equitable, and in the best interest of the receivership estate.

B

Attorneys' Fees

In addition to the request for approval of the PSA, the Receiver also requests approval for the payment of attorneys' fees to the Special Counsel under the terms of the Retainer Agreement, which was previously approved by this Court.

On October 11, 2017, the Receiver sought leave from this Court, and the Court granted its Petition, to engage WSL as Receiver's Special Counsel. WSL was retained to "investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan" and make claims against those persons or entities. (Pet. Ex. G.) The Retainer Agreement provides that "[i]f 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." *Id.*

WSL engaged in pre-suit investigation for over eight months, filed two actions on behalf of the Receiver, and in August and November of 2018, entered into two settlement agreements, with a total gross recovery of $17,181,202.91. (Pet. ¶¶ 9-14.) With respect to the settlement in the Federal Action, the Court appointed a Special Master to make a recommendation concerning the attorneys' fees for the Special Litigation Counsel pursuant to the terms of the Retainer Agreement providing for 23 1/3 percent of the gross settlement amount. *Id.* ¶ 18. The Special Master recommended that the attorneys' fees be approved as they were consistent with the Retainer Agreement and below the benchmark of 25 percent of a common fund. (Pet. Ex. H, at 15-16.) The Special Master's analysis reviewed much of the subject matter set forth in Section III.A., *supra*, such as the complexity of the factual and legal issues and risks and duration of litigation, before concluding that the 23 1/3 percent of the gross of the settlement was reasonable. *Id.* at 14-15 (reviewing the seven "*Goldberger* factors" *infra*, to assess the reasonableness of the fees to be awarded in a settlement).

Not only were two prior settlements vigorously contested and favorably decided for the Plan, various intermediary proceedings were also zealously pursued. Still, as a result of the great effort by the Special Counsel and all of the parties that came to the table, this PSA is now before the Court.

C.J. Williams opined that based on the Retainer Agreement that was approved by this Court and the substantial work and effort of WSL in litigating the federal and state court actions in order to reach a favorable settlement for the Plan "participants by increasing the assets of the Plan," the 23 1/3 percent of the PSA fund was reasonable. (Williams Decl. ¶ 13.)

In "common fund" cases, where any recovery will be attributed to a common fund for the benefit of a group of persons, the percentage-of-fund (POF) method to determining attorneys' fees is frequently imposed, based on reasonableness. *See, e.g.*, *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295, 305 (1st Cir. 1995). In choosing to apply the POF method over the lodestar approach, the court must exercise informed discretion. *Id.* at 306. The lodestar approach assesses "'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" *Sisto v. America Condominium Association, Inc.*, 140 A.3d 124, 129 n.7 (R.I. 2016) (quoting *In re Schiff*, 684 A.2d 1126, 1131 (R.I. 1996)).

As it would be impracticable to apply the lodestar approach under the circumstances of the "global settlement[,]" due to the vast amount of proceedings, parties, filings, and efforts of counsel, the POF method is not only reasonable but was previously contemplated by this Court when it approved the Retainer Agreement, including the amount of 23 1/3 percent of any settlement obtained. (Williams Decl. ¶ 8.) The POF method is "result-oriented"; thus, "'a showing that the fund conferring a benefit on the [Plan participants] resulted from'" Special Counsel's efforts is the Court's primary concern. *In re Thirteen Appeals*, 56 F.3d at 307 (quoting *Camden I Condominium Association, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991)).

Our Supreme Court has recognized that the "common fund exception" to the general American Rule, that all parties pay their own attorneys' fees, "'allows a court to award attorney's fees to a party whose litigation efforts directly benefit others[.]'" *McCulloch v. McCulloch*, 69 A.3d 810, 826 (R.I. 2013) (quoting *Blue Cross & Blue Shield of Rhode Island v. Najarian*, 911 A.2d 706, 711 n.5 (R.I. 2006)). However, the Court has not set forth a standard for determining what percentage of the common fund is reasonable. Nevertheless, in determining the

reasonableness of the percentage of recovery that would be allocated to attorneys' fees, some courts have analyzed the following "*Goldberger* factors":

> "'(1) the size of the fund and the number of persons benefitted; (2) 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.'" *In re Neurontin Marketing & Sales Practices Litigation*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) (quoting *In re Lupron Marketing & Sales Practices Litigation*, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005) (citing *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2nd Cir. 2000))).

Other courts consider fewer factors, namely, "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved," and assign "the greatest weight to the benefit achieved in litigation." *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012).

Because the *Goldberger* factors provide for a more thorough analysis, the Court adopts this approach to assess the request in the instant Petition. *See In re Neurontin*, 58 F. Supp. 3d at 170. Factors three and four—the complexity, duration, and risk of the litigation—are satisfied as provided for in Section III.A. *See id.* In addition, regarding factor two, due to the complex nature of this portfolio of litigation, it required highly skilled attorneys to investigate and pursue the various claims in the several forums and ultimately to come to the terms of the PSA that were favorable to the Plan and its participants. *See id.* Furthermore, the Retainer Agreement that was approved by this Court contemplated that a percentage of the fund be utilized for attorney's fees, as the Court understood that in order to obtain the greatest outcome for the receivership estate, an hourly rate absent any reward would only further diminish the Plan. The POF method not only "enhances efficiency" but encourages efforts to get to the end game, albeit by settlement or otherwise, for the benefit of the estate. *See In re Thirteen Appeals*, 56 F.3d at 307 ("If the POF

method is utilized, a lawyer is still free to be inefficient or to drag her feet in pursuing settlement options—but, rather than being rewarded for this unproductive behavior, she will likely reduce her own return on hours expended.").

Regarding the first *Goldberger* factor—the size of the fund and the number of persons benefitting from it—the Plan has approximately 2,700 participants and the PSA contemplates that the net proceeds of the $30,000,000 will be contributed to further fund the Plan. *See In re Neurontin*, 58 F. Supp. 3d at 170. After deducting costs and expenses, including Special Counsel's 23 1/3 percent of the PSA amount, the net contribution to the Plan is approximately $23,000,000. According to the Receiver, this $23,000,000 contribution to the Plan will bring the Plan beyond its pre-Petition value, when Plan participants faced a forty percent cut in their benefits. Thus, all Plan participants will benefit from this substantial contribution to the fund.

This Court has presided over several of the interrelated lawsuits that are subject to the PSA. In the Plan Receivership alone, this Court has reviewed seventeen interim reports by the Receiver, all of which detailed the efforts of the Receiver and Special Counsel. Regarding the fifth *Goldberger* factor, the amount of time devoted to the various proceedings by the Special Counsel is—without question—extensive. *See In re Neurontin*, 58 F. Supp. 3d at 170.

Our Supreme Court has not articulated a benchmark percentage as a reasonable percentage for attorneys' fees in the recovery for a common fund; however, federal courts provide well-established instruction. *See In re Fleet/Norstar Securities Litigation*, 935 F. Supp. 99, 109 (D.R.I. 1996), supplemented, 974 F. Supp. 155 (D.R.I. 1997) ("In common-fund cases, the majority of attorney fee awards fall between 20% and 30% of the fund.") (citing *Camden I*, 946 F.2d at 774); *see also Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (utilizing 25 percent as the established benchmark). Many federal courts have looked to the benchmark of 25

percent of the recovery for a common fund as a reasonable percentage for attorneys' fees. *See In re Fleet*, 935 F. Supp. at 109; *see also Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 349 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015). Nevertheless, "the expectation is [also] that 'absent unusual circumstances, the percentage will decrease as the size of the fund increases.'" *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 187 (D. Mass. 1998) (quoting *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 256, n.63 (1986)).

If compared, however, to a contingency fee under Rhode Island law, in accordance with Rule 1.5 of the Supreme Court Rules of Professional Conduct, the fee must be reasonable according to the factors set forth in subsection (a).[8] R.I. Sup. Ct. R. Professional Conduct 1.5, cmt. 3. Many of these factors are reflective of the *Goldberger* factors. *See In re Neurontin*, 58 F. Supp. 3d at 170. Thus, the Court is confident that a POF in the amount of 23 1/3 percent of the gross recovery could be analyzed similarly under Rhode Island law and found to be reasonable.

[8] Pursuant to Rule 1.5(a), "[t]he factors to be considered in determining the reasonableness of a fee include the following:

> "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> "(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> "(3) the fee customarily charged in the locality for similar legal services;
> "(4) the amount involved and the results obtained;
> "(5) the time limitations imposed by the client or by the circumstances;
> "(6) the nature and length of the professional relationship with the client;
> "(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> "(8) whether the fee is fixed or contingent." R.I. Sup. Ct. R. Professional Conduct 1.5(a).

In the instant Petition, Receiver is requesting that Special Counsel be compensated in accordance with the terms of the Retainer Agreement, in the amount of 23 1/3 percent of the gross recovery of $30,000,000, which is approximately $7,000,000. The Court finds that—in regards to the sixth *Goldberger* factor—Receiver's request is reasonable, (1) due to this percent being less than the 25 percent benchmark commonly considered; and (2) in light of (a) the percent requested being otherwise reasonable under the *Goldberger* factors; and (b) the opinion of C.J. Williams who presided over the mediation and stated that, the "request by WSL for an attorneys' fee in the amount of twenty-three and one-third percent (23 & 1/3%) of the $30,000,000 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." Williams Decl. ¶ 13; *see also In re Neurontin*, 58 F. Supp. 3d at 170.

Finally, public policy favors settling under terms that provide a promising outcome for the Plan and its participants, certainly more so in light of the Plan's underfunded status, which gave rise to the receivership and resulted in an array of contentious disputes. Indeed, it was difficult to have foreseen that a mutual agreement by the numerous settling parties would be entered into after good-faith settlement negotiations, whereby there would be no objecting parties and also wide-spread support by the Plan participants.

Attorney Violet, on behalf of the Plan participants she represents, acknowledged the request for fees and "urge[d] the Court to approve the [PSA] (including attorneys' fees) . . . [as] [t]he settlement . . . is beneficial to [her] clients." (Violet Decl. ¶¶ 9-10.) In addition, Attorneys Callaci and Kasle expressed their support for approval of the PSA, including the attorneys' fees as requested by the Receiver. (Callaci Decl. ¶¶ 3-4; Kasle Decl. ¶ 7.)

As all parties are in agreement to the terms of the PSA and support for the approval of attorneys' fees as requested, the Court cannot say that the approval of the PSA, including the request for attorneys' fees, is by any means against public policy. As such, the Court finds that the seventh *Goldberger* factor weighs in favor of approving the attorneys' fees as they have been requested by the Receiver. *See In re Neurontin*, 58 F. Supp. 3d at 170.

IV

Conclusion

After assessing the factors based on the issues presented in the Petition, the Court finds that the PSA is fair, equitable, and in the best interest of the receivership estate. In addition, the Court finds that the attorneys' fees are reasonable. Accordingly, the Court approves the PSA, pursuant to § 23-17.14-35 as a good-faith settlement, including Receiver's request to pay attorneys' fees to Special Litigation Counsel pursuant to the terms of the Retainer Agreement, in the amount of 23 1/3 percent of the gross settlement amount.

Exhibit B

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	:	

ORDER

Stephen F. Del Sesto, Esq., in his capacity as the Permanent Receiver (the "Plan Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") having filed a Petition for Settlement Instructions and Approval relating to a proposed settlement (the "Proposed Settlement") pursuant to a Settlement Agreement ("Settlement Agreement") among the Plan Receiver, seven individuals, 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, and the Court having conducted a hearing on February 11, 2021, and no objection having been filed or made, it is hereby:

ORDERED, ADJUDGED, AND DECREED:

1. That the Petition for Settlement Instructions and Approval is granted;

2. That notice of the Petition for Settlement Instructions and Approval and of the hearing thereon was given to all parties in interest, including all of the Plan's participants and beneficiaries;

3. That the Proposed Settlement including specifically the Settlement Agreement is fair and reasonable, was made in good faith, and is in the best interests of

the Receivership estate and the Plan's participants and beneficiaries, and that all actions of the Plan Receiver in connection with the negotiation, execution, and implementation of the Proposed Settlement are approved and ratified;

4. That the Plan Receiver may seek approval of the Proposed Settlement by the United States District Court in 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 is directed to take all necessary and appropriate actions in connection therewith;

5. That Special Counsel's contingent fee for representing the Plan Receiver of 23 1/3% (as set forth in the Petition for Settlement Instructions and Approval and which the Court has previously approved) is fair, reasonable, and a benefit to the Receivership estate and, subject to the approval of the Proposed Settlement and the fee by the court in the Federal Court Action, the Plan Receiver is authorized to pay said fee to Special Counsel from the proceeds of the Proposed Settlement and to pay the entire remaining proceeds to the Plan; and

6. That the Settlement Agreement constitutes a good-faith settlement under R.I. Gen. Laws § 23-17.14-35.

SO ORDERED:

Brian P. Stern, J.
Stern, J.

Dated: March 4, 2021

ENTERED:

/s/ Carin Miley
Dep. Clerk Deputy Clerk I

Dated: March 4, 2021

Presented by:

/s/ Stephen P. Sheehan
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
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Dated: February 24, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on the 24th day of February, 2021, 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 C

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

Del Sesto et al. v. Prospect Chartercare, LLC et al.

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

NOTICE OF CLASS ACTION PARTIAL SETTLEMENT

YOUR LEGAL RIGHTS MIGHT BE AFFECTED IF YOU ARE A MEMBER OF THE FOLLOWING CLASS (the "Settlement Class"):

> All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:
>
> i) all surviving former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan; and
>
> ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan.

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.

U.S. District Judge William E. Smith of the United States District Court for the District of Rhode Island (the "Court") has preliminarily approved a proposed partial settlement (the "Partial Settlement") of a class action lawsuit brought under the Employee Retirement Income Security Act of 1974 ("ERISA") and state common law. The Partial Settlement will provide for payments to the Plan, and the lawsuit will continue as to the remaining defendants. The Partial Settlement is summarized below.

The Court has scheduled a hearing (the "Final Approval Hearing") to consider the Individual Named Plaintiffs' motion for final approval of the Partial Settlement, including Plaintiffs' Counsel's application for attorneys' fees. The Final Approval Hearing before U.S. District Judge William E. Smith has been scheduled for _____, 2021 at ____ a.m./p.m., in the United States District Court for the District of Rhode Island,

Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island 02903. Any objections to the Partial Settlement or the application for attorneys' fees must be served in writing on Plaintiffs' Counsel and on the Settling Defendants' attorneys, as identified on pages 14-16 of this Notice of Class Action Partial Settlement ("Mailed Notice"). The procedure for objecting is described below.

This Mailed Notice contains summary information with respect to the Partial Settlement. The terms and conditions of the Partial Settlement are set forth in a Settlement Agreement (herein referred to as the "Plan/Prospect/Angell Settlement Agreement"). Capitalized terms used in this Mailed Notice but not defined in this Mailed Notice have the meanings assigned to them in the Plan/Prospect/Angell Settlement Agreement. The Plan/Prospect/Angell Settlement Agreement, and additional information with respect to this lawsuit (the "Action") and the Partial Settlement, is contained in Plaintiffs' Motion for Preliminary Settlement Approval, Settlement Class Certification, Appointment of Class Counsel, and a Finding of Good Faith Settlement ("Plaintiffs' Motion for Preliminary Settlement Approval"), filed on [INSERT DATE], and is available at the internet site https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan ("the Plan Receiver's Web Site") that was established by Attorney Stephen Del Sesto as Court-Appointed Receiver and Administrator of the Plan (hereinafter the "Plan Receiver") 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 Proceedings").

PLEASE READ THIS MAILED NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS, THE PARTIAL SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE PARTIAL SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE PARTIAL SETTLEMENT BY FOLLOWING THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE PARTIAL SETTLEMENT

YOU WILL NOT RECEIVE A DIRECT PAYMENT IN CONNECTION WITH THIS SETTLEMENT

The Partial Settlement provides for payment of certain funds to increase the assets of the Plan, and to put the Plan on a better financial position than it would be without the

Partial Settlement to meet payment obligations to Plan participants and their beneficiaries in accordance with their rights under the Plan and applicable law. It is not expected that the Partial Settlement will increase Plan assets sufficiently to make the Plan fully funded to meet all of its benefit obligations. However, the case will go on against the non-settling defendants. Plan participants or beneficiaries of Plan participants will not receive any direct payments in connection with this Partial Settlement.

If the Partial Settlement is approved by the Court and you are a member of the Class, you will not need to do anything.

THIS PARTIAL SETTLEMENT WILL NOT REDUCE YOUR RIGHTS TO COMMENCE OR CONTINUE TO RECEIVE A BENEFIT FROM THE PLAN

If the Partial Settlement is approved by the Court and you are a member of the Settlement Class, your entitlement to commence or receive a benefit at the time and in the form provided under the terms of the Plan will not be reduced or diminished as a result of your participation in the Partial Settlement. To the contrary, the effect if the Partial Settlement is approved by the Court will be to increase the assets available to pay benefits under the Plan.

YOU MAY OBJECT TO THE SETTLEMENT BY _____, 2021.

If you wish to object to any part of the Partial Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Partial Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON_____, 2021.

If you submit a written objection to the Partial Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing about the Partial Settlement and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you have filed a written notice of objection in advance of the Final Approval Hearing AND you file a Notice of Intention to Appear. To file a written notice of objection and Notice of Intention to Appear, you must follow the instructions set forth in answer to Question 15 in this Mailed Notice.

• These rights and options—and the deadlines to exercise them—are explained in this Mailed Notice.

• The Court still has to decide whether to approve the Partial Settlement. Payments will be made only if the Court approves the Partial Settlement.

Further information regarding this Action and this Mailed Notice may be obtained by contacting the following Plaintiffs' Counsel:

Max Wistow, Esq., Stephen P. Sheehan, Esq.,
or Benjamin Ledsham, Esq.
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WHAT THIS NOTICE CONTAINS

SUMMARY OF PARTIAL SETTLEMENT

This Action is in part a class action in which the Plan Receiver and the Individual Named Plaintiffs claim that the Plan is underfunded such that it will not be able to pay all of the benefits to which Plan participants are entitled, and that the defendants are liable for that underfunding, as well as related claims. Copies of the Complaint and First Amended Complaint filed in the Action are available at the Plan Receiver's Web Site, https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan.

The Settling Defendants are Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, (collectively referred to herein as "Prospect"), and The Angell Pension Group, Inc. ("Angell"), Sam Lee, and David Topper (Prospect, Angell, Sam Lee and David Topper are referred to collectively as the "Settling Defendants"). If this Partial Settlement is approved, the Plan Receiver and the Individual Named Plaintiffs will continue to assert claims against the non-settling defendants in this Action, who are the Roman Catholic Bishop of Providence, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively the "Diocesan Defendants"), and will continue to assert claims against (to the extent of their assets) CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH"), in the Rhode Island Superior Court matter captioned In re: CharterCare CharterCARE Community Board, St. Joseph Health Services of Rhode Island and Roger Williams Hospital (C.A. No. PC-2019-11756) (the "Liquidation Proceedings"). The Plan Receiver's and the Individual Named Plaintiffs' claims against the Settling Defendants arise principally from a 2014 transaction in which certain of the assets and certain of the liabilities of SJHSR, RWH, and CCCB were sold to Prospect and other entities. The Plan Receiver's and the Individual Named Plaintiffs' claims are set forth in the allegations in the First Amended Complaint in this Action, the material terms of which the Settling Defendants deny.

The Partial Settlement calls for a total payment of thirty million dollars ($30,000,000) (the "Settlement Payment"), of which Prospect will pay twenty-seven million two hundred fifty thousand dollars ($27,250,000) and Angell will pay two million seven hundred fifty thousand dollars ($2,750,000). The Plan/Prospect/Angell Settlement Agreement provides that $4 million of Prospect's contribution will be allocated to the purchase of the membership interest in Prospect Chartercare LLC owned by CCCB,

and $1 million will be allocated to the release of CCCB's other claims against Prospect. Angell's contribution of $2.75 million has been deposited in the registry of the Rhode Island Superior Court, and Prospect's contribution of $27.25 million has been paid through letters of credit issued by JPMorgan Chase Bank, N.A. and delivered to the Plan Receiver, to be held while the parties seek the necessary court approvals.

In consideration for Prospect and Angell's Settlement Payment to the Plan Receiver, the Plan Receiver and the Individual Named Plaintiffs agree to release the Settling Defendants and certain other individuals and entities and to dismiss all claims against the Settling Defendants in this Action or in related litigation that is pending in the Rhode Island Superior Court and the Court of Chancery for the State of Delaware. The terms and conditions of those releases are more fully described in the Plan/Prospect/Angell Settlement Agreement.

This Partial Settlement is contingent upon final approval by the United States District Court for the District of Rhode Island in this Action. Further details regarding this Partial Settlement are described below.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

If this Partial Settlement had not been agreed to, or if this Partial Settlement does not receive the necessary final approval from the United States District Court for the District of Rhode Island in this Action, the Settling Defendants would dispute the claims asserted in the Action and in the related litigation.

The Plan Receiver and the Individual Named Plaintiffs would face an uncertain outcome if the Action and the related litigation were to continue against the Settling Defendants and the non-settling defendants. There is no assurance that the Plan Receiver or the Individual Named Plaintiffs will secure recoveries from any of the Defendants, including the Settling Defendants or the non-settling defendants. In that case, this proposed Partial Settlement may be the only opportunity to significantly increase the assets of the pension fund to pay benefits as and when they are due, and the consequence of not approving the Partial Settlement may be that the pension fund runs out of money sooner than if the Partial Settlement were approved.

It is not possible to forecast exactly which type of outcome would occur if this Action and the related litigation were to continue against the Settling Defendants. The Plan Receiver and the Individual Named Plaintiffs might succeed in securing a declaratory judgment that the Plan was governed by ERISA at the time of the 2014 Asset Sale and that Prospect has successor liability for the Plan under ERISA, which could result in Prospect having certain obligations to make contributions to the Plan. The Plan Receiver and the Individual Named Plaintiffs might succeed in securing a money

judgment of damages against Prospect and/or Angell. The Plan Receiver and the Individual Named Plaintiffs might succeed in securing a judgment against Sam Lee and David Topper holding that certain dividends that they received from Prospect Medical Holdings, Inc. or other Prospect-related entities were fraudulent or avoidable transfers, and have to be paid to the Plan Receiver and the Individual Named Plaintiffs to satisfy any judgment of money damages that the Plan Receiver and the Individual Named Plaintiffs obtain against Prospect Medical Holdings, Inc. However, all of the Settling Defendants dispute the merits of the claims against them and, in addition, argue that the Plan Receiver and the Individual Named Plaintiffs do not have any damages, because they allege that Pension Benefit Guaranty Corporation will make up any shortfall. The Plan Receiver and the Individual Named Plaintiffs contend that coverage by Pension Benefit Guaranty Corporation is not a certainty and that such coverage would not reduce their recoverable damages because it would be a collateral source of recovery.

In summary, the Plan Receiver, the Individual Named Plaintiffs, and the Settling Defendants do not agree on liability. They also do not agree on the amount that would be recoverable even if the Plan Receiver and the Individual Named Plaintiffs were to prevail at trial against the Settling Defendants. If this Partial Settlement had not been agreed to, or if this Partial Settlement is not approved, the Settling Defendants would strongly deny all claims and contentions by the Plaintiffs and deny any wrongdoing with respect to the Plan.

Nevertheless, having considered the uncertainty and expense inherent in any litigation, particularly in a complex case such as this, the Plan Receiver and the Individual Named Plaintiffs and the Settling Defendants have concluded that it is desirable that the Action be fully and finally settled as between them, on the terms and conditions set forth in the Plan/Prospect/Angell Settlement Agreement.

STATEMENT OF ATTORNEYS' FEES SOUGHT IN THE ACTION

Plaintiffs' Counsel will apply to the Court for an order awarding attorneys' fees in accordance with the Retainer Agreement previously approved by the Rhode Island Superior Court in the Plan Receivership Proceedings concerning Plaintiffs' Counsel's representation of the Plan Receiver in this and other cases, in the amount of 23 1/3% of the Settlement Payment. Any amount awarded will be paid from the Settlement Payment. The Settling Defendants will not oppose Plaintiffs' Counsel's application and otherwise have no responsibility for payment of such fees.

Neither the Individual Named Plaintiffs nor any of the Settlement Class Members will receive any direct payments in connection with the Partial Settlement. The Plan Receiver will receive the Net Settlement Amount for deposit into the assets of the Plan

in accordance with the orders of the Superior Court in the Plan Receivership Proceeding. The benefit the Individual Named Plaintiffs or any of the Settlement Class Members will receive will be that the funds paid to the Plan in connection with the Partial Settlement will increase the amount of the assets of the Plan available to pay benefits to the Plan participants and the beneficiaries of the Plan participants.

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE PACKAGE?

You are a member of the Settlement Class, because you are a Participant in the Plan, or are the Beneficiary of someone who is a participant in the Plan.

The Court directed that this Mailed Notice be sent to you because since you were identified as a member of the Settlement Class, you have a right to know about the Partial Settlement and the options available to you regarding the Partial Settlement before the Court decides whether to approve the Partial Settlement. This Mailed Notice describes the Action and the Partial Settlement.

The Court in charge of the Action is the United States District Court for the District of Rhode Island. The persons who sued are Stephen Del Sesto (as Receiver and Administrator of the Plan), and seven Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque. These Plan participants are called the “Individual Named Plaintiffs,” and the people they sued are called “Defendants.” 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., the corporation Roger Williams Hospital, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, and The Angell Pension Group, Inc. The Action is known as *Del Sesto et al. v. Prospect Chartercare LLC, et al.*, C.A. No: 1:18-CV-00328-WES-LDA.

The Partial Settlement also involves and resolves certain claims asserted in related litigation in the Rhode Island Superior Court and the Court of Chancery of the State of Delaware (the “Related Litigation”). Certain of the Defendants in the Action are also Defendants in the Related Litigation in the Rhode Island Superior Court and certain of the Defendants in the Action are also Plaintiffs in the Related Litigation in the Court of Chancery of the State of Delaware.

2. WHAT IS THE ACTION ABOUT?

The Individual Named Plaintiffs and the Plan Receiver claim that, under the Employees Retirement Income Security Act of 1974, as amended ("ERISA"), and state law, Prospect was obligated to fully fund the Plan. There are other related claims against Prospect, Angell, Topper and Lee, including allegations of fraud and misrepresentation and, with respect to Settling Defendants Topper and Lee, certain claims alleging fraudulent or avoidable transfers. The Settling Defendants deny the claims in the Action, deny that they were obligated to fully fund the Plan and Plaintiffs' related claims, and deny that they have engaged in any wrongdoing.

3. SETTLEMENT DISCUSSIONS

The proposed Partial Settlement is the product of over three and a half years of investigative and litigation activity and recent negotiations between Plaintiffs and the Settling Defendants through their respective counsel. Those negotiations were mediated by the Hon. Frank Williams, who is a retired Chief Justice of the Rhode Island Supreme Court.

4. WHY IS THIS CASE A CLASS ACTION?

In a class action, one or more plaintiffs, called "class representatives" sue on behalf of people who have similar claims. All of these people who have similar claims collectively make up the "class" and are referred to individually as "class members." One case resolves the issues for all class members together. Because the purported wrongful conduct alleged in this Action affected a large group of people—participants in the Plan—in a similar way, the Individual Named Plaintiffs filed this case as a proposed class action.

5. WHY IS THERE A SETTLEMENT?

As in any litigation, all parties face an uncertain outcome. On the one hand, continuation of the case against the Settling Defendants could result in a judgment greater than this Partial Settlement.

However, it will likely take at least a year and likely much longer for this case to go to trial. During that time, Prospect could commence bankruptcy proceedings, which would both delay the trial of this Action and could severely reduce and perhaps eliminate the ability of the Plan Receiver and the Individual Named Plaintiffs to collect on any

judgment obtained against Prospect. Counsel for the Plan Receiver has had an expert review the financial statements of Prospect, and that expert has concluded that, in his opinion, "bankruptcy is imminent unless there is a significant infusion of capital and a return of all dividends previously paid out." Moreover, the claims of the Plan Receiver and the Individual Named Plaintiffs against Angell and Messrs. Topper and Lee might be unsuccessful. If a bankruptcy prevents the Plan Receiver and the Individual Named Plaintiffs from collecting any judgment against Prospect and the claims of the Plan Receiver and the Individual Named Plaintiffs against Angell and Messrs. Topper and Lee are not successful, there would be no recovery from any of the Settling Defendants.

Based on these factors, the Plan Receiver, the Individual Named Plaintiffs, and Plaintiffs' Counsel have concluded that the proposed Partial Settlement is in the best interests of all members of the Class.

6. WHY IS THIS ONLY A PARTIAL SETTLEMENT?

This is a Partial Settlement because it only resolves the Plaintiffs' claims against the Settling Defendants and certain other parties and entities as identified in the releases. Plaintiffs' claims against the Diocesan Defendants are not being settled. If this Plan/Prospect/Angell Settlement Agreement is approved, then, based upon a statute passed by the Rhode Island General Assembly in response to this case, the only expected effect of this Partial Settlement on the Plaintiff's claims against the Diocesan Defendants is that the Diocesan Defendants may be entitled to reduce their liability to the Plaintiffs by the Settlement Payment.

The following hypothetical example applying such statute may help explain the reduction to which the Diocesan Defendants may be entitled:

> Imagine a personal injury lawsuit brought by a plaintiff against two defendants, in which the plaintiff claims the defendants were negligent, and settled his or her claims against one defendant for $100 and proceeded to trial against the remaining defendant against whom the plaintiff obtained an award of $500. The effect of the prior settlement would be at most to reduce the $500 award by $100, so that the plaintiff's total recovery would be $100 from the settlement and an additional $400 from the defendant against whom the plaintiff went to trial.

7. WILL THIS ACTION CONTINUE AFTER THE PARTIAL SETTLEMENT?

This Action will continue against the Diocesan Defendants. However, there are no assurances that Plaintiffs' claims against the Diocesan Defendants will be successful or result in any recovery.

8. HOW DO I KNOW WHETHER I AM PART OF THE PARTIAL SETTLEMENT?

You are a member of the Settlement Class if you fall within the criteria for the Settlement Class approved by U.S. District Judge William E. Smith:

> All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:
>
> i) all surviving former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan; and
>
> ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan.

9. WHAT DOES THE PARTIAL SETTLEMENT PROVIDE?

This Partial Settlement provides for a total gross Settlement Payment to the Plan Receiver of $30 million.

This Partial Settlement is contingent upon final approval by the United State District Court for the District of Rhode Island in this Action.

If the United States District Court does not approve the Partial Settlement, the Partial Settlement will be considered null and void, the Settling Parties will be restored to the respective positions that they occupied before this Partial Settlement was signed, and the Action will continue to proceed against the Settling Defendants and the Diocesan Defendants.

If instead this Partial Settlement receives all the necessary approval from the United States District Court for the District of Rhode Island in this Action, all members of the Settlement Class shall be deemed to fully release the Settling Defendants and certain other individuals named in the releases from the Released Claims (the "Settlement Releases"). The Released Claims mean any and all past, present and future causes of action, claims, damages, awards, equitable, legal, and administrative relief, interest,

demands or rights that are based upon, related to, or connected with, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Action, including but not limited to any and all claims seeking damages because of the underfunded status of the Plan. The Plan/Prospect/Angell Settlement Agreement and its exhibits provides a complete description of the scope of the Settlement Releases. Together with those Settlement Releases, the Partial Settlement provides that the Plan Receiver and the Individual Named Plaintiffs will dismiss with prejudice all claims that were asserted or could have been asserted against the Settling Defendants.

Second, the Related Litigation will be dismissed with prejudice to any claims of the Settlement Class.

The above description of the proposed Partial Settlement is only a summary. The complete terms, including the definitions of the Released Parties and Released Claims, are set forth in the Plan/Prospect/Angell Settlement Agreement (including its exhibits), which is contained in Plaintiffs' Motion for Preliminary Settlement Approval, and is available at the Plan Receiver's Web Site, https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan.

10. CAN I GET OUT OF THE PARTIAL SETTLEMENT?

You do not have the right to exclude yourself from the Partial Settlement. The Plan/Prospect/Angell Settlement Agreement provides for certification of the Class as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1)(B), and the Court has determined that the requirements of that rule have been satisfied. As a member of the Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action or are otherwise released under the Partial Settlement.

Although you cannot opt out of the Partial Settlement, you can object to the Partial Settlement and ask the Court not to approve it. For more information on how to object to the Partial Settlement, see the answer to Question 15 below.

11. WHO ARE THE LAWYERS REPRESENTING THE CLASS

Plaintiffs' Counsel Wistow, Sheehan & Loveley, PC have been preliminarily appointed to represent the Class.

12. DO I HAVE A LAWYER IN THE CASE?

The Court has appointed Plaintiffs' Counsel Wistow, Sheehan & Loveley, PC to represent the Class in the Action. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. HOW WILL THE LAWYERS BE PAID?

Plaintiffs' Counsel will file a motion for the award of attorneys' fees of 23 1/3% of the Settlement Payment. The percentage of 23 1/3% is the percentage applicable to Plaintiffs' Counsel's representation of Attorney Stephen Del Sesto as Plan Receiver in this Action and was previously approved by Associate Justice Brian P. Stern of the Rhode Island Superior Court in connection with the case captioned *St. Joseph Health Services of Rhode Island, Inc., Petitioner, v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Plan Receivership Proceedings"). The petition filed on behalf of SJHSRI alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. The Superior Court in the Plan Receivership Proceedings authorized the retention of Wistow, Sheehan & Loveley, PC as Special Counsel to the Plan Receiver, to investigate and assert possible claims that may benefit the Plan, pursuant to Wistow, Sheehan & Loveley, PC's retainer agreement which was approved by the Superior Court.

On March 4, 2021, the Rhode Island Superior Court entered an order approving the Partial Settlement and finding that Wistow, Sheehan & Loveley, PC's contingent fee for representing the Plan Receiver of 23 1/3% (as set forth in the Petition for Settlement Instructions and Approval and which the Superior Court had previously approved) is fair, reasonable, and a benefit to the Receivership estate and, subject to the approval of the Proposed Settlement and the fee by the Court in this Action, the Plan Receiver is authorized to pay said fee to Wistow, Sheehan & Loveley, PC from the proceeds of the Proposed Settlement.

Plaintiffs' Counsel's Motion for Award of Attorneys' Fees and Costs is due to be filed on or before [INSERT DATE], and after it is filed it may be obtained at the Plan Receiver's Web Site, https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan. This motion will be considered at the Final Approval Hearing described below. The Settling Defendants will not take any position on that matter before the Court.

14. OBJECTING TO THE ATTORNEYS' FEES

By following the procedures described in the answer to Question 15, you can tell the Court that you do not agree with the fees and expenses the attorneys intend to seek and ask the Court to deny their motion or limit the award.

15. HOW DO I TELL THE COURT IF I DO NOT LIKE THE PARTIAL SETTLEMENT?

If you are a member of the Settlement Class, you can object to the Partial Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it, and you may object to Plaintiffs' Counsel's motion for attorneys' fees. To object, you must send a letter or other writing saying that you object to the Partial Settlement in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA. Be sure to include your name, address, telephone number, signature, and a full explanation of all the reasons why you object to the Partial Settlement. Your written objection must be sent to the following counsel and must be postmarked by no later than _____, 2021.

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THE LIQUIDATING RECEIVER

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You must also file your objection with the Clerk of the Court of the United States District Court for the District of Rhode Island by mailing it to the address set forth below. The objection must refer prominently to Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA. Your objection must be postmarked no later than _____, 2021. The address is:

Clerk of the Court
United States District Court for the
District of Rhode Island
Federal Courthouse
1 Exchange Terrace
Providence, Rhode Island 02903

16. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE PARTIAL SETTLEMENT?

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Partial Settlement as fair, reasonable, and adequate (the "Final Approval Hearing"). You may attend the Final Approval Hearing, but you do not have to attend.

The Court will hold the Final Approval Hearing at __:_0 _.m. on _____, 2021, at the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island 02903, in the courtroom then occupied by U.S. District Judge William E. Smith. The Court may conduct the hearing by electronic means. The Court may adjourn the Final Approval Hearing without further notice to the members of the Settlement Class, so if you wish to attend, you should confirm the date and time of the Final Approval Hearing with Plaintiffs' Counsel before doing so. At that hearing, the Court will consider whether the Partial Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also rule on the motions for attorneys' fees.

17. DO I HAVE TO COME TO THE HEARING?

No, but you are welcome to come at your own expense. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Partial Settlement. You also may pay your own lawyer to attend the Final Approval Hearing, but such attendance is also not necessary.

18. MAY I SPEAK AT THE HEARING?

If you submit a written objection to the Partial Settlement or to Plaintiffs' Counsel's motion for attorneys' fees to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear, as described in this paragraph. To do so, you must send a letter or other paper called a "Notice of Intention To Appear at Final Approval Hearing in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-

00328-WES-LDA .” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention To Appear must be sent to the attorneys listed in the answer to Question 15 above, postmarked no later than _____, 2021, and must be filed with the Clerk of the Court by mailing it (post-marked no later than ___, 2021) to the address listed in the answer to Question 13.

19. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing and you are a member of the Settlement Class, you will participate in the Partial Settlement of the Action as described above in this Mailed Notice.

GETTING MORE INFORMATION

20. ARE THERE MORE DETAILS ABOUT THE PARTIAL SETTLEMENT?

Yes. This Mailed Notice summarizes the proposed Partial Settlement. The complete terms are set forth in the Plan/Prospect/Angell Settlement Agreement, which is contained in Plaintiffs’ Motion for Preliminary Settlement Approval, and is available at the Plan Receiver’s Web Site, https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan. You are encouraged to read the complete Plan/Prospect/Angell Settlement Agreement.

DATED: _____, 2021.

Exhibit D

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

[PROPOSED]
ORDER

This matter having come before the Court on Plaintiffs' Motion for Preliminary Partial Settlement Approval, Settlement Class Certification, Appointment of Class Counsel, and a Finding of Good Faith Settlement ("Plaintiffs' Motion for Preliminary Settlement Approval") in the above captioned case (the "Action"), filed by Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Receiver"), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually and on behalf of the settlement class (collectively "Plaintiffs"), which attaches thereto the Settlement Agreement (the "Settlement Agreement," which memorializes the "Settlement") between the Plaintiffs and Thomas Hemmendinger (as the Liquidating Receiver for CharterCARE Community Board ("CCCB")) (the

"Liquidating Receiver"), on the one hand, and Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, (collectively referred to herein as "Prospect"), and The Angell Pension Group, Inc. ("Angell"), Sam Lee, and David Topper (Prospect, Angell, Sam Lee and David Topper are referred to collectively as the "Settling Defendants"), on the other hand (all of the parties thereto are the "Settling Parties"). Having duly considered the papers,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action, the Settling Parties, and all Settlement Class Members.

2. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Settlement Agreement for fairness, adequacy, and reasonableness.

3. Based on this evaluation, the Court finds there is cause to believe that: (i) the Settlement Agreement is fair, reasonable, and adequate, and within the range of possible approval; (ii) the Settlement Agreement has been negotiated in good faith at arms-length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the form of the proposed notice (the "Class Notice") of the material terms of the Settlement Agreement to Settlement Class Members for their consideration and reaction, that Class Notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement Class:

> All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:
>
> i) all surviving former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan; and
>
> ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan.

5. Members of the preliminarily approved Settlement Class do not have the right to exclude themselves or "opt-out" of the Settlement. Consequently, all Settlement Class members will be bound by all determinations and judgments concerning the Settlement Agreement.

6. The Court hereby preliminarily appoints the Individual Named Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, PC ("WSL") to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. No later than [INSERT MONTH DAY], 2021, WSL shall file its motion for attorneys' fees for representing the Settlement Class and supporting papers. The Plan Receiver will publish such filing by placing a copy on the website maintained by the Receiver at https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan, and the Plan Receiver shall give written notice to all Plan participants of such publication.

9. On [INSERT MONTH DAY], 2021, at [INSERT TIME] in Courtroom [INSERT COURTROOM] of the United States District Court for the District of Rhode Island, One Exchange Terrace, Providence, Rhode Island, or by electronic means, or at such other date and time later set by Court order or by the Class Notice, this Court will hold a final approval hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement to determine whether (i) final approval of settlement as embodied by the Settlement Agreement should be granted, and (ii) WSL's application for attorneys' fees should be granted, and if so, in what amount.

10. The Court approves the proposed notice plan submitted by Plaintiffs in connection with their Motion for Preliminary Settlement Approval for giving notice to the settlement class (i) directly, by sending them the proposed Class Notice by first class mail; and (ii) by publishing the Motion for Preliminary Settlement Approval, with all exhibits thereto, including but not limited to the Settlement Agreement, on the website maintained by the Receiver at https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan. The Court hereby directs the Settling Parties, and specifically the Receiver, to complete the notice plan no later than [INSERT MONTH DAY], which is ten (10) days after the entry of this Order.

11. Settlement Class members who wish to object to Settlement Agreement or to WSL's Motion for Attorneys' Fees must do so by the [INSERT MONTH DAY] (the "Objection Deadline") which is sixty (60) calendar days after the deadline for notice to be sent pursuant to this Order.

12. To object to the Settlement Agreement, or to WSL's Motion for Attorneys' Fees, Settlement Class members must follow the directions in the Class Notice and file a written objection with the Court by the Objection Deadline. In a written objection, a Settlement Class member must state his or her full name, address, and home or cellular telephone number(s), pursuant to which the Settlement Class member may be contacted. The member must also state the reasons for the member's objection, and whether the member intends to appear at the final fairness hearing on his or her own behalf or through counsel. Any documents supporting the objection must also be attached to the objection. Any and all objections shall identify any attorney that assisted or provided advice as to the case or such objection. No objection will be considered unless all the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to counsel for all parties by mail utilizing the United States Postal Service First Class Mail, to the addresses listed in the Class Notice, or by email to the email addresses listed in the Class Notice.

13. If a Settlement Class member does not submit a written comment on the proposed Settlement Agreement or the application of WSL for attorneys' fees in accordance with the deadline and procedure set forth in the Class Notice and this Order, and if the Settlement Class member wishes to appear and be heard at the final fairness hearing, the Settlement Class member must file a notice of intention to appear with the Court and serve a copy upon counsel for all parties in the manner provided in Paragraph 15 of the Class Notice, no later than the Objection Deadline, and comply with all other requirements that may be established by the Court for such an appearance.

14. Any Settlement Class member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the final fairness hearing in accordance with the terms of this Order and as detailed in the Class Notice, or who fails at the same time to provide copies to counsel for all parties, shall not be permitted to object to the Settlement Agreement or to WSL's Motion for Attorneys' Fees at the final fairness hearing; shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means; shall be deemed to have waived the member's objections; and shall be forever barred from making any such objections. All members of the Settlement Class will be bound by all determinations and judgments in this action, whether favorable or unfavorable to the Settlement Class.

15. The Settling Parties other than the Plaintiffs may (but are not required to) file papers in support of final class action approval of the Settlement Agreement, so long as they do so no later than [INSERT MONTH DAY], which is twenty-four (24) days prior to the final approval hearing.

16. The Non-Settling Defendants may (but are not required to) file papers in opposition or in support of final class action approval of the Settlement Agreement, so long as they do so no later than [INSERT MONTH DAY], which is twenty-four (24) days prior to the final approval hearing.

17. No later than [INSERT MONTH DAY], which is fourteen (14) days prior to the final approval hearing, Plaintiffs must file papers in support of final class action approval of the Settlement Agreement and respond to any written objections.

18. No later than [INSERT MONTH DAY], which is fourteen (14) days prior to the final approval hearing, WSL shall respond to any written objections to its motion for attorneys' fees.

19. If the Settlement Agreement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection with the Settlement Agreement will be without prejudice to the right of all parties to assert any right or position that could have been asserted as if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Settling Parties will return to the *status quo ante* in this action and the certification of the preliminarily approved Settlement Class will be deemed vacated. The certification of the class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.

20. Counsel for Plaintiffs are hereby authorized to use all reasonable procedures in connection with the approval and administration the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they believe are reasonable and necessary, including such changes or supplements as may be reasonable or necessary to give the Plan participants notice if the final approval hearing is to be conducted by video conference with remote attendance. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the settlement class.

21. The Settling Defendants will file with the Court by no later than [INSERT MONTH DAY], which is fourteen (14) days prior to the final fairness hearing, proof that the Class Notice was provided by any Settling Parties to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, if required.

ORDERED:

_____
Hon. William E. Smith
United States District Judge

Dated:

ENTERED:

_____
Dep. Clerk

Dated:

EXHIBIT 1

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