

Hearing date: December 16, 2021 at 9:30 a.m.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re:

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

C.A. No. PC-2019-11756

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

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

Introduction

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

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

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

4. On June 20, 2014, the Legacy Hospital Entities closed on a transaction involving the sale of these hospitals to subsidiaries of Prospect CharterCARE, LLC. The details of this transaction are set forth in detail in the Liquidating Receiver's Fourth Report to this Court.¹

¹ Certain capitalized terms used in this report are defined in the Fourth Report.

The Pension Litigation

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

6. On June 18, 2018, after an investigation by Wistow, Sheehan & Loveley, PC (“Special Counsel”), special counsel to the Plan Receiver, the Plan Receiver and certain Plan participants as putative class representatives sued the Legacy Hospital Entities, various Prospect entities, various Roman Catholic organizations, and others to recover damages for the benefit of the Plan and its participants (collectively, the “Pension Litigation”) (*Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. 18-cv-00328-WES (D. R.I.), and *Del Sesto et al. v. Prospect CharterCARE, LLC et al.*, C.A. No. PC-2018-4386 (R.I. Super.)).

7. In 2018, subject to court approval, the Legacy Hospital Entities, the Plan Receiver, and the putative class-action representatives entered into the Settlement “A” Agreement and the Settlement “B” Agreement, which brought the gross amount of approximately \$17.1 million into the Plan.

8. Both this Court and the U.S. District Court approved these settlements. The U.S. District Court also certified settlement classes for purposes of both Settlement “A” and Settlement “B”, appointed the Plan participant plaintiffs as class representatives of all Plan participants, and appointed Special Counsel as class counsel for the two settlements.

9. Despite these settlements, CCCB, RWH and SJHSRI remain nominal defendants in the Pension Litigation. The Liquidating Receiver continues to monitor developments in the litigation.

10. Both the temporary and permanent orders appointing the Liquidating Receiver directed him to perform the Legacy Hospital Entities' obligations under the settlement agreements. As this Court has directed, the Liquidating Receiver has been performing all of the Legacy Hospital Entities' current obligations under them.

Other Controversies with Prospect Entities

11. As more fully set forth in the Liquidating Receiver's Fourth Report, the Liquidating Receiver and various Prospect entities were parties to a number of substantial controversies, both in this liquidating receivership, the Plan receivership, the Delaware Chancery Court, and in administrative proceedings before the Rhode Island Department of Health and the Rhode Island Attorney General.

The Prospect/Angell Settlement

12. As of December 30, 2020, after extensive litigation and negotiations, and subject to approval by this Court and by the U.S. District Court, the Liquidating Receiver, the Plan Receiver, and the individual named plaintiffs in the Pension Litigation entered into a Settlement Agreement (the "Prospect/Angell Settlement Agreement") with Prospect Medical Holdings, Inc., Prospect East, Inc., Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, and Prospect CharterCARE RWMC, LLC (collectively, the "Prospect Parties"), Sam Lee and David Topper (principals of the Prospect Parties), and The Angell Pension Group, Inc. ("Angell").

13. On March 4, 2021, this Court issued its decision approving the Prospect/Angell Settlement Agreement.

14. On March 26, 2021, the U.S. District Court granted preliminary approval of the settlement as a good faith settlement, preliminarily certified the class of Plan participants for the purpose of the proposed settlement, and certified Wistow, Sheehan & Loveley, PC as class counsel. On July 29, 2021, the U.S. District Court entered an order granting final approval of the

settlement and found that the settlement was made in good faith.

15. The following is a summary of the settlement terms and the implementation of the settlement:

(a) Settlement Payments. The Prospect Parties and Angell must pay an aggregate of \$30.1 million, allocated and to be paid as follows:

(1) Prospect Medical caused JPMorgan Chase Bank to deliver to the Plan Receiver a \$22.25 million irrevocable standby letter of credit and a \$5 million irrevocable standby letter of credit, each issued by the bank and naming the Plan Receiver as beneficiary. The Plan Receiver has drawn on the standbys and received full payment.

(2) The Prospect Parties paid the Liquidating Receiver \$100,000 in settlement of the parties' respective claims over revised final settlements from the Centers for Medicare & Medicaid Services for services that the legacy hospitals performed before the 2014 sale to Prospect.

(3) Angell has paid \$2.75 million into the Registry of this Court, and the Registry has paid this amount to the Plan Receiver.

(b) Category A Directors. The settlement addresses the controversies regarding the Category A Directors (appointed by the Liquidating Receiver) during the court approval process as follows:

(1) Prospect paid the Category A Directors their stipend of \$1,000 per month from the date of their appointment to the end of April 2021.

(2) Prospect must continue paying the stipend until the date on which the Category A Directors resign or are replaced or the settlement becomes void for any reason other than a breach of the settlement by the Prospect Parties, their principals, or Angell. Prospect has paid the stipend through August 31, 2021.

(3) The Category A Directors agreed not to attend board meetings during the settlement approval process. The LLC Agreement was amended to eliminate the requirement for votes by the Category A Directors.

(4) The Category A Directors were relieved of any obligation to act in any way as directors of Prospect CharterCARE, LLC during the settlement approval process.

(5) The Prospect Parties and their principals indemnified the Category A Directors for any claims arising out of or related to any Category A Director not taking action as a director of Prospect CharterCARE, LLC. The indemnity is effective and applies from July 22, 2020 forward. If the settlement becomes void, the indemnity nevertheless applies from July 22, 2020 to the date on which the settlement becomes void.

(6) On August 18, 2021 after final court approval of the settlement, Prospect East removed the Category A Directors.

(c) Litigation. The settlement resolved the remaining controversies among the settling parties, specifically:

(1) On August 20, 2021, a stipulation was filed dismissing *CCCB v. Lee* with prejudice, subject to exceptions required by the settlement. The dismissal encompassed all pending motions in that action, including Prospect's motion for protective order and the Green Equity Investors entities' motion to dismiss.

(2) On August 22, 2021, a stipulation was filed dismissing the Delaware Chancery Action with prejudice, subject to exceptions required by the settlement.

(3) On August 23, 2021, the settlement parties filed a stipulation in the Plan Receiver's and individual plaintiffs' claims against the Prospect Parties in the Pension Litigation dismissing the claims between the plaintiffs and the Prospect Parties (but preserving all plaintiffs' claims against the remaining defendants).

(4) The Prospect Parties' pending motion to adjudge the Plan Receiver in contempt.

(5) The Prospect Parties' pending motion for protective order.

(6) The receivers' pending motion for reconsideration of this Court's October 19, 2020 decision denying their motion for injunctive relief against Adler Pollock & Sheehan P.C.

(7) CCCB's put option. On August 18, 2021, the Liquidating Receiver's assignment of the Hospital Interests to Prospect East was released from escrow and delivered to Prospect East.

(8) As noted above, claims between SJHSRI and RWH, on the one hand, and the

Prospect Parties, on the other hand, regarding pre-2014 sale Medicare rate increases and adjustments.

(9) The disputes over the Category A Directors.

(10) The receivers' objections to Prospect's regulatory applications. Pursuant to the Prospect/Angell Settlement Agreement and the Stipulation and Consent Order (as defined therein), the receivers withdrew their objections, and the Prospect Parties asked the regulators to expressly condition any approvals on the Prospect Parties, their principals, and Angell fulfilling their obligations under the settlement agreement. In June 2021, the Rhode Island Attorney General approved Prospect's regulatory applications subject to a number of conditions, including a requirement that Prospect and the Leonard Green Partners entities post an \$80 million escrow to secure the Prospect entities' ongoing obligations to meet the operating obligations of Our Lady of Fatima Hospital and Roger Williams Medical Center, and waive the multi-million dollar management fee.

(d) Releases. The parties signed releases consistent with the settlement terms, and the releases were delivered to their respective beneficiaries on August 18, 2021.

(e) Wind-down Matters. However, the Prospect/Angell Settlement Agreement leaves in place the following:

(1) The records-retention and access obligations of the various Prospect entities.

(2) Prospect's obligations to cooperate with the Plan Receiver or other Plan administrator regarding employment documentation or other information.

(3) Ongoing transition and wind-down obligations regarding CCCB, SJHSRI or RWH.

16. In its final approval of the Prospect/Angell Settlement, the U.S. District Court expressly left open for later adjudication the claims of the non-settling defendants that the statute providing contribution protection to parties who make court-approved settlements related to the Plan, R.I. Gen. Laws § 23-17.14-35, is either preempted by the federal Employee Retirement Income Security Act (ERISA) or is unconstitutional.

Proofs of Claim

17. On May 22, 2020, this Court ordered that the Plan Receiver may file a proof of claim in this receivership on behalf of all Plan participants, and that individual Plan participants are not required to file separate proofs of claim in their capacity as Plan participants. The Plan Receiver submitted a timely sworn proof of claim on behalf of the Plan and the Plan participants.

18. The bar date for creditors to submit sworn proofs of claim has expired.

19. Pursuant to the Prospect/Angell Settlement, the Prospect entities have already withdrawn their claims.

20. The Liquidating Receiver's obligations to cooperate with the Plan Receiver under Settlement "A" and the Orders of this Court include "opposing and seeking to limit the claims of other creditors where appropriate."

Pre-Receivership Workers Compensation Matters

21. For various times before this receivership, SJHSRI and RWH were each self-insured for workers compensation claims.

22. Pursuant to Settlement "A" and orders of this Court, in collaboration with the Plan Receiver, the Liquidating Receiver is investigating the open claims of several former employees, the administration of, and accounting for, the SJHSRI self-insurance program by the third-party administrator Beacon Mutual Insurance Company, and other related matters.

23. In furtherance of this investigation, in August 2021, the Liquidating Receiver served subpoenas duces tecum on Beacon. Beacon produced some, but not all, of the requested documents and made an untimely objection to the subpoenas. In September 2021 after the parties could not resolve the discovery dispute, the receivers filed a joint motion to enforce the subpoenas.

24. This Court heard the joint motion and Beacon's objection on October 26, 2021,

referred the matter to Justice Silverstein (ret.) for a discovery conference, and otherwise took the motion and objection under advisement.

25. On December 1, 2021, Justice Silverstein held a conference with the receivers, Special Counsel, and Beacon's counsel and continued the discovery conference to December 9, 2021. In the meantime, the receivers and Beacon, along with the R.I. Department of Labor and Training, continue efforts to resolve all outstanding SJHSRI workers compensation issues.

26. Under Settlement "A" RWH assigned to the Plan Receiver its rights to a \$750,000 escrow fund at the R.I. Department of Labor and Training, which serves as security for potential self-insured obligations of RWH. Pursuant to that settlement, the receivers are collaborating on the Plan Receiver's efforts to obtain a loss portfolio transfer to free this escrow for the benefit of the Plan.

Truk-Away Environmental Remediation Site

27. The R.I. Department of Environmental Management ("DEM") filed a \$50 million proof of claim in this receivership, based on allegations that SJHSRI and RWH generated hazardous materials that were ultimately deposited at the Truk-Away landfill site in Warwick, Rhode Island. A group of potentially responsible parties at the site have filed a \$16.7 million proof of claim in this receivership. The Liquidating Receiver disputes these claims and, pursuant to Settlement "A" and orders of this Court, is collaborating with the Plan Receiver to investigate these claims and the liquidating receivership's defenses.

Pre-Receivership Tort Litigation

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

29. None of these plaintiffs has filed a proof of claim in this liquidating receivership.

30. In one potentially substantial case, brought by Michael Nissensohn, the insurance carrier's counsel sought the Liquidating Receiver's assistance. The Liquidating Receiver promptly complied, and the case was settled. The insurance carrier paid the settlement amount.

31. In late October 2021, Prospect Medical Holdings notified the Liquidating Receiver of a civil action commenced in November 2018 against various Prospect entities, alleging that one of the Prospect Entities (Prospect CharterCARE SJHSRI, LLC, d/b/a Our Lady of Fatima) is liable for acts and omissions both before and after the 2014 sale to Prospect. This was the first notice that either the Liquidating Receiver or the Legacy Hospital Entities had of this action. Further, neither the complaint nor the amended complaint in this action names SJHSRI.

32. The Liquidating Receiver promptly tendered the defense of this matter to SJHSRI's liability insurance carrier. The carrier has engaged counsel to represent the Liquidating Receiver and SJHSRI and participate in the defense of this action under a reservation of rights.

Coordination with the Plan Receiver and Special Counsel

33. Since the period covered by the Liquidating Receiver's Fourth Report, the Liquidating Receiver has received further specific requests and recommendations from the Plan Receiver and Special Counsel with respect to (i) seeking to recover or release additional funds that would be available for distribution to the Plan Receiver against his claims in this liquidating receivership, and (ii) opposing or limiting the claims of the Legacy Hospital Entities' other creditors as noted above. The Liquidating Receiver will continue to coordinate work on these matters with the Plan Receiver and Special Counsel to facilitate the speedy and just resolution of those issues and the closing of this liquidating receivership.

Other Matters

34. As stated above, the Liquidating Receiver continues to perform the Legacy Hospital Entities' current obligations under the settlement agreements with the Plan Receiver.

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

36. The Liquidating Receiver continues to deal with subpoenas and other court process served on SJHSRI or RWH regarding medical records requests, accounts receivable that predate the sale to Prospect and were sold to Prospect in the 2014 sale, and other matters.

Interim Accounting

37. From July 1, 2021 to September 30, 2021, the Liquidating Receiver has made the following collections and disbursements:

	<u>CCCB</u>	<u>SJHSRI</u>	<u>RWH</u>	<u>Aggregate</u>
Starting cash	\$ 9,662.08	\$ 599,159.41	\$ 483,965.18	\$ 1,092,786.67
Receipts	-	67,152.52	60,032.67	127,185.19
Disbursements	-	224.00	8,086.58	8,310.58
Net income (loss)	\$ -	\$ 66,928.52	\$ 51,946.09	\$ 118,874.61
Ending cash	\$ 9,662.08	\$ 666,087.93	\$ 535,911.27	\$ 1,211,661.28

38. Attached hereto as Exhibit 1 is a consolidated income statement for the Legacy Hospital Entities from July 1, 2021 to September 30, 2021.

Request for Interim Compensation and Reimbursement of Expenses

39. From July 1, 2021 to September 30, 2021, the Liquidating Receiver and his counsel put in a total of 161.55 hours and advanced \$47.18 for expenses.

40. The Liquidating Receiver has given this Court a detailed statement of the Liquidating Receiver's time and expenses, and this statement (redacted for privileged and work-product information) is available to parties in interest on request.

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

Notice to Parties in Interest

42. The Liquidating Receiver has served this Report and notice of the hearing thereon to counsel of record in this receivership and to counsel of record for the following parties in interest: the Plan Receiver; the named plaintiffs and the defendants in the Pension Litigation; the Prospect entities; and the defendants in *CCCB v. Lee*.

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

WHEREFORE, the Liquidating Receiver prays that this Court:

- (a) Accept, approve and ratify this Report.
- (b) Approve and ratify the acts of the Liquidating Receiver.
- (c) Award to the Liquidating Receiver an interim fee for services rendered and for expenses advanced and authorize the Liquidating Receiver to pay same from cash on hand.
- (d) Award to the Liquidating Receiver such other and further relief as this Court deems appropriate.

Respectfully submitted,

Date: December 6, 2021

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger #3122
Liquidating Receiver
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CERTIFICATE OF SERVICE

I hereby certify as follows:

- 1) On December 6, 2021, I electronically filed the foregoing document. This document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.
- 2) The following parties received electronic notice: any parties entered to be notified through the Electronic Filing System.
- 3) The document was served by United States Postal Service, postage prepaid, on the following persons: see separate certificate of service.

/s/ Thomas S. Hemmendinger
Thomas S. Hemmendinger

Exhibit 1
Receipts and Disbursements
(July 1, 2021 – September 30, 2021)

CharterCARE Community Board et al.
Profit & Loss Detail
 July through September 2021

2:39 PM
 11/16/21
 Accrual Basis

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
Ordinary Income/Expense								
Income								
Interest Income								
Deposit	07/31/2021			Interest		Roger Williams...	2.55	2.55
Deposit	07/31/2021			Interest		St. Joseph He...	6.12	8.67
Deposit	07/31/2021			Interest		Roger Williams...	2.72	11.39
Deposit	08/31/2021			Interest		St. Joseph He...	6.12	17.51
Deposit	08/31/2021			Interest		Roger Williams...	2.72	20.23
Deposit	08/31/2021			Interest		Roger Williams...	2.55	22.78
Deposit	09/30/2021			Interest		Roger Williams...	2.63	25.41
Deposit	09/30/2021			Interest		Roger Williams...	2.47	27.88
Deposit	09/30/2021			Interest		St. Joseph He...	5.92	33.80
Total Interest Income							33.80	33.80
Trust Income								
Deposit	07/08/2021		Bank of America	Brown Fund		Roger Williams...	10,323.50	10,323.50
Deposit	07/19/2021		Bank of America	Knight		Roger Williams...	2,016.00	12,339.50
Deposit	07/29/2021		Bank of America	Flint - deficien...		Roger Williams...	3,411.50	15,751.00
Deposit	07/29/2021		Bank of America	Brown Fund - ...		Roger Williams...	7,195.50	22,946.50
Deposit	08/24/2021		Bank of America	Townsend Co...		St. Joseph He...	67,134.36	90,080.86
Deposit	08/26/2021		Bank of America	Knight		Roger Williams...	3,640.50	93,721.36
Deposit	09/01/2021		Bank of America	Flint		Roger Williams...	5,450.50	99,171.86
Deposit	09/21/2021		Bank of America	Horton		Roger Williams...	27,979.53	127,151.39
Total Trust Income							127,151.39	127,151.39
Total Income							127,185.19	127,185.19
Expense								
Court-related Expense								
Check	08/18/2021	1024	Kyle Norigian	Service of sub...		St. Joseph He...	224.00	224.00
Check	09/21/2021	1046	Falcon Constable S...	Service of sub...		Roger Williams...	114.00	338.00
Check	09/24/2021	1047	Michael DeFalco	Service of sub...		Roger Williams...	114.00	452.00
Check	09/24/2021	1048	Litigistics	Mailing to part...		Roger Williams...	419.48	871.48
Total Court-related Expense							871.48	871.48
Records Management								
Check	08/12/2021	1043	Xact Data Discovery			Roger Williams...	2,479.70	2,479.70
Check	08/26/2021	1044	Xact Data Discovery			Roger Williams...	2,479.70	4,959.40
Check	09/21/2021	1045	Xact Data Discovery	September		Roger Williams...	2,479.70	7,439.10
Total Records Management							7,439.10	7,439.10
Total Expense							8,310.58	8,310.58
Net Ordinary Income							118,874.61	118,874.61
Net Income							118,874.61	118,874.61