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Reviewer: Sharon S.

STATE OF RHODE ISLAND PROVIDENCE, SC.		SUPERIOR COURT
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
vs.	:	C.A. No: PC-2017-3856
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	

THE RECEIVER'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO ADJUDGE PROSPECT CHARTERCARE, LLC IN CONTEMPT

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October 5, 2018

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The Receiver, Stephen F. Del Sesto, Esq. (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), submits this memorandum in support of his motion asking the Court to hold Prospect CharterCare, LLC ("Prospect Chartercare") in contempt of court, to compel Prospect Chartercare to withdraw its Petition for Declaratory Order which it admits it filed with the office of the Rhode Island Attorney General on September 27, 2018, to award the Receiver attorneys' fees and costs, and such other and further relief as the Court may direct.

BACKGROUND

I. The Orders Enjoining Suits Against Property of the Receivership Estate

On August 18, 2017, the Court (Silverstein, J.) entered an Order Appointing Temporary Receiver, which *inter alia* contained the following injunction:

> This cause came to be heard upon the Plaintiff's Petition for Appointment of a Receiver and, upon consideration thereof, it is hereby
>
> ORDERED, ADJUDGED AND DECREED
>
> * * *
>
> 6. That the **commencement**, prosecution, or continuance of the prosecution, **of any action**, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, **or any other proceeding, in law, or in equity or under any statute, or otherwise, against said Plan or any of its property, in any Court, agency, tribunal, or elsewhere**, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership **or any other person**, or the levy of any attachment, execution or other process upon or against any property of said Plan, or the taking or attempting to take into possession any property in the possession of the Plan or of which the Plan has the right to possession, **or the interference with the Receiver's taking possession of or retaining possession of any such property, or the cancellation at any time during the Receivership proceeding** herein of any insurance policy, lease **or other contract relating to the Plan**, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, or the termination of services relating to the Plan, **without obtaining prior approval thereof from this Honorable Court**, in which connection said Receiver shall be entitled to

> prior notice and an opportunity to be heard, **are hereby restrained and enjoined until further Order of this Court.**

Exhibit 1 (Order Appointing Temporary Receiver) (emphasis added). The Order Appointing Temporary Receiver restrains and enjoins (1) the commencement of any proceeding against the Plan or the property of the Plan; (2) any interference with the Receiver's taking and retaining possession of any property of the Plan; and (3) the cancellation of any contract relating to the Plan, without obtaining prior approval from the Court.

On October 27, 2017, the Court (Stern, J.) entered an Order Appointing Permanent Receiver, which *inter alia* contained the following injunction:

> This cause came to be heard on October 27, 2017, on the Appointment of Permanent Receiver for the Respondent, and it appearing that the notice provided by the Order of this Court previously entered herein has been given, and upon consideration thereof, it is hereby
>
> ORDERED. ADJUDGED AND DECREED:
>
> * * *
>
> 15. **That the commencement, prosecution, or continuance of the prosecution, of** any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, **or any other proceeding**, in law, or in equity or **under any statute, or otherwise, against the Respondent or any of its assets or property, in any** Court, **agency**, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, **or the cancellation at any time during the Receivership proceeding herein of any** insurance policy, lease or **other contract with the Respondent**, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, **without obtaining prior approval thereof from this Honorable Court**, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, **are hereby restrained and enjoined until further Order of this Court**.

Exhibit 2 (Order Appointing Permanent Receiver) (emphasis supplied). The operative language is the same as the Order Appointing Temporary Receiver. Accordingly, the Order Appointing Permanent Receiver also restrains and enjoins (1) the commencement of any proceeding against the Plan or the property of the Plan; (2) any interference with the Receiver's taking and retaining possession of any property of the Plan; and (3) the cancellation of any contract relating to the Plan, without obtaining prior approval from the Court.

II. The Prospect Entities are Subject to the Jurisdiction of the Court

All of the Prospect entities have appeared through counsel in the Receivership Proceeding. On November 29, 2017, counsel for Prospect Chartercare entered an appearance in the Receivership Proceeding. On April 19, 2018, counsel for Prospect Medical Holdings, Inc. ("Prospect Medical Holdings") entered an appearance in the Receivership Proceeding. On September 7, 2018, Prospect Medical Holdings, Prospect East Holdings, Inc. ("Prospect East"), and Prospect Chartercare, through their counsel, filed a joint motion to continue the hearing on the Receiver's Petition for Settlement Instructions. On September 27, 2018, Prospect Medical Holdings, Prospect East, Prospect Chartercare, Prospect CharterCare SJHSRI, LLC ("Prospect Chartercare St. Joseph"), and Prospect CharterCare RWMC, LLC ("Prospect Chartercare Roger Williams") filed their "Joint Objection" to the Receiver's Petition for Settlement Instructions.

III. The Proposed Settlement

On September 4, 2018, the Receiver (along with seven named Plan participants acting individually and as putative class representatives) consummated a binding

Settlement Agreement with CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH"), pursuant to which the Receiver (along with the other named plaintiffs) obtained certain rights and interests with respect to CCCB's membership interest in Prospect Chartercare. Although the Settlement Agreement is subject to being unwound in the event the Court denies the Receiver's Petition, as well as in the event the Federal Court disapproves the settlement, the Settlement Agreement is presently a binding contract between the Receiver and the Settling Defendants and presently gives the Receiver certain rights and interests. Those rights and interests include a current security interest in the Settling Defendants' assets, including CCCB's 15% membership interest in Prospect Chartercare.

In furtherance of the Settlement Agreement, on September 4, 2018, CCCB, SJHSRI, and RWH, as debtors, filed a UCC-1 Form with the Rhode Island Secretary of State in favor of the secured party ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN (STEPHEN DEL SESTO, RECEIVER), in respect of the following collateral of CCCB, SJHSRI, and RWH:

> ALL ACCOUNTS, CHATTEL PAPER, COMMERCIAL TORT CLAIMS, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS, INSTRUMENTS, INVESTMENT PROPERTY AND INVESTMENT ACCOUNTS, LETTER - OR - CREDIT RIGHTS, LETTERS OF CREDIT, MONEY, AND GENERAL INTANGIBLES OF THE DEBTOR AND ANY AND ALL PROCEEDS OF ANY THEREOF, WHETHER NOW OR HEREAFTER EXISTING OR ARISING.

Exhibit 3.

Also on September 4, 2018, the Receiver filed his Petition for Settlement Instructions, seeking permission from the Court (as required in the Settlement

Agreement) to proceed, including applying to the federal court for approval.[1] That arrangement can fairly be analogized to a real estate purchase and sale agreement that is subject to zoning approval, in that the contracting parties must use good faith to attempt to obtain such approval, and the parties are contractually obligated to perform the contract if such approval is obtained. However, if through no fault of the parties such approval is not obtained, the parties' contractual obligations terminate.

IV. Prospect Was Informed that the Settlement Agreement Was Property of the Receivership Estate and Any Interference Outside the Receivership Proceedings Would Violate the Court's Orders

On September 13, 2018, Prospect East,[2] through its counsel, delivered a letter captioned "Re: Notice of Dispute" to CharterCARE Community Board and its counsel. This letter stated:

> This firm represents Prospect East Holdings, Inc. ("Prospect East") in connection with the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, as amended (the "LLC Agreement"). We are writing to provide you with notice pursuant to the LLC Agreement and to initiate the dispute resolution process set forth in Section 17.4 of the LLC Agreement.
>
> Prospect East is in receipt of the Settlement Agreement executed by CharterCARE Community Board ("CCCB"), Stephen DelSesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the 'Receiver") and other parties, dated on or about August 31, 2018 (the "Settlement Agreement"). As it relates to Prospect East, CCCB and their respective obligations under the LLC Agreement, the Settlement Agreement provides:

[1] Prospect Chartercare, along with all of the other Prospect entities and all of the other entities and individuals who appeared in the Receivership Proceedings, were served through the electronic filing system.

[2] Prospect East owns an 85% membership interest in Prospect Chartercare, with CCCB owning the remaining 15% interest which plays so large a role in the matters before the Court.

1. That CCCB will hold its 15% membership interest in Prospect Chartercare, LLC in trust for the Receiver and that the Receiver will have the full beneficial interests therein. Settlement Agreement, paragraph 17;

2. That the Receiver will have the power to direct and control CCCB's future exercise of the put option set forth in the LLC Agreement. Settlement Agreement, paragraph 18;

3. That the Receiver shall have the right to sue in the name of CCCB to collect or otherwise obtain the value of the beneficial interest in Prospect Chartercare LLC. Settlement Agreement, Paragraph 19;

4. That upon the Receiver's written demand, CCCB file a petition for its Judicial Liquidation and follow the requests of the Receiver to marshal its assets and oppose claims of other creditors. Settlement Agreement, Paragraph 24; and

5. That CCCB grant the Receiver a security interest in its assets, investment property and general intangibles, which would include its membership interest in Prospect Chartercare LLC. Settlement Agreement, Paragraph 29.

Prospect East considers each of the above provisions in the Settlement Agreement to be in violation of the LLC Agreement. Section 13.1 of the LLC Agreement provides, in pertinent part, as follows:

> . . . [A] member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly through the transfer of the power to control, or to direct or cause the direction of the management and policies, of, such Member.

The above-referenced provisions of the Settlement Agreement plainly include a hypothecation of CCCB's interest, by the granting of a security interest, by the transfer of CCCB's beneficial interest and by the transfer to the Receiver of the power to control and direct CCCB. As such, the purported transfers contemplated by the Settlement violate the LLC Agreement and constitute invalid transfers under Section 13.6 of the LLC Agreement.

We are prepared to meet with you in an effort to negotiate a resolution to this dispute. Please contact me with a date and time when you are available to meet.

Exhibit 4.

On September 24, 2018, counsel for the Receiver and counsel for CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams

Hospital had an in-person meeting with counsel for Prospect Medical Holdings and Prospect East to discuss the September 13, 2018 Notice of Dispute and related issues. During that meeting, counsel for the Receiver informed counsel for Prospect Medical Holdings and Prospect East that the Settlement Agreement was property of the Receivership Estate, and that any attempt to interfere with the settlement outside of the Receivership Proceeding would violate the Court's Orders and subject his clients to contempt proceedings. See Affidavit of Max Wistow Sworn to on October 5, 2018 (Exhibit 5 hereto) ¶ 3.

On September 27, 2018, at 4:07 p.m., counsel for the Receiver sent a letter to counsel for Prospect East and Prospect Medical Holdings by electronic mail, which stated:

> I write in follow-up to the meeting at my office on the afternoon of September 24, 2018. At that meeting, you were present representing at least Prospect East Holdings, Inc. Rick Land and Bob Fine were there for CCB, SJHSRI and RWH (the "Settling Defendants"). Stephen Sheehan, Benjamin Ledsham and I were representing Stephen Del Sesto, the Receiver (and the individual named plaintiffs).
>
> It is yet possible that there may be a resolution of the "Dispute" to which your letter of September 13, 2018 refers within the 30-day period referenced in Section 17.4 of the LLC Agreement to which your letter also refers.
>
> For that reason, we think that it is important for you to understand the position taken by the Settling Defendants and the Receiver (along with the other settling plaintiffs) with regard to the alleged violation of Section 13.1 of the LLC Agreement. Your objection to the proposed settlement is due today and our responses thereto on October 5. We believe that, armed with such filings, all will be better able to continue within that 30-day period to determine if the "Dispute" is resolvable.
>
> **If that 30-day period passes without such resolution, we urge you to obtain permission from the court here in Rhode Island overseeing the Receivership Petition – before you take any action which will in any way seek to impair the Receiver's rights to the assets and property of the Receivership Estate. Those assets and property include all rights under the Settlement Agreement, including those**

> **rights concerning CCB's interest in Prospect Chartercare. Insofar as you seek to prevent CCB from fulfilling its obligations in the Settlement Agreement (which it must do if the Courts approve the settlement), you are interfering with such present rights of the Receivership Estate.** By way of further concrete example, as you know, there are UCC-financing statements currently in place running in favor of the Receiver.
>
> **In other words, as we clearly stated to you at the meeting, a suit anywhere without Judge Stern's permission will be viewed by the Receiver as a violation of the Order in the Receivership (a proceeding in which all of the relevant Prospect entities have entered appearances through you or Joseph Cavanagh, III) subjecting your client(s) to contempt proceedings.**
>
> I would expect that the Settling Defendants will be in agreement with the contents of this letter.

Exhibit 6 (emphasis supplied).

V. The Petition for Declaratory Order

On September 27, 2018, at 4:34 p.m., Prospect Medical Holdings, Prospect East, Prospect Chartercare, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams filed their Joint Objection to the Receiver's Petition for Settlement Instructions, as well as a supporting Memorandum ("Prospect's Memo"). Prospect's Memo attached a copy of a signed Petition for Declaratory Order [Pursuant to] R.I. Gen. Laws § 42-35-8, captioned *In the Matter of: Prospect CharterCARE, LLC before the Rhode Island Department of Attorney General* (the "Petition for Declaratory Order"), signed by Attorney Mark Russo on behalf of Prospect Chartercare.[3] Prospect's Memo stated:

> As detailed below, the Settlement Agreement that the Receiver entered into–and has already begun to implement, even before receiving this Court's approval, has numerous problems. CCCB is a shareholder [*sic*

[3] The Receiver received the Petition for Declaratory Order as Exhibit B to Prospect's Memo, but has not been served with the Petition for Declaratory Order *per se*.

> *recte* member] in Prospect Chartercare, which operates two hospitals (acquired in 2014 from CCCB) through subsidiaries. The Settlement Agreement effectively liquidates CCCB and places the Receiver in its shoes in connection with, among other things, the operation of the hospitals. **Not only does this exceed the proper function of a court receiver, but it violates the approvals that Prospect Chartercare obtained from the Rhode Island Attorney General and the Rhode Island Department of Health in order to acquire the hospitals from CCCB.** The Settlement Agreement's transfer of authority to the Receiver implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required from the RIDOH to alter the voting authority of Prospect Chartercare; as a result, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8. The change in voting authority also violates the LLC Agreement – CCCB cannot simply give away its interest or its voting authority to someone else, which is exactly what the Settlement Agreement purports to do.
>
> * * *
>
> The 2014 Sale was subject to RIAG and RIDOH approval under the HCA, which is codified at §§ 23-17.14-1 et seq., and subject to the HLA, which is codified at §§ 23-17-1 et seq. The proposed transfer under the Settlement Agreement by the Settling Parties, namely CCCB, of its fifteen percent membership interest in Prospect Chartercare violates the hospital conversion decision relative to Fatima Hospital and RWH, which is incorporated into the Hospitals' current licensure. Furthermore, the transfer contemplated by the Settlement Agreement of CCCB's fifteen percent interest in Prospect Chartercare implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required from the RIDOH to alter the voting authority of Prospect Chartercare. **In relation to the transfer of CCCB's fifteen percent interest in Prospect Chartercare, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8 ("Petition for Declaratory Order"), which is attached hereto as Exhibit B.** The Prospect Entities reference and incorporate herein the arguments set forth in the Petition for Declaratory Order.

Prospect's Memo. at 2-3, 11-12 (emphasis supplied).

The Petition for Declaratory Order states, *inter alia*:

> 27. **Thus, the transfer of ownership and voting interests proposed by the Receiver to advance the Settlement is in violation of the Conversion, at variance with the HCA and the HLA, and at variance the determinations embodied within final agency decisions that the Acquiror has no liability for the Plan**.

28. Accordingly, as pursuant to R.I. Gen. Laws §42-35-8, if the HCA and HLA are properly interpreted and applied, and the Final Conversion and CEC Decisions are properly applied to the Petitioner, **the transfer proposed by the Receiver in furtherance of the Settlement would not be allowed without review and approval by the Department of Health and the Department of Attorney General.** In turn, if an application for administrative review and approval were property submitted by the Receiver, the administrative agencies would be required to reject the application based upon the doctrine of administrative finality.

29. **Finally and of critical importance, the transfer proposed by the Receiver to advance the Settlement seeks to re-attach the Plan and Plan liability to the ownership and operation of the Hospitals and it is based, in large part, upon the allegations in the Federal Court Litigation that the Acquiror has liability for the Plan. However, said cause of action in the Federal Court Litigation as against the Acquiror is barred by the doctrine of res judicata and said bar should be enforced by the agencies with jurisdiction over the Conversion and CEC Proceedings**.

* * *

46. On or about September 4, 2018, the Receiver petitioned the Receivership Court to grant the Receiver authority to enter into what is defined above as the Settlement with SJHSRI and the other Transacting Parties on the Acquiree's side of the Conversion, by having the Acquiree transfer its fifteen (15%) percent interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver. The Settlement, if hypothetically approved, would transfer the Acquiree's interest and voting authority in the Prospect CharterCARE, LLC to the Receiver as a vehicle to address Plan liability. Thus, the Receiver, through the proposed Settlement, seeks to re-attach the Plan to the Hospitals, post-Conversion, which violates the Final Conversion and CEC Decision.

47. Accordingly, the Petitioner seeks a declaratory order as follows:

a. If the HCA and HLA are properly interpreted and applied and/or the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA, as it is at variance with the Final Conversion and CEC Decisions. **Thus, the Receiver would have to apply to the administrative agencies with jurisdiction for relief**;

b. If the HCA and HLA are properly interpreted and applied, the transfer proposed by the Receiver to advance the Settlement is a "conversion" as defined by §4(6) of the HCA, as it would result in the transfer of more than 20% of the voting control of the Acquiror.

Thus, the Receiver could not effectuate such a conversion without application to, review, and approval by the Departments of Health and/or the Department of Attorney General;

c. If the Receiver applied to modify the Final Conversion and/or CEC Decisions, or applied for the review and approval of the proposed conversion embodied within the Settlement, the Receiver's application would be barred by the doctrine of administrative finality; and

d. **The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of res judicata and the bar should be enforced in the first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings**.

Exhibit 7 (Petition for Declaratory Order) (emphasis supplied).

The Petition for Declaratory Order thereafter proceeds to ask the Attorney General for four "Request[s] for Declaratory Order", ultimately concluding with:

> 73. The Final Conversion and CEC Decisions were final agency decisions that were never appealed and thus, the claims in the Federal Court Litigation that the Acquiror and/or its affiliates are somehow liable for the Plan are barred by the doctrine of res judicata and that bar should be enforced by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

Id. (Exhibit 7) at 21.

Thus, in its Petition for Declaratory Order, Prospect Chartercare is asking the Attorney General for an order declaring that the Settlement Agreement provisions concerning CCCB's membership interest in Prospect Chartercare are illegal and void, and that even an application to the Attorney General for approval of those provisions would be unavailing, barred by *res judicata*.

Prospect Chartercare neither sought nor received permission from the Court before commencing the agency proceeding with the Attorney General by filing the

Petition for Declaratory Order. Prospect Chartercare, to the Receiver's knowledge, has not withdrawn the Petition for Declaratory Order.

ARGUMENT

I. The Applicable Standard for Civil Contempt

"The authority to find a party in civil contempt is among the inherent powers of our courts." Town of Coventry v. Baird Properties, LLC, 13 A.3d 614, 621 (R.I. 2011). "General Laws 1956 § 8–6–1 grants the Superior Court 'power to punish, by fine or imprisonment, or both, all contempts of its authority.'" Id. See also State v. Price, 672 A.2d 893, 896 (R.I. 1996) ("Thus, we conclude that the Legislature intended § 8–6–1 as an affirmation of the inherent power of the courts of this state to punish for contempt of their authority and as a codification of the contempt powers of the courts at common law.").

"To establish civil contempt, there must be a showing by clear and convincing evidence that a specific order of the court has been violated." State v. Lead Indus., Ass'n, Inc., 951 A.2d 428, 466 (R.I. 2008). "Willfulness need not be shown as an element of civil contempt." Trahan v. Trahan, 455 A.2d 1307, 1311 (R.I. 1983). "A finding of civil contempt must be based on a party's lack of substantial compliance with a court order, which is demonstrated by the failure of a party to 'employ the utmost diligence in discharging its responsibilities.'" Gardiner v. Gardiner, 821 A.2d 229, 232 (R.I. 2003) (Family Court justice abused his discretion in failing to adjudge litigant in contempt for disobeying orders to reinstate medical coverage) (quoting Durfee v. Ocean State Steel, Inc., 636 A.2d 698, 704 (R.I. 1994)). "Findings of fact in a contempt hearing will not be disturbed unless they are clearly wrong or the trial justice abused his or her discretion." Biron v. Falardeau, 798 A.2d 379, 382 (R.I. 2002) (affirming adjudication of

contempt based on conduct "at the core of what was prohibited by the restraining order").

"If a court order is to have any validity in a civil case, it must be made apparent to litigants that said order will be enforced." Town of Coventry v. Baird Properties, LLC, 13 A.3d 614, 622 (R.I. 2011). "A coercive sanction which dissolves upon willful noncompliance is obviously of no significant aid in enforcing a judicial decree." Id. "[I]n order to avoid an order of the court, an individual must demonstrate that he or she is literally unable to comply because compliance is not presently within his or her power." Zannini v. Downing Corp., 701 A.2d 1016, 1018 (R.I. 1997). "The burden of proving impossibility, however, is a heavy one, and mere inconvenience or annoyance is insufficient." Id. "A court may use contempt sanctions to coerce a defendant into complying with a court order and/or to compensate the complainants for losses caused by a defendant's failure to comply with the court's order." Troutbrook Farm, Inc. v. DeWitt, 611 A.2d 820, 825 (R.I. 1992). "Those who fail to seek review of an order 'cannot defend their misconduct by asserting collaterally that the order was invalid.'" Lahoud v. Carvalho, 143 A.3d 1077, 1079 n.6 (R.I. 2016) (quoting Brown v. Brown, 329 A.2d 200, 203 (R.I. 1974)).

II. Prospect CharterCare, LLC's Commencement of the Petition for Declaratory Order Without Prior Court Permission Violated the Court's Orders

As quoted *supra*, the Order Appointing Permanent Receiver tracks the Court's Order Appointing Temporary Receiver, and contains the following injunction:

> 15. **That the commencement, prosecution, or continuance of the prosecution, of** any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, **or any other proceeding**, in law, or in equity or **under any**

> **statute, or otherwise, against the Respondent or any of its assets or property, in any** Court, **agency**, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, **or the cancellation at any time during the Receivership proceeding herein of any** insurance policy, lease or **other contract with the Respondent**, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, **without obtaining prior approval thereof from this Honorable Court**, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, **are hereby restrained and enjoined until further Order of this Court**.

Exhibit 2 (Order Appointing Permanent Receiver) (Emphasis supplied).

Clearly the Petition for Declaratory Order, which was brought pursuant to R.I. Gen. Laws § 42-35-8, is the commencement of a "proceeding" before an "agency". Not only does it fall within the ordinary meaning of those words as used in the Court's Order Appointing Permanent Receiver, but the very statute Prospect Chartercare has invoked describes the administrative process using those words. See id. § 42-35-8(a) ("A person may petition **an agency** for a declaratory order. . . .") (emphasis supplied). See also R.I. Gen. Laws § 42-35-8(b) (referring to the proceeding as "an agency proceeding for a declaratory order").

As recited above, Prospect Chartercare has commenced an administrative proceeding before the Attorney General to obtain an adjudication of various issues including: (1) that the Receiver's rights under the Settlement Agreement concerning a transfer of membership in Prospect Chartercare are invalid; (2) that the Receiver cannot proceed with the Settlement Agreement without completing a new administrative proceeding under the Hospital Conversions Act; (3) that the Receiver is conclusively bound by various prior alleged administrative findings by *res judicata*, including the alleged "finding" that the Prospect Defendants are not liable for funding the Pension

Plan; and (4) that the Receiver is conclusively bound by various judicial admissions allegedly made in the Petition for Receivership filed in Superior Court, including the alleged "admission" that the Prospect Defendants are not liable for funding the Pension Plan.

It is clear that the Petition for Declaratory Order, which seeks to invalidate the Settlement Agreement and the Receiver's rights thereunder, including *inter alia* his rights concerning the transfer to him of a 15% membership interest in Prospect Chartercare, is the commencement by Prospect Chartercare of a proceeding "against the Respondent or any of its assets or property." The Settlement Agreement is presently an asset in the possession of the Receiver and ultimately belonging to the Receivership Estate.[4] It gives the Receiver the right to all the benefits required under that agreement, subject to court approvals. It also gives the Receiver a current and currently enforceable security interest in those benefits, including all of the property interests the Receiver will obtain in connection with the Property Settlement, which include CCCB's membership interests in Prospect Chartercare. As such it is very valuable to the Receiver and clearly constitutes an asset and property of the Receivership Estate.

Through the Petition for Declaratory Order, Prospect Chartercare also violated the prohibition against "the cancellation. . . of any . . . contract with the Respondent," because through the declaratory proceeding Prospect Chartercare is seeking to cancel the Settlement Agreement.

[4] As noted *supra*, although subject to potentially being disapproved by this Court or the Federal Court, the Settlement Agreement is a presently binding contract that presently provides rights and interests, including security interests, to the Receiver. The Petition for Declaratory Order seeks to invalidate the Settlement Agreement.

III. The Petition for a Declaratory Order Is Meritless

What is of paramount and immediate concern to the Court is that by commencing the Petition for Declaratory Order without seeking prior permission of the Court, Prospect Chartercare has violated the injunction contained in this Court's Order Appointing Permanent Receiver. It is irrelevant to that inquiry whether the Petition for Declaratory Order has merit or is baseless. Accordingly, the Court need not even address that issue.

Nevertheless, the fact is that the Petition for Declaratory Order is so completely without merit that it could only have been filed to delay and frustrate the resolution of the Receiver's Petition for Settlement Instructions.

Much of the Petition for Declaratory Order proceeds from utterly incorrect premises. For example, the Petition for Declaratory Order contains numerous incorrect statements of fact and conclusions of law. See, e.g., Petition for Declaratory Order ¶ 23 ("It is beyond dispute that the Receivership Estate is SJHSRI in its role as Plan Administrator. . . ."); Id. ¶ 71 ("It is beyond dispute that there is an identity of parties between the Conversion and CEC Proceedings and the Federal Court Litigation in that the Acquiror and the Receivership Estate were both Transacting Parties in the Conversion and CEC Proceedings."). These "facts" are claimed by Prospect Chartercare to be "beyond dispute" notwithstanding that they are not only actually disputed but indeed are palpably absurd. The Receivership Estate is the Plan, not SJHSRI who petitioned the Plan into receivership. The Plan was and is not a "transacting party" in the "Conversion and CEC Proceedings." Indeed, the Attorney General takes a diametrically opposite position on this issue, stating that the Receiver and the named Plan participants identified as the Plaintiffs in the Settlement Agreement

"were not 'transacting parties' in the 2014 conversion." Attorney General's Response to the Receiver's Petition for Settlement Instructions at 7.

Much of the Petition for Declaratory Order also proceeds from astonishingly gross misreadings of the Hospital Conversions Act ("HCA").

For example, the Petition for Declaratory Order presupposes that the transfer of 15% of the membership units in Prospect Chartercare (which in turn owns the two LLC companies that own the hospitals), constitutes a "Conversion" within the meaning of R.I. Gen. Laws § 23-17.14-4(6), *i.e.* "a change of ownership or control or possession of twenty percent (20%) or greater of the members or voting rights or interests of the hospital or of the assets of the hospital. . ." Petition for Declaratory Order at 15-16. However, the term "hospital" is defined in the HCA as "a person or governmental entity licensed in accordance with chapter 17 of this title." R.I. Gen. Laws § 23-17.14-4(4). Prospect Chartercare is not and never has been licensed to operate a hospital.

To the contrary, the hospital licensees in the for-profit operation are Prospect Chartercare St. Joseph (Fatima Hospital) and Prospect Chartercare Roger Williams (Roger Williams Medical Center). Prospect Chartercare is the sole member in those entities, but the Proposed Settlement does not affect Prospect Chartercare's membership in those entities, which remains unchanged at 100%.[5] What it affects is only CCCB's membership interest in Prospect Chartercare. In other words, the Proposed Settlement has zero effect on "an ownership or membership interest or

[5] Notably, the HCA's definitions of "Conversion" and "Hospital" do not encompass or even refer to a "parent," notwithstanding that other provisions of the HCA do expressly refer to a "parent". See, e.g., R.I. Gen. Laws § 23-17.14-6(a)(8) (requiring that the initial application submitted by the transacting parties include "Organizational structure for existing transacting parties and each partner, affiliate, **parent**, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or greater ownership interest") (emphasis supplied).

authority in a hospital, or the assets of a hospital," which is a *sine qua non* for a "conversion" under the HCA. R.I. Gen. Laws § 23-17.14-4(6). Accordingly, as a matter of law, transfer of CCCB's membership interests in Prospect Chartercare cannot constitute "a change of ownership or control or possession of twenty percent (20%) or greater."

Even assuming (*arguendo*) that transfer of CCCB's nominal right to appoint 50% of the Board of Directors *of Prospect Chartercare* were a transfer of "voting rights or interests of the hospital" (which it is not), that right is ultimately illusory (and part of the misleading public relations campaign to tout "local control") since many of the most significant decisions are ultimately resolved by allowing the Prospect-appointed board members' decisions to prevail over the wishes of the CCCB-appointed directors. See Amended & Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "LLC Agreement") § 12.5 (governing the breaking of deadlocks). For example, these decisions, among many others, include:

> (g) Appointing individuals to serve on the Local Boards of the Hospitals (as per Section 12.4[6] below);
>
> (h) Approving Medical Staff credentialing, other Medical Staff related decisions, and quality assurance and accreditation matters, all as per recommendations of the Local Boards of the Hospitals (subject to Section 12.4[7] below);
>
> * * *
>
> (k) Approving any change in the medical staff bylaws and structure of the Hospitals, if and as provided in Section 13.17 of the Purchase Agreement;

Id. § 8.3(g) & (h). Thus even if (*arguendo*) construal of the HCA's definition of

[6] Section 12.4 defines the composition and duties of the Local Boards.

[7] Id.

"Conversion" involved the disregarding of all corporate formalities and thereby encompassed not just transfers of voting rights in hospitals but also transfers of voting rights in parents of hospitals (which it does not), CCCB as a practical matter lacks even those voting rights.

Finally, even if the HCA definition of "hospital" included companies that have membership interests in a hospital (which it simply does not), the LLC Agreement for Prospect Chartercare expressly excludes transfers of membership interest to an "Affiliate" of CCCB from the prohibition on transfers. Both the Plan and the Receiver are "Affiliates" of CCCB for the reasons discussed in the Receiver's Reply to Objections to the Receiver's Petition for Settlement Instructions ("Receiver's Reply").[8] The Attorney General approved the LLC Agreement which freely permits such transfers, acknowledging that the HCA prohibition on "transfers" of hospital membership interests does not include transfers between Affiliates, as that term is defined in the LLC Agreement.

In addition, much of the relief demanded in the Petition for Declaratory Order is an inappropriate attempt to invade the provinces of this Court and the Federal Court by seeking an administrative adjudication of what are essentially affirmative defenses, not asserted—or not yet asserted—in the Receivership Proceeding or the Federal Court Action. For example, the claim that the Receiver is barred by *res judicata* from asserting that the Prospect Defendants are liable to fund the Pension Plan is obviously an affirmative defense that should be asserted—if at all, and only if consistent with Rule 11—in the Federal Court Action.

[8] See the Receiver's Reply at 29-38.

Indeed, the Petition for Declaratory Order seeks to reverse the roles of a governmental agency and the courts by appointing the Attorney General to adjudicate the Receiver's rights under the Settlement Agreement. If the 2014 Asset Sale and Conversion were held to be *res judicata* of anything, it is for the courts to say so. Courts rule on the issue of whether agency proceedings are *res judicata*. Courts do not ask or even allow an agency to instruct the courts whether the agency proceedings are *res judicata*.

IV. Although Willfulness Is Not a Necessary Prerequisite to an Adjudication of Civil Contempt, Prospect CharterCare, LLC's Violation Was Indeed Willful

As discussed *supra*, Prospect Chartercare, through counsel, was specifically warned not to violate the injunction in question prior to doing so. On September 24, 2018, three days before commencing the Petition for Declaratory Order, counsel for the Receiver specifically warned counsel for Prospect Medical Holdings and Prospect East that commencing proceedings to contest the Settlement Agreement without first obtaining permission of the Court in the Receivership Action would be a contempt of the Order Appointing Permanent Receiver. That warning was confirmed in a letter to counsel electronically delivered on September 27, 2018, prior to Prospect Chartercare's filing of the Petition for Declaratory Order with the Court. Prospect Chartercare has not only commenced but has persisted in prosecuting the Petition for Declaratory Order notwithstanding specific warning not to do so in violation of the Court's order.

Thus, while it is not necessary to find that Prospect Chartercare willfully violated the Court's order in order to adjudge it in contempt, see Trahan v. Trahan, 455 A.2d 1307, 1311 (R.I. 1983), it is abundantly clear that Prospect Chartercare's violation was willful.

Even if (*arguendo*) Prospect Chartercare had not been specifically warned not to violate the Court's order (which it was), Prospect Chartercare has actual knowledge of the order in question. Prospect Chartercare has appeared in the instant Receivership Action through its counsel. Copies of the Order Appointing Permanent Receiver has subsequently been served on Prospect Chartercare from time to time in connection with various motion practice.[9]

Finally, even if (*arguendo*) Prospect Chartercare did not have actual knowledge of the Court's order (which it did), Prospect Chartercare has appeared in the instant Receivership Proceeding and thereby has constructive knowledge of the Court's orders available on the Court's docket. As one bankruptcy court has observed:

> For purposes of the first prong of the civil contempt test, actual knowledge of a court order is not an absolute prerequisite to hold a party liable for civil contempt. Instead, for purposes of a civil *760 contempt action, actual knowledge of a court order will be imputed to a party when that party had the opportunity to know of a court order, but simply chose not to gain actual knowledge of the order. *Utah State Credit Union v. Skinner (In re Skinner)*, 90 B.R. 470, 479 (D. Utah 1988) (a party may be found in contempt where the contemnor received notice, but until later did not actually read the contents of the order). Stated in another way, constructive knowledge, and not actual knowledge, of a court order is sufficient to hold a party liable for civil contempt. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000). Such a principle is absolutely necessary as our entire judicial system would become unworkable if any person wishing to ignore an order of a court could simply claim that, although they had the opportunity to see the order, they chose not to. . . .

In re Walter, 265 B.R. 753, 759–60 (Bankr. N.D. Ohio 2001).

[9] For example, a copy of the Order Appointing Permanent Receiver is Exhibit 3 to the Respondent's Memorandum in Support of Its Motion to Compel Documents from St. Joseph Health Services of Rhode Island and for Monetary Sanctions, which was filed with the Court on December 20, 2017 and was concurrently electronically served by the Court on counsel for Prospect Chartercare. Such service constitutes service on Prospect Chartercare. See Super. R. Civ. P. 5(b).

Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 10/5/2018 3:09 PM
Envelope: 1746301
Reviewer: Sharon S.

CONCLUSION

Accordingly, the Receiver respectfully requests that the Court adjudge Prospect CharterCare, LLC in contempt of the Court's Order Appointing Permanent Receiver. The Receiver respectfully requests that the Court hold Prospect CharterCare, LLC in contempt of court, compel Prospect CharterCare, LLC to withdraw its Petition for Declaratory Order, award the Receiver attorneys' fees and costs, and award such other and further relief as the Court may direct.

Respondent,
Stephen F. Del Sesto, Esq., Solely in His Capacity as Permanent Receiver of the Receivership Estate,
By his Attorneys,

/s/ Max Wistow

Max Wistow, Esq. (#0330)
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Dated: October 5, 2018

Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 10/5/2018 3:09 PM
Envelope: 1746301
Reviewer: Sharon S.

CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of October, 2018, 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/ Max Wistow

Exhibit 1

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.

Vs.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended

PC 2017- 3856

ORDER APPOINTING TEMPORARY RECEIVER

This cause came on to be heard upon the Plaintiff's Petition for Appointment of a Receiver and, upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED

1. That Stephen DelSesto, of Providence, Rhode Island be and hereby is appointed Temporary Receiver (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan").

2. That said Receiver shall, no later than five (5) days from the date hereof, file a bond in the sum of $ 1,000,000.00 with any surety company authorized to do business in the State of Rhode Island as surety thereon, conditioned that the Receiver will well and truly perform the duties of said office and duly account for all monies and property which may come into the Receiver's hands and abide by and perform all things which the Receiver will be directed to do by this Court.

3. That said Receiver is authorized to take control of the Plan as described in the Petition.

4. That said Receiver is authorized, until further Order of this Court, in the Receiver's discretion and as said Receiver deems appropriate and advisable, to continue administration of the Plan, to engage employees and assistants, clerical or otherwise, actuaries, and other professionals necessary or appropriate for the efficient administration of the Plan, and to pay all such individuals and entities in the usual course of business, and to do and perform or cause to be done and performed all other acts and things as are appropriate in the premises. The Court specifically authorizes the Receiver to continue to utilize the services of Chace Ruttenberg & Freedman, LLP in connection with the administration of the Plan, provided that payment for such services shall not come from assets of the Plan unless otherwise ordered by this Court.

5. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 2000-2, this Court finds that the designation of the aforedescribed persons for

Filed BH 8/18/17

appointment as Receiver herein is warranted and required because of the Receiver's specialized expertise and experience in operating businesses in Receivership and in administrating non-routine Receiverships which involve unusual or complex legal, financial, or business issues.

6. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against said Plan or any of its property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution or other process upon or against any property of said Plan, or the taking or attempting to take into possession any property in the possession of the Plan or of which the Plan has the right to possession, or the interference with the Receiver's taking possession of or retaining possession of any such property, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract relating to the Plan, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, or the termination of services relating to the Plan, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

7. That a Citation be issued to the Plan, returnable to the Superior Court sitting at 250 Benefit Street, Providence, Rhode Island on the 11th day of OCTOBER, 2017, at 9:30 a.m. at which time and place this cause is set down for Hearing on the prayer for the Appointment of a Permanent Receiver and for reduction of beneficiary payments as described in the Petition; that the Clerk of this Court shall give Notice of the pendency of the Petition herein by publishing this Order Appointing Temporary Receiver once in The Providence Journal on or before the 24th day of AUGUST, 2017, and the Receiver shall give further notice by mailing, on or before the 31st day of August, 2017, a copy of said Order Appointing Temporary Receiver to each of the participants of the Plan whose address is known or may become known to the Receiver.

ENTER:

Michael A. Silverstein
Associate Justice/Business Calendar
Dated: 8/17/2017

BY ORDER:

1st Beatrice Henriquez
Clerk, Superior Court
8/18/2017

Exhibit 2

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.
Petitioner

vs.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended
Respondent

Bank of America, in its capacity as Trustee of Respondent
Nominal Respondent

PC 2017-3856

ORDER APPOINTING PERMANENT RECEIVER

This cause came to be heard on October 27, 2017, on the Appointment of Permanent Receiver for the Respondent, and it appearing that the notice provided by the Order of this Court previously entered herein has been given, and upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That Stephen F. Del Sesto, Esq., of Providence, Rhode Island, be and hereby is appointed Permanent Receiver (the "Receiver") of the Respondent, and of all the estate, assets, effects, property and business of Respondent of every name, kind, nature and description, with all the powers conferred upon the Receiver by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver's said Office.

2. That said Receiver shall, no later than five (5) days from the date hereof, file herein a bond in the amount of $1,000,000.00 with any surety thereon authorized to do business in the State of Rhode Island conditioned that the Receiver will well and truly perform the duties of said office.

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the Respondent's plan administrator, officers, directors and managers under applicable state and federal law, the Plan, as amended, the Trust Agreement, as may have been amended and/or other agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of RI Rules of Civil Procedure, Rule 66.

4. The directors, officers, managers, investment advisors, accountants, actuaries, attorneys and other agents of the Respondent shall have no authority with respect to the Respondent, its administration or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the administration of the Respondent and shall pursue and preserve all of its claims. The Receiver be and hereby is authorized to take any and all actions or expressly delegate the same which, prior to the entry of this Order, could have been taken by the officers, directors, administrators, managers, and agents of the Respondent.

5. That said Receiver be and hereby is authorized, empowered and directed to take control, possession and charge of said Respondent and its assets, wherever located, and manage and continue the administration and oversee the Respondent and to reasonably preserve the same, and is hereby vested with title to the same; to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent and to appear, intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or desirable for the protection, maintenance and preservation of the assets of said Respondent.

6. The past and/or present officers, directors, agents, managers, trustees, attorneys, actuaries, accountants, investment advisors and investment managers of the Respondent, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Respondent and/or all Respondent's assets or property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

7. That this appointment is made in succession to the appointment of Temporary Receiver heretofore made by order of this Court, and the Receiver shall take and be vested with the title to all assets, property and chooses-in-action which have heretofore accrued to the Temporary Receiver with power to reject or confirm and ratify in writing such agreements as are entered into by such Temporary Receiver and to carry out and perform the same.

8. That the Receiver is authorized, in the Receiver's discretion, to monitor, manage and continue the administration of Respondent until further order of this Court, and to engage and employ such persons, including, without limitation, actuaries, investment advisors, investment managers, benefit administrators and any other professionals as may be desirable, in the Receiver's sole discretion, for the foregoing purposes and, in connection therewith, to use such assets of the Respondent and other monies as shall come into the Receiver's hands and possession, as far as the same shall be necessary, for the above purposes and for continuing the administration of the Respondent until further Order of this Court. The Court recognizes and acknowledges that prior to the entry of this Order the Receiver had sought and obtained this Court's authority to engage the Providence, RI law firm of Wistow Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to the Receiver for the purpose of investigating and, if necessary and appropriate, settling or litigating possible claims against third parties related to the prior management, administration and oversight of the Respondent. To the extent necessary, the Court here confirms and ratifies the Receiver's authority to engage WSL for that purpose.

9. That the Receiver is authorized to incur expenses for goods and services as in the Receiver's discretion may be desirable or necessary for continued management, investment, assessment and administration of the Respondent and its assets. To the extent that the Receiver incurs, directly or indirectly, any hard costs and expenses in furtherance of his obligations and duties hereunder, until further order of this Court, the Receiver shall be authorized to pay or reimburse the pre-payment of such expenses without the need to first obtain prior approval from this Court. Any and all such expenses paid or reimbursed shall be reported to the Court as part of the Receiver's formal reports filed with the Court. The Receiver's authority as set forth in this paragraph 9 shall be *nunc pro tunc* as of August 18, 2017.

10. That said Receiver be and hereby is authorized and empowered to sell, transfer convert, invest, monetize or convey said Receiver's right, title and interest and the right, title and interest of the Respondent in and to any investment, interest or property, tangible or intangible, for such sum or sums of money as to said Receiver appears reasonable and proper, provided, however, that approval is first given by this Court on *ex parte* application by the Receiver, or after such notice as the Court may require.

11. In fulfillment of the reporting requirements set forth in Rule 66 (e) of the Superior Court Rules of Civil Procedure, the Receiver shall file with the Court the Reports referred to in said Rule, as and when the Receiver deems necessary or advisable under the circumstances, or, in any event, as and when required by Order of this Court. In addition, the Receiver shall file with the Court, on or before May 1st and October 1st of each year, a Receivership Control Calendar Report in accordance with Rhode Island Superior Court Administrative Order No. 98-7.

12. That the Receiver shall continue to discharge said Receiver's duties and trusts hereunder until further order of this Court; that the right is reserved to the Receiver and to the parties hereto to apply to this Court for any other or further instructions to said Receiver and that this Court reserves the right, upon such Notice, if any, as it shall deem proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

13. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 95-01, this Court finds that the designation of the aforedescribed person for appointment as Receiver is warranted and required because of said Receiver's specialized expertise and experience.

14. Excluding the vested participants of Respondent, all other creditors or other claimants of Respondent, if any, hereby are ordered to file under oath with the Receiver at 72 Pine Street, 5th Floor, Providence, Rhode Island 02903 on or before the **1st day of March, 2018**, a statement setting forth their claims, including, but without limiting the generality of the foregoing, the name and address of the claimant, the nature and amount of such claim, a statement of any security or lien held by the claimant to which such claimant is or claims to be

entitled, and also a statement as to any preference or priority which the claimant claims to be entitled to over the claims of any other or all other claimants or creditors.

15. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Respondent or any of its assets or property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract with the Respondent, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

16. That Notice be given of the entry of this Order by the Clerk of this Court by publication of a copy of this Order in The Providence Journal on or before the 10th day of November, 2017, and by the Receiver mailing on or before the 17th day of November, 2017 a copy of this Order to each of Respondent's vested participants and creditors known as such to the Receiver, or appearing as such on the books or records of the Respondent, addressed to each such vested participant or creditor at his/her/its last known address.

17. This Order is entered by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

ENTERED as an Order of this Court this 27TH day of October, 2017.

ENTERED: BY ORDER:

Stern, J. BRIAN P. STERN
October 27, 2017 ASSOCIATE JUSTICE

Clerk, Superior Court CARIN MILEY
October 27, 2017 DEPUTY CLERK

Exhibit 3

RI SOS Filing Number: 201820126860 Date: 9/4/2018 3:08:00 PM

UCC-1 Form

FILER INFORMATION

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Email Contact at Filer: **JGAUTHIER@CRFLLP.COM**

SEND ACKNOWLEDGEMENT TO

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Mailing Address: **C/O ONE PARK ROW, SUITE 300**

City, State Zip Country: **PROVIDENCE, RI 02903 USA**

DEBTOR INFORMATION

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Mailing Address: **C/O ONE PARK ROW, SUITE 300**

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Org. Name: **ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND**

Mailing Address: **C/O ONE PARK ROW, SUITE 300**

City, State Zip Country: **PROVIDENCE, RI 02903 USA**

Org. Name: **CHARTERCARE COMMUNITY BOARD**

Mailing Address: **C/O ONE PARK ROW, SUITE 300**

City, State Zip Country: **PROVIDENCE, RI 02903 USA**

SECURED PARTY INFORMATION

Org. Name: **ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN (STEPHEN DEL SESTO, RECEIVER)**

Mailing Address: **C/O ONE FINANCIAL PLAZA, 26TH FLOOR**

City, State Zip Country: **PROVIDENCE, RI 02903 USA**

TRANSACTION TYPE: STANDARD

COLLATERAL

ALL ACCOUNTS, CHATTEL PAPER, COMMERCIAL TORT CLAIMS, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS, INSTRUMENTS, INVESTMENT PROPERTY AND INVESTMENT ACCOUNTS, LETTER-OR-CREDIT RIGHTS, LETTERS OF CREDIT, MONEY, AND GENERAL INTANGIBLES OF THE DEBTOR AND ANY AND ALL PROCEEDS OF ANY THEREOF, WHETHER NOW OR HEREAFTER EXISTING OR ARISING.

Exhibit 4

SHECHTMAN HALPERIN SAVAGE, LLP
ATTORNEYS AT LAW
Attorneys At Law
A Limited Liability Partnership

September 13, 2018

REGISTERED MAIL
RETURN RECEIPT REQUESTED

CharterCARE Community Board
c/o Richare L. Land, Esq.
One Park Row, Suite 300
Providence, RI 02903

David Hirsch, President
CharterCARE Community Board
50 South Main Street
Providence, RI 02903

Re: Notice of Dispute

Dear Mr. Hirsch:

This firm represents Prospect East Holdings, Inc. ("Prospect East") in connection with the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, as amended (the "LLC Agreement"). We are writing to provide you with notice pursuant to the LLC Agreement and to initiate the dispute resolution process set forth in Section 17.4 of the LLC Agreement.

Prospect East is in receipt of the Settlement Agreement executed by CharterCARE Community Board ("CCCB"), Stephen DelSesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the 'Receiver") and other parties, dated on or about August 31, 2018 (the "Settlement Agreement"). As it relates to Prospect East, CCCB and their respective obligations under the LLC Agreement, the Settlement Agreement provides:

1. That CCCB will hold its 15% membership interest in Prospect Chartercare, LLC in trust for the Receiver and that the Receiver will have the full beneficial interests therein. Settlement Agreement, paragraph 17;

2. That the Receiver will have the power to direct and control CCCB's future exercise of the put option set forth in the LLC Agreement. Settlement Agreement, paragraph 18;

3. That the Receiver shall have the right to sue in the name of CCCB to collect or otherwise obtain the value of the beneficial interest in Prospect Chartercare LLC. Settlement Agreement, Paragraph 19;

4. That upon the Receiver's written demand, CCCB file a petition for its Judicial Liquidation and follow the requests of the Receiver to marshal its assets and oppose claims of other creditors. Settlement Agreement, Paragraph 24; and

5. That CCCB grant the Receiver a security interest in its assets, investment property and general intangibles, which would include its membership interest in Prospect Chartercare LLC. Settlement Agreement, Paragraph 29.

Prospect East considers each of the above provisions in the Settlement Agreement to be in violation of the LLC Agreement. Section 13.1 of the LLC Agreement provides, in pertinent part, as follows:

> …[A] member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly through the transfer of the power to control, or to direct or cause the direction of the management and policies, of, such Member.

The above-referenced provisions of the Settlement Agreement plainly include a hypothecation of CCCB's interest, by the granting of a security interest, by the transfer of CCCB's beneficial interest and by the transfer to the Receiver of the power to control and direct CCCB. As such, the purported transfers contemplated by the Settlement violate the LLC Agreement and constitute invalid transfers under Section 13.6 of the LLC Agreement.

We are prepared to meet with you in an effort to negotiate a resolution to this dispute. Please contact me with a date and time when you are available to meet.

Very truly yours,

Preston Halperin

Preston W. Halperin

Cc: Prospect East Holdings, LLC

Exhibit 5

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.

vs.

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

C.A. No: PC-2017-3856

AFFIDAVIT

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

1. I am counsel, along with Stephen Sheehan and Benjamin Ledsham, to the Receiver in the above captioned Receivership Proceeding.

2. On September 24, 2018, we all three met at our office together with attorneys Preston Halperin, Richard Land, Robert Fine.

3. During that meeting, I informed Mr. Halperin that the Settlement Agreement (among, *inter alia*, the Receiver and CharterCARE Community Board) was property of the Receivership Estate, and urged him to seek permission from this Court before "taking any action which will in any way seek to impair the Receiver's right to the assets and property of the Receivership Estate." I also informed him that any attempt to interfere with the settlement outside of the Receivership Proceeding would violate the Court's Orders and subject his clients to contempt proceedings.

4. On September 27, 2018, I followed up with the letter to Mr. Halperin attached to the Receiver's Memorandum of Law in Support of His Motion to Adjudge Prospect CharterCare, LLC in Contempt, as Exhibit 6, in which I referred to the above discussions from the September 24, 2018 meeting.

Max Wistow

SUBSCRIBED AND SWORN to before me this 5th day of October, 2018.

NOTARY PUBLIC
My Commission Expires: 9/5/21

Exhibit 6

Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 10/5/2018 3:09 PM
Envelope: 1746301
Reviewer: Sharon S.

From:	Daria Souza
To:	Preston Halperin
Cc:	Richard Land; Robert Fine; Stephen Del Sesto; Max Wistow; Stephen P. Sheehan; Benjamin Ledsham
Subject:	Prospect Chartercare
Date:	Thursday, September 27, 2018 4:07:51 PM
Attachments:	Halperin, Preston 9.27.18.pdf

Dear Mr. Halperin,

Please see attached correspondence from Attorney Wistow.

Daria L. Souza
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Providence, RI 02903
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MAX WISTOW
STEPHEN P. SHEEHAN
A. PETER LOVELEY
BENJAMIN G. LEDSHAM
SHAD M. MILLER
KENNETH J. SYLVIA

September 27, 2018

VIA ELECTRONIC MAIL

Preston Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860

Re: Prospect Chartercare

Dear Mr. Halperin:

I write in follow-up to the meeting at my office on the afternoon of September 24, 2018. At that meeting, you were present representing at least Prospect East Holdings, Inc. Rick Land and Bob Fine were there for CCB, SJHSRI and RWH (the "Settling Defendants"). Stephen Sheehan, Benjamin Ledsham and I were representing Stephen Del Sesto, the Receiver (and the individual named plaintiffs).

It is yet possible that there may be a resolution of the "Dispute" to which your letter of September 13, 2018 refers within the 30-day period referenced in Section 17.4 of the LLC Agreement to which your letter also refers.

For that reason, we think that it is important for you to understand the position taken by the Settling Defendants and the Receiver (along with the other settling plaintiffs) with regard to the alleged violation of Section 13.1 of the LLC Agreement. Your objection to the proposed settlement is due today and our responses thereto on October 5. We believe that, armed with such filings, all will be better able to continue within that 30-day period to determine if the "Dispute" is resolvable.

If that 30-day period passes without such resolution, we urge you to obtain permission from the court here in Rhode Island overseeing the Receivership Petition – before you take any action which will in any way seek to impair the Receiver's rights to the assets and property of the Receivership Estate. Those assets and property include all rights under the Settlement Agreement, including those rights concerning CCB's

interest in Prospect Chartercare. Insofar as you seek to prevent CCB from fulfilling its obligations in the Settlement Agreement (which it must do if the Courts approve the settlement), you are interfering with such present rights of the Receivership Estate. By way of further concrete example, as you know, there are UCC-financing statements currently in place running in favor of the Receiver.

In other words, as we clearly stated to you at the meeting, a suit anywhere without Judge Stern's permission will be viewed by the Receiver as a violation of the Order in the Receivership (a proceeding in which all of the relevant Prospect entities have entered appearances through you or Joseph Cavanagh, III) subjecting your client(s) to contempt proceedings.

I would expect that the Settling Defendants will be in agreement with the contents of this letter.

Very truly yours,

Max Wistow

MW/dls

cc via electronic mail: Richard Land, Esq.
Robert Fine, Esq.
Stephen Del Sesto, Esq.

Exhibit 7

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL

In the Matter of: Prospect CharterCARE, LLC

PETITION FOR DECLARATORY ORDER
R.I. Gen. Laws §42-35-8

Introduction

1. Petitioner, Prospect CharterCARE, LLC holds all membership in those entities that operate and hold the licensure for two, acute care community hospitals, Our Lady of Fatima Hospital and Roger Williams Medical Center.[1]

2. Petitioner, Prospect CharterCARE, LLC holds all membership interest in Prospect SJHSRI, LLC and Prospect RWH, LLC, which own and operate the Hospitals, as pursuant to final Rhode Island Hospital Conversion Act ("HCA"), R.I. Gen. Laws §27-17.14-1 *et seq.*, decisions rendered by the Rhode Island Department of Health and Rhode Island Department of Attorney General dated May 19, 2014 and May 16, 2014, respectively (the HCA decisions are referred to herein as the "Final Conversion Decisions" and the HCA proceedings that resulted in the Final Conversion Decisions are referred to herein as the "HCA Proceedings" or the "Conversion").

3. In addition, as pursuant to Rhode Island law, the HCA Proceedings were consolidated with Change in Effective Control or "CEC Proceedings" under the Rhode Island Hospital Licensure Act ("HLA"), R.I. Gen. Laws §23-17-1 *et seq.*, resulting in a "Final CEC Decision" being issued by the Department of Health on or about May 19, 2014, after full hearings before and recommendations issued by the Rhode Island Health Services Council (the

[1] Our Lady of Fatima Hospital and Roger Williams Medical Center were part of the CharterCARE Health Partners network and referenced herein as the "Hospitals". The Hospitals were converted to the CharterCARE Health Partners system in 2009, to try and stem severe operating losses.

"Health Services Council") in accord with §4 of the HLA Regulations. Such licensure proceedings are a legal pre-requisite to the Final Conversion Decisions and are defined by the Rhode Island Administrative Procedures Act, R.I. Gen. Laws §42-35-1 *et seq.*, as "contested cases" with full rights of judicial review.

4. Prospect CharterCARE, LLC was a Transacting Party in the HCA and CEC Proceedings and thus, hereinafter, Prospect CharterCARE, LLC is referred to as the "Acquiror" for the purposes of this Petition.

5. Prior to the Conversion, the entity that owned and operated Our Lady of Fatima Hospital was St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI"), a non-profit corporation organized under the laws of the State of Rhode Island with its Class A Member being CharterCARE Health Partners and its Class B Member being The Roman Catholic Bishop of Rhode Island.

6. SJHSRI and its Class A Member, CharterCARE Health Partners were Transacting Parties in the HCA and CEC Proceedings and thus, SJHSRI is hereinafter referred to as "SJHSRI" or the "Acquiree" for the purposes of this Petition. After the Conversion, CharterCare Health Partners became known as the CharterCare Community Board or ("CCCB"). CCCB holds fifteen (15%) percent of the limited liability company membership and fifty (50%) percent of the voting authority in Petitioner, Prospect CharterCARE, LLC.

7. Prior to and after the Conversion, SJHSRI was and remained the Plan Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan'). It is critical to emphasize that as pursuant to Section 8.1 of the Plan, the Plan Administrator is defined as the "Employer" and the "Employer" is defined as SJHSRI.

8. Upon information and belief, the Plan is a retirement vehicle or "pension plan" which pays out to a beneficiary (presumably, a former employee of SJHSRI), a structured payment over time based, in part, upon the employee's compensation level while employed, length of service, and the funding of the Plan.

9. The Rhode Island General Assembly in enacting the HCA, in 1997, made a specific finding that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of not-for-profit hospitals to for-profit status. *See* HCA at §2(6). The General Assembly has been proven to be correct.

10. In turn, the General Assembly provided the Department of Health and the Department of Attorney General with jurisdiction to review and approve such agreements that provide for the investment of private capital and the resulting conversion of not-for-profit hospitals assets, including voting rights, to for-profit status. *Id.* §3(4).

11. In short, there cannot be such a conversion, as defined by the HCA, without application to and the prior approval of the Department of Health and the Department of Attorney General. In order to gain said approval, the Transacting Parties have to submit their transactional agreements and an application which, in part, details how the transactional structure relates to, amongst other assets and liabilities, the acquiree's pension plans. *Id.* at §6(13).

12. In the underlying Conversion, the issue of pension plan liability was critical as SJHSRI just prior to conversion was sustaining considerable operating losses and when combined with what was disclosed as a $79M Plan liability, SJHSRI could not survive without private investment, conversion to for-profit status, and approval of a structure to de-couple Plan liability from Hospital ownership and operation, post-Conversion.

13. Thus, as set forth below, it was submitted from the outset of the relevant transaction that the Hospital system, at issue (the former CharterCARE Health Partners' system), would not survive if it remained coupled to Plan liability. As such, it was determined that the ownership and operation of the Hospitals, post-Conversion, would be separated from the Plan and any liability therefore. In turn, the Plan and any liability therefore, would remain with the Acquiree, including its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

14. If that critical aspect of the Conversion were not approved, the Conversion would not have taken place and in all likelihood, as determined by independent experts engaged by the Department of Health and the Department of Attorney General, the Hospitals would not have been able to continue to provide essential healthcare services to the community.

15. From a hypothetical standpoint, the Department of Health and the Department of Attorney General could have determined that the Acquiror be liable for the Plan. If the Final Conversion and CEC Decisions had resulted in the Acquiror being liable for the Plan, then the Department of Attorney General would have exercised its authority under §28(c) of the HCA, to require the Acquiror to make certain minimum investments, post-Conversion, into the Plan. However, it was decided that the Acquiror would not have any liability for the Plan. Thus, the Department of Attorney General acted in accordance with the HCA and did not require any minimum investments into the Plan by the Acquiror, post-Conversion, because it was determined that the Acquiror would have no liability for the Plan and that liability would remain with the Acquiree.

16. The Attorney General under §28(c) of the HCA, can establish minimum investment requirements specifically for community benefit. It was properly decided, that the

balance of community interests was best served if the Hospitals continued to provide essential healthcare services for five (5) years, post-Conversion and any Plan liability remained with SJHSRI, what is now CCCB, and the Roman Catholic Bishop of Rhode Island.

17. In summary, if the final administrative agency decision was that the Plan and the liability therefor remained coupled to the Hospitals, post-Conversion, then the Acquiror would not have implemented the Conversion and the Hospitals would have failed to survive. Such an outcome would have been at variance with the General Assembly's findings in the HCA, dating back to 1997, that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of those not-for-profit hospitals to for-profit status. It is critical that private capital, most often from outside of the State of Rhode Island, be able to rely on those final agency decisions which approve hospital conversions and pave the way for the investment of considerable, capital into the State of Rhode Island's healthcare system to ensure that the system continues to serve various communities.

18. Thus, as a result of the Conversion, the Acquiror did not assume any liability for the Plan and/or the continuing risk for the Plan, including what the Health Services Council during hearings in May of 2016, referred to as "investment risk" or the obligation to continue funding the Plan.

19. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership in the matter entitled *St. Joseph's Health Services of Rhode Island, Inc. v. St. Joseph's Health Services of Rhode Island Retirement Plan, as amended*, Rhode Island Superior Court, PC-2017-3856 (J. Stern, presiding) (hereinafter, the "Receivership").

20. In the Receivership Petition, the Acquiror was defined as the "Hospital Purchaser". Of great significance, SJHSRI, in the Receivership Petition, judicially admitted that the Acquiror "**had no role in the evaluation of the Plan or its funding level**" during the Conversion or thereafter and, the Acquiror did not "**assume [ ] the Plan or any liability with respect thereto as clearly stated forth in the asset purchase agreement among the parties.**"

21. The asset purchase agreement (hereinafter, the "Asset Purchase Agreement") identified by SJHSRI in the Petition for Receivership was reviewed, approved, and incorporated by specific reference into the Final Conversion and CEC Decisions.

22. On or about June 18, 2018, the Receiver, by and through the Receiver's Special Counsel, Wistow Sheehan & Lovely P.C. (hereinafter, "Special Counsel"), filed a Complaint in the United States District Court for the District of Rhode Island entitled *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. A-18-cv-00328-WES-LDA (the "Federal Court Litigation") alleging, in part, that the Acquiror has some liability for the Plan.

23. It is beyond dispute that the Receivership Estate is SJHSRI in its role as Plan Administrator. Therefore, the Plan Administrator is by Plan definition, SJHSRI. Under Rhode Island law, the Receivership Estate stands in the shoes of SJHSRI. *See Francis v. Buttonwood Realty Co.*, 765 A.2d 437, 443 (R.I. 2001). SJHSRI participated as a Transacting Party in the Conversion in which administrative agencies with jurisdiction acting in a quasi-judicial manner determined that the Acquiror would have no liability for the Plan. In fact, SJHSRI advocated for that result. This uncontested conclusion was judicially admitted by SJHSRI in the Receivership Petition.

24. Nevertheless, the Receiver now seeks to circumvent the jurisdiction of the Department of Health and the Department of Attorney General by alleging that the Acquiror has liability for the Plan.

25. Furthermore, on September 4, 2018, the Receiver filed a Petition for Instructions with the Receivership Court asking the Receivership Court to authorize the Receiver to enter into a settlement agreement (the "Settlement") which would result in CCCB transferring its fifteen (15%) percent membership interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver.

26. The Final Conversion and CEC Decisions de-coupled the Plan and Plan liability from Hospital ownership and operation to ensure the Hospitals' viability and ongoing ability to provide essential healthcare services to the community. The Receiver's proposed Settlement seeks to re-attach Plan liability to Hospital ownership and operation.

27. Thus, the transfer of ownership and voting interests proposed by the Receiver to advance the Settlement is in violation of the Conversion, at variance with the HCA and the HLA, and at variance the determinations embodied within final agency decisions that the Acquiror has no liability for the Plan.

28. Accordingly, as pursuant to R.I. Gen. Laws §42-35-8, if the HCA and HLA are properly interpreted and applied, and the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver in furtherance of the Settlement would not be allowed without review and approval by the Department of Health and the Department of Attorney General. In turn, if an application for administrative review and approval were property submitted by the Receiver, the administrative agencies would be required to reject the application based upon the doctrine of administrative finality.

29. Finally and of critical importance, the transfer proposed by the Receiver to advance the Settlement seeks to re-attach the Plan and Plan liability to the ownership and operation of the Hospitals and it is based, in large part, upon the allegations in the Federal Court Litigation that the Acquiror has liability for the Plan. However, said cause of action in the Federal Court Litigation as against the Acquiror is barred by the doctrine of *res judicata* and said bar should be enforced by the agencies with jurisdiction over the Conversion and CEC Proceedings.

General Allegations

30. In or about March of 2013, the Transacting Parties to the Conversion entered into a Letter of Intent which is incorporated into the Final Conversion and CEC Decisions. The Letter of Intent specifically provided that the new company or "Newco" to be formed to own and operate the Hospitals would not purchase the Plan. In turn, the Letter of Intent made it clear that the Seller, as defined in the Letter of Intent, would remain liable for the Plan and the Plan would specifically be an "Excluded Asset" and an "Excluded Liability".

31. Simply stated, the Acquiror from the outset of the transaction that was ultimately reviewed and approved pursuant to the Final Conversion and CEC Decisions, made it clear that the Hospitals would not survive if they remained linked to Plan liability. Thus, the Transaction, as structured, proposed that Plan liability be de-coupled from Hospital ownership and operation and remain with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

32. In or about September of 2013, the Transacting Parties to the Conversion entered into the Asset Purchase Agreement which is also incorporated into the Final Conversion and

CEC Decisions. The Asset Purchase Agreement specifically listed the Plan as an "Excluded Liability".

33. In turn, in or about October of 2013, the Transacting Parties filed HCA and CEC applications (collectively, the "Application"). The Application specifically stated that the Transacting Parties on the Acquiror side would not acquire the Plan or assume any Plan liability.

34. The Department of Health and the Department of Attorney General, as is allowed under the HCA, both engaged financial experts to review the Application and the Transaction as structured in the Asset Purchase Agreement. Both experts were very candid in their review of the Transaction, making it clear that the Acquiror was not assuming any liability for the Plan. The expert for the Department of Health specifically stated that the $14M of the purchase price to be deposited by the Acquiree into the Plan would simply reduce what was then disclosed by the expert to be at least a $79M Plan deficiency. Moreover, the Department of Health's expert specifically testified before Health Services Council as pursuant to the CEC Proceedings, that there was no actuarial support as to the Acquiree's representations regarding Plan funding requirements going forward, post-Conversion. In turn, it was made clear and confirmed by the Health Services Council that the Acquiree would carry the risk for Plan funding and Plan liability, post-Conversion.

35. The Department of Attorney General's expert also made it clear that the Hospital system could not survive if it remained linked to Plan liability.

36. As above stated, the General Assembly in enacting the HCA looked to review and approve private investment in not-for-profit hospitals, in large part, to ensure their survival. In accord with the reports of the financial experts, the Final Conversion and CEC Decisions undertook a balancing analysis and determined that the Hospitals would not survive, if Plan

liability remained coupled to the Hospitals. This is especially evident in the Final Conversion Decision by the Department of Attorney General which provided in part as follows:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
>
> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

37. In short, the Department of Attorney General recognized that Plan liability had remained attached to Hospital ownership and operations as a result of the 2009 CharterCARE Healthcare Partners' hospital conversion, and as of 2016, the Hospitals were failing, in large part, due to that fact. Therefore, the relevant Conversion had to be approved in a manner that separated Plan liability from Hospital ownership and operation. If not, there may still exist issues with Plan funding and the Hospitals would have failed.

38. Thus, the Final Conversion and CEC Decisions incorporated the Asset Purchase Agreement and the Applications and made it an absolute requirement that the Conversion be implemented in accord with those documents. In turn, the Asset Purchase Agreement and the Application made it clear that Acquiror was not acquiring or assuming any liability for the Plan.

Quite simply, to propose otherwise was a recipe for failure of the entire Hospital system. The Receiver is not in position, as a matter of law, to change that administrative determination.

39. The decision to de-couple the Plan from Hospital ownership and operation resulted from a balancing that placed significant weight on the Hospitals' viability and ability to continue to provide essential healthcare services to the community, and a recognition that the Acquiree and its membership would remain liable for the Plan. In other words, the Conversion did not change the equation with regard to the Plan. The Acquiree and its membership would remain liable for the Plan just as they were, pre-Conversion. However, the Decisions that separated Plan liability from Hospital ownership and operation were deemed necessary to ensure that the Hospitals would continue, post-Conversion, to serve the community.

40. As part of that balancing, the administrative agencies with jurisdiction thought it more in line with the HCA, to require a commitment by the Acquiror to continue essential healthcare services at the Hospitals. Accordingly, one of the conditions incorporated into the Final Conversion and CEC Decisions, was that the Acquiror had to maintain all essential services at the Hospitals for a period of five (5) years after the Conversion. If the Receiver were to circumvent the Final Conversion and CEC Decisions and re-attach Plan liability to the Hospitals, such a commitment would be in jeopardy.

41. Moreover, under §28(c) of the HCA, the Department of Attorney General can establish conditions requiring minimum investments to protect Hospital assets, post-Conversion. This is critical as the Department of Attorney General placed no requirement on the Acquiror to make minimum investments, post-Conversion, into the Plan, because it was the final decision of the administrative agencies that the Acquiror would have no responsibility for the Plan. Rather, it was decided that the Plan liability would be de-coupled from the Hospital assets and liabilities

acquired and assumed by the Acquiror. Thus, the actions of the Department of Health and the Department of Attorney General were wholly appropriate in that liability for the Plan would remain with SJHSRI and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

42. As such, the Acquiror was not required to report any ongoing contributions to the Plan or report as to the condition of the Plan under §28 of the HCA, post-Conversion, because it was a final agency decision that the Acquiror assumed no liability for the Plan.

43. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership, above-defined as the "Receivership", in an effort to restructure the Plan.

44. In so doing, SJHSRI judicially admitted that the Acquiror had no role in the evaluation of the Plan or its funding levels during the Conversion or CEC Proceedings and that the Acquiror assumed no liability for the Plan in accord with the Asset Purchase Agreement by the Final Conversion and CEC Decisions. Under Rhode Island law, a judicial admission is a deliberate, clear and unequivocal statement of a party about a concrete fact with that party's knowledge which is considered conclusive and binding as to the party making the admission. The judicial admission relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing same. In other words, under Rhode Island law, a judicially admitted fact is conclusively established.

45. In or about June of 2018, the Receiver, despite the Final Conversion and CEC Decisions, and the judicial admissions in the Petition for the Appointment of a Receiver, filed the Federal Court Litigation alleging, in part, that the Transacting Parties on the Acquiror side, including the Petitioner herein, may have liability for the Plan.

46. On or about September 4, 2018, the Receiver petitioned the Receivership Court to grant the Receiver authority to enter into what is defined above as the Settlement with SJHSRI and the other Transacting Parties on the Acquiree's side of the Conversion, by having the Acquiree transfer its fifteen (15%) percent interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver. The Settlement, if hypothetically approved, would transfer the Acquiree's interest and voting authority in the Prospect CharterCARE, LLC to the Receiver as a vehicle to address Plan liability. Thus, the Receiver, through the proposed Settlement, seeks to re-attach the Plan to the Hospitals, post-Conversion, which violates the Final Conversion and CEC Decision.

47. Accordingly, the Petitioner seeks a declaratory order as follows:

a. If the HCA and HLA are properly interpreted and applied and/or the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA, as it is at variance with the Final Conversion and CEC Decisions. Thus, the Receiver would have to apply to the administrative agencies with jurisdiction for relief;

b. If the HCA and HLA are properly interpreted and applied, the transfer proposed by the Receiver to advance the Settlement is a "conversion" as defined by §4(6) of the HCA, as it would result in the transfer of more than 20% of the voting control of the Acquiror. Thus, the Receiver could not effectuate such a conversion without application to, review, and approval by the Departments of Health and/or the Department of Attorney General;

c. If the Receiver applied to modify the Final Conversion and/or CEC Decisions, or applied for the review and approval of the proposed conversion embodied within the Settlement, the Receiver's application would be barred by the doctrine of administrative finality; and

d. The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of *res judicata* and the bar should be enforced in the first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

First Request for Declaratory Order

48. Acquiror submits that a proper interpretation and application of the HCA and HLA, and a proper application of the Final Conversion and CEC Decisions issued by the respective administrative agencies in May of 2014, must result in a determination that the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA and is at variance with the Final Conversion and CEC Decisions.

49. The Final Conversion and CEC Decisions issued by the Department of Health and Department of Attorney General expressly incorporated the Asset Purchase Agreement and the Amended and Restated Operating Agreement ("Operating Agreement") of the Petitioner.

50. The Final Conversion and CEC Decisions recognized and determined that the Hospitals, including Our Lady of Fatima Hospital, could not survive if the Plan and the liability therefore, remained attached to the Hospitals. Accordingly, the Final Conversion and CEC Decisions determined that the Plan and the liability therefore, would be separated from the Hospitals and remain with Acquiree, including the Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

51. Furthermore, the Final Conversion and CEC Decisions incorporating the Operating Agreement, provided for a "joint venture" approach to ownership and operation of the Hospitals, post-Conversion, with 15% of the joint venture being owned by a community-based, healthcare entity which would continue to advance the original not-for-profit healthcare mission of the so-called "Heritage Hospitals" for a minimum of five (5) years after the Conversion, which took place on June 14, 2014.

52. In addition, the healthcare policy was to have a not-for-profit, community-based facet to the ongoing voting and governance structure of the Hospitals. Thus, the Final Conversion and CEC Decisions incorporated the concept of a "50/50 board" as set forth in the Operating Agreement.

53. The transfer proposed by the Receiver to advance the Settlement is at absolute variance with those concepts and policy adopted by the Final Conversion and CEC Decisions and cannot be allowed absent regulatory relief.

54. In short, the hospital conversion policies and determinations embodied within the Final Conversion and CEC Decisions should not be abandoned simply to create a vehicle to fund liabilities for the Plan. To do so, would be the absolute opposite of the decision made to separate Plan liability from Hospital ownership and operation, post-Conversion, so that that those Hospitals could survive and continue to serve the healthcare needs of the community with Plan liability remaining with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

Second Request for Declaratory Order

55. Acquiror seeks a declaratory order and submits that a proper interpretation and application of the HCA would result in a determination that the transfer proposed by the

Receiver to advance the Settlement is a "conversion" as that term is defined in §4(6) of the HCA and thus, the Conversion would not be allowed absent application to review and approval by the Department of Health and/or Department of Attorney General under the HCA and/or the HLA.

56. As set for above, the Final Conversion and CEC Decisions acknowledged and required that the Conversion be implemented and operated with the concept of a 50/50 Board.

57. The HCA defines a Conversion to include the conversion of more than 20% of the voting authority of a Hospital. *See* HCA at §4(6).

58. The transfer proposed by the Receiver in order to advance the Settlement clearly seeks to transfer more than 20% of voting authority. Accordingly, the proposed transfer would require review and approval as a Hospital Conversion.

59. Moreover, in order to approve a Conversion of this nature, §8 of the HCA and §4.2(h) of the HCA Regulations would require the Receiver to demonstrate compliance with the Final Conversion and CEC Decisions. In this instance, for the reasons set forth herein, the Receiver would not be able to demonstrate compliance with those Decisions and thus, the proposed Conversion could not be approved.

Third Request for Declaratory Order

60. Acquiror seeks a declaratory order and submits that a proper application of the Final Conversion and CEC Decisions to the Acquiror would render any application by the Receiver for the review and approval of the proposed transfer to advance the Settlement as barred by the doctrine of administrative finality.

61. Acquiror submits that the Receiver would have to file some form of application with the Department of Health and Department of Attorney General to grant relief and/or to

approve a conversion that would allow for the Receiver's proposed transfer of Acquiree's ownership and voting authority in the Hospitals.

62. Said application would be seeking same relief as the prior Conversion and CEC applications and there has been no change in material circumstances.

63. The material circumstances surrounding Plan liability remain exactly the same with regard to the prior conversion and licensure proceedings that resulted in the Final Conversion and CEC Decisions in that the Hospitals could not survive if their ownership and operation continued to be attached to Plan liability.

64. A subsequent application by the Receiver would be seeking to approve a transfer, so that the Acquiree's Hospital ownership and voting authority would be used as a vehicle to address Plan liability that was previously separated from Hospital ownership and operations, post-Conversion, per final agency decision.

65. The doctrine of administrative finality has been adopted by the Rhode Island Supreme Court and applied to administrative agencies addressing healthcare issues, so that administrative healthcare policy decisions remain consistent unless there is a material change in circumstances. In this instance, it was determined that in order for the Hospitals to survive and continue to serve the healthcare needs of the community, Plan liability had to be separated from the Hospital ownership and operations, post-Conversion. This decision was critical in attracting the investment of private capital to allow for the survival of the Hospitals and the continued service of the healthcare needs of the community. Potential investors, often times from outside of the State of Rhode Island, must be able to rely on those policy decisions and the doctrine of administrative finality was designed for that very purpose.

Fourth Request for Declaratory Order

66. Acquiror requests a declaratory order and submits a proper application of the Final Conversion and CEC Decisions bar any claim that Acquiror is liable for the Plan, including such claims in the Federal Court Litigation based upon the doctrine of *res judicata*.

67. Under Rhode Island law, the doctrine of *res judicata* makes a prior decision in a quasi-judicial agency action between the same parties conclusive regarding the issues that were litigated in the prior action or, that could have been presented and litigated therein.

68. Under Rhode Island law there are three prerequisites for the doctrine of *res judicata* to be invoked: (1) whether the first and second actions involve in the same parties, or their privies; (2) whether the first and second actions compromise the same cause of action; and (3) whether a administrative agency in a quasi-judicial proceeding entered a final decision.

69. The proceedings that resulted in a Final Conversion and CEC Decisions were quasi-judicial, including but not limited to the fact that §34 of the HCA, §9 of the HLA and, §§9.2 and 16.1 of the HCA Regulations and §4 of the HLA Regulations all set forth that the prior proceedings are contested agency proceedings, which have full rights of appeal.

70. In addition, the CEC licensure proceedings are a legal pre-requisite to the Conversion and the procedures set forth in §4 of the HLA Regulations are clearly quasi-judicial, including the burden of proof and review criteria before the Health Services Council. In addition, the Rhode Island Administrative Procedures Act clearly defines such proceedings as contested agency proceedings with an absolute right of judicial review.

71. It is beyond dispute that there is an identity of parties between the Conversion and CEC Proceedings and the Federal Court Litigation in that the Acquiror and the Receivership Estate were both Transacting Parties in the Conversion and CEC Proceedings.

72. Furthermore, there is no dispute that there was an identity of issues as the Conversion and CEC Proceedings and the Federal Court Litigation both address the very same transaction considered in the Conversion and CEC Proceedings. Moreover, the following is beyond dispute:

a. The HCA requires that an HCA application address pension plan liability;

b. The transactional documents and HCA/CEC Applications submitted by the Transacting Parties all stated that the Acquiror would have no liability for the Plan;

c. The experts engaged by the Department of Health and the Department of Attorney General all reviewed that aspect of the transaction and advised that the $14M of the Purchase Price that would be put in to the Plan by the Acquiree would merely reduce what was then identified as $79M funding deficiency and that any testimony by the Acquiree of how to fund the Plan going forward had no actuarial support;

d. The Conversion and CEC Proceedings, incorporating the relevant transactional documents and the independent expert analysis specifically established that the risk of funding the Plan, post-Conversion, remained with the Acquiree;

e. The experts concluded that the Hospitals would not survive if their ownership and operation remained connected to Plan liability;

f. The expert testimony was specifically adopted by the Department of Attorney General in its decision that provided:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately

> $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
>
> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

g. The Department of Attorney General and the Department of Health, thus, realized that a prior conversion was attempted that left Plan liability attached to Hospital ownership and operation and that did not work;

h. Accordingly, the Final Conversion and CEC Decisions required that the Conversion be implemented pursuant to the Application and the transactional documents which specifically provided that Plan liability would be separated from Hospital ownership and operation, post-Conversion, and remain with the Acquiree; and

i. This is further reflected by the fact that the Department of Attorney General did not exercise its authority under §28(c) of the HCA and require the Acquiror to make ongoing investments in the Plan, post-Conversion, because it was determined by the Final Conversion and CEC Decisions that liability for the Plan would remain with the Acquiree and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

73. The Final Conversion and CEC Decisions were final agency decisions that were never appealed and thus, the claims in the Federal Court Litigation that the Acquiror and/or its affiliates are somehow liable for the Plan are barred by the doctrine of *res judicata* and that bar should be enforced by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

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