

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

---

In re:

CharterCARE Community Board,

St. Joseph Health Services of  
Rhode Island,

And

Roger Williams Hospital

---

PC-2019-11756

**LIQUIDATING RECEIVER AND PLAN RECEIVER'S MEMORANDUM  
IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION BASED ON  
CRITICAL EVIDENCE WITHHELD FROM THE RECEIVERS AND THE COURT**

Max Wistow, Esq. (#0330)  
Stephen P. Sheehan, Esq. (#4030)  
Benjamin Ledsham, Esq. (#7956)  
WISTOW, SHEEHAN & LOVELEY, PC  
61 Weybosset Street  
Providence, RI 02903  
401-831-2700 (tel.)  
[mwistow@wistbar.com](mailto:mwistow@wistbar.com)  
[spsheehan@wistbar.com](mailto:spsheehan@wistbar.com)  
[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

Thomas S. Hemmendinger, Esq. (#3122)  
Liquidating Receiver  
Brennan, Recupero, Cascione,  
Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909  
Tel. (401) 453-2300  
Fax (401) 453-2345  
[themmendinger@brcsm.com](mailto:themmendinger@brcsm.com)

December 21, 2020

**TABLE OF CONTENTS**

Introduction..... 1

The Critical Evidence That Was Withheld ..... 1

Procedural Travel..... 5

Argument ..... 8

    I. The Rule 54(b) standard for revising the Court’s interlocutory Decision..... 8

    II. The Critical Evidence, which the Prospect Entities improperly withheld from the Receivers and the Court, conclusively demonstrates (a) the substantial relationship between the 2019 Regulatory Proceedings and the 2013–2014 Regulatory Proceedings; and (b) the material adversity between the Prospect Entities and the Oldcos ..... 9

        A. The Critical Evidence establishes that AP&S’s representation of the Prospect Entities is substantially related to AP&S’s prior representation of the Oldcos..... 9

        B. The Critical Evidence establishes that the Prospect Entities’ interests are materially adverse to the Oldcos..... 12

    III. Additional reasons why the Decision should be revised..... 13

        A. The Court should revise its findings concerning the roles of AP&S’s attorneys in negotiating the post-2014 organizational structure..... 13

        B. The Court should also revise its finding that AP&S has not been involved in CCCB v. Lee ..... 14

Conclusion ..... 15

Certificate of Service ..... 17

## INTRODUCTION

Thomas S. Hemmendinger (the “Liquidating Receiver”) as Liquidating Receiver of CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital (the “Oldcos”), and Stephen Del Sesto as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan Receiver”) (together being the “Receivers”), hereby submit this memorandum of law in support of their motion for reconsideration of the Court’s Decision of October 19, 2020 (the “Decision”) and Order of October 29, 2020 denying the Receivers’ motion for injunctive relief against Adler Pollock & Sheehan PC (“AP&S”).

The Receivers bring this motion based on evidence that was improperly withheld by the Prospect Entities in violation of this Court’s order. This evidence, which is not part of the public record, also contradicts misinformation that AP&S provided to the Court at oral argument.

## THE CRITICAL EVIDENCE THAT WAS WITHHELD

In its Decision, the Court concluded (1) that AP&S’s representation of the Prospect Entities in the pending Regulatory Proceedings is not substantially related to its prior representation of the Oldcos in the 2013–2014 Regulatory Proceedings; and (2) that AP&S’s present representation is not adverse to the Oldcos. In reaching those findings, the Court reasoned:

As a condition of approval of the 2013-2014 Regulatory Proceedings, the DOH and AG required the Prospect Entities to “over four years[,] put in [\$50] million of long-term capital” following the approval of the proceedings. (Hr’g Tr. 14:18-19.) “In March 2019, CCCB . . . brought a Superior Court derivative action . . . [to, inter alia,] compel the Prospect Entities to fulfill their obligations . . . with respect to funding \$50 million in long-term capital improvements at the hospitals . . . .” (Receivers’ Mem. at 3.) **The Receivers contend that the Prospect Entities, through AP&S, made**

**“misrepresentations to the state regulators” regarding the 2013-2014 Regulatory Proceedings; namely, the Receivers allege that AP&S has taken the position that the Prospect Entities have fulfilled their \$50 million capital contribution.** *See id.* In support of their position, the Receivers rely on the July 21, 2020 HSC presentation that AP&S created (AP&S’s Ex. 5) and the July 21, 2020 HSC meeting transcript (AP&S’s Ex. 6). The Receivers assert that AP&S’s Exhibit 5 and AP&S’s Exhibit 6 are evidence of AP&S taking an affirmative position on the Prospect Entities fulfilling their required capital contribution.

**However, nowhere in AP&S’s Exhibits 5 or 6 did AP&S represent an affirmative position that the capital contributions were made.** Although, in AP&S’s Exhibit 5 and during the HSC proceeding, AP&S listed the capital expenditures that the Prospect Entities had made to date, **AP&S did not make affirmative representations that the Prospect Entities had fulfilled the \$50 million capital contribution**, or that the capital expenditures AP&S outlined went toward the required capital contribution. *See* AP&S’s Ex. 5 at 15; see also AP&S’s Ex. 6. There is no evidence in the record that shows AP&S’s exercise of loyalty to the Prospect Entities might harm the Oldco Entities or that AP&S’s zealous representation will require it to use confidential information that could adversely affect the Oldco Entities. *See* Simpson Performance Products, Inc., 92 P.3d at 288. **Thus, this Court finds that AP&S has not taken a position on the required \$50 million capital contribution that is materially adverse to the Oldco Entities’ position pursuant to Rule 1.9.**

[Emphasis supplied]

Decision (Exhibit 66<sup>1</sup>) at 21-22.

The Receivers have now uncovered critical evidence contradicting those findings, evidence that the Prospect Entities were required to turn over to the Receivers prior to the completion of the briefing on the Motion for Injunctive Relief, but which the Prospect Entities improperly withheld. Neither the Prospect Entities nor AP&S brought this evidence to the Court’s attention before or after rendering its Decision, and indeed, at oral argument AP&S

---

<sup>1</sup> For the clarity of the record and to avoid ambiguity, the Receivers continue the sequential numbering of the exhibits previously filed in connection with the motion for injunctive relief.

affirmatively misinformed the Court concerning those facts.

On April 8, 2020, the Attorney General's Office wrote to AP&S (Patricia Rocha) and posed the following question (S-31) for response by the Prospect Entities:

Please describe in detail any prior instances of PMH converting related party debt of PCC or the hospital subsidiaries into equity, including an explanation of what the debt was for (e.g. forgiveness of management fees, loan forgiveness) and what portion of the particular debt was converted. **Please indicate if the converted debt is considered part of the \$50M long-term capital commitment required under the Prospect CharterCARE Asset Purchase Agreement dated September 24, 2014 [sic, recte 2013], as amended, and explain this determination.** Please describe how the decision is made to convert debt into equity and how to calculate the applicable portion to be converted.

[Emphasis supplied]

Exhibit 67 (April 8, 2020 First Set of Supplemental Questions) at 7-8 (question S-31).

On May 6, 2020, AP&S (on behalf of the Prospect Entities) responded to the Attorney General's office and provided this answer:

Prior to fiscal year 2019, there were no other instances where PMH converted related party debt of PCC or hospital subsidiaries of PCC into equity. **The one time conversion of inter-company debt between PCC and PMH through its wholly owned subsidiary PEHAS in fiscal year 2019 was part of PMH's \$50 million capital commitment to PCC under the Asset Purchase Agreement.** Prior to the conversion of such inter-company debt, PMH was funding investments and capital expenditures of PCC as required under the Asset Purchase Agreement either through cash or by not collecting management fees owed under the Asset Purchase Agreement and its operating agreement. The uncollected management fees were recorded as inter-company debt. **In May 2019, PMH through its subsidiary PEAS converted \$24.7 million of inter- company debt from debt to equity. By converting such inter-company debt to an equity contribution akin to cash, PMH satisfied its obligations under the Asset Purchase Agreement.**

[Emphasis supplied]

Exhibit 68 (May 6, 2020 Response to First Set of Supplemental Questions) (hereinafter the

“Critical Evidence”) at 8. Neither the First Set of Supplemental Questions nor AP&S’s answers thereto are part of the public record in the regulatory proceedings. Both documents were unknown to the Receivers.

Four months later, at oral argument, AP&S told a very different story to the Court. The Court specifically inquired of AP&S as to whether Prospect’s performance of the \$50 million Long Term Capital Commitment was an issue in these proceedings before the regulators, and AP&S incorrectly responded to the Court that it would not be an issue:

THE COURT: Counsel, let me ask a question that I would like you to take me through, which is the \$50 million capital infusion.

MR. TARANTINO: That's correct .

THE COURT: Is one of the factors or issues that the Health Services Council is looking at in whether to approve or not approve this new application **whether or not their prior approvals have been complied with**, and is that adversity if, in fact, Attorney Wistow is correct that there was some affirmative representation that that investment had been made?

MR. TARANTINO: **Your Honor, my understanding is that the answer to that is -- the first part of the question is no.** The condition remains the same. There is still a condition of \$50 million. **They're not determining whether it was or wasn't paid.** Ms. Rocha says right on the record there is a dispute about that. That is going to be decided in a matter before your Honor. All Ms. Rocha did was set forth this is what the condition is. It is going to be determined. And, frankly, I don't believe in your case Mr. Wistow or anyone else puts forth a different percent of ownership toward that 50 –

THE COURT: I'm putting the ownership aside. What I'm talking about is the long-term capital contribution.

MR. TARANTINO: My understanding is that is an issue that there is adversity about in your case.

THE COURT: Correct.

MR. TARANTINO: **The Department of Health is not going to decide that.**

THE COURT: Not whether they' re going to decide that but whether the Department of Health **or in the Hospital Conversion Act portion if it comes up here** and the HCA is that a factor that's looked towards to make that ultimate decision, which you're saying is five layers up? I guess that's my question.

MR. TARANTINO: My understanding, your Honor, there are four criteria. None of which have to deal with that condition. **No one is asking them to revisit that requirement or whether it did or didn't happen.** They're talking about what happens at the top. The \$50 million was paid or it wasn't paid. If it wasn't paid that's a problem for the entity, irrespective of who owns it at the top. That is not going to be determined in this case.

THE COURT: Just so I'm clear, if the entity went in on this new application and said we know we agree to as far as this transaction that we make \$50 million over a certain period of time. That time period has past. We just want to let you know we only made 10 - and I'm making up a number - not 50, that that -wouldn't have any effect one way or another on the decision before the council in terms of whether they'll approve this new transaction.

MR. TARANTINO: My understanding that -would be a separate proceeding of whether there should be a change to any of the conditions, and my understanding, your Honor, is that the hospital would have to petition to change that condition, but it has nothing to do with who owns it at the time.

THE COURT: Okay. Thank you.

Exhibit 70 (Sept. 17, 2020 Hearing Transcript) at 74–77.

#### **PROCEDURAL TRAVEL**

The following procedural travel makes clear that the Prospect Entities and AP&S possessed and should have produced the Critical Evidence to the Receivers in time for the Court to have considered it in connection with rendering its Decision. In any event, AP&S (which did know of the Critical Evidence) should not have presented misinformation in its arguments to the Court.

On April 8, 2020, the Attorney General's office posed its First Set of Supplemental Questions to AP&S (on behalf of the Prospect Entities), including question S-31 quoted *supra*.

On May 6, 2020, AP&S submitted its Response to First Set of Supplemental Questions (on behalf of the Prospect Entities) to the Attorney General's office, including AP&S's response to question S-31 quoted *supra*.

On July 10, 2020, in this action, the Receivers filed their Motion for Injunctive Relief against AP&S.

On July 21, 2020, in the action CharterCARE Community Board et al. v. Lee et al., C.A. No. PC-2019-3654 ("CCCB v. Lee"), the Court entered its Order<sup>2</sup> granting (in relevant part) the Receivers' motion to compel Prospect Chartercare, LLC ("Prospect Chartercare") to produce "Category 2. DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN THE LLC AGREEMENT)."<sup>3</sup> Although unknown to the Receivers and the Court at that time, this category encompassed the supplemental answers identifying the forgiveness of inter-company debt as a long-term capital contribution.

On July 27, 2020, in this action, the Receivers filed their first Supplement to their motion. AP&S on that same date entered its appearance in this action on behalf of the Prospect Entities and filed its Objection to the Motion for Injunctive Relief.

Over the next several weeks, in this action, the Receivers and AP&S filed additional supplements concerning the Motion for Injunctive Relief. The Receivers filed their Second Supplement on July 28, 2020, their Third Supplement on August 11, 2020, and their Fourth Supplement on September 11, 2020. AP&S filed its first Supplement on August 14, 2020.

---

<sup>2</sup> Exhibit 69 (July 21, 2020 Order).

<sup>3</sup> The LLC Agreement is Exhibit A to the Asset Purchase Agreement and is incorporated therein by reference.



The Court heard oral arguments on September 17, 2020 on the Motion for Injunctive Relief. During the Oral Argument, AP&S (through attorney Patricia Rocha) stated:

We [AP&S] spent enumerable time on this matter preparing the application, responding to the deficiency questions, responding to three sets of supplemental questions from the Attorney General, some 140 questions, producing 7,700 pages of documents.

Exhibit 70 (Sept. 17, 2020 Hearing Transcript) at 94. AP&S (through John Tarantino) also made the statements to the Court quoted *supra* at 4–5.

On September 18, 2020, the Prospect Entities purported to produce all documents responsive to the July 21, 2020 Order, including “Category 2. DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN THE LLC AGREEMENT).” The Prospect Entities, however, improperly withheld and did not produce the Critical Evidence. Nevertheless, there was no reason for the Receivers to suspect that it had been withheld.

On September 23, 2020, the Receivers filed their Post-Hearing Memorandum, and AP&S filed its Second Supplemental Memorandum. Because the Critical Evidence had been improperly withheld from the Receivers, they could not address it in connection with that supplemental memorandum, notwithstanding that it was relevant to the question<sup>4</sup> on which the Court had invited such briefing (i.e. the criteria to be applied by the regulators in the pending proceedings, which include the Prospect Entities’ compliance *vel non* with the conditions of approval of prior such proceedings).

---

<sup>4</sup> See Exhibit 70 (Sept. 17, 2020 Hearing Transcript) at 98 (“THE COURT: Counsel, just because, as I mentioned before, just because it came up, I am going to give both sides at this point until next Wednesday to submit, and, please, you’ve killed enough trees at this point, short and concise as possible so the Court can understand each of your positions in terms of the criteria within which the plaintiff or agency is operating. Hopefully, we’ve flushed it out enough. As you all know, that may or may not just go to one factor. There are several factors the Court has to work its way through. The Court is going to reserve.”).

On September 24, 2020, AP&S sent a letter to the Court making arguments about the authorities cited in the Receivers' Post-Hearing Memorandum.

On September 28, 2020, the Prospect Entities re-produced certain documents responsive to the July 21, 2020 Order compelling production. However, the Prospect Entities still did not produce the Critical Evidence. Still deprived of that evidence, on September 28, 2020, the Receivers filed their Reply to AP&S's Epistolary Reply Brief.

On October 19, 2020, the Court issued its written Decision ("Decision") denying the Receivers' Motion for Injunctive Relief.

On October 29, 2020, the Court entered its Order effectuating the Decision.

Notwithstanding the Prospect Entities' improper withholding of the Critical Evidence, the Plan Receiver subsequently obtained redacted copies from the Attorney General's office pursuant to an APRA request.

### ARGUMENT

#### **I. The Rule 54(b) standard for revising the Court's interlocutory Decision**

This Court's interlocutory orders and decisions (including the Decision) are subject to its revision at any time before the entry of final judgment. Rule 54(b) provides:

When more than one (1) claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one (1) or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. **In the absence of such determination and direction, any order or other form of decision, however designated,** which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision **is subject to revision at any time before the entry of judgment** adjudicating all the claims and the rights and liabilities of all the parties.

[Emphasis supplied]

Super. R. Civ. P. 54(b).

Rule 54(b) “confirms the trial court's necessary authority to correct itself.” Wright & Miller, 18B Fed. Prac. & Proc. Juris. § 4478.1 (2d ed.) (discussing the analogous Fed. R. Civ. P. 54(b)). See In re: CharterCARE Health Partners Foundation, KM-2015-0035 (R.I. Super. Sept. 17, 2018) (Stern, J.) (“Because this Court was not requested and made no separate entry of final judgment, the cy pres order remained interlocutory and subject to modification by this Court without reference to Rule 60 governing modification of final judgments) (vacating cy pres order obtained by the Oldcos, where the Oldcos, then-represented by AP&S, had failed to disclose relevant facts and evidence to the Court in the cy pres petition).

**II. The Critical Evidence, which the Prospect Entities improperly withheld from the Receivers and the Court, conclusively demonstrates (a) the substantial relationship between the 2019 Regulatory Proceedings and the 2013–2014 Regulatory Proceedings; and (b) the material adversity between the Prospect Entities and the Oldcos**

**A. The Critical Evidence establishes that AP&S’s representation of the Prospect Entities is substantially related to AP&S’s prior representation of the Oldcos**

The Rules of Professional Conduct prohibit an attorney from undertaking a representation when that attorney formerly represented another client in a “substantially related matter” in which the interests of the present and former client are adverse, unless the former client gives informed consent in writing. Supreme Court Rules of Professional Conduct R. 1.9(a).<sup>5</sup> “Matters

---

<sup>5</sup> Likewise, Supreme Court Rules of Professional Conduct R. 1.10(a) provides: “While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.”

are ‘substantially related’ for purposes of this Rule if they *involve the same* transaction or *legal dispute*.” *Id.* at 1.9 cmt. (emphasis added). Our Supreme Court has explained:

The test for determining whether matters are substantially related has been honed in its practical application to grant disqualification only upon a showing that *the relationship between the issues in the prior and present cases is patently clear* **or** when the issues are identical or essentially the same.

Brito v. Capone, 819 A.2d 663, 664 (R.I. 2003) (emphasis added).

The Critical Evidence establishes that the relationship between the issues in AP&S’s prior and present representations is patently clear. As quoted *supra* at 3–4, AP&S has affirmatively taken the position in the pending proceeding before the Attorney General that Prospect has “satisfied its obligations” under the \$50 million Long-Term Capital Commitment.<sup>6</sup>

The Critical Evidence also sheds new light on and solidifies the evidence the Receivers previously submitted to the Court. It is no mere happenstance that AP&S has advocated that position (concerning compliance with the Long-Term Capital Commitment) on behalf of the Prospect Entities. In the 2019 Proceedings, must demonstrate on behalf of the Prospect Entities that they have affirmatively met the terms and conditions of approval of the 2013–2014 Proceedings:

In reviewing an application for a conversion involving hospitals in which one or more of the transacting parties is a for-profit corporation as the acquiror the department shall consider the following criteria:

\* \* \*

(8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and conditions of approval for any previous conversion pursuant to an application submitted under § 23-17.14-6 [i.e., the 2014 approval conditions imposed on the Prospect Entities].

---

<sup>6</sup> This issue is part of the Regulatory Proceedings. It does not matter who is right (i.e. whether the Receivers are correct or whether AP&S and Prospect are correct).

R.I. Gen. Laws § 23-17.14-8(b)(8).<sup>7</sup> Accordingly, the Prospect Entities (through AP&S) filed their pending HCA application, which affirmatively states (in response to Question #25):

On or about October 18, 2013, an Initial Application for a Hospital Conversion was filed with the Rhode Island Attorney General whereby PMH, PEH, and PEHAS, Delaware for-profit corporations, together with PCC purchased certain assets of CharterCARE Health Partners (“CCHP”), Roger Williams Medical Center and St. Joseph Health Services of Rhode Island, non-profit Rhode Island corporations with their principle offices located at 825 Chalkstone Avenue, Providence, RI 02908 to form a joint venture to own and operate all of the health care entities associated with CCHP. The proposed transaction was subject to review by the Attorney General pursuant to the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1, et seq.; and the Attorney General rendered a decision pursuant to such review on May 16, 2014. **Thereafter, Prospect has performed with regard to the terms and conditions of approval of conversion** and each projection, plan, or description submitted as part of the application **for any conversion submitted pursuant to the Hospital Conversion Act and made a part of the approval for the conversion pursuant to R.I. Gen. Law §§ 23-17.14-7 or 23-17.14-8.**

[Emphasis supplied]

AP&S’s Exhibit 4 at 29. Clearly, the issue of whether the Prospect Entities have satisfied the conditions imposed in the 2013–2014 Proceedings directly and inexorably relates to those

---

<sup>7</sup> R.I. Gen. Laws § 23-17.14-8(b) applies to every “conversion involving hospitals in which one or more of the transacting parties is a for-profit corporation as the acquiror . . . .” AP&S argued to the Court that the criteria in R.I. Gen. Laws § 23-17.14-8 are inapplicable where the acquiree is a for-profit entity. However, the DOH’s regulations require the Department to consider the criteria in R.I. Gen. Laws § 23-17.14-8(b) whenever there is a for-profit acquiror, irrespective of the status of the acquiree:

40-10-23.6. Review of For-profit Conversions

A. Review process is pursuant to R.I. Gen. Laws § 23-17.14-7.

B. In reviewing an application for a conversion involving hospitals in which one (1) or more of the transacting parties is a for-profit corporation as the acquiror, the Department shall consider the criteria stated in R.I. Gen. Laws § 23-17.14-8 and:

1. Issues of market share especially as they affect quality, access, and affordability of services.

[Emphasis supplied]

216 R.I. Code R. 40-10-23.6. The Receivers cited this authority in their September 28, 2020 post-hearing reply memorandum.

proceedings. Those previously imposed conditions include the Prospect Entities' four-year \$50 million Long-Term Capital Commitment. The Receivers have asserted both in 2019 Proceedings and in CCCB v. Lee that the Prospect Entities have failed to satisfy those conditions, but as quoted above, AP&S on behalf of the Prospect Entities has affirmatively represented to the Attorney General and the Department of Health that they have satisfied them.

The relationship between the issues is patently clear.

**B. The Critical Evidence establishes that the Prospect Entities' interests are materially adverse to the Oldcos**

The Rules of Professional Conduct require disqualification of an attorney who formerly represented a client in a substantially related matter and that the attorney is now representing a client "materially adverse" to the former client. Supreme Court Rules of Professional Conduct R. 1.9(a) & 1.10(a). In its Decision, the Court correctly laid out a test that looks to whether the former client will suffer a "legal, financial, or other identifiable detriment" due to the current representation. See Decision at 19-24.

The Oldcos have made that showing.

As quoted *supra*, the Critical Evidence conclusively establishes that AP&S is indeed taking an adverse position on the issue of whether the Prospect Entities have satisfied the Long-Term Capital Commitment.

In addition, in the 2019 Proceedings the Prospect Entities seek approval of a leveraged buyout that (if permitted) will constitute a fraudulent transfer, to the detriment of the Liquidating Receiver and his trust. In this buyout, the undercapitalized (and likely insolvent) Prospect Medical Holdings, Inc., an insolvent debtor of the Liquidating Receiver on a guaranty given in connection with the 2013–2014 Proceedings, would pay approximately \$11 million (plus an

undisclosed sum) so that Samuel Lee and David Topper’s family trust can acquire all the shares of Prospect Medical Holdings, Inc.’s ultimate parent entity—even though Prospect Medical Holdings would receive nothing of value in exchange for that payment. The Liquidating Receiver has filed objections in the 2019 Proceedings, which AP&S (on behalf of the Prospect Entities) is seeking to have the regulators overrule or disregard.

Under the test articulated in the Decision, the interests of the Liquidating Receiver, as successor to the Oldcos, and the Prospect Entities are indeed materially adverse.

### **III. Additional reasons why the Decision should be revised**

#### **A. The Court should revise its findings concerning the roles of AP&S’s attorneys in negotiating the post-2014 organizational structure**

In the Decision, the Court stated:

While it is possible that AP&S may have reviewed the negotiations for “transactional purposes,” the evidence proffered by the Receivers has not convinced this Court that AP&S was involved in negotiating or designing the organizational structure that developed out of the 2013-2014 Regulatory Proceedings.

Decision at 14.

There is such uncontradicted evidence that the Court may have overlooked. In 2012, AP&S attorneys Hans Lundsten and Joseph DiStefano were discussing and researching the structuring of the Oldcos’ prospective entry into a joint venture with a for-profit entity to own and operate the Rhode Island hospitals.<sup>8</sup> In December 2012, AP&S attorney Hans Lundsten was researching how to structure a sale of the hospitals at least with respect to the SJHSRI

---

<sup>8</sup> Exhibit 1 (AP&S billing entries) at 21.

Retirement Plan (a matter of overwhelming significance in the litigations before this Court and the federal court).<sup>9</sup>

In the days immediately before and after the execution of the March 18, 2013 letter of intent between CCCB and the Prospect Entities, Mr. DiStefano again discussed the transaction structure with Mr. Lundsten, including how it related to the SJSHRI Retirement Plan.<sup>10</sup> Shortly after these discussions, Mr. Lundsten specifically advised Mr. DiStefano concerning the structuring of the post-sale hospital entities and how it would affect the Oldcos.<sup>11</sup>

In addition, on July 15, 2013, Mr. DiStefano wrote a letter memorandum to Ken Belcher (CEO of CCCB) providing specific comments on a draft of the Asset Purchase Agreement. Exhibit 47. These comments included advice from AP&S concerning how to structure the post-2014 organizational structure of the hospitals. *Id.*

**B. The Court should also revise its finding that AP&S has not been involved in CCCB v. Lee**

The Decision states:

In fact, the issue of CCCB's ownership interest in PCC is before this Court in another matter, to which AP&S is not a party and in which AP&S does not represent the Prospect Entities. *See generally CharterCARE Community Board v. Samuel Lee et al.*, PC-2019-3654.

Decision at 23.

While it is correct that AP&S has not formally entered its appearance in CCCB v. Lee, AP&S's attorneys have been providing active assistance to the Prospect Entities' other counsel in connection with that matter and have acted adversely to the Oldcos in connection with that

---

<sup>9</sup> Exhibit 1 (AP&S billing entries) at 39.

<sup>10</sup> Exhibit 1 (AP&S billing entries) at 47.

<sup>11</sup> Exhibit 41 (April 26, 2013 Lundsten email to DiStefano).



assistance. At a June 23, 2020 hearing on the Receivers' motion to compel production of documents from the Prospect Entities, the Prospect Entities' counsel stated:

Now, yesterday Mr. Sheehan [(counsel for the Plan Receiver)] pointed to some language in the [PMH] financial statements for the first time. **I got on the phone with Pat Rocha because she is the attorney for Prospect** in front of the regulators right now on this effective change of control proceeding. I spoke with my client **and I learned from Ms. Rocha that, in fact, a 2019 financial had what she referred to as a poor choice of words in it that was, in fact, corrected.** There was language that suggested that the hospitals in Rhode Island had provided security for the \$112 million that was a loan. That secured language was removed. It was a mistake and an updated financial was provided.

[Emphasis supplied]

Exhibit 12 (June 23, 2020 CCCB v. Lee Hearing Transcript) at 29.

### CONCLUSION

For all these reasons, the Court should reconsider its Decision of October 19, 2020 and enter an order enjoining AP&S from representing the Prospect Entities in connection with the pending regulatory proceedings.

Respectfully submitted,

Stephen Del Sesto as Receiver of the St. Joseph  
Health Services of Rhode Island Retirement Plan,  
By his Attorney,

/s/ Max Wistow

Max Wistow, Esq. (#0330)

Stephen P. Sheehan, Esq. (#4030)

Benjamin Ledsham, Esq. (#7956)

WISTOW, SHEEHAN & LOVELEY, PC

61 Weybosset Street

Providence, RI 02903

401-831-2700 (tel.)

[mwistow@wistbar.com](mailto:mwistow@wistbar.com)

[spsheehan@wistbar.com](mailto:spsheehan@wistbar.com)

[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

and

Thomas S. Hemmendinger, as Liquidating Receiver  
of CharterCARE Community Board,  
St. Joseph Health Services of Rhode Island, and  
Roger Williams Hospital

/s/ Thomas S. Hemmendinger

Thomas S. Hemmendinger, Esq. (#3122)

Brennan, Recupero, Cascione,

Scungio & McAllister, LLP

362 Broadway

Providence, RI 02909

Tel. (401) 453-2300

Fax (401) 453-2345

[themmendinger@brcsm.com](mailto:themmendinger@brcsm.com)

Dated: December 22, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 22nd day of December, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Thomas S. Hemmendinger, Esq.  
Sean J. Clough, Esq.  
Lisa M. Kresge, Esq.  
Ronald F. Cascione, Esq.  
Brennan, Recupero, Cascione, Scungio &  
McAllister, LLP  
362 Broadway  
Providence, RI 02909  
[themmendinger@brscm.com](mailto:themmendinger@brscm.com)  
[sclough@brscm.com](mailto:sclough@brscm.com)  
[lkresge@brscm.com](mailto:lkresge@brscm.com)  
[rcascione@brscm.com](mailto:rcascione@brscm.com)

Jessica Rider, Esq.  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
[jrider@riag.ri.gov](mailto:jrider@riag.ri.gov)

John A. Tarantino, Esq.  
Patricia K. Rocha, Esq.  
Joseph Avanzato, Esq.  
Leslie D. Parker, Esq.  
Adler Pollock & Sheehan PC  
One Citizens Plaza, 8<sup>th</sup> Floor  
Providence, RI 02903  
[jtarantino@apslaw.com](mailto:jtarantino@apslaw.com)  
[procha@apslaw.com](mailto:procha@apslaw.com)  
[javanzato@apslaw.com](mailto:javanzato@apslaw.com)  
[lparker@apslaw.com](mailto:lparker@apslaw.com)

Steven J. Boyajian, Esq.  
Robinson & Cole LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903  
[sboyajian@rc.com](mailto:sboyajian@rc.com)

Preston Halperin, Esq.  
Christopher J. Fragomeni, Esq.  
Douglas A. Giron, Esq.  
Shechtman Halperin Savage, LLP  
1080 Main Street  
Pawtucket, RI 02860  
[phalperin@shslawfirm.com](mailto:phalperin@shslawfirm.com)  
[cfragomeni@shslawfirm.com](mailto:cfragomeni@shslawfirm.com)  
[dag@shslawfirm.com](mailto:dag@shslawfirm.com)

Giovanna La Terra Bellina, Esq.  
144 Wayland Square  
Providence, RI 02906  
[jlaterra@orsonandbrusini.com](mailto:jlaterra@orsonandbrusini.com)

Patricia Antonelli, Esq.  
Salter McGowan Sylvia & Leonard, Ir  
56 Exchange Street, Suite 500  
Providence, RI 02903  
[pantonelli@smsllaw.com](mailto:pantonelli@smsllaw.com)

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

/s/ Benjamin Ledsham

# Exhibit 66

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**SUPERIOR COURT**

**[FILED: October 19, 2020]**

**IN RE: CHARTERCARE COMMUNITY** :  
**BOARD, ST. JOSEPH HEALTH SERVICES** : **C.A. No. PC-2019-11756**  
**OF RHODE ISLAND, and ROGER** :  
**WILLIAMS HOSPITAL.** :

**DECISION**

**STERN, J.** Before this Court is the motion of Stephen Del Sesto (the Plan Receiver), as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan (the Plan), and Thomas Hemmendinger (the Liquidating Receiver), as Liquidating Receiver of CharterCARE Community Board (CCCB), St Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH) (together, the Receivers), to enjoin Adler Pollock & Sheehan P.C. (AP&S) from representing the Prospect Entities, as defined *infra*, in matters relating to the Change in Effective Control (CEC) proceedings pending before the Rhode Island Department of Health (DOH) and the Hospital Conversion Act (HCA) proceedings pending before the Rhode Island Attorney General (AG) (the 2019 Regulatory Proceedings), and from sharing knowledge or work product with the Prospect Entities or successor counsel. AP&S and Prospect Medical Holdings Inc. (PMH) (and its affiliated entities) have objected to the motion. Those affiliated entities include Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holding Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect Blackstone Valley Surgicare, LLC; and Prospect CharterCARE Home Health and Hospice, LLC. For the sake of clarity, the Court will refer to these

entities collectively as the “Prospect Entities.” Jurisdiction is pursuant to G.L. 1956 § 8-2-13, as well as Rule 65 of the Superior Court Rules of Civil Procedure.

## I

### Facts and Travel

As the parties are familiar with the details of this case, the Court will only recount those facts relevant to the instant motion. Since at least November of 2011, AP&S rendered legal services for SJHSRI, RWH, and CCCB (collectively, the Oldco Entities). *See generally* Receivers’ Mem. Ex. 1. AP&S represented the Oldco Entities before the DOH and AG “for CEC and HCA approval for the transaction set forth in the September 24, 2013 Asset Purchase Agreement, which transferred ownership of the two licensed not-for-profit hospitals, Our Lady of Fatima Hospital and RWH, as well as other licensed not-for-profit medical facilities to for-profit Prospect CharterCARE, LLC . . . ” (the 2013-2014 Regulatory Proceedings). (Receivers’ Mem. Ex. 9 at 1-2.) AP&S also represented the Oldco Entities in obtaining CEC and HCA regulatory approval for the 2014 asset sale, whereby the Oldco Entities sold operating assets to the for-profit subsidiaries of PMH, and CCCB received a membership interest in Prospect CharterCARE, LLC (PCC) (the 2014 Asset Sale). *See* AP&S’s Mem. at 3. With respect to the regulatory proceedings regarding the 2014 Asset Sale, the Oldco Entities and PMH entered into an agreement which recognized their common legal interest in obtaining regulatory approval in order to finalize the transaction. *See id.* at n.9. The Oldco Entities also retained Drinker Biddle & Reath LLP in connection with the 2014 Asset Sale. (Receivers’ Mem. Ex. 17.)

Currently, AP&S represents the Prospect Entities in connection with the 2019 Regulatory Proceedings. These proceedings seek regulatory approval for a buy-out agreement whereby certain private equity investors and minority shareholders will be bought out, and PMH’s original

founders will obtain a 100 percent ownership interest (the 2019 Regulatory Proceedings). Pursuant to the 2019 Regulatory Proceedings, the organizational structure of the Prospect Entities will be altered at the highest levels. *See* AP&S’s Mem. Ex. 1; AP&S’s Ex. 2.

The Receivers filed the instant motion for injunctive relief on July 10, 2020 seeking to enjoin AP&S from representing the Prospect Entities in the 2019 Regulatory Proceedings. AP&S filed an objection and memoranda in opposition to the Receivers’ motion for injunctive relief. On September 17, 2020, this Court heard oral arguments on the motion.

## II

### Standard of Review

Our Supreme Court has stated that, in considering whether to grant injunctive relief, the trial justice must consider

“whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Vasquez v. Sportsman’s Inn, Inc.*, 57 A.3d 313, 318 (R.I. 2012) (quoting *Iggy’s Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999)).

“The sine qua non of this four-part inquiry [for a preliminary injunction] is likelihood of success on the merits: if the moving party cannot demonstrate that he [or she] is likely to succeed in his [or her] quest, the remaining factors become matters of idle curiosity.” *New Comm Wireless Services, Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002). To show a reasonable likelihood of success on the merits, the moving party is not required “to establish ‘a certainty of success’[;] rather, “[the Court] require[s] only that [it] make out a prima facie case.” *Id.* (quoting *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)).

The decision to extend injunctive relief is within the sound discretion of the trial justice. *See Hagenberg v. Avedisian*, 879 A.2d 436, 441 (R.I. 2005).

### III

#### Analysis

The Receivers seek to enjoin AP&S from representing the Prospect Entities before the DOH and AG based on an alleged violation of Article V, Rules 1.9 and 1.10 of the Supreme Court Rules of Professional Conduct. *See generally* Receivers' Mem. Specifically, the Receivers argue that AP&S's representation of the Prospect Entities involves issues substantially related to AP&S's prior representation of the Oldco Entities, and that the Receivers did not consent to AP&S's representation of the Prospect Entities. Therefore, the Receivers argue that AP&S has violated Rules 1.9 and 1.10.

#### A

##### Timeliness of the Motion

A threshold issue in this matter is whether the Receivers' motion for an injunction was timely. As this Court has previously recognized, in numerous jurisdictions, "failure to make a reasonably prompt motion to disqualify counsel can result in waiver." *Quinn v. Yip*, No. KC-2015-0272, 2018 WL 3613145, at \*3 (R.I. Super. July 20, 2018) (citing *Campbell v. Bank of America, N.A.*, 155 A.D.3d 820, 823 (N.Y. App. Div. 2017); *Zelda Enterprises, LLLP v. Guarino*, 806 S.E.2d 211, 214 (Ga. Ct. App. 2017); *Thomas v. Cook*, 170 So.3d 1254, 1261-62 (Miss. Ct. App. 2015)). "However, a mere delay in bringing a motion for disqualification for a potential breach of the attorney-client privilege with respect to a former client will not bar the motion." *Id.* (citing *Kevlik v. Goldstein*, 724 F.2d 844, 848 (1st Cir. 1984) ("[The court] must note that it is hard to see how delay alone will benefit the plaintiffs and prejudice the defendant. In any event, the need for



upholding high ethical standards in the legal profession far outweighs the problems caused by the delay in filing the disqualification motion.”); R.I. Supreme Court Ethics Advisory Panel Opinion No. 1989-07 (citing with approval *Kevlik*).

Here, AP&S asserts that the Receivers unjustifiably delayed in their filing of this motion. (AP&S’s Mem. at 8.) AP&S argues that, because the Receivers first raised their claim of conflict of interest on April 9, 2020 at the CEC application hearing, then waited three months before filing the current motion, the motion is untimely. *Id.* Additionally, AP&S proffers that the Receivers knew for over a year that AP&S was representing the Prospect Entities in the 2019 Regulatory Review. *Id.*

Notwithstanding AP&S’s argument, and regardless of whether delay alone can constitute a waiver of a party’s disqualification motion, this Court finds that the Receivers did not delay in bringing their motion to disqualify. As AP&S concedes, on April 9, 2020, the Receivers brought their objection to AP&S’s representation of the Prospect Entities in the objection to the CEC application. Then, three months later, and almost two weeks before the public meeting on the CEC application, the Receivers brought the current motion. *Cf. In re Valencia v. Ripley*, 128 A.D.3d 711, 713 (N.Y. App. Div. 2015) (record reflected that defendant was aware of potential conflict for at least eight months before bringing disqualification motion, and court thus determined she waived any objection to plaintiff’s choice of counsel). Further, there is no evidence that the Receivers unduly delayed in filing the motion or were acting for any improper purpose. For those reasons, this Court finds that the Receivers’ motion was timely.

## B

### Likelihood of Success on the Merits

Moving on to the merits of the request for injunctive relief, first, the Receivers must show a likelihood of success on the merits that AP&S is disqualified from further representing the Prospect Entities before the DOH and the AG because such representation violates the Supreme Court Rules of Professional Conduct.

Though the Rhode Island Supreme Court has not expressly adopted a standard of review for a motion to disqualify an attorney from a case, it has expressed that the proponent of a motion to disqualify has a high burden to meet. *In re Yashar*, 713 A.2d 787, 790 (R.I. 1998) (party seeking disqualification of a judge based on alleged prejudice carries a substantial burden of establishing that the actions of the judge were affected by facts and events which were not pertinent nor before the court); *Olivier v. Town of Cumberland*, 540 A.2d 23, 27 (R.I. 1988) (However, [the appearance of impropriety alone] is “simply too slender a reed on which to rest a disqualification order except in the rarest of cases.”) (quoting *Sellers v. Superior Court of State, In and For County of Maricopa*, 742 P.2d 292, 300 (Ariz. Ct. App. 1987)).

Furthermore, this Court and the United States District Court for the District of Rhode Island have addressed, on numerous occasions, the standard of review for a motion to disqualify counsel. “A party seeking disqualification of an opposing party’s counsel bears a ‘heavy burden of proving facts required for disqualification.’” *Haffenreffer v. Coleman*, 2007 WL 2972575, at \*2 (D.R.I. 2007) (quoting *Evans v. Artek Systems Corp.*, 715 F.2d 788, 794 (2d Cir. 1983)); see *Jacobs v. Eastern Wire Products Co.*, No. Civ.A. PB-03-1402, 2003 WL 21297120, at \*2 (R.I. Super. May 7, 2003) (“Because motions to disqualify are viewed with disfavor a party seeking to disqualify carries a heavy burden and must satisfy a high standard of proof.”).

Additionally, pursuant to Rule 1.9(a) of the Supreme Court Rules of Professional Conduct,

“[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person *in the same or a substantially related matter* in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” (Emphasis added.)

Courts will disqualify a lawyer pursuant to Rule 1.9(a) “only upon a showing that the relationship between the issues in the prior and present cases is ‘patently clear’ or when the issues are ‘identical’ or ‘essentially the same.’” *Brito v. Capone*, 819 A.2d 663, 665 (R.I. 2003) (quoting *American Heritage Agency, Inc. v. Gelinis*, 774 A.2d 220, 230 (Conn. App. Ct. 2001)). “In order to determine whether a situation requires attorney disqualification under Rule 1.9, a court needs to determine ‘(i) whether there [was] an attorney-client relationship and (ii) if so, whether there is a substantial relationship between the former representation and present relationship.’” *Ageloff v. Noranda, Inc.*, 936 F. Supp. 72, 75 (D.R.I. 1996) (citing *Polyagro Plastics, Inc. v. Cincinnati Milacron, Inc.*, 903 F. Supp. 253, 256 (D.P.R. 1995)).

## 1

### **Attorney-Client Relationship**

The first issue the Court must address is whether the Receivers are AP&S’s former clients for purposes of Rule 1.9. AP&S argues that it never represented the Plan and, therefore, that the Plan Receiver is not a former client and has no standing to challenge AP&S’s representation of the Prospect Entities. Our “Supreme Court has often stated that an attorney-client relationship is contractual in nature, and thus is the product of an agreement of the parties and may be implied from their conduct.” *Rhode Island Depositors Economic Protection Corp. v. Hayes*, 64 F.3d 22, 27 (1st Cir. 1995).

Here, it is undisputed that AP&S represented the Oldco Entities in the 2013-2014 Regulatory Proceedings and the 2014 Asset Sale.<sup>1</sup> *See* AP&S's Mem. at 3; *see also* Receivers' Mem. Ex. 9 at 1-2. However, AP&S contends that it never represented the Plan, and, as such, it does not have an attorney-client relationship with the Plan Receiver for the purposes of Rule 1.9. *See id.* at 5. Further, neither the Plan Receiver nor the Liquidating Receiver claim that AP&S represented the Plan at any time; nor has either produced any evidence purporting the same. The Plan Receiver has asserted, as approved by this Court and the United States District Court for the District of Rhode Island, that he has standing because the Plan received CCCB's 15 percent in PCC during the settlement in the District Court case. *See* Hr'g Tr. 5:10-23, Sept. 17, 2020 (Hr'g Tr.). Because it is undisputed that the Liquidating Receiver has standing to bring the instant motion, the Court need not address the Plan Receiver's standing any further because the outcome of that analysis is of no moment in this case. Thus, the Court finds that the Liquidating Receiver and Plan Receiver are AP&S's former clients for the purposes of Rule 1.9.

2

**Substantially Related**

The Receivers allege that the scope of AP&S's representation of the Prospect Entities involves issues substantially related to AP&S's former representation of the Oldco Entities, and that the Prospect Entities' positions in the 2019 Regulatory Proceedings are materially adverse to the Oldco Entities' interests. The Receivers contend that AP&S's representation of the Prospect Entities in the 2019 Regulatory Proceedings arises out of and concerns the same ownership interests as the 2013-2014 Regulatory Proceedings. Accordingly, the Receivers maintain that

---

<sup>1</sup> AP&S represented the Oldco Entities alongside Drinker Biddle & Reath LLP in connection with the 2014 Asset Sale.

AP&S has “switched sides,” and now seeks—on behalf of the Prospect Entities—to modify and change the structure it had gained approval for—on behalf of the Oldco Entities—in the 2013-2014 Regulatory Proceedings. Specifically, the Receivers make two arguments: (1) that AP&S seeks to change the organizational structure it negotiated and gained approval for in the 2013-2014 Regulatory Proceedings; and (2) that AP&S’s 2019 representation concerns ownership interest that the Oldco Entities acquired in connection with the 2013-2014 Regulatory Proceedings.

AP&S objects, arguing that AP&S’s 2019 representation of the Prospect Entities is not the same or substantially similar to its 2013 representation of the Oldco Entities. Rather, AP&S maintains, while both its 2013 representation of the Oldco Entities and its 2019 representation of the Prospect Entities were with respect to regulatory matters concerning changes in ownership, the subject matter of the proceedings are different. Specifically, AP&S argues that the 2013-2014 Regulatory Proceedings involved representation before the DOH and AG for CEC and HCA approval for the transaction that transferred ownership of the two licensed not-for-profit hospitals, SJHSRI and RWH, to for-profit PCC, while the 2019 Regulatory Proceedings involved a buy-out of private equity investors and minority shareholders at the top of the corporate chain, five entities removed from the 2013-2014 Regulatory Proceedings, with PMH’s original co-founders. AP&S further asserts that it did not represent the Oldco Entities as “transactional counsel”; rather, AP&S asserts that Drinker Biddle & Reath LLP represented the Oldco Entities in the 2014 Asset Sale, that AP&S was counsel only for the CEC and HCA regulatory reviews, and, that in fact, AP&S did not represent the Oldco Entities in negotiations.

**a**

**Patently Clear Relationship**

“[T]he test for determining whether matters are substantially related has been ‘honed in its practical application to grant disqualification only upon a showing that the relationship between the issues in the prior and present cases is patently clear or when the issues are identical or essentially the same.’” *Brito*, 819 A.2d at 665 (quoting *American Heritage Agency, Inc.*, 774 A.2d at 230 (internal quotation marks omitted)). For purposes of Rule 1.9(a), “[t]he scope of a ‘matter’ . . . depends on the facts of a particular situation or transaction,” and “[t]he underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.” Rule 1.9(a) of Art. V of the Supreme Court Rules, cmt. 2. Further, the comments to Rule 1.9 state that matters are “substantially related” if

- “(1) they involve the same transaction or legal dispute; or
- “(2) there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” Rule 1.9 of Art. V of the Supreme Court Rules, cmt. 3.

Our Supreme Court addressed the “substantially related” language of Rule 1.9(a) in its *Brito* decision. *See generally Brito*, 819 A.2d at 665. In *Brito*, the defendants appealed, *inter alia*, from the trial judge’s denial of the defendants’ motion to dismiss the plaintiff’s attorney. *Id.* at 665. The defendants sought the disqualification of the plaintiff’s attorney because, prior to the action that was then presently before the Superior Court, the “plaintiff’s counsel represented both plaintiff and [a named defendant] in the formation of a limited liability corporation.” *Id.* However, the Supreme Court held that the trial judge did not err in denying the motion because there was “no evidence in the record that the attorney’s former representation of [the named defendant] and

current representation of plaintiff were substantially related.” *Id.* The Supreme Court reasoned that the test for determining whether matters are substantially related has been “honed in its practical application to grant disqualification only upon a showing that the relationship between the issues in the prior and present cases is ‘*patently clear*’ or when the issues are ‘identical’ or ‘essentially the same.’” *Id.* (emphasis added) (citations omitted).

Here, this Court must examine the relationship between the issues in AP&S’s 2013 representation of the Oldco Entities and its 2019 representation of the Prospect Entities. Thus, it is not patently clear that AP&S’s 2013 representation of the Oldco Entities and the 2019 representation of the Prospect Entities are substantially related. Following, the Court will address the Receivers’ material arguments *in seriatim*.

**i**

**Changes to the Organizational Structure**

The Receivers assert that AP&S’s 2013 representation of the Oldco Entities is substantially similar to its 2019 representation of the Prospect Entities because AP&S sought to change the same organizational structure that AP&S negotiated and gained approval for in 2013. *See* Hr’g Tr. 47:2-6, 14-16. During the September 17, 2020 hearing, the Plan Receiver presented billing records and emails outlining AP&S’s involvement in the 2014 Asset Sale negotiations. *See generally* Hr’g Tr. 44-52. The Plan Receiver argued that the emails and billing records showed AP&S’s involvement in the negotiations and “transactional” deal because AP&S attorneys billed for (1) meeting with the then-president of CharterCARE, (Hr’g Tr. 44:16-25); (2) reviewing the analysis of the Plan and receivership, (Hr’g Tr. 45:13-22); and (3) reviewing issues on the proposed 2014 Asset Sale (Hr’g Tr. 47:6-12). Additionally, to demonstrate AP&S’S involvement in the 2014 Asset Sale negotiations, the Plan Receiver relied on AP&S attorneys’ statements in emails and letters

including (1) AP&S's confirmation that it was representing Prospect Medical Holdings "in connection with obtaining a tax stabilization/exemption ordinance from the City of Providence," (Hr'g Tr. 48:8-16); (2) in an email between two AP&S attorneys, one states "we should confirm our representation of [CharterCARE], [RWH], [SJHSRI] in the regulatory review, and if there is a dispute between the parties regarding the property tax issue, we will not represent either one" (Hr'g Tr. 49:1-8); (3) comments, in a letter from one AP&S attorney to another AP&S attorney, on the draft asset purchase agreement, which included suggested changes to the agreement, (Hr'g Tr. 49:9-17). AP&S asserts that during the 2014 Asset Sale, it served only as regulatory counsel. (AP&S's Mem. at 8-9.) The Receivers' argument relies heavily on this Court's prior decision in *Quinn*, cited *supra*, 2018 WL 3613145, at \*1.

In *Quinn*, this Court disqualified a law firm from representing a plaintiff in the case under Rule 1.9(a). *See id.* There, the law firm had previously represented the movants in the structuring and formation of the involved corporate entities (the Involved Corporations). *Id.* at \*4.

"Said representation was for a variety of business matters, including the following: (1) the structuring of [one of the Involved Corporations], including determining how particular corporate structures would serve or harm the particular interests of the individual clients; (2) the formation of [one of the Involved Corporations], including the drafting of articles of incorporation, bylaws, and partnership agreements, and the allocation of ownership interests and corporate responsibilities among particular individuals; (3) [one of the Involved Corporation's] financing and acquisition of its real estate; and (4) researching issues of Rhode Island law, including equitable interests in real property. At least four attorneys involved in the prior representation still work[ed] at [the law firm at that time], and, as recently as 2014—only one year before [the] [p]laintiff filed the [] suit—[the law firm] was retrieving and sending copies of its [related] files to [an Involved Corporation].

"[I]n September 2017, [the] [p]laintiff[,] [represented by the law firm,] amended his Verified Complaint and claimed an ownership interest in the [Involved Corporations] and their real estate . . . [The law firm] not only incorporated the [Involved Corporations] and



documented the allocation of ownership interest therein, but also represented them in acquiring the very same real estate in which [the] [p]laintiff [was then] seeking an ownership interest.” *Id.* at \*\*4-5 (internal citations omitted).

This Court disqualified the law firm from representing the plaintiff, stating that “a prior representation regarding a corporation’s structure and formation is substantially related to a current representation attacking that same corporate form and structure.” *Id.* at \*5; *see Avigdor v. Rosenstock*, 16 N.Y.S.3d 791 (Table), at \*\* 12-13 (N.Y. Suppl. 2015) (holding that in lawsuit where plaintiff sought a twenty percent stake in defendant corporation defendant’s allegation that subject real estate had been purchased with embezzled funds was substantially related to defendant’s attorney’s prior representation of plaintiff with the attempted sale of the same real estate); *see also Burnett v. Olson*, No. CIV.A 04-2200, 2005 WL 711602, at \*\*5-6 (E.D. La. Mar. 18, 2005) (holding that counsel for plaintiff—an investor of defendant cruise ship corporation—was properly disqualified in lawsuit seeking to pierce the corporate veil where attorney previously represented one of the shareholders in creating and structuring a different cruise ship corporation during the same time period). Following that logic, this Court in *Quinn* held that the law firm’s representation of the defendants disqualified it from representing the plaintiff because the law firm represented the movants in structuring and forming the Involved Corporations, and then the law firm “represented the [p]laintiff—a party materially adverse to the Movants—who question[ed] the very structure and formation of the [Involved Corporations] the law firm created approximately thirteen years” prior to their representation of the plaintiff. *Quinn*, 2018 WL 3613145, at \*6.

This Court finds that *Quinn* is inapplicable to the case at hand. Here, AP&S does not deny that it represented the Oldco Entities in the 2013-2014 Regulatory Proceedings and subsequent matters; however, AP&S has argued that, while both representations deal with regulatory proceedings, the facts, issues, and type of proceedings are unrelated. This Court agrees. In 2013,

AP&S represented the Oldco Entities in an asset purchase agreement, the 2013-2014 Regulatory Proceedings, which transferred the ownership of the SJHSRI and RWH to PCC, five entities removed from the entities involved in the 2019 Regulatory Review. *See* AP&S's Mem. Ex. 1 and Ex. 2. AP&S asserts that, during that time, it did not participate in any negotiations regarding the 2014 Asset Sale. (AP&S's Mem. at 8-9.) However, the Receivers assert that AP&S was in fact involved in the negotiations and took the lead, despite retained Drinker Biddle & Reath LLP's involvement. *See* Hr'g Tr. at 44-52. Currently, AP&S is representing the Prospect Entities in the 2019 Regulatory Proceedings, which involves a buy-out of private equity investors and minority shareholders at the top of the corporate chain with PMH's original co-founders increasing their ownership interests from 40 percent to 100 percent in the ultimate parent. *Id.* at 6. *Cf. Ogden Energy Resource Corp. v. State of Rhode Island*, Civ. A. No. 92-0600T, 1993 WL 406375, at \*3 (D.R.I. June 23, 1993) (disqualifying a firm from representing a client who sought to build a facility where the firm had formerly represented the town in opposing the facility because "the factual base is the same, the parties are the same, and the underlying goals of each party are the same").

Additionally, the Receivers have failed to show that AP&S's involvement rise to the same level as those of the law firm in *Quinn*. Despite the Receivers' presentation of AP&S's billing records and emails, the Receivers have not met the "heavy burden" that they must meet in a Rule 1.9 disqualification action. While it is possible that AP&S may have reviewed the negotiations for "transactional purposes," the evidence proffered by the Receivers has not convinced this Court that AP&S was involved in negotiating or designing the organizational structure that developed out of the 2013-2014 Regulatory Proceedings.

Thus, the relationship between the issues in this case is not patently clear, as it was in *Quinn*, because AP&S is not attacking the work the law firm performed in the 2013-2014 Regulatory Proceedings. In fact, AP&S's representation of the Prospect Entities in the 2019 Regulatory Proceedings is wholly unrelated to the 2013-2014 Regulatory Proceedings. Therefore, this Court finds that AP&S does not seek to change the organizational structure and it is not "patently clear" that the issues are "identical" or "essentially the same." As such, this Court finds that the cases are not substantially related.

ii

**The Oldco Entities' Property Interest**

The Receivers argue that AP&S's 2019 representation of the Prospect Entities is substantially related to AP&S's representation of the Oldco Entities in the 2013-2014 Regulatory Proceedings because the Receivers "vehemently dispute [CCCB's] '15% owner[ship]' figure." (Receivers' Mem. at 16.) As a result of the 2013-2014 Regulatory Proceedings, CCCB obtained a 15 percent ownership interest in PCC. (Hr'g Tr. 10:7-15.) Now, the Liquidating Receiver holds CCCB's interest in trust for the Plan as part of the settlement agreement between the Plan Receiver and the Oldco Entities in the federal court case. *See* Receivers' Mem. at 2. In addition to the 15 percent ownership interest in PCC, CCCB had the right to appoint 50 percent of the Prospect CharterCARE Board. *See id.* The Receivers argue that the 15 percent interest has now increased to almost 27 percent because the Prospect Entities have failed to fulfill the requirements of the 2013-2014 Regulatory Proceedings. *Id.* at 13. The Receivers also assert that AP&S now seeks to

affect the Plan's ownership interest in PCC through the 2019 Regulatory Proceedings and this makes the two representations substantially related. *See id.* at 14-16.

A Supreme Court Ethics Advisory Panel addressed the issue of whether matters are substantially related under Rule 1.9 when the latter matter could adversely affect a property interest in a former client. *See, e.g.*, Supreme Court Ethics Advisory Panel Opinion No. 2012-01 (Jan. 12, 2012) (stating that matters are not the same or substantially related under Rule 1.9 simply because the latter matter could adversely affect a property interest in a former client). There, “[t]he inquiring attorney ask[ed] whether there [was] a conflict of interest in the representation of the son in a bankruptcy matter in which a property interest of the [m]other, a former client, could be affected.” *Id.* at 2. The Opinion provided that “[i]t [was] not a conflict of interest under Rule 1.9 for the inquiring attorney to represent the son in a bankruptcy matter in which the property of the [m]other, a former client, may be affected[.]” and that the matters were not the same or substantially related. *Id.* at 2, 3.

While that advisory panel opinion focused on a bankruptcy matter, this Court finds the Opinion instructive on the issue of the Receivers' claimed affected property interest. The Opinion demonstrated that, even if the type of the current and former matters is the same (*e.g.*, both matters were bankruptcy cases), a conflict does not exist unless the subject of the two matters is the same. *See* Supreme Court Ethics Advisory Panel Opinion No. 2012-01. Therefore, this Court cannot deem two matters substantially related simply because the matters are the same *type* of proceedings; the subject matter must be the same. *See id.* As such, this Court finds that, even if CCCB's claimed interest may be affected by the 2019 Regulatory Proceedings, which the Receivers have not shown is the case through competent evidence, that is not enough to show that the 2013-2014 Regulatory Proceedings and the 2019 Regulatory Proceedings are substantially

related because, even though the proceedings were both regulatory proceedings, the subject matter of each regulatory proceedings is not the same. *See generally* Receivers' Ex. 21; Receivers' Ex. 22; Receivers' Ex. 23; Receivers' Ex. 24. Therefore, the Receivers have not met their burden of proving that it is "patently clear" that the 2013-2014 Regulatory Proceedings and the 2019 Regulatory Proceedings are substantially related or the same matters.

**b**

**Substantial Risk that AP&S Will Use Previously Obtained Confidential Information**

Many jurisdictions find that if the prior matter is substantially related to the present matter, there is an irrebuttable presumption that client confidences were obtained in the prior matter. *See, e.g., In re Marriage of Newton*, 955 N.E.2d 572, 583 (Ill. App. Ct. 2011); *Attorney Grievance Commission of Maryland v. Siskind*, 930 A.2d 328, 337 (Md. 2007); *Sullivan County Regional Refuse Disposal District v. Town of Acworth*, 686 A.2d 755, 757-58 (N.H. 1996); *Chrispens v. Coastal Refining and Marketing, Inc.*, 897 P.2d 104, 114 (Kan. 1995). For example, Rule 1.9 of the Oklahoma Rules of Professional Conduct<sup>2</sup> seemingly includes an irrebuttable presumption when it has been proven that an attorney-client relationship exists and that the present litigation involves a matter that is substantially related to a prior matter. *See United States v. Stiger*, 413 F.3d 1185, 1196 (10th Cir. 2005). This irrebuttable presumption recognized by the Tenth Circuit was found to be consistent with a comment to Rule 1.9 of the Oklahoma Rules of Professional Conduct, which states:

“A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial

---

<sup>2</sup> Oklahoma has adopted the same rule that Rhode Island follows regarding conflicts with former clients. *See Okla. R. Prof. C. 1.9(a)* (“A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.”)

risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.” *Accounting Principals, Inc. v. Manpower, Inc.*, 599 F. Supp. 2d 1287, 1292 (N.D. Okla. 2008) (quoting Okla. R. Prof. C. 1.9(a), cmt.).

Importantly, Rule 1.9 of the Rhode Island Supreme Court Rules of Professional Conduct includes the same comment. *See* Rule 1.9 of Art. V. of the Supreme Court Rules, cmt. 3. Therefore, consistent with the reasoning of many jurisdictions in this country, this Court recognizes that Rhode Island’s Rule 1.9 carries with it an irrebuttable presumption that client confidences were obtained in a prior matter *if that prior matter and the current matter are the same or substantially related*. (Emphasis added.) *See Hybrid Kinetic Automotive Holdings, Inc. v. Hybrid Kinetic Automotive Corp.*, 643 F. Supp. 2d 819, 824-25 (N.D. Miss. 2009); *Exterior Systems, Inc. v. Noble Composites, Inc.*, 175 F. Supp. 2d 1112, 1116 (N.D. Ind. 2001); *Greig v. Macy’s Northeast Inc.*, 1 F. Supp. 2d 397, 402 (D.N.J. 1998); *Prisco v. Westgate Entertainment, Inc.*, 799 F. Supp. 266, 271 (D. Conn. 1992); *Green v. Montgomery County, Alabama*, 784 F. Supp. 841, 843-44 (M.D. Ala. 1992).

However, this Court has found that these present matters are not substantially related to one another. Thus, the Receivers must show that AP&S has obtained client confidences and there is a “substantial risk that confidential factual information . . . would materially advance the client’s position in the subsequent matter.” Rule 1.9(a) of Art. V. of the Supreme Court Rules, cmt. 3. The Receivers have not alleged any facts that lead the Court to believe that there is a substantial risk that AP&S obtained any information in the 2013-2014 Regulatory Proceedings that will materially advance the 2019 Regulatory Proceedings. While AP&S may be involved in ex parte meetings with the DOH and the AG, the Court does not believe that the Receivers have shown that AP&S

is in possession of confidential information that will advance the Prospect Entities' position in the 2019 Regulatory Proceedings. For those reasons, this Court finds that there is not a substantial risk that the Oldco Entities' confidential, factual information will materially advance the Prospect Entities' position in the 2019 Regulatory Proceedings. Therefore, this Court again finds that the matters are not substantially related under Rule 1.9.

3

**Materially Adverse**

The Receivers allege that AP&S has taken a position on behalf of the Prospect Entities in the regulatory proceedings that is materially adverse to the Oldco Entities' interests. The Receivers also argue that, through AP&S's current representation of the Prospect Entities, AP&S is advancing positions contrary to the positions taken by the Oldco Entities, including claiming that (1) the Prospect Entities complied with the terms and conditions of the 2014 HCA conversion approval, and (2) CCCB is a 15 percent owner of PCC.

Again, AP&S objects to the Receivers' allegations, arguing that the Prospect Entities' interests in the 2019 Regulatory Proceedings are not materially adverse to the Oldco Entities. AP&S argues that the 2019 Regulatory Action and the past representation of the Oldco Entities are not materially adverse because the current transaction at the top of the corporate chain will have no effect on the Oldco Entities as (1) the Oldco Entities will not be a party to any agreement, (2) they will not undertake any additional rights or obligations, and (3) the ownership structure of PCC will not be impacted.

Rhode Island state and federal courts have not yet defined when representation of a new client becomes "materially adverse" as to a previous client. *See generally Ogden Energy Resource Corp.*, 1993 WL 406375, at \*\*1, 2 (holding that firm was disqualified because "firm essentially

switched sides” where firm resigned from its representation of a town opposing the siting and construction of an incinerator and began work in furtherance of the goal of building the incinerator in the same town and case, but not defining what constitutes “materially adverse”). Nevertheless, comment 2 of Rule 1.9 states that “[t]he underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.” *See State ex rel. Verizon West Virginia, Inc. v. Matish*, 740 S.E.2d 84, 94 (W.Va. 2013) (stating the interest of the attorney’s former and current clients must be “so diametrically opposed as to require the attorney to adopt adversarial or opposite positions in the two representations”); *Simpson Performance Products, Inc. v. Robert W. Horn, P.C.*, 92 P.3d 283, 288 (Wyo. 2004) (a material adversity analysis is case-specific and focuses on whether the “current representation may cause legal, financial, or other identifiable detriment to the former client”). The court must also consider “whether the attorney’s exercise of individual loyalty to one client might harm the other client or whether his zealous representation will induce him to use confidential information that could adversely affect the former client.” *Id.* (citation omitted).

Here, this Court finds that the Oldco Entities’ position and Prospect Entities’ position are not so diametrically opposed that AP&S must adopt adversarial or opposite positions in the 2019 Regulatory Proceedings. *See* Rule 1.9 of Art. V of the Supreme Court Rules, cmt. 2; *Matish*, 740 S.E.2d at 94. Thus, AP&S’s representation of the Prospect Entities and Oldco Entities are not materially adverse. The Court will address the Receivers’ material arguments *in seriatim*.



a

### **The \$50 Million Capital Contribution**

As a condition of approval of the 2013-2014 Regulatory Proceedings, the DOH and AG required the Prospect Entities to “over four years[,] put in [\$50] million of long-term capital” following the approval of the proceedings. (Hr’g Tr. 14:18-19.) “In March 2019, CCCB . . . brought a Superior Court derivative action . . . [to, *inter alia*,] compel the Prospect Entities to fulfill their obligations . . . with respect to funding \$50 million in long-term capital improvements at the hospitals . . . .” (Receivers’ Mem. at 3.) The Receivers contend that the Prospect Entities, through AP&S, made “misrepresentations to the state regulators” regarding the 2013-2014 Regulatory Proceedings; namely, the Receivers allege that AP&S has taken the position that the Prospect Entities have fulfilled their \$50 million capital contribution. *See id.* In support of their position, the Receivers rely on the July 21, 2020 HSC presentation that AP&S created (AP&S’s Ex. 5) and the July 21, 2020 HSC meeting transcript (AP&S’s Ex. 6). The Receivers assert that AP&S’s Exhibit 5 and AP&S’s Exhibit 6 are evidence of AP&S taking an affirmative position on the Prospect Entities fulfilling their required capital contribution.

However, nowhere in AP&S’s Exhibits 5 or 6 did AP&S represent an affirmative position that the capital contributions were made. Although, in AP&S’s Exhibit 5 and during the HSC proceeding, AP&S listed the capital expenditures that the Prospect Entities had made to date,<sup>3</sup>

---

<sup>3</sup> The following were the capital contributions that AP&S outlined:

- “New ED at RWMC with private bays (only ED in the state with private bay treating areas and state of the art equipment) and emergency medicine technology; (\$15.1 million)
- “Dedicated Behavioral Health ED under construction (\$5 million)
- “ED renovations and expansion at OLF (\$4.3 million)
- “Pharmacy equipment and upgrades at RWMC and OLF (\$3.3 million)

AP&S did not make affirmative representations that the Prospect Entities had fulfilled the \$50 million capital contribution, or that the capital expenditures AP&S outlined went toward the required capital contribution. *See* AP&S’s Ex. 5 at 15; *see also* AP&S’s Ex. 6. There is no evidence in the record that shows AP&S’s exercise of loyalty to the Prospect Entities might harm the Oldco Entities or that AP&S’s zealous representation will require it to use confidential information that could adversely affect the Oldco Entities. *See Simpson Performance Products, Inc.*, 92 P.3d at 288. Thus, this Court finds that AP&S has not taken a position on the required \$50 million capital contribution that is materially adverse to the Oldco Entities’ position pursuant to Rule 1.9.

**b**

**CCCB’s Ownership Rights**

The Receivers also assert that AP&S has “switched sides” as to CCCB’s ownership interest in the Prospect Entities. *See* Receivers’ Mem. at 22. The Receivers argue that AP&S has switched sides by affirmatively stating in the CECA and HCA applications that “PCC is owned 85% by

---

“Main entrance redesigns and other facility renovations at RWMC (\$6.3 million)

“Main entrance redesigns and other facility renovations at OLF (\$2.3 million)

“Other infrastructure improvements including expansion of Cancer Center (\$600,000)

“New medical, surgical, and imaging equipment and other upgrades at both hospitals; (\$39.4 million)

“Initial start-up investment to create an integrated health delivery system to improve health outcomes and reduce cost of care (\$1.4 million)

“Working capital investment (\$6 million)

“Capital to support physician recruitment, physician retention, and other physician engagement strategies (\$33.1 million)

“Many of [*sic*] renovations improved design and access including handicap access to the facilities, were green energy projects and allowed for growth and expansion of service lines such as behavioral and opioid addiction service lines to meet the community needs in Providence and North Providence.” AP&S’s Ex. 5 at 15.

Prospect East Holdings, Inc., and [] 15% by [CCCB].” *Id.*; see Receivers’ Ex. 24 at 9. Again, the Receivers “vehemently dispute [CCCB’s] ‘15% owner[ship]’ figure.” (Receivers’ Mem. at 16.) Thus, the Receivers argue that, because AP&S has represented that CCCB’s ownership interest is only 15 percent, AP&S has taken a position that is materially adverse to CCCB and effectively “switched sides.” See Receivers’ Mem. at 22.

Here, this Court finds that AP&S has not effectively “switched sides” on CCCB’s ownership interest in PCC. As a requirement of the 2013-2014 Regulatory Proceedings, CCCB obtained a 15 percent interest in PCC. (Hr’g Tr. 10:7-15.) Now, AP&S claims that CCCB has a 15 percent interest in PCC. See Receivers’ Ex. 24 at 9. At no point in AP&S’s representation of the Prospect Entities has AP&S claimed that CCCB’s ownership interest in PCC is any more or less than the 15 percent CCCB obtained in the 2013-2014 Regulatory Proceedings. *Cf. United States v. Caramadre*, 892 F. Supp. 2d 397, 404 (D.R.I. 2012) (recognizing a conflict under Rule 1.9(a) where counsel would need to attack former client’s credibility as part of defense strategy).

Additionally, and notwithstanding the Receivers’ argument that CCCB claims an interest greater than 15 percent in PCC, no matter the outcome of the Prospect Entities’ CEC and HCA applications, CCCB’s ownership interest will remain the same in PCC. In fact, the issue of CCCB’s ownership interest in PCC is before this Court in another matter, to which AP&S is not a party and in which AP&S does not represent the Prospect Entities. See generally *CharterCARE Community Board v. Samuel Lee et al.*, PC-2019-3654.<sup>4</sup> Again, this Court finds that AP&S need not take and

---

<sup>4</sup> “In March 2019, CCCB (acting both for itself and as trustee of the Hospital Interests) brought a Superior Court derivative action captioned *CharterCARE Community Board v. Samuel Lee, et al.*, PC-2019-3654, to vindicate CCCB’S interest in [PCC] and compel the Prospect Entities to fulfill their obligations (*inter alia*) with respect to funding \$50 million in long-term capital improvements at the hospitals (among other relief). CCCB contends that the Prospect Entities made misrepresentations to the state regulators and certain municipalities in connection with the [2013–]2014 Asset Sale and have failed to fulfill their obligations pursuant to the terms and regulatory

has not taken a position that is materially adverse to the position of the Oldco Entities on CCCB's ownership interest in PCC. *Cf. Caramadre*, 892 F. Supp. 2d at 404. Thus, AP&S has not effectively "switched sides" or taken a position that is "materially adverse" to CCCB on behalf of the Prospect Entities. *Cf. Ogden Energy Resource Corp*, 1993 WL 406375, at \*\*1, 2.

Thus, the Court finds as follows: (1) the Plan Receiver is not AP&S's prior client for the purposes of Rule 1.9; (2) the Liquidating Receiver is AP&S's prior client for the purposes of Rule 1.9; (3) AP&S's representation of the Prospect Entities does not involve issues substantially related to AP&S's former representation of the Oldco Entities; (4) there is no evidence on the record that there is a substantial risk that AP&S obtained any confidential information in the 2013-2014 Regulatory Proceedings that will materially advance the Prospect Entities' position in the 2019 Regulatory Proceedings; and (5) during AP&S's representation of the Prospect Entities, AP&S has not taken positions materially adverse to those it took during its representation of the Oldco Entities. Accordingly, the Receivers have failed to establish a reasonable likelihood of success on the merits.

## C

### **Additional Requirements for Issuance of an Injunction**

Again, our Supreme Court has stated that, in considering whether to grant injunctive relief, the trial justice must consider

“whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Vasquez*, 57 A.3d at 318 (quoting *Iggy's Doughboys, Inc.*, 729 A.2d at 705).

---

conditions of that sale, for which [AP&S] obtained regulatory approval on behalf of the Oldco[] [Entities].” (Receivers' Mot. at 3.)

Further, as noted above, “the sine qua non of this four-part inquiry [for a preliminary injunction] is likelihood of success on the merits: if the moving party cannot demonstrate that he [or she] is likely to succeed in his [or her] quest, the remaining factors become matters of idle curiosity.” *New Comm Wireless Services, Inc.*, 287 F.3d at 9.

This Court has already found that the Receivers have not met their burden of showing a likelihood of success on the merits; accordingly, to address the three additional prongs for an injunction would be unnecessary and a mere exploration of curiosity. As such, this Court will not address the possibility of irreparable harm, the balance of the equities, or the preservation of the status quo.

#### IV

#### Conclusion

For the foregoing reasons, the Receivers cannot meet the prongs for an injunction; the Court **denies** the motion. Counsel shall prepare the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

---

**TITLE OF CASE:** **In Re: Chartercare Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital**

**CASE NO:** **PC-2019-11756**

**COURT:** **Providence County Superior Court**

**DATE DECISION FILED:** **October 19, 2020**

**JUSTICE/MAGISTRATE:** **Stern, J.**

**ATTORNEYS:**

**For Plaintiff:** **See attached**

**For Defendant:** **See attached**

*In re: CharterCARE Community Board,  
St. Joseph Health Services of Rhode Island,  
and Roger Williams Hospital*  
C.A. No. PC-2019-11756

**Counsel of Record:**

**CharterCARE Community Board**

- Richard D. Land, Esq.  
[rland@crflfp.com](mailto:rland@crflfp.com)

**Stephen Del Sesto, Receiver for SJHSRI Retirement Plan**

- Stephen F. Del Sesto, Esq.  
[sdelsesto@pierceatwood.com](mailto:sdelsesto@pierceatwood.com)

**Counsel for Receiver, SJHSRI Retirement Plan**

- Max Wistow, Esq.  
[mwistow@wistbar.com](mailto:mwistow@wistbar.com)
- Stephen P. Sheehan, Esq.  
[spsheehan@wistbar.com](mailto:spsheehan@wistbar.com)
- Benjamin G. Ledsham, Esq.  
[bledsham@wistbar.com](mailto:bledsham@wistbar.com)

**Peter F. Neronha, Attorney General of the State of Rhode Island,  
in his capacity as Administrator of Charitable Trusts**

- Jessica D. Rider, Esq.  
[jrider@riag.ri.gov](mailto:jrider@riag.ri.gov)

**Prospect East Holdings, Inc.  
Prospect Medical Holdings, Inc.**

- Preston W. Halperin, Esq.  
[phalperin@shslawfirm.com](mailto:phalperin@shslawfirm.com)
- Christopher J. Fragomeni, Esq.  
[cfragomeni@shslawfirm.com](mailto:cfragomeni@shslawfirm.com)
- Douglas A. Giron, Esq.  
[dag@shslawfirm.com](mailto:dag@shslawfirm.com)
- John Tarantino, Esq.  
[jtarantino@apslaw.com](mailto:jtarantino@apslaw.com)
- Patricia K. Rocha, Esq.  
[procha@apslaw.com](mailto:procha@apslaw.com)

**Prospect East Holdings, Inc.  
Prospect Medical Holdings, Inc.**

- Joseph Avanzato, Esq.  
[javanzato@apslaw.com](mailto:javanzato@apslaw.com)
- Leslie D. Parker, Esq.  
[lparker@apslaw.com](mailto:lparker@apslaw.com)

**The Angell Pension Group, Inc.**

- Steven J. Boyajian, Esq.  
[sboyajian@rc.com](mailto:sboyajian@rc.com)

**The Beacon Mutual Insurance Company**

- Patricia Antonelli, Esq.  
[pantonelli@smsllaw.com](mailto:pantonelli@smsllaw.com)

**Truk-Away Landfill Site PPP Group**

- Giovanni La Terra Bellina, Esq.  
[jlaterra@orsonandbrusini.com](mailto:jlaterra@orsonandbrusini.com)

**Liquidating Receiver**

- Thomas S. Hemmendinger, Esq.  
(401) 453-2300  
[themmendinger@brcsm.com](mailto:themmendinger@brcsm.com)
- Ronald F. Cascione, Esq.  
[rcascione@brcsm.com](mailto:rcascione@brcsm.com)
- Lisa M. Kresge, Esq.  
[lkresge@brcsm.com](mailto:lkresge@brcsm.com)
- Sean J. Clough, Esq.  
[sclough@brcsm.com](mailto:sclough@brcsm.com)



# Exhibit 67



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400

*Peter F. Neronha*  
*Attorney General*

April 8, 2020

***Via Electronic Mail Only***

Patricia K. Rocha, Esq.  
Adler Pollock & Sheehan P.C.  
One Citizens Plaza, 8<sup>th</sup> Floor  
Providence, RI 02903  
PRocha@apslaw.com

***Re: Hospital Conversion Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC (the “Transacting Parties”)***

Dear Attorney Rocha:

In accordance with the Hospital Conversions Act (“HCA”), R.I. Gen. Laws §23-17.14-1, *et seq.*, the Office of the Attorney General (“Attorney General”) has reviewed the Hospital Conversion Initial Application and additional information you have submitted in the above-entitled matter. We notify you in your capacity as legal counsel to the Transacting Parties that the Attorney General hereby deems the Hospital Conversion Application filed with our Office complete and accepted for review. The review period under the HCA will commence tomorrow, April 9, 2020.

We will be advising you shortly of our confidentiality determinations. Please be aware that once our confidentiality determinations have been issued, you will need to submit a final copy of your complete applications to each agency in order for the public versions to be posted for public review.

Patricia K. Rocha, Esq.  
Adler Pollock & Sheehan P.C.  
April 8, 2020  
Page Two

Finally, attached please find the first set of supplemental questions. Please feel free to contact us with any questions regarding the foregoing.

Sincerely

*Jessica Rider*

Jessica Rider  
Special Assistant Attorney General  
Health Care Advocate  
401-274-4400 Ext. 2314

JR/dm  
Enclosure

cc: Leslie Parker, Esq., Adler Pollock & Sheehan, P.C.  
Jacqueline Kelley, Esq., Legal Counsel, RIDOH  
Michael Dexter, Chief, Center for Health Systems Policy & Regulation, RIDOH  
Fernanda Lopes, Chief, Health Systems Development, RIDOH

## CONFIDENTIAL

### Exhibit A

Please provide complete and accurate answers to the First Set of Supplemental Questions below.

The following definitions have been used:

- Chamber Inc. (“Chamber”);
- Ivy Holdings, Inc. (“Ivy”);
- Ivy Intermediate Holdings, Inc. (“IIH”);
- Prospect Medical Holdings, Inc. (“PMH” or “Prospect”);
- Prospect East Holdings, Inc. (“PEH”);
- Prospect East Hospital Advisory Services, LLC (“PEHAS”);
- Prospect CharterCARE, LLC (“PCC”);
- Prospect CharterCARE SJHSRI, LLC (“OLF”);
- Prospect CharterCARE RWMC, LLC (“RWMC”);
- Chamber, Ivy, IIH, PMH, PEH, PEHAS, PCC, OLF, RWMC (collectively, the “Transacting Parties” or “Parties”);
- Ivy Board of Directors (“Ivy BOD”);
- Board of Prospect Medical Holdings (“PMH Board”); and
- Rhode Island Department of Health’s Change in Effective Control Application (“RIDOH CEC”).

S-1	Question 1	Please explain in detail the \$1 Billion in liabilities being assumed as part of the Proposed Transaction as stated in the response to this question.
S-2	Question 1	Please explain how PMH’s cash depletion to fund the purchase impacts its ability to subsidize PCC and the subsidiary hospitals for their deficits.
S-3	Exhibit 3(b)	Please provide all documents related to the four (4) directors who are resigning after the conversion from Ivy BOD and PMH Board: John Baumer, Jeerreddi A. Prasad, M.D., Michael S. Solomon and Alyse Wagner. If no documents exist, please indicate. If documents evidencing resignation will exist upon completion of conversion, please indicate.

**CONFIDENTIAL**

S-4	Question 4	What notice and information has been provided to PCC, including the CharterCARE Community Board, in connection with the Proposed Transaction?
S-5	Question 4	Please provide a copy of the minutes and votes from the Board meeting and approval of payment of the 2018 dividends on February 22, 2018.
S-6	Exhibit 4	Please explain how IH will determine whether to retain the \$12 Million Dividend for ordinary business purposes and/or use it to fund the closing of the transaction (See C-CIHH4-000091). If the \$12 Million Dividend is not used to fund the Proposed Transaction, please explain in detail what the funds will be used for.
S-7	Exhibit 4	Have any of the \$12M dividends already been paid/transferred as of the date of these Questions, and if not paid, where are those dividends sitting today?
S-8	Exhibit 4	██ ██ ██
S-9	Question 10	This response states John Baumer, Alyse Wagner, Michael Solomon, and Jeereddi A. Prasad, MD do not receive compensation for their position as current board members. However, certain other board members do receive stipends according to their respective COIS. Please explain why certain board members receive stipends but the four above-mentioned members do not, and identify all documents that set forth that difference in compensation.
S-10	Exhibit 12	The Merger Agreement indicates that the capital stock of IHI consists only of common stock. Please explain the disposition of the

**CONFIDENTIAL**

		13.5% cumulative Preferred Stock issued to Green Equity Investors, when that occurred, and what the preference was. Please also explain if the \$.5B dividend was calculated in connection with Preferred Stock.
S-11	Exhibit 12	Please confirm there are no “In the Money Options” as referenced in Section 4.03(a) of the Merger Agreement.
S-12	Exhibit 12	Do the Transacting Parties still plan to send a Drag-Along Notice under Section 6.03(b) of the Merger Agreement within the time period referenced in this section even though there has been a request for all to consent? Please explain.
S-13	Exhibit 12	Under Section 6.03(b) of the Merger Agreement, “Special Stockholder Consent” is required prior to, and as a condition of, the closing. Please explain the process for obtaining such consent and when it be obtained.
S-14	Exhibit 12	Has any Stockholder elected to exercise their appraisal rights under the Agreement? If so, please explain.
S-15	Exhibit 12	Please explain the reasoning for the restrictions on distributions in Section 6.09 of the Merger Agreement.
S-16	Question 15	Were there any redemptions of stock or other transactions since the acquisition of OLF and RWMC for which the Fair Market Value was required to be determined? Please provide a chronological chart of stock valuations and explain the circumstances for each.
S-17	Question 15	Please provide documentation of the minority stockholder consent to the Merger Agreement.

## CONFIDENTIAL

S-18	Question 15	Please provider a list of Stockholders who objected or did not consent, identifying each and provide all associated documentation regarding any objections.
S-19	Exhibit 15	Please provide a copy of the “Written Consent” attached as Annex B to the October 15, 2019 consent of majority stockholders.
S-20	Exhibit 15	Did every subsequent stockholder (i.e. holders of stock options) of IHI become a party to the Stockholders Agreement provided in this Exhibit so that every share of stock is subject to this Agreement?
S-21	Exhibit 15	Please explain the circumstances surrounding the issuing of the “Supplemental Notice to Shareholders” dated October 29, 2019 (CIIH15-000531).
S-22	Exhibit 15	Please confirm whether or not there have been no For Value Shares (shares purchased at FMV) as referenced in the Stockholders Agreement.
S-23	Question 16	Please confirm the investments made/held by Chamber, Ivy, IIH, PEH and/ or PEHAS. Please explain where those investments are held and provide current account statement(s).
S-24	Question 16	Please explain why there has been no financial activity for Chamber, Ivy, IIH, PEH or PEHAS as stated in this response.
S-25	Question 16	Please explain the process for deciding whether PMH and/or PEHAS makes an equity contribution to PCC and the hospital subsidiaries, and if so, in what amount and for what purpose.

**CONFIDENTIAL**

S-26	Question 16	Please provide a detailed summary of the current status of material weaknesses for RWMC and OLF.
S-27	Question 16	This response states that “The Transacting Parties will not ...distribute any dividends to the acquiror as a result of this Transaction” and the Response to Question 1 states that “There were no dividends made in connection with the Transaction prior to the date of the Initial Application.(CIIH-000022).” However, a \$0.5B dividend has been paid. Please provide details concerning that dividend and a detailed explanation as to how/why the initial dividend paid to the investors relates to the calculation of the merger compensation.
S-28	Question 16	Please explain why the RWMC financial statements for year ending 9/2017 do not reference FY16 when the other entities’ financial statements do.
S-29	Exhibit 16	All Notes to Consolidated Financial Statements for PMH (CIIH16-000635; CIIH16-000796; CIIH-16-000955) indicate “significant intercompany balances and transactions have been eliminated in consolidation.” Please explain.
S-30	Exhibit 16	Please explain how the amount to subsidize liabilities referenced in FY 2019 Financials for PCC in Note 1 at CIIH16-001013 and Note 7 at CIIH16-001025, was determined.
S-31	Exhibit 16	Please describe in detail any prior instances of PMH converting related party debt of PCC or the hospital subsidiaries into equity, including an explanation of what the debt was for (e.g. forgiveness of management fees, loan forgiveness) and what portion of the particular debt was converted. Please indicate if the converted debt is considered part of the \$50M long-term capital commitment required under



**CONFIDENTIAL**

		the Prospect CharterCARE Asset Purchase Agreement dated September 24, 2014, as amended, and explain this determination. Please describe how the decision is made to convert debt into equity and how to calculate the applicable portion to be converted.
S-32	Exhibit 16	The mortgage on the Rhode Island property referenced at CIIH16-000986 matures in August 2022 or upon conversion to sale-lease back. Are there any plans for a future sale of Rhode Island hospital real estate similar to the MPT sale?
S-33	Exhibit 16	PMH's Notes to Consolidated Financial Statements refers to full impairment of Rhode Island hospitals at CIIH16-000966. Does PMH have a policy or practice once an asset's goodwill is fully impaired? If so, please explain such policy or practice.
S-34	Exhibit 16	Please explain why Prospect sold and/or closed its hospitals in TX and NJ as mentioned in Section 5 of the Notes to Consolidated Financial Statements at CIIH16-000976.
S-35	Exhibit 16	Section 11 of the Notes to Consolidated Financial Statements states that "the exercise price of an incentive stock option ("ISO") may not be less than 100% of the fair market value of the Company's common stock on the date of the grant" (CIIH16-000987). Please provide a schedule listing the exercise price at the time of each grant since the closing of the Prospect CharterCARE transaction in 2014.
S-36	Exhibit 16	The responses provided in the RIDOH CEC indicate RWMC has "sufficient revenues." Please reconcile this statement with RWMC's FY 2018 and 2019 financial statements showing losses. See CIIH16-000919 and CIIH16-001074.

**CONFIDENTIAL**

S-37	Question 20	According to the financial statements provided in response to Question 16, RWMC has optional pension match but OLF does not. Please explain the plans for the next fiscal year and how the decision for pension matching is made.
S-38	Question 20	Please describe any impact of the Proposed Transaction on PMH's pension matches at PCC, OLF, and RWMC.
S-39	Question 20	Please explain how PMH determines when a hospital subsidiary will receive a pension match.
S-40	Question 20	Please explain the current union status for RWMC and OLF, including whether the collective bargaining agreements that expired in 2018 have been renewed, and the length of each CBA.
S-41	Question 23	Please explain the calculation of the total stockholder payments of \$16,882,998 and the discrepancy with the capital costs of the transaction of approximately \$12 million. Does the \$16,882,998 include the value of the Lee and Topper stock being contributed in addition to the majority and minority stock being purchased? If so, please explain this response.
S-42	Exhibit 23	Please explain the decision to enter into the MPT transaction and if the transaction was connected to obtaining cash flow after the \$.5 billion dividend payment.
S-43	Exhibit 23	Please provide a summary of the balance on the original \$1.55B MPT financing (i.e. of all outstanding MPT transactions to date) (See also Notes to PCC FY2019 financials at CIH16-001027).
S-44	Exhibit 23	Please explain the current MPT financing impacts on:

**CONFIDENTIAL**

		<p>a. Contingent liability of the hospital subsidiaries for all cross defaulted and cross collateralized financing arrangement at the top of the organizational chart (See Note 10 to PMH’s financial statement regarding MPT at CIIH16-000985-986; and see e.g. Note 8 to the RWMC financial statements at CIIH16-000648);</p> <p>b. Ability of PMH to continue to subsidize hospital subsidiaries particularly if deficits increase; and</p> <p>c. PMH’s supporting pension matches at the hospital subsidiaries.</p>
S-45	Governance	Have there been any amendments to the management agreement between PEHAS and PCC since the Prospect CharterCARE transaction closed in 2014? If yes, please provide all amendments.
S-46	Miscellaneous	Please provide a summary of the investments Green Equity Investors has made to PMH since it became a private equity investor in PMH.
S-47	Miscellaneous	Please explain Green Equity’s shareholder interest post-transaction. Why, as a non-party, is Green Equity requiring that no dividends are issued and that a pension contribution be made?
S-48	Miscellaneous	What criteria does Prospect use when evaluating whether to close a hospital, and which entity(ies) make the decision?
S-49	Miscellaneous	Does Prospect have any plans to sell and/or close OLF or RWMC?
S-50	Miscellaneous	Will there continue to be equity-based compensation under new ownership structure? If yes, please provide new Stock Options plan.

## CONFIDENTIAL



S-51	Miscellaneous	Please reconcile the payment of dividends since the Prospect/CharterCARE transaction closed in 2014 with the response in S4-22 in the Non-Confidential Responses to the Fourth Supplemental Questions to the HCA Application of Prospect CharterCARE, LLC, et al. that “Prospect does not plan to make another dividend ...” Please explain the policies and criteria for that govern Prospect’s decision to pay dividends.
S-52	Miscellaneous	Please explain Prospect’s five-year strategic plan, including but not limited to whether Prospect is considering additional acquisitions in Rhode Island.
S-53	Miscellaneous	Please explain how the Rhode Island subsidiaries are performing in comparison with the rest of PMH’s subsidiaries.
S-54	Miscellaneous	Please state whether RWMC and OLF are treated differently than other hospital subsidiaries. If so, please explain how and why.
S-55	Miscellaneous	Please explain if Chamber, IH and IHI currently have or plan to have any additional activities outside of Prospect.

# Exhibit 68


May 6, 2020 Response to First Set of Supplemental Questions


<b>AG Issue</b>	<b>HCA Question</b>	<b>AG Request for Information</b>	<b>TP Response/Completed</b>
S-1	Question 1	Please explain in detail the \$1 Billion in liabilities being assumed as part of the Proposed Transaction as stated in the response to this question.	Please see Bates number C-CIIH-001185.
S-2	Question 1	Please explain how PMH's cash depletion to fund the purchase impacts its ability to subsidize PCC and the subsidiary hospitals for their deficits.	Funding the purchase does not impact PMH's ability to subsidize PCC and the subsidiary hospitals for their deficits. PMH will continue to have the ability to subsidize PCC and the subsidiary hospitals for their deficits, as appropriate.
S-3	Exhibit 3(b)	Please provide all documents related to the four (4) directors who are resigning after the conversion from Ivy BOD and PMH Board: John Baumer, Jeerreddi A. Prasad, M.D., Michael S. Solomon and Alyse Wagner. If no documents exist, please indicate. If documents evidencing resignation will exist upon completion of conversion, please indicate.	There are no documents responsive to this question and there are no plans to create such documents.

S-4	Question 4	What notice and information has been provided to PCC, including the CharterCARE Community Board, in connection with the Proposed Transaction?	<p>Jeff Leibman, PCC's CEO, reviewed the transaction with Ed Santos, the Chairman of the PCC Board. Mr. Leibman also reviewed the transaction with the other PCC Board members before they signed their COIS.</p> <p>CCCB is not a Prospect entity and, as such, Prospect is not aware of what information has been discussed among CCCB Board members.</p>
S-5	Question 4	Please provide a copy of the minutes and votes from the Board meeting and approval of payment of the 2018 dividends on February 22, 2018.	Please see Bates No. C-CIIH4-000251A through C-CIIH4-000266A.
S-6	Exhibit 4	Please explain how IH will determine whether to retain the \$12 Million Dividend for ordinary business purposes and/or use it to fund the closing of the transaction (See C-CIIH4-000091). If the \$12 Million Dividend is not used to fund the Proposed Transaction, please explain in detail what the funds will be used for.	IH is contractually bound to fund the transaction and the \$12 Million Dividend will be used to fund the Transaction as confirmed by the PMH, IIH, and IH Board resolutions.

S-7	Exhibit 4	Have any of the \$12M dividends already been paid/transferred as of the date of these Questions, and if not paid, where are those dividends sitting today?	No, the dividend has not been paid/transferred as of the date of these responses. The funds are on PMH's balance sheet and held in PMH's bank accounts.
S-8	Exhibit 4		
S-9	Question 10	This response states John Baumer, Alyse Wagner, Michael Solomon, and Jeerreddi A. Prasad, MD do not receive compensation for their position as current board members. However, certain other board members do receive stipends according to their respective COIS. Please explain why certain board members receive stipends but the four above-mentioned members do not, and identify all documents that set forth that difference in compensation.	A business decision was made to give PCC non-employee board members a stipend. Mr. Baumer, Ms. Wagner, Mr. Solomon, and Dr. Prasad are not PCC board members. Moreover, as PMH Board members, they do not receive any stipend because they receive compensation through their employment – <i>i.e.</i> , through employment with LGP or PMH. There are no responsive documents to this question.



S-10	Exhibit 12	The Merger Agreement indicates that the capital stock of IHI consists only of common stock. Please explain the disposition of the 13.5% cumulative Preferred Stock issued to Green Equity Investors, when that occurred, and what the preference was. Please also explain if the \$.5B dividend was calculated in connection with Preferred Stock.	
S-11	Exhibit 12	Please confirm there are no “In the Money Options” as referenced in Section 4.03(a) of the Merger Agreement.	Confirmed.
S-12	Exhibit 12	Do the Transacting Parties still plan to send a Drag-Along Notice under Section 6.03(b) of the Merger Agreement within the time period referenced in this section even though there has been a request for all to consent? Please explain.	Yes, the Drag-Along Notice is required to be sent within 15 days of closing as set forth in the Merger Agreement. The Transacting Parties are planning to send the Drag Along Notice in accordance with that requirement.
S-13	Exhibit 12	Under Section 6.03(b) of the Merger Agreement, “Special Stockholder Consent” is required prior to, and as a condition of, the closing. Please explain the process for obtaining such consent and when it be obtained.	Special Stockholder Consent was already received. Specifically, upon execution of the Merger Agreement, IHI sought the required consent and received at least 97.5% approval as required. Other than the Drag-Along Notice, no further consent is required.
S-14	Exhibit 12	Has any Stockholder elected to exercise their appraisal rights under the Agreement? If so, please explain.	No.

S-15	Exhibit 12	Please explain the reasoning for the restrictions on distributions in Section 6.09 of the Merger Agreement.	LGP drafted the Merger Agreement and proposed its terms, which were agreed to by the Transacting Parties. The restrictions were one part of the many financial negotiations between the parties. The Transacting Parties cannot speak for LGP's reasoning.
S-16	Question 15	Were there any redemptions of stock or other transactions since the acquisition of OLF and RWMC for which the Fair Market Value was required to be determined? Please provide a chronological chart of stock valuations and explain the circumstances for each.	
S-17	Question 15	Please provide documentation of the minority stockholder consent to the Merger Agreement.	Please see Bates No. C-CIIH-001194 to C-CIIH-001227 (Joinders to Written Stockholders Consent) for the minority stockholders consents received by PMH.
S-18	Question 15	Please provider a list of Stockholders who objected or did not consent, identifying each and provide all associated documentation regarding any objections.	No stockholders objected to the Transaction. Please see Bates No. C-CIIH-001194 to C-CIIH-001227 (Joinders to Written Stockholders Consent) for the minority stockholders consent received by PMH and Bates No. C-CIIH-001186 to C-CIIH-001193 for the written consent of the majority stockholders received by PMH reflecting all consents received.





S-19	Exhibit 15	Please provide a copy of the “Written Consent” attached as Annex B to the October 15, 2019 consent of majority stockholders.	Please see Bates No. C-CIIH-001185 to C-CIIH-001193.
S-20	Exhibit 15	Did every subsequent stockholder (i.e. holders of stock options) of IHI become a party to the Stockholders Agreement provided in this Exhibit so that every share of stock is subject to this Agreement?	Yes.
S-21	Exhibit 15	Please explain the circumstances surrounding the issuing of the “Supplemental Notice to Shareholders” dated October 29, 2019 (CIIH15-000531).	The Supplemental Notice to Shareholders dated October 29, 2019 was provided due to requirements of Delaware law.
S-22	Exhibit 15	Please confirm whether or not there have been no For Value Shares (shares purchased at FMV) as referenced in the Stockholders Agreement.	Confirmed.
S-23	Question 16	Please confirm the investments made/held by Chamber, Ivy, IIH, PEH and/ or PEHAS. Please explain where those investments are held and provide current account statement(s).	Chamber, Ivy, IIH, PEH, and/or PEHAS do not hold any investments.
S-24	Question 16	Please explain why there has been no financial activity for Chamber, Ivy, IIH, PEH or PEHAS as stated in this response.	There has been no financial activity in those entities because there has been no operations in those entities. PEHAS provides its services through PMH.

S-25	Question 16	Please explain the process for deciding whether PMH and/or PEHAS makes an equity contribution to PCC and the hospital subsidiaries, and if so, in what amount and for what purpose.	PMH and PEHAS comply with their respective contractual obligations and operating agreements when deciding whether to make an equity contribution. PMH also takes into account the needs of PCC and the hospital subsidiaries in that determination.
S-26	Question 16	Please provide a detailed summary of the current status of material weaknesses for RWMC and OLF.	Their current status does not include any finding of material weaknesses for RWMC or OLF. <i>See</i> 2019 Audited Financial Statements.
S-27	Question 16	This response states that “The Transacting Parties will not ...distribute any dividends to the acquiror as a result of this Transaction” and the Response to Question 1 states that “There were no dividends made in connection with the Transaction prior to the date of the Initial Application.(CIIH-000022).” However, a \$0.5B dividend has been paid. Please provide details concerning that dividend and a detailed explanation as to how/why the initial dividend paid to the investors relates to the calculation of the merger compensation.	The dividend that was paid in February 2018 is unrelated to the transaction that is the subject matter of the HCA review (the Transaction). Accordingly, at the time the dividend was paid, the Transaction had not been considered.
S-28	Question 16	Please explain why the RWMC financial statements for year ending 9/2017 do not reference FY16 when the other entities’ financial statements do.	The outside accounting firm, BDO prepared and issued the financial statements. The Transacting Parties are not aware of any specific reason why FY16 was not referenced in the RWMC financial statements.

CONFIDENTIAL


S-29	Exhibit 16	All Notes to Consolidated Financial Statements for PMH (CIIH16-000635; CIIH16-000796; CIIH-16-000955) indicate “significant intercompany balances and transactions have been eliminated in consolidation.” Please explain.	In consolidation, intercompany balances are eliminated to comply with generally accepted accounting principles (“GAAP”).
S-30	Exhibit 16	Please explain how the amount to subsidize liabilities referenced in FY 2019 Financials for PCC in Note 1 at CIIH16-001013 and Note 7 at CIIH16-001025, was determined.	Please see response to S-31.
S-31	Exhibit 16	Please describe in detail any prior instances of PMH converting related party debt of PCC or the hospital subsidiaries into equity, including an explanation of what the debt was for (e.g. forgiveness of management fees, loan forgiveness) and what portion of the particular debt was converted. Please indicate if the converted debt is considered part of the \$50M long-term capital commitment required under the Prospect CharterCARE Asset Purchase Agreement dated September 24, 2014, as amended, and explain this determination. Please describe how the decision is made to convert debt into equity and how to calculate the applicable portion to be converted.	Prior to fiscal year 2019, there were no other instances where PMH converted related party debt of PCC or hospital subsidiaries of PCC into equity. The one time conversion of inter-company debt between PCC and PMH through its wholly owned subsidiary PEHAS in fiscal year 2019 was part of PMH’s \$50 million capital commitment to PCC under the Asset Purchase Agreement. Prior to the conversion of such inter-company debt, PMH was funding investments and capital expenditures of PCC as required under the Asset Purchase Agreement either through cash or by not collecting management fees owed under the Asset Purchase Agreement and its operating agreement. The uncollected management fees were recorded as inter-company debt. In May 2019, PMH through its subsidiary PEAS converted \$24.7 million of inter-company debt from debt to equity. By converting such inter-company debt to an equity contribution akin to cash, PMH satisfied its obligations under the Asset Purchase Agreement.

S-32	16	The mortgage on the Rhode Island property referenced at CIIH16-000986 matures in August 2022 or upon conversion to sale-lease back. Are there any plans for a future sale of Rhode Island hospital real estate similar to the MPT sale?	First, there are no mortgages on the Rhode Island real estate. Second, there are no current plans for a future sale of Rhode Island hospital real estate.
S-33	16	PMH's Notes to Consolidated Financial Statements refers to full impairment of Rhode Island hospitals at CIIH16-000966. Does PMH have a policy or practice once an asset's goodwill is fully impaired? If so, please explain such policy or practice.	<p>Full impairment of the Rhode Island hospitals was booked in order to comply with GAAP. PMH complies with GAAP when reporting its audited financial statements.</p> <p>Even if goodwill of an entity is fully impaired in accordance with GAAP, it is PMH's practice to continue to operate the hospitals to provide high quality efficient care to the communities it serves.</p>
S-34	16	Please explain why Prospect sold and/or closed its hospitals in TX and NJ as mentioned in Section 5 of the Notes to Consolidated Financial Statements at CIIH16-000976.	PMH has neither sold nor closed any of its hospitals in New Jersey. In Texas, PMH closed the Nix Health system based on a business decision grounded in business strategy, market demand, and financial results, as well as a business decision to concentrate on markets in which PMH has a greater presence.

S-35	16	Section 11 of the Notes to Consolidated Financial Statements states that “the exercise price of an incentive stock option (“ISO”) may not be less than 100% of the fair market value of the Company’s common stock on the date of the grant” (CIIH16-000987). Please provide a schedule listing the exercise price at the time of each grant since the closing of the Prospect CharterCARE transaction in 2014.	   
S-36	16	The responses provided in the RIDOH CEC indicate RWMC has “sufficient revenues.” Please reconcile this statement with RWMC’s FY 2018 and 2019 financial statements showing losses. See CIIH16-000919 and CIIH16-001074.	Revenues are different from losses identified in the financial statements. In the event any additional funds are required, PMH has sufficient cash to fund such operating needs.
S-37	Question 20	According to the financial statements provided in response to Question 16, RWMC has optional pension match but OLF does not. Please explain the plans for the next fiscal year and how the decision for pension matching is made.	RWMC and OLF sponsor Defined Contribution 401(k) plans. Neither entity sponsors a Defined Benefit Pension Plan. Each 401(k) has a matching contribution which complies with the requirement of the U.S. Department of Labor as well as IRS laws and regulations. In the next fiscal year we plan to abide by the same plan documents.

S-38	Question 20	Please describe any impact of the Proposed Transaction on PMH's pension matches at PCC, OLF, and RWMC.	None. Neither RWMC, OLF, nor PCC sponsors a Defined Benefit Pension Plan.
S-39	Question 20	Please explain how PMH determines when a hospital subsidiary will receive a pension match.	Assuming that this question is regarding our RI operations, please note that none of our entities in RI (PCC, RWMC & OLF) have Defined Benefit Pension Plans. PCC however, sponsors Defined Contribution 401(k) plans. Matching contributions are made based upon our 401(k) plan documents.
S-40	Question 20	Please explain the current union status for RWMC and OLF, including whether the collective bargaining agreements that expired in 2018 have been renewed, and the length of each CBA.	The current CBA agreement effective dates for RWMC and OLF are listed below:  Roger Williams, Teamsters: 2/4/18-2/4/21 OLF, UNAP RN: 7/31/19-7/30/21 OLF/UNAP SW: 7/31/19-7/30/22
S-41	Question 23	Please explain the calculation of the total stockholder payments of \$16,882,998 and the discrepancy with the capital costs of the transaction of approximately \$12 million. Does the \$16,882,998 include the value of the Lee and Topper stock being contributed in addition to the majority and minority stock being purchased? If so, please explain this response.	\$16,882,998 represents the aggregate value of all outstanding shares and options in Prospect Medical Holdings including shares held by Mr. Lee and the Topper Family Trust. The \$12 million represents the aggregate consideration for the redemption of the shares and options in order to effectuate the transaction.



S-42	Exhibit 23	Please explain the decision to enter into the MPT transaction and if the transaction was connected to obtaining cash flow after the \$.5 billion dividend payment.	PMH entered into a transaction with MPT in order to refinance its existing debt at more favorable terms and conditions than its existing long-term debt at that time. The transaction had the added benefit of providing additional liquidity to PMH after it sustained unforeseeable losses following the dividend payment.
S-43	Exhibit 23	Please provide a summary of the balance on the original \$1.55B MPT financing (i.e. of all outstanding MPT transactions to date) (See also Notes to PCC FY2019 financials at CIIH16-001027).	 The content of this cell is completely redacted with black boxes.

S-44	Exhibit 23	<p>Please explain the current MPT financing impacts on:</p> <p>a. Contingent liability of the hospital subsidiaries for all cross defaulted and cross collateralized financing arrangement at the top of the organizational chart (See Note 10 to PMH’s financial statement regarding MPT at CIIH16-000985-986; and see e.g. Note 8 to the RWMC financial statements at CIIH16-000648);</p> <p>b. Ability of PMH to continue to subsidize hospital subsidiaries particularly if deficits increase;</p> <p>c. PMH’s supporting pension matches at the hospital subsidiaries.</p>	<p>As stated in response to question S-42, PMH entered into a transaction with MPT in order to refinance its existing debt at more favorable terms and conditions than its existing long-term debt at that time.</p> <p>The transaction also provided additional liquidity to PMH.</p> <p>As such, PMH will continue to meet its obligations under its contingent liabilities and will continue to subsidize its hospital subsidiaries and support their retirement plan obligations.</p> <p>It is important to note that neither PMH, PCC, RWMC, SHJRI nor any of the PMH’s subsidiaries have obligations under a defined benefit plan in RI.</p>
S-45	Governance	<p>Have there been any amendments to the management agreement between PEHAS and PCC since the Prospect CharterCARE transaction closed in 2014? If yes, please provide all amendments.</p>	<p>There have not been any amendments to the management agreement between PEHAS and PCC since the PCC transaction closed in 2014.</p>
S-46	Miscellaneous	<p>Please provide a summary of the investments Green Equity Investors has made to PMH since it became a private equity investor in PMH.</p>	<p>There have been no investments by GEI since it became a private equity investor in PMH. Instead, the GEI entities purchased shares at the time it became a private equity investor.</p>

S-47	Miscellaneous	Please explain Green Equity’s shareholder interest post-transaction. Why, as a non-party, is Green Equity requiring that no dividends are issued and that a pension contribution be made?	Pursuant to the terms of the Merger Agreement, GEI has no shareholder interest post-transaction. The terms of the Merger Agreement are the results of negotiations between and among the parties in an effort to ensure the financial viability of the healthcare system.
S-48	Miscellaneous	What criteria does Prospect use when evaluating whether to close a hospital, and which entity(ies) make the decision?	When deciding to close a hospital, PMH evaluates whether the hospital services are necessary for the community and whether there is demand for the hospital services.
S-49	Miscellaneous	Does Prospect have any plans to sell and/or close OLF or RWMC?	No.
S-50	Miscellaneous	Will there continue to be equity-based compensation under new ownership structure? If yes, please provide new Stock Options plan.	It is anticipated that equity-based compensation will be part of compensation for certain executives. However, no plan has yet been finally designed or adopted.
S-51	Miscellaneous	Please reconcile the payment of dividends since the Prospect/CharterCARE transaction closed in 2014 with the response in S4-22 in the Non-Confidential Responses to the Fourth Supplemental Questions to the HCA Application of Prospect CharterCARE, LLC, et al. that “Prospect does not plan to make another dividend …” Please explain the policies and criteria for that govern Prospect’s decision to pay dividends.	At the time of the closing of transaction in 2014, there were no plans to make another dividend. Approximately four years later, the decision was made to make a special cash dividend as more fully set forth in the Board Meeting minutes [Bates Number C-CIIH4-00251A], which includes the policies and criteria that govern the decision to make such payments.

S-52	Miscellaneous	Please explain Prospect's five-year strategic plan, including but not limited to whether Prospect is considering additional acquisitions in Rhode Island.	<p>Prospect continually surveys the marketplace and, if potential acquisitions exist, PMH will pursue that possibility to evaluate whether it would be a viable acquisition. PMH is currently unaware of any hospital in RI that is for sale.</p> <p>While PMH does not have a 5 year strategic plan, it focuses on acquisitions that are low cost, provide a safety net, and are population oriented. RI plays an important part in Prospect's future.</p>
S-53	Miscellaneous	Please explain how the Rhode Island subsidiaries are performing in comparison with the rest of PMH's subsidiaries.	<p>Each one of the operating hospitals in PMH's portfolio is unique due to:</p> <ol style="list-style-type: none"> <li>1. The demographics of the communities it serves;</li> <li>2. Service lines;</li> <li>3. Payor mix; and</li> <li>4. Regulatory environment.</li> </ol> <p>As such, RWMC and OLF are very different than PMH's other hospitals, but important providers in the PMH healthcare system.</p>
S-54	Miscellaneous	Please state whether RWMC and OLF are treated differently than other hospital subsidiaries. If so, please explain how and why.	No, other than the fact that RWMC and OLF are the only PMH hospitals with a joint venture partner (15% CCCB).

S-55	Miscellaneous	Please explain if Chamber, IH and IHI currently have or plan to have any additional activities outside of Prospect.	Chamber, IH, and IHI currently do not have and do not have plans to have any additional activities outside of PMH.
------	---------------	---	--

# Exhibit 69

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**SUPERIOR COURT**

**CHARTERCARE COMMUNITY BOARD** :  
:  
**v.** :  
:  
**SAMUEL LEE, ET AL.** :

**C.A. No. PC-2019-3654**

**ORDER**

**STERN, J.** This matter came to be heard on June 23, 2020, and July 8, 2020,<sup>1</sup> on Stephen Del Sesto, as Receiver (the Plan Receiver) for the St. Joseph Health Services of Rhode Island Retirement Plan (the Plan), and Thomas Hemmendinger's, as Liquidating Receiver (the Liquidating Receiver) of CharterCARE Community Board (CCCB), St Joseph Health Services of Rhode Island (SJHSRI), and Roger Williams Hospital (RWH), motion to compel production of documents and other information from Prospect Chartercare, LLC (PCC)<sup>2</sup> and motion for injunctive or equitable relief. After considering oral and written arguments, it is hereby

---

<sup>1</sup> On the morning of the July 8, 2020, hearing, Attorney Sheehan—counsel to the Plan Receiver—sent to the Court a letter signed by five members of Congress concerning Prospect. Counsel requested that the letter be made a part of the hearing record. As the Court indicated during the hearing, after reviewing the letter it would determine whether the letter was relevant to the Court's decision. After review, the Court finds that the letter is not relevant to the instant motion because it does not have any bearing on whether the information requested is reasonably required to evaluate the Put Option.

<sup>2</sup> CCCB asserts that pursuant to a stipulation and consent order entered by this Court on April 25, 2019 (Consent Order), CCCB is permitted to request additional information as reasonably required in connection with the evaluation of the Put Option. CCCB asserts that on January 21, 2020, and January 30, 2020, it requested answers to 20 questions, access to 10 categories of information, and information regarding the financial condition of Prospect Medical and Prospect East. CCCB asserts that it is entitled to the requested information and it is information necessary for the expert's evaluation of the Put Option. PCC objected to CCCB's request, arguing that it had already complied with the language and spirit of the Consent Order by producing all of the financial information requested by CCCB and complying with the Court's October 3, 2019, Order, which required PCC to produce specific financial information. PCC avers that the information now requested is well beyond the scope of the Consent Order because CCCB requests information to conduct an actual appraisal, not information limited to evaluating whether to begin the Put Option process. PCC also contends that the information requested is not presently available and in existence, and would need to be specifically prepared and would require interviews with multiple PCC employees. PCC also argues that information regarding the financial condition of Prospect Medical and Prospect East are not relevant to the valuation of PCC.

**ORDERED, ADJUDGED & DECREED<sup>3</sup>**

1. **Category 1:** PCC shall produce the financial statements for PCC from fiscal year ending 9/30/17 to present, including audited financial at least through 9/30/19 and internally prepared statements to the present.<sup>4</sup> The remaining information requested is denied.
2. **Category 2:** Granted.
3. **Category 3:** Granted.
4. **Category 4:** Granted.
5. **Category 5:** Granted.
6. **Category 6:** Granted.
7. **Category 7:** PCC shall produce documents showing all liens or encumbrances, whether recorded or unrecorded, on the real or personal property of PCC. The remaining information requested is denied.
8. **Category 8:** The Court reserves on the Plan and Liquidating Receivers' request for documents showing any obligations of the Prospect Entities to third parties outside the usual course of business, including under the 2019 sale-leaseback agreement, in order to allow PCC to update financial statements to clarify that PCC is not a pledger on the sale-leaseback with Medical Properties Trust, Inc.
9. **Category 9:** Denied; the LLC Agreement provides a specific process for the parties to engage in once the election has been made, including hiring of appraisers and furnishing of information to the appraisers, and the Consent Order in no way entitles CCCB to information it would only be allowed access to during a formal appraisal

---

<sup>3</sup> Following the June 23, 2020 hearing, the parties were to meet and confer and determine what categories of information they could not reach an agreement on. On July 7, 2020, the Court received a correspondence from Attorney Sheehan which included eleven categories of information. Accordingly, this Order is limited to those eleven categories of information, which is attached hereto as **Exhibit A**; the Court assumes that any remaining documents or requests sought through the motion to compel filed on February 20, 2020 which are not encompassed within these eleven categories of information have been resolved by the parties.

<sup>4</sup> In accordance with the April 25, 2019 Stipulation and Consent Order, any information ordered to be produced pursuant hereto must be available to PCC and shall not include documents that are subject to the attorney-client privilege, joint defense privilege and/or attorney work product doctrine.



process. CCCB may not use the Consent Order as a means of foregoing a formal election and collecting information to establish a valuation.

10. **Category 10**: The Court reserves on the Plan and Liquidating Receivers' request for five years of financial statements for all entities that are leasees under or guaranteed the lessees' obligations under the sale-leaseback financing documents in order to allow PCC to update financial statements to clarify that PCC is not a pledger on the sale-leaseback with Medical Properties Trust, Inc.
11. **Category 11**: Denied; the requested information is overly broad and not reasonably required to evaluate whether to exercise the Put Option. Moreover, information regarding any pending transactions involving or affecting PCC may be available via a books and records request in accordance with ¶ 12 of this Order.
12. **Books and Records**: Pursuant to the LLC Agreement, CCCB is permitted full access to PCC's books and records, and those books and records must be made available for inspection by CCCB and/or its duly authorized representatives. PCC has not objected to CCCB's right to access the books and records and, therefore, PCC is ordered to give CCCB access to the books and records provided, however, that CCCB must make a more specific request regarding what books and records it is seeking so as to allow PCC to search for and produce the appropriate documents. Nothing in this Order is meant to limit the types and scope of the books and records available in accordance with the LLC Agreement.
13. **Extension of the Put Option**: Pursuant to ¶ 3 of the Consent Order, the Court extends the time by which CCCB must exercise the Put Option until PCC complies with this Order and produces the required documents and information provided, however, that PCC must comply in no longer than sixty (60) days. Once CCCB receives the documents and information from PCC, the time by which CCCB must exercise the Put Option is sixty (60) days from the date thereof. PCC has a continuing duty to disclose and update the documents and information until the Put Option is exercised or lapses.

**ENTER:**

Brian P. Stern, J.  
Stern, J.  
Dated: July 21, 2020

**PER ORDER:**

/s/ Carin Miley  
Deputy Clerk I  
July 21, 2020

# **EXHIBIT A**

**Category 1: FINANCIAL STATEMENTS FOR PROSPECT MEDICAL HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC FROM FISCAL YEAR ENDING 9/30/17 TO PRESENT including:**

- a. AUDITED FINANCIALS AT LEAST THROUGH 9/30/19[; and]**
- b. INTERNALLY PREPARED STATEMENTS TO THE PRESENT**

**Category 2. DOCUMENTS IDENTIFYING ALL OF THE LONG-TERM CAPITAL CONTRIBUTIONS (AS DEFINED IN LLC AGREEMENT)**

**Category 3: ALL RETURN-ON-INVESTMENT ANALYSES FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION**

**Category 4: ALL CAPITAL NEEDS ASSESSMENTS FOR ANY TRANSACTION CLAIMED TO BE A LONG-TERM CAPITAL CONTRIBUTION**

**Category 5: ALL DOCUMENTS SHOWING NOTICE TO CCCB OF ##2, 3 OR 4**

**Category 6: ALL DOCUMENTS SHOWING THAT ##2, 3 OR 4 WERE ACCEPTABLE TO CCCB**

**Category 7: DOCUMENTS SHOWING ALL LIENS OR ENCUMBERANCES ON THE REAL OR PERSONAL PROPERTY OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC**

**Category 8: DOCUMENTS SHOWING ANY OBLIGATIONS OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC TO THIRD PARTIES OUTSIDE THE USUAL COURSE OF BUSINESS, INCLUDING UNDER THE 2019 SALE-LEASEBACK AGREEMENT**

**Category 9: ANY VALUATIONS OF PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, OR PROSPECT CHARTERCARE RWMC, LLC PERFORMED OVER THE LAST 5 YEARS**

**Category 10: FIVE YEARS OF FINANCIAL STATEMENTS FOR ALL ENTITIES THAT ARE LEASEES UNDER OR GUARANTEED THE LESSEES' OBLIGATIONS UNDER THE SALE-LEASEBACK FINANCING DOCUMENTS**

**Category 11: ANY PENDING OR CONTEMPLATED TRANSACTIONS INVOLVING OR AFFECTING PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, AND/OR PROSPECT CHARTERCARE RWMC, LLC THAT ARE OR MAY BE IN ANY WAY CONTINGENT UPON OR POSSIBLY AFFECTED BY WHETHER OR NOT THE PUT OPTION IS EXERCISED.**

# Exhibit 70

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

IN RE: CHARTERCARE COMMUNITY )  
BOARD, ST. JOSEPH HEALTH ) CASE #: PC-2019-11756  
SERVICES OF RHODE ISLAND, )  
and ROGER WILLIAMS HOSPITAL )

HEARD BEFORE

THE HONORABLE BRIAN P. STERN, ASSOCIATE JUSTICE,

REMOTELY ON SEPTEMBER 17, 2020

APPEARANCES:

MAX WISTOW, ESQUIRE.....FOR THE RECEIVER  
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER  
THOMAS HEMMENDINGER, ESQUIRE....LIQUIDATING RECEIVER  
JOHN TARANTINO, ESQUIRE.....ADLER POLLOCK & SHEEHAN  
PATRICIA ROCHA, ESQUIRE.....ADLER POLLOCK & SHEEHAN  
PRESTON HALPERIN, ESQUIRE.....PROSPECT  
STEVEN BOYAJIAN, ESQUIRE.....ANGELL PENSION GROUP  
DAVID GODOFSKY, ESQUIRE.....ANGELL PENSION GROUP  
JESSICA RIDER, ESQUIRE.....ATTORNEY GENERAL'S OFFICE  
VINCENT INDEGLIA, ESQUIRE.....VARIOUS ENTITIES

GINA GIANFRANCESCO GOMES  
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 108, inclusive, are a true and accurate transcript of a hearing done remotely to the best of my ability.



GINA GIANFRANCESCO GOMES  
COURT REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THURSDAY, SEPTEMBER 17, 2020

MORNING SESSION

(The following hearing was conducted remotely:)

THE COURT: Good morning. I would just ask everyone to please put their microphones on mute. It looks like just about everyone has and then we will get started. Very good. Madam Clerk, if you would turn on the public streaming, please.

THE CLERK: Public streaming is on, your Honor.

THE COURT: Thank you. And if you would please call the case.

THE CLERK: Your Honor, the matter before the Court is Case Number PC-2019-11756, In Re: CharterCare Community Board, et al. This on for the Liquidating and Plan Receiver's motion for injunctive relief against Adler Pollock & Sheehan. Would the Receiver and council for the Receiver identify themselves for the record.

THE COURT: Why don't we start with the Plan Receiver.

MR. WISTOW: Max Wistow for Stephen Del Sesto.

MR. LEDSHAM: Also Benjamin Ledsham for Stephen Del Sesto.

THE COURT: And counsel for the Liquidating or the Liquidating Receiver.

MR. HEMMENDINGER: Your Honor, Thomas Hemmendinger,

1 the Liquidating Receiver.

2 THE COURT: Why don't we next turn to counsel for  
3 Adler Pollock & Sheehan.

4 MR. TARANTINO: Good morning, your Honor. John  
5 Tarantino for Adler Pollock & Sheehan.

6 THE COURT: Okay. And I notice Leslie Parker is  
7 here as well.

8 MR. TARANTINO: And, your Honor, Pat Rocha is as  
9 well.

10 MS. ROCHA: Good morning, your Honor.

11 THE COURT: Good morning. Why don't we move next to  
12 counsel who is here for many of the Prospect entities.

13 MR. HALPERIN: Good morning, your Honor. Preston  
14 Halperin for Prospect Medical Holdings and the Prospect  
15 entities.

16 THE COURT: Thank you very much. And counsel for --  
17 I apologize. Actuarial counsel.

18 MR. GODOFSKY: This is David Godowsky representing  
19 Angell Pension Group.

20 THE COURT: Thank you.

21 MR. BOYAJIAN: Steve Boyajian is also here.

22 THE COURT: Good morning. It appears Attorney  
23 Rider, you have joined us from the Attorney General's  
24 Office.

25 MS. RIDER: Yes, your Honor.



1 THE COURT: As we are doing with Prospect and the  
2 others, Attorney Indeglia, if you would enter your  
3 appearance and who you represent.

4 MR. INDEGLIA: Your Honor, I represent a number of  
5 individuals and entities in the CCCB v. Lee matter. I  
6 represent Mr. Lee, Mr. DiStefano, Ms. Doyle, Dr. Doyle.  
7 In that matter I represent the Green Equity Investors,  
8 Side V, LP, Green Equity Investors, V LP, Ivy Holdings,  
9 Ivy Intermediate Holdings, Ed Quinlin, Thomas Reardon,  
10 Edward Santos, the David and Alexa Topper Trust, and Bob  
11 Crockett.

12 THE COURT: Very good. Thank you. Is there anyone  
13 else on with us this morning, other than my law clerks  
14 and staff, that have not identified themselves at this  
15 point?

16 Okay. Very good. The Court has before it the  
17 Plan Receiver and the Liquidating Receiver's motion. I  
18 have had the opportunity, spent a lot of time reviewing  
19 not only the papers, supplemental papers, and extensive  
20 exhibits in this case. I am going to ask the movent at  
21 this point to proceed. And I don't know as far as the  
22 two receivers how you're going to divide it up or how you  
23 want to take the argument.

24 MR. WISTOW: It was discussed with Mr. Hemmendinger  
25 and we agreed that with your Honor's permission I would

1 go first.

2 THE COURT: Okay. You may proceed, counsel.

3 MR. WISTOW: Many of the issues I'm going to be  
4 raising relate to Mr. Hemmendinger. I know he is not  
5 going to be repeating anything I say. Your Honor, the  
6 first thing I want to do is apologize for the massive  
7 number of materials that we sent to your Honor. There  
8 are two reasons for the bulk. One was, and we will get  
9 into it in a little while, for example, there was a  
10 291-page privilege log. We don't expect to go into  
11 details about the items, but I wanted your Honor, I think  
12 it's irrelevant, to see the size of it. Also, since we  
13 filed this motion on July 9th, there have been subsequent  
14 matters that have taken place. There is a change of  
15 circumstances in this case every time I turn around.

16 So there are issues I am going to be addressing  
17 which are matters of record before your Honor that are  
18 part of the exhibits we submitted as a reason why there  
19 has been these various supplements. I hope to make clear  
20 what those additional factors are. For example, one  
21 outstanding one was that the time that the motion was  
22 filed with the memo we had not yet appeared before the  
23 regulatory bodies, the Department of Health. So there is  
24 an extensive discussion, I hope not too extensive  
25 discussion, of what happened there and to fill your Honor

1 in and part of the exhibits that I deluged you with  
2 include, for example, the transcripts of the hearing and  
3 some of the exhibits. At any rate, your Honor, this  
4 is --

5 THE COURT: Counsel, I apologize, and I am going to  
6 let you make your argument but I would just like you to  
7 address the Plan Receiver's standing in this matter. I  
8 certainly understand the Liquidating. If we can just  
9 start with that.

10 MR. WISTOW: The first thing, your Honor, is that,  
11 as your Honor well knows, the 15 percent interest in the  
12 hospital, Prospect CharterCare, the 15 percent is held in  
13 trust by Mr. Hemmendinger, for the Plan Receiver and that  
14 was a very valuable portion of the settlement we obtained  
15 with your Honor's approval allowing us to go to the  
16 United States District Court. And candidly, and I think  
17 Mr. Hemmendinger would agree with this, we have done a  
18 goodly amount of the work that would affect that 15  
19 percent interest. I don't want to suggest for one moment  
20 that Mr. Hemmendinger is neutral on that subject. He is  
21 trying to protect it also, but that is our principle  
22 concern is we have a 15 percent interest in these  
23 hospitals.

24 There is also an interesting point your Honor makes  
25 as to whether or not the same standing issues arise in

1 front of the regulatory agencies as in front of your  
2 Honor. For example, we have encountered all kinds of --  
3 and I'm going to get this if your Honor allows me to  
4 speak. We believe there is a difference in the standing  
5 in the court and the standing in front of the regulators,  
6 and that it's critical, critical that we be able to  
7 explain that to you. And I hope Mr. Hemmendinger  
8 acknowledges he's only been in this case formally since  
9 December of this year, and most of the time we have been  
10 suffering from the Covid virus and he has done fantastic  
11 work to get on top of the complexities of this stuff. I  
12 mean, really wonderful exemplary work. But not that  
13 we're brighter on our side of this thing, but we have  
14 been working on this thing for three years, since the  
15 investigator phase in August of 2017 which your Honor  
16 will recall.

17 So that's where I -- one thing I would like to do is  
18 explain to you because I think the standing becomes more  
19 apparent as your Honor hears what is going on in the  
20 regulatory commission. With that, your Honor, I would  
21 ask you to allow me to proceed.

22 THE COURT: No, I wanted you to put that on the  
23 record. Certainly, when we can get to the other side,  
24 I'm not going to make any decisions on standing right  
25 now. Let's get it on the record. The only thing I do

1 want to mention you mentioned there's privilege logs and  
2 there's other information and there are some things that  
3 were provided under protective order. Just recall that  
4 this proceeding is being publically streamed. If you  
5 need to get into anything that is under protection, just  
6 let us know. We can have the clerk pause the public  
7 streaming as we go through that. Please proceed,  
8 counsel.

9 MR. WISTOW: Thank you, your Honor, for reminding  
10 me. With regard to the privilege log, Mr. Hemmendinger,  
11 as the representative of the Oldco in which the  
12 attorney/client privilege arose and the work product  
13 privilege and the common defense or the common interest  
14 privilege arose has given to us the Plan Receiver the  
15 attorney/client material. Adler Pollock has refused to  
16 turn over its work product and the common interest  
17 materials to Mr. Hemmendinger. I have Mr. Hemmendinger's  
18 permission, and I'm only going to be addressing some  
19 attorney/client issues and I have his permission to  
20 proceed with that.

21 Having said that, your Honor, I think it's important  
22 to understand what exactly is going on in front of the  
23 regulatory bodies. There are two separate parallel  
24 proceedings both mandated by statute and both subject to  
25 separate regulations, separate statutes. One is the

1 so-called change in effective control which is run  
2 exclusively by the Department of Health and then there is  
3 the Hospital Conversion Act proceeding, which is run  
4 jointly by the Department of Health and the Attorney  
5 General. We're involved in both of those at this point  
6 in the sense the applications have been filed under both  
7 of those statutory requirements.

8 By the way, the issue here, your Honor, it should be  
9 patently obvious, we're not talking about at all whether  
10 or not the allegations we've made, which are pretty  
11 serious in some regards, are either correct, incorrect,  
12 or even frivolous. The issue is should Adler Pollock &  
13 Sheehan be able to oppose those allegations in the CEC  
14 and the HCA, not the merits. We're not asking your Honor  
15 to decide if we're right or wrong, but just whether or  
16 not there really is adversity under Rule 1.9 of the Rules  
17 of Professional Ethics, and also whether or not there is  
18 a danger of privileged material being used. I'll get  
19 into that also. And whether or not Adler Pollock is now  
20 actively, actively seeking to deprive its former clients  
21 of the protection that they were involved in obtaining  
22 for those clients in 2014.

23 So let me just say first of all, who does Adler  
24 Pollock -- may I make this comment, by the way? The  
25 memorandum that has been filed is on behalf of Adler

1 Pollock and Prospect Medical entities and it's very  
2 important to understand the chronology of this because  
3 Prospect Medical is taking the position reinforced by  
4 Adler Pollock that they are going to be deprived of their  
5 counsel and this is a very, very draconian measure to  
6 impose upon them if there is an injunction and they have  
7 to get somebody else to do the CEC and HCA proceedings.  
8 The chronology that I'm going to get into to make it  
9 clear to your Honor that Prospect Medical has caused  
10 this mess upon itself when it sought the assistance of  
11 Adler Pollock.

12 Adler Pollock per the memo that it put in to your  
13 Honor with Prospect, the joint memo, identifies Adler  
14 Pollock as representing the following entities before the  
15 regulatory commissions, and that's on page one of their  
16 memo. They represent Chamber Inc., Ivy Holdings, Inc.,  
17 Ivy Intermediate Holdings, Inc., Prospect Medical  
18 Holdings, Inc., Prospect East Holdings, Inc, Prospect  
19 East Hospital Advisory, LLC, Prospect CharterCare, LLC,  
20 Prospect CharterCare SJHSRI, Prospect CharterCare RWMC,  
21 LLC, Prospect Blackstone Valley Surgicare, LLC, and  
22 Prospect CharterCare Home Health & Hospice, LLC. That's  
23 on page one of their memo. They identify their clients.  
24 Only four of those clients are really involved in the HCA  
25 and CEC because only four of those clients are licensed

1 by the state. The other entities are all holding  
2 companies, and, indeed, in Adler Pollock's Exhibit 4 on  
3 page six they indicate that there is no financial  
4 activity for any of these entities with the exception of  
5 Prospect Medical Holdings and Prospect CharterCare and  
6 its subsidiaries.

7 Your Honor will recall that we ended up -- and I'll  
8 go through the background of this. I know your Honor has  
9 other cases besides this one. We ended up, the Oldco  
10 ended up owing 15 percent or more, and we'll get into  
11 that in a little bit, of the ownership interest of  
12 Prospect CharterCare, which in turn is a holding company  
13 for the licensed facilities. What exactly is before the  
14 Department of Health and the Attorney General? It's a  
15 very confusing situation.

16 And in one of the rare instances where I'm going to  
17 agree completely with Ms. Rocha, I'm going to quote her  
18 from the July 21st hearing in front of the CEC, The Rhode  
19 Island Health Advisory Council or Health Services  
20 Advisory Council, and this is my exhibit. There's a  
21 transcript of my exhibit on page 16 to 17, and I'll read  
22 you exactly what she says and I believe it's an accurate  
23 statement of what's going on in the proceedings in front  
24 of the regulators. She says and I quote, "Today at the  
25 top of the corporate chain Leonard Green, the private



1 equity investor, owns the majority interest with about 60  
2 percent. Sam Lee and David Topper, the original  
3 co-founders of Prospect, own approximately 40 percent" --

4 Before I go on, your Honor, as you go through the  
5 documents, you will see references to minority  
6 shareholders. This is not in the documents referring to  
7 Lee and Topper. It's referring to executors who own  
8 perhaps one, one and a half percent, something like that  
9 of the shares. Going on, "Now with your approval",  
10 meaning the Department of Health, "and after confirmation  
11 of the merger agreement Sam Lee and David Topper's  
12 ownership interest will increase about 40 percent to a  
13 hundred percent."

14 It's as simple as that. That's what is before you,  
15 nothing more and nothing less. And I agree that the way  
16 she described the end result is correct but there is a  
17 great deal more before the CEC and the HCA regulators.  
18 For example, the statutes that require this say that  
19 certain things have to be satisfied to get approvals for  
20 this. Otherwise, what are we doing here? It would just  
21 be pro forma. As your Honor may note, the applications  
22 represent almost 2,000 pages of materials. So it's not  
23 some pro forma thing. We also urge that because the  
24 regulators allowed the original transaction in 2014 and  
25 they allowed it under conditions that there be an inquiry

1           whether or not those conditions have been satisfied.

2                     Furthermore, we have urged the regulators that they  
3           not approve what on its face is a fraudulent transfer,  
4           and I will get into an explanation of what I mean. What  
5           I'm talking about is the payment to Leonard Green in  
6           exchange for Leonard Green transferring over essentially  
7           the 60 percent to Lee and Topper personally without any  
8           payment by them whatever. And by the way, to our  
9           detriment, as I hope to demonstrate, again, I'm not  
10          trying to demonstrate to your Honor that we're right on  
11          the fraudulent transfer. We're not asking you to do  
12          that. We just want to show you there is an adversity  
13          here that we're making out patients that Prospect Medical  
14          in front of the CEC and the HCA regulatory bodies  
15          completely negate saying we're wrong.

16                     Let me go back to how we ended up where we are.  
17          And, again, forgive me, your Honor, I know you were  
18          involved in this but we're going back some years. And,  
19          as I said, I'm sure your Honor has other cases than this.  
20          What happened basically here is we started in 2009 with  
21          two non-profit hospitals, Roger Williams and Our Lady of  
22          Fatima. They were losing money and they decided to  
23          consolidate for economic reasons, you know, eliminate  
24          superfluous things, gain access to each other's  
25          facilities. And they went in to the Department of Health

1 and the Attorney General for permission to do that back  
2 in 2009 and that was allowed and what happened was those  
3 two charitable hospital corporations became subsidiaries  
4 of a newly created charitable hospital corporation at  
5 that time called CharterCare Health Partners, now the  
6 same entity as the CharterCare Community Board. All  
7 three of those entities are clients -- party to the  
8 estate that Mr. Hemmendinger is administering. He is the  
9 Oldco, the most important of which is Prospect  
10 CharterCare, which as I said, owns a minimum of 15  
11 percent of the current hospital interest, which he is  
12 holding in trust for the Plan Receiver, Mr. Del Sesto.

13 What happened was the hope for success of that  
14 merger in 2009 was not achieved and they came back in  
15 2014 and asked the Attorney General and the Department of  
16 Health to allow another transaction, this one quite  
17 dramatically different because they were converting  
18 not-for-profit hospitals into for-profit hospitals. That  
19 is to say substantially all of the assets of the old  
20 hospital, the Oldco, substantially all the assets would  
21 be transferred to newly created for profit. Those newly  
22 created for-profit companies would in turn be  
23 subsidiaries of a new for-profit LLC called Prospect  
24 CharterCare, LLC. So we go from three non-profits, a  
25 holding company, and two subs to three for profits, a

1 holding company, and two subs. The holding company,  
2 being the company that still belongs 15 percent to Mr.  
3 Hemmendinger, at least 15 percent. I don't want to make  
4 that concession.

5 Now, what were the terms of the sale in 2014 that  
6 were approved by the regulators? Ultimately, the  
7 regulators approved the sale and made conditions on that  
8 sale and that included that certain representations be  
9 fulfilled. For example, the very important one was that  
10 the Prospect entities would buy the assets of the going  
11 hospitals for \$45 million in cash, \$31 million of which  
12 would go to payoff bonds that the hospitals owed, and \$14  
13 million to go in to so-called stabilize the pension plan.  
14 There is no issue those things took place, not a problem.

15 The second thing this was a huge, huge issue and a  
16 huge selling point and became a condition of the  
17 transaction was that the buyer, the Prospect entities,  
18 would over four years put in \$15 million of long-term  
19 capital into the two hospitals, and that would be in  
20 addition to some \$10 million a year for routine capital  
21 expenditures. Additionally, the consideration was the 15  
22 percent transfer of interest -- I shouldn't say transfer,  
23 the creation of a 15-percent interest in the new  
24 for-profits that would be owned by the not-for-profits.

25 Additionally, it was required by the Attorney

1 General that there be a cy pres proceeding to take the  
2 charitable assets that belonged to the charitable  
3 corporation and do something with them because they  
4 couldn't be transferred, obviously, the for-profits. And  
5 your Honor was involved in that transaction back in 2015,  
6 which was also handled by Adler Pollock & Sheehan, and  
7 your Honor will recall that allegations were made that  
8 the Court was, to use a charitable term, misled in those  
9 proceedings and that the AG was misled in those  
10 proceedings and there was an \$8.2 million transfer that  
11 had been made in a settlement which your Honor approved  
12 initially to go to the federal court for \$4.6 million of  
13 the 8.2 was paid over to the Plan Receiver.

14 Your Honor will recall that your Receivers at that  
15 point -- your one Receiver, the Plan Receiver, was the  
16 plaintiff in a federal court proceeding where he was  
17 asking permission for him to go take the settlements to  
18 the federal court. He wasn't asking you to approve that.  
19 By the way, even though we weren't asking you to approve  
20 that -- by the way, vigorous objections. Your Honor will  
21 recall we were in front of your Honor every twenty  
22 minutes on every settlement before we could even get to  
23 the federal court to see what they would do with it.

24 Finally and very, very critically, your Honor, very  
25 critically, the Attorney General imposed a monitoring

1 schedule on this transaction where he was supposed to get  
2 initially reports every two months for the first six  
3 months and then the next six months twice, once every  
4 three months and thereafter annual reports up to the time  
5 that it can be shown that the \$50 million was put in.  
6 And I'm going to talk about those monitoring reports in a  
7 moment, but that was a critical part of the protection of  
8 the Oldco because the Oldco wanted, as we do today, these  
9 hospitals to flourish because they owned 15 percent and  
10 the better the hospitals did, the more that 15 percent  
11 would be worth. And if something bad happened to the  
12 hospitals, they went under, which is one of the things  
13 we're concerned about now, the 15 percent would be  
14 worthless.

15 So there is no question, no question whatever that  
16 Adler Pollock & Sheehan represented Oldco in connection  
17 with the 2014 transaction. They take the position, which  
18 I hope to demonstrate to your Honor as factually  
19 completely incorrect, that they were only involved in the  
20 proceedings in front of the regulators. I will explain  
21 to your Honor the documentary evidence that we obtained  
22 from Adler Pollock & Sheehan including the privileged  
23 documents that were recently, very recently produced that  
24 show they were involved in this underlying transaction  
25 way before, way before they went to the regulators.

1           And by the way, your Honor, I don't want to fall  
2           into the trap of saying that that distinction really  
3           means something. I don't think it does. They were  
4           involved in protecting their client in front of the  
5           regulators and seeing that the conditions that were  
6           imposed were correctly carried out or at least, at least  
7           not go to the other side of the transaction and now claim  
8           what we're saying they weren't carried out. They're  
9           saying they were.

10           THE COURT: Counsel, just a question on that.  
11           Reviewing the transcript and the application, can you  
12           point to where an affirmative representation was made  
13           that the \$50 million had somehow been satisfied?

14           MR. WISTOW: Yes, I can. If, your Honor -- I'm not  
15           going to say that. What I'm going to say is this, and if  
16           your Honor will give me a moment.

17           THE COURT: Sure.

18           MR. WISTOW: In the presentation by Adler Pollock &  
19           Sheehan there are references -- actually, there are power  
20           points that were shown when I was there, actual power  
21           points. And if your Honor will give me a moment, I'll  
22           tell you where those are.

23           THE COURT: Sure.

24           MR. WISTOW: In the Adler Pollock & Sheehan Exhibit  
25           5 that they submitted to your Honor, if you go to Exhibit

1 5, page 15, they talk about the millions, millions of  
2 dollars of capital expenditures that they've made. That  
3 is page 15. We absolutely dispute that those -- that  
4 many of those were made, and we also dispute whether many  
5 of those actually count toward the kind of capital  
6 expenditures that were mandated by the agreement. There  
7 is a whole provision for how those were to be decided  
8 upon, which we firmly believe were not followed. What  
9 I'm saying here is Adler Pollock has put before -- and by  
10 the way, there were no witnesses to substantiate this, no  
11 documents. It was a power point that was put up being  
12 supported by Ms. Rocha, who is quite familiar with the  
13 procedures over at the Health Services Council and enjoys  
14 a very good relationship with them. And to have her say  
15 this is what the capital expenditures was goes a long way  
16 to convincing people that is probably true. We dispute  
17 vigorously that it's true.

18 Getting back to the point that I want to make here  
19 is we have been fighting, your Honor. Your Honor knows  
20 this. We have been trying to find out the capital  
21 expenditures. Mr. Sheehan was in front -- in fact, there  
22 was an order that was entered. We are supposed to get  
23 this information finally, like tomorrow literally, and  
24 not to say that we are agreeing with what answers we get.  
25 This has been a fiasco of the first order in terms of our



1 finding out the answers to the capital contributions.  
2 But the capital contributions is the least -- I shouldn't  
3 say the least, is only one of the problems we have with  
4 the submission that has been put forward by Adler  
5 Pollock. And by the way, this isn't just directed at  
6 Adler Pollock. This is really directed at Prospect, who  
7 says effectively we are being deprived of our counsel.  
8 This is terrible what they're trying to do to us. What I  
9 can tell your Honor is Prospect has known literally for  
10 years about these bones in contention. I'm not going to  
11 speculate as to why they went to Adler Pollock & Sheehan.  
12 Hopefully it wasn't because they knew that Adler Pollock  
13 had represented us and had a lot of confidential  
14 information, which I'm going to get into in a moment  
15 about why the confidential information was  
16 extraordinarily relevant to this proceeding. When I say  
17 this proceeding, I mean the CEC and the HCA proceeding.  
18 Again, forgive me, your Honor, I'm just going to go  
19 through a little bit of a history here. In August of  
20 2017 that was the petition receivership that old St.  
21 Joe's, Oldco, to put the receivership into a separate  
22 receiver; namely, Steve Del Sesto and that receivership  
23 became in effect -- not in effect, it became an estate  
24 under Mr. Del Sesto. Within days of his appointment I  
25 was allowed to be appointed as special investigator to

1 look into what happened to these plans. I shouldn't say  
2 these plans, the retirement plan, which if your Honor  
3 will recall, there was a frank admission not only that  
4 they were under water by millions and millions and  
5 millions of dollars, but there was an affirmative request  
6 to your Honor to reduce everybody's pension by 40 percent  
7 across the board. I'm sure your Honor recalls that.

8 And we investigated on behalf of the Receiver what  
9 was going on and that investigation went from August of  
10 2017 through June of 2018 when we brought suit on behalf  
11 of the plan and brought a class action suit for the  
12 members -- the beneficiaries of the pension plan. The  
13 history here that I'm about to relate is central to the  
14 idea of we delayed. That's what is being alleged, that  
15 we've now at the last moment tried to deprive Prospect  
16 employees. I think your Honor is going to see that that  
17 is the absolute height of hypocrisy, height of hypocrisy,  
18 and I think I'm being charitable by just calling it that.

19 We now know, your Honor, we now know from the memo  
20 put in by Adler Pollock and Prospect to your Honor in  
21 opposition to my motion, we know from that for the first  
22 time, I know it anyway, that Adler Pollock has been  
23 working on this at least since July of 2019. That is  
24 stated flat out on page four of Adler Pollock & Sheehan's  
25 memo.

1           Now, what did Prospect know in July of 2019? What  
2           did they know? What did Adler Pollock & Sheehan know?  
3           This is a variation of the question what did they know.  
4           I'm not asking when did they know it. I'm going to tell  
5           you when they knew it and I'm also going to tell you what  
6           they knew. They knew the suits were pending. They were  
7           pending starting in June of 2018. They knew, Adler  
8           Pollock knew, that they had billed St. Joseph's Hospital  
9           over \$300,000 to respond to the subpoena requesting the  
10          records relating to this transaction, and which generated  
11          the 291-page privilege log. That privilege log cost --  
12          and it was presented to me and they were representing at  
13          that time that these were attorney/client work product.  
14          These are confidential information. They spent \$334,000  
15          to do that. Now, that's before the suit even. And they  
16          identified in the memo -- they refer to that, that they  
17          represented St. Joseph in regard to that. There was more  
18          to it than just this regulatory business.

19                Now, they knew about the receivership. They knew  
20                about the suits. They knew about the investigation.  
21                Next, there was a settlement that was negotiated with the  
22                Oldco and that was approved by this Court so that I could  
23                go over to the United States District Court on October  
24                19, 2018. And that settlement, if it was to be  
25                approved -- by the way, your Honor will remember we

1           fought like the devil to even get to the federal court.  
2           There were objections by Prospect and so forth. That  
3           settlement if ultimately approved, which it turns out it  
4           was, transferred 15 percent, we say more now, to Oldco,  
5           which is to be held in trust for the Plan Receiver. That  
6           was expressly stated and it was one of the bones of  
7           contentions, by the way. Your Honor allowed that on  
8           October 19, 2018. You didn't approve the settlement.  
9           You approved the fact that it was being recommended by  
10          the Plan Receiver and he was going to look for approval  
11          which had to be in the federal court because that's where  
12          the case was pending and it was a class action also.

13                 Now in March of 2019, this is now months before  
14          Adler Pollock begins its work for Prospect, in March of  
15          2019 Richard Land, who was then operating Oldco, if your  
16          Honor recalls, and who was the lawyer who we entered into  
17          the settlement agreement, which, by the way, Prospect  
18          affirmatively alleged in federal court was the product of  
19          collusion between Mr. Del Sesto and Mr. Land and actually  
20          got depositions as to what the discussions before them  
21          and pressed the collusion issue that was completely  
22          overruled on that by Judge Smith.

23                 In any event, in March of 2019 Richard Land brought  
24          the original CCCB v. Lee case, the case we are on this  
25          morning, in March of 2019, and in that he sued all of the

1 directors. This was both a direct and a derivative  
2 action, suing the directors for not taking action to  
3 ensure that the \$50 million was put in, suing for  
4 fraudulent transfer. There was actually a reference  
5 made, your Honor, to some dividends that were improperly  
6 paid. We didn't know to whom. So the original CCCB  
7 refers to the dividends expressly and says they don't  
8 know who they were paid to and they don't how much. But  
9 there was significant dividends improperly paid and that  
10 was a fraudulent transfer. We sued -- I shouldn't say we  
11 sued. Mr. Land on behalf of CCCB at that point was  
12 cooperating with the plan because of the pending  
13 settlement. He alleged and we believe appropriately that  
14 ABC Corp, which we now know to be the Leonard Green  
15 entities received an unknown amount of money as a  
16 fraudulent transfer. On May 17, 2019, United States  
17 District Court gives a preliminary approval to the class  
18 action settlement. And the reason it's only preliminary  
19 is notice has to go out to all of the members of the  
20 class to finalize it.

21 So after all of that happens, Prospect goes to Adler  
22 Pollock and says, hey, guess what, we want you to  
23 represent us before the regulatory commission. In  
24 September -- by the way, there has been no filings yet  
25 with the commission at that point. On September 30,

1           2019, the suit that I referred to before that was based  
2           on Adler Pollock's handling of the cy pres money in which  
3           we alleged that your Honor had been misled, one of the  
4           problems is, you know, I don't have to tell you, that  
5           given hundreds of thousands of pages of material, like we  
6           did to you in this case, like Adler Pollock, and we said  
7           we were misled and that the AG was misled and the case  
8           settled on September 30, 2019, with the foundation paying  
9           paying more than half of the \$8.2 million that was  
10          transferred.

11                 On October 2, 2019, there is a merger agreement that  
12          is signed between all of those Chamber Link, Ivy, Ivy  
13          Intermediate. The only reason I know that, your Honor,  
14          is because it appears in the memo submitted by Adler  
15          Pollock & Sheehan to you. That is on page one, and it  
16          identifies that the merger contract was signed on that  
17          date. Now, because that is subject, obviously, to  
18          approval by the regulators, because we were involved with  
19          two licensed hospitals and two licensed healthcare  
20          facilities, on October 9th there is a final settlement in  
21          the federal court, a final settlement of the Oldco case,  
22          the case in which the Plaintiffs are suing Oldco and  
23          which we're going to get the 15 percent back, and which  
24          part of the agreement, and this is very important, is  
25          that the three Oldcos would liquidate. They would go

1 into a liquidating receivership. That is the origin of  
2 the liquidating receivership. That's part of the  
3 settlement agreement. That was approved on October 9,  
4 2019.

5 And if your Honor recalls the difficulties we had in  
6 front of you, not because of you, but in front of you,  
7 because of Prospect to get over to federal court. You  
8 simply would not dream of the difficulty we got to get  
9 final approval to get over there. Prospect was involved  
10 in this. All your Honor has to do is take a look at the  
11 papers in the case. It's incredible the objections that  
12 were filed, not only by Prospect, but by Angell, by the  
13 diocese. It went on forever.

14 On November 8, 2019, Adler Pollock & Sheehan finally  
15 -- I shouldn't say finally, files the CEC application  
16 with the Department of Health. Now, that is not a public  
17 filing because the practice of the CEC is until they  
18 consider an application complete, they don't post it on  
19 the website. We got no notice of the application, the  
20 one that is talking about the transaction we're  
21 objecting, none whatever, in spite of this history.

22 Excuse me. I just got a kind of an important  
23 handout from Mr. Ledsham in my office and he actually  
24 gets to the very heart of this better than I can. He is  
25 referring to the filing with the Attorney General under

1 the Hospital Conversion Act which I haven't really  
2 referred to, but it flat out says -- and this is an  
3 exhibit to your Honor. It flat out says, this is the  
4 current transaction we're talking about, "The proposed  
5 transaction was subject to review by the Attorney General  
6 pursuant to the Hospital Conversion Act." We're talking  
7 about the October, 2013, application. It says, "The  
8 proposed transaction was subject to review by the  
9 Attorney General pursuant to the Hospital Conversion Act  
10 general laws so and so and the Attorney General rendered  
11 a decision pursuant to such review on May 16, 2014."  
12 This is the representation being made.

13 "Thereafter, Prospect has performed with regard to  
14 the terms and conditions of approval and conversion and  
15 each projection plan of description submitted as part of  
16 the application for any conversion and made a part of the  
17 approval of the conversion." That is false. I don't  
18 expect your Honor to agree that it's false, but I expect  
19 your Honor to recognize that we contend that it's false  
20 and we would like an opportunity to show that.

21 Now, if I might, your Honor, on December 13, 2019,  
22 Land filed the petition for the liquidating receivership  
23 pursuant to the settlement and thereafter Prospect sued  
24 the Oldco in Delaware in violation of your Honor's stay  
25 that was granted. We never made a to-do about that



1 because they ultimately agreed to withdraw it. But they  
2 were so cognizant of what was going on they actually sued  
3 us in Delaware for indemnity. On January 17, 2020, Mr.  
4 Hemmendinger was appointed the permanent Receiver and  
5 Prospect has filed a claim in that receivership for  
6 indemnity. This is how intimately they're involved with  
7 all of these goings on. So they knew about the 15  
8 percent. They knew the claims of \$15 million not being  
9 paid in. They made affirmative representations -- thank  
10 you, Benjamin. They made affirmative misrepresentations  
11 today that they performed everything. That's what they  
12 told the regulators.

13 Now, to show you how sensitive this situation is  
14 from our point of view, until last night, literally last  
15 night, I didn't realize there had been a further  
16 submission by Adler Pollock beyond the ones I talked  
17 about. The reason I didn't know that is it's not  
18 publically posted, and I checked after I looked at it  
19 last night. It's not on the website of either the  
20 Department of Health or the Attorney General. The reason  
21 I know about it is because Adler Pollock put it in as an  
22 exhibit to your Honor and it's Adler Pollock & Sheehan  
23 Exhibit Number 3, page 11. If you look at it, what you  
24 will see is it puts in a further submission, which,  
25 candidly, I didn't have the time last night to try to

1 figure out what the difference was. And, yes, if I had  
2 read carefully the thousands of pages, I would have  
3 realized it's a submission by Adler Pollock. If I read  
4 that submission more carefully, I admit I would have  
5 picked it up the way I did last night.

6 The point is and I will get into why this is such a  
7 sensitive issue being able to give things to the Attorney  
8 General and the Department of Health. The next thing  
9 that happened was on March 10, 2020, there was a posting  
10 on the website of the Department of Health. I found out  
11 about it much later. I was not noticed. I was not told  
12 and I am now on their mailing list now that I know how  
13 they operate. I was totally unaware of this and when I  
14 was made aware and I checked, it was clear that I had to  
15 put in an objection by April 9th. I had a couple of  
16 weeks to put the objection in. I was confronted with  
17 almost 2,000 pages of documents that had been filed by  
18 Adler Pollock and by Prospect for me to put an objection  
19 in within a couple of weeks. Once I saw what they were  
20 saying in the submission, I now know that they had paid  
21 400 -- that they had borrowed. When I say they, Prospect  
22 Medical had borrowed \$1.1 billion in 2018. They took  
23 \$457 million of that borrowed money and they gave it to  
24 the shareholders. Sixty percent went to Leonard Green.  
25 Forty percent of that \$457 million went to Topper and

1 Lee. They left Prospect Medical Holdings with a billion  
2 point one further obligation and only increased the  
3 assets by the money they didn't disperse to the  
4 shareholders.

5 Now, when I realized that, and at that point we knew  
6 that they were attempting to do this transaction in front  
7 of the regulators. There was an amendment of the  
8 CCCB v. Lee case and it's the amendment that is now  
9 pending before you. And the basic difference is that  
10 we've entered an appearance -- I shouldn't say entered an  
11 appearance, the Plaintiffs are Mr. Hemmendinger and Mr.  
12 Del Sesto. Nobody has moved to kick out Mr. Del Sesto.  
13 He is suing as the beneficiary of the trustee, of Mr.  
14 Hemmendinger, and we were able to supply in that  
15 amendment, and your Honor can look at it and you'll see.  
16 We talk about the \$457 million. We now know who the  
17 recipients were so we named them as recipients. We  
18 identified that as an absolutely fraudulent transfer,  
19 which affects us in multiple ways.

20 At that point it put Prospect Medical Holdings in a  
21 very liquid -- strike that. It was insolvent. It was  
22 insolvent before this transaction and it was insolvent  
23 after the transaction but only more so. We, Oldco, were  
24 the beneficiaries of a guarantee by Prospect Medical  
25 Holdings that this \$15 million would be put in. We would

1 also benefit if the \$50 million would be put in, the 15  
2 percent would be arguably worth more. It would be worth  
3 nothing if the hospitals fails.

4 We also point out expressly, expressly in the CEC --  
5 excuse me, in the CCCB v. Lee case we expressly refer to  
6 paragraph 102 to the CEC pending in the Department of  
7 Health saying that that is a fraud on the regulators  
8 expressly. Paragraph 102 refers to the CEC itself. By  
9 the way, the transaction that is being described here in  
10 the CEC is Prospect Medical Holdings is saying we are  
11 going to pay \$12 million even though we have a negative  
12 net worth in the financials. We have a negative net  
13 worth of a billion dollars. Their assets are about a  
14 billion eight roughly as to the last financial statements  
15 and their liabilities are about 2.9. They are going to  
16 take \$12 million at least and give it over so that the  
17 shareholders, Lee and Topper, will end up with 100  
18 percent of the ownership of all of these hospitals.  
19 There is no indication of any benefit whatever to  
20 Prospect Medical Holdings for this money and it  
21 jeopardizes the whole hospital system.

22 By the way, the other thing that is so curious, your  
23 Honor, is the amount of money being paid pursuant to  
24 what's been given to the CEC is \$11.9 million. We'll  
25 call it \$12 million that Prospect Medical is paid.

1           They're going to end up with 100 percent ownership at the  
2           top of the third of all of the hospitals. There is 20  
3           hospitals. If you take the 60 percent is worth \$12  
4           million, then 100 percent should be worth about \$18  
5           million. A hundred percent ownership of all of these  
6           hospitals is worth \$18 million. Even the Attorney  
7           General once we brought this to her attention she had  
8           serious questions about all of this. We have serious  
9           questions about all of this. We don't know what's going  
10          on and we haven't been able to find out.

11                 By the way, what they did was they entered into a  
12          sale leaseback arrangement with an entity called Medical  
13          Properties Trust. In spite of the use of the term  
14          medical, it's not a related entity as far as I know, and  
15          that sale leaseback was for \$1.5 billion. And as a  
16          result of that sales leaseback, the obligations of  
17          Prospect Medical Holding to pay rent is actually bigger  
18          than the obligations they had to pay off the \$1.1 billion  
19          loan. They're actually in worse shape and they attempted  
20          to do that to hide the fact that there was a fraudulent  
21          transfer. That's what we're alleging.

22                 I also say, your Honor, that the sale leaseback is  
23          nothing more than unsecured debt. Strike that. It's  
24          secured debt. They borrowed \$1.5 million and it's  
25          secured by transferring the title to Medical Properties

1 Trust who has leases which are more onerous in terms of  
2 the dollars than the original payment had to be on the  
3 1.1. They also completely miscategorized that  
4 transaction with the regulators, misrepresented, and I'll  
5 tell you exactly what I'm referring to. The application  
6 that the regulators are looking at refers to the sales  
7 leaseback and it says that -- and this is on page six of  
8 the application. By the way, there were multiple  
9 applications for each licensed facility. I believe it's  
10 the same on page six for all of them, but it's at least  
11 on a couple.

12 What it says is that Medical Properties Trust,  
13 quote, invested, invested in Prospect Medical Holdings  
14 \$1.5 billion and that investment, again using the term  
15 investment, gives them the wherewithal. It is not an  
16 investment. It's recorded as debt. It is debt and it's  
17 a gross misrepresentation to call it an investment. An  
18 investment, as I needn't say, is somebody that becomes an  
19 equity holder in a business, not somebody who gets an  
20 obligation back to pay on a monthly basis rents that in  
21 effect are debt payments, which, by the way accountants  
22 treat this kind of transaction as a finance transaction.  
23 We're not going to be allowed, apparently according to --  
24 I'll get into that in a moment.

25 Now, we filed an objection that is pending. Now,

1 let's look at what our objection says. If we're going to  
2 look at adversity, let's look at what we said and here is  
3 what we said and our objections are Exhibit 6, your  
4 Honor, the objections and the regulators. It says on  
5 page 22, "They are in default of the \$50 million  
6 capital." We say that flat out. I'm not going to  
7 explain again why that's important. We expressly say on  
8 page 17 that they're asking permission to do a fraudulent  
9 transfer and we explained why that fraudulent transfer is  
10 adverse. We say on page 20 that the transaction  
11 described is literally incomprehensible, and the reason I  
12 say that, your Honor, is the \$11.9 million, the \$12  
13 million is part of the purchase price. The rest of the  
14 purchase price is the payment of some options. The  
15 optionee -- it literally says it's the 12 plus these  
16 payments. The optionee is not described. The amount of  
17 the option payment is not described. There is a  
18 complete -- you have no idea what the additional payment  
19 is or who is getting it and we flat out say that. We  
20 make a big issue of that.

21 On page 25 we say that the balance sheet shows \$7.7  
22 million of cash in PMH, not even enough to pay the \$12  
23 million that Prospect wants to pay. And, by the way,  
24 with relation to that we also say flat out on page 25 of  
25 our objection that it was false for them to represent, as

1           they did in the application, that the two new subsidiary  
2           corps for Prospect, one is called Prospect CharterCare  
3           RWMC, LLC, and the other one is Prospect CharterCare  
4           SJHSRI. So those are the new entities that are operating  
5           the old hospitals.

6                     They say flat out that they, quote, "Continue to  
7           generate sufficient revenue to cover their expenses."  
8           Flat out they say that in the application. In the same  
9           financial that they submitted -- they put in 2,000 pages  
10          of material and let the regulators go make their way  
11          through that swamp. In that same financial they say that  
12          the two percent net charged by Prospect East advisory as  
13          an advisory suit cannot be paid, they haven't been able  
14          to pay it, and they owe them \$24 million. I think it's  
15          actually \$24.7 million that they have been unable to pay  
16          that fee. And by the way, they want to apply the \$24.7  
17          million and consider that as part of the \$50 million  
18          capital contribution.

19                    Now, how did the back and forth about Adler Pollock  
20          being out of the case, when did that start? It's true  
21          that the first time we mentioned anything about this was  
22          the April 6th filing. That's absolutely true. We were  
23          swamped. We are going through myriads of papers. We've  
24          got other things going in the case, as you know, your  
25          Honor and we just filed it, the motion. Excuse me, the



1 objection. We raised it. What happened then and your  
2 Honor can track this. I'm not going to go through every  
3 page. Volume one of our submission, tabs seven through  
4 nine show what happened started April 27th, which, I  
5 believe, is roughly two weeks after we filed. You will  
6 see the exhibits.

7 Pat Rocha calls Tom Hemmendinger and says in effect,  
8 knock it off. We don't have a copy. That's with regard  
9 to the objection. There's not a word said about, oh, and  
10 by the way, there is a problem with your objection. All  
11 of these allegations are a bunch of baloney. Let's sit  
12 down and we'll show you. Nothing like that. Back off.  
13 Tom asks for the bills that were run up by Adler Pollock  
14 in connection with the 2014 transaction. She says at  
15 first, well, you must have them. You're Oldco. And he  
16 discovers that Oldco -- and your Honor will recall this  
17 problem in the investigation. Oldco doesn't have the  
18 bills. They were left at Prospect physically. He gets  
19 back to her and says, please, get me the bills. I can't  
20 get them. They are at Prospect. You will see she  
21 pleads with some justification that we are in the middle  
22 of Covid. Our IT people are working remotely. There is  
23 going to be an enormous amount of work to get this stuff  
24 to you, the bills.

25 He gets the bills in early June and on June 11,

1 2020, sends a very lengthy letter, which is part of the  
2 record explaining in very great detail why there is a  
3 conflict. Now, remember, your Honor, you can imagine our  
4 reaction when we learned in April that Adler Pollock is  
5 representing our adversaries and never even mentions it  
6 to us even in passing and now is upset that we delayed in  
7 filing the motion for disqualification -- not  
8 disqualification, for an injunction.

9 Now, another thing happened and it's on July 3rd.  
10 On July 3rd we get the monitoring report. Your Honor  
11 will recall part of the condition was the annual  
12 monitoring report. Guess what? The monitoring report is  
13 dated March 20, 2020. We're talking about complying with  
14 the conditions from 2014. The monitoring report is dated  
15 March 20, 2020. It contains data in it that didn't exist  
16 until May 20th. Notice it says on May 20th so and so.  
17 You can see there were supplements made to the monitoring  
18 report. And we only got this monitoring report because  
19 the Attorney General contacted the monitor. Remember  
20 Attorney General Neronha inherited this mess from  
21 Kilmartin.

22 And what do we get? We get a monitoring report  
23 which is in evidence as Exhibit 18, which flat out says I  
24 can't answer these questions. There is a lot of  
25 unanswered questions. This is six years after the

1 transaction trying to get the same information that we  
2 have been pestering your Honor to give us an order  
3 allowing us to get all this information. And here is the  
4 conclusion. It's Exhibit 18. The conclusion the monitor  
5 makes -- this is in 2020. AMI, that's Associated  
6 Monitoring, which was hired, by the way, under a  
7 three-way arrangement between Prospect, the AG, and the  
8 monitors. The payments were supposed to come from  
9 Prospect. I'll read you their conclusion. It's only two  
10 paragraphs. It's a very lengthy thing. By the way, they  
11 come to no conclusion whatever on whether or not the \$50  
12 million satisfied. They come to no conclusion whether or  
13 not there has been adequate staffing. There is a myriad  
14 of things. I won't bore you.

15 Here is the conclusion: "AMI found that while the  
16 individual Prospect employees we spoke with were pleasant  
17 and willing to help, the entity did not seem to be  
18 focused on collecting and organizing the information  
19 necessary to demonstrate its compliance with the  
20 conditions set forth in the HCA decision until pressed by  
21 the Attorney General." The reason the Attorney General  
22 pressed him is I came here in February and I said can I  
23 please have the monitoring reports. Continuing with the  
24 quote, "We noticed a steep drop in reporting activity  
25 once Moshe Berman left as general counsel for

1 CharterCare. It appears that the reporting role was not  
2 assigned to someone with both the local knowledge and  
3 the corporate leverage to pull together the materials  
4 needed." Nobody gave a dam what that really means on a  
5 corporate level. They didn't have enough corporate  
6 leverage to get this thing moving.

7 Now, when you say it was a steep drop. The steep  
8 drop was the last report. It was in 2015. That was the  
9 first report and then the next one was 2020. So in  
10 conclusion, "AMI was not able to determine whether  
11 Prospect complied with federal conditions. We will  
12 follow up with a request for clarification in all of  
13 these areas. So the final report of Prospect's  
14 compliance will accurately reflect the extent of the  
15 investment Prospect has made in its facilities and  
16 services to the community."

17 So I'm not going to go on to say except we were  
18 hoping to get an answer there. We don't get it. The  
19 Attorney General doesn't get it. They represent in the  
20 current thing that they complied with everything. Bear  
21 with me just a moment.

22 THE COURT: Sure.

23 MR. WISTOW: Now, here is something that really,  
24 really, really concerns me and I hope it concerns the  
25 Court. Go to the memo submitted by Adler Pollock &

1 Sheehan in opposition to the injunction. And by the way,  
2 it's not just Adler Pollock & Sheehan, it's Prospect.  
3 And it says on page nine, footnote ten, and this is key:  
4 "At the July 21, 2020, meeting, that's where I appeared,  
5 Ms. Rocha presented to the HSC, the Hospital Services  
6 Council, I'm not sure of the exact meaning.

7 THE COURT: Health Services Council.

8 MR. WISTOW: Health Services Council. Thank you.  
9 "On behalf of the applicants and the Health Services  
10 Council heard public comment. Due to time constraints  
11 the public comments were not completed. As a result, the  
12 public comment and presentation by the applicant will  
13 continue at a future meeting." Here's the bad part: "In  
14 addition, the applicants are responding to supplemental  
15 questions from the AG, providing information to RIDOH's  
16 experts and will be participating in the interviews, not  
17 open to the public, that will be conducted jointly by the  
18 AG and RIDOH. Finally, as set forth above, a public  
19 informational meeting will be scheduled."

20 Now, I know, your Honor, from my experience  
21 investigating what happened in 2014 that there is a ton  
22 of material that the AG and the Department of Health  
23 don't make available. In fact, your Honor will recall  
24 you ordered in representatives of the Department of  
25 Health because stuff wasn't forth coming and then we had

1 to agree to keep things confidential because they weren't  
2 public. So what we have here, we have a law firm that  
3 represented to this Court that it had 291 pages of  
4 confidential information, some of which it won't even  
5 share with its own clients and it's going to go to  
6 ex parte meetings with the Attorney General and the  
7 Department of Health.

8 Ms. Rocha said on July 21st on page 17 of the  
9 transcript, this is a quote from her: "Now, on the good  
10 news front, Prospect's commitment to the Rhode Island  
11 licensed facilities, the hospitals, the surgery center,  
12 the home health agency, and you are going to hear from a  
13 variety of speakers today talking about those  
14 commitments, both financial and otherwise, and I think  
15 you're going to be very impressed. Listen carefully to  
16 them. But that commitment will continue under the  
17 leadership of Sam Lee and David Topper and that way it  
18 will enable Rhode Island licensed facilities to continue  
19 to provide quality cost, effective services to patients  
20 in need. That's what this is all about." Your Honor,  
21 you will recall she put up power points and showed the  
22 millions of dollars they contend into these hospitals.

23 What did she say about my presentation, my  
24 objection? What did she say to the regulators? The  
25 transcript Exhibit 13 page 139 to 40, "What I do know is

1 that Prospect, Prospect disagrees with all of the  
2 material allegations and claims made by Mr. Wistow, who,  
3 by the way, is a member of the public who has provided  
4 written comment and has been afforded the opportunity to  
5 speak as a member of the public. He shouldn't be treated  
6 any better or worse than any member of the public  
7 commenting on an application. He is not the applicant  
8 and he is not entitled to call witnesses or put on  
9 presentations."

10 She, our old lawyer -- I don't mean old  
11 chronologically, a former lawyer is going to go in  
12 ex parte with -- by the way, I didn't count the number of  
13 items on the privilege log but there's 291 pages and  
14 there is 20 to 30 items on each page. There is between  
15 four and 6,000 confidential communications. So they're  
16 saying I don't have standing here. I don't have standing  
17 in front of the board. That very position that I don't  
18 have standing is adverse to Mr. Hemmendinger who has  
19 asked me and did ask me expressly to speak on his behalf  
20 in front of the council. And what she's really saying is  
21 that the Oldcos have no right to be heard. This is of no  
22 consequence to them whether or not the commitments that  
23 were made, which are now being represented were honored,  
24 were honored or not.

25 Your Honor, this is not just -- you know, the

1 suggestion that is being made -- by the way, what I would  
2 like to do is there is going to be decisions made by the  
3 council, by the regulators, I would like to put in expert  
4 testimony from accountants as to how they finagled this.  
5 By the way, your Honor can look at the financials, which  
6 are Exhibits 19, 20, 59, and 60. There are dramatic,  
7 dramatic changes that were made to those financials after  
8 they were put in. We said that under those financials  
9 the local hospitals are on the hook for millions and  
10 millions and millions of dollars, hundreds of millions of  
11 dollars.

12 This probably is something that may come back to you  
13 because June 23rd Mr. Sheehan and Mr. Halperin were  
14 fighting about that that there was this out-and-out  
15 representation. Mr. Halperin said and this on the record  
16 in that proceeding in front of you which we have attached  
17 as an exhibit. There is a transcript. Mr. Halperin  
18 said, "I called my client, Pat Rocha, and she has  
19 confirmed that those were mistakes and they've been  
20 fixed." So, now, there is a complete total revision of  
21 financial statements that were certified by public  
22 accountants. They have now changed them. They would  
23 like to characterize it as clarifications. They are in  
24 no way clarifications. They are completely  
25 contradictory.



1           And by the way, even the new financials are not  
2           correct for reasons that I intend to get into with the  
3           council. They are still not correct. They are not  
4           reliable and to allow them to proceed with this is a  
5           travesty. Right or wrong about what I just said, your  
6           Honor, I don't ask you to give any credibility to what  
7           I'm saying about the financials being dramatically  
8           contradicting and there are still problems. I provided  
9           the documents and they have been highlighted so you can  
10          see. But even if you don't agree, the point is this is  
11          our contention and this is not the time to determine  
12          whether our contention is correct or not. Right or wrong  
13          there is a huge dispute.

14                 By the way, this really is very, very troubling,  
15                 your Honor. They represented they weren't involved in  
16                 the 2014 regulatory approval. That is absolutely untrue.  
17                 And I'm going to refer you -- some I this I couldn't do  
18                 before because we just got the attorney/client privilege  
19                 material from Mr. Hemmendinger who demanded it. These  
20                 were his client's records. And I'm going to tell your  
21                 Honor where to locate these so you don't have to take my  
22                 word for what they say. Remember now their position was  
23                 that they were only involved in the regulatory  
24                 transaction and not in setting up the underlying  
25                 transaction in any way.

1           They claim that Drinker Biddle was the firm that did  
2           that. And, clearly, Drinker Biddle was involved and I'll  
3           tell you exactly when they became involved in a moment.  
4           But the first thing I would like your Honor to look at is  
5           the fourth supplement. Forgive me for having to refer to  
6           the fourth supplement, but these are materials we got  
7           recently. At tab 34 there is an e-mail from Richard  
8           Beretta to Pat Rocha and it's dated August 4, 2012. This  
9           is, by the way, a year before Drinker Biddle, whose  
10          engagement letter comes into affect. The first in the  
11          trail says -- this is Beretta to DiStefano, who is a  
12          partner in the firm and to Pat Rocha, who says, "Let's  
13          meet Monday." And the next one is Pat Rocha says, "What  
14          is this?", and Beretta responds to her, "Potential  
15          purchase of CharterCare." That's August 24, 2012.

16           If your Honor goes to the fourth supplement, tab 34  
17          at page two, we enclosed some billings that we got from  
18          Adler Pollock. That's three days. I believe that  
19          that's the Monday they're talking about or Friday. I've  
20          lost track. I'll read to you now and your Honor can  
21          double check. "August 27th, Rocha meeting with Ted  
22          Belcher. He was the president of CharterCare. From  
23          Attorney Jay DiStefano and R. Beretta. 8/27, Beretta  
24          meeting with Ted Belcher re Prospect, followup telephone  
25          call." I'm not going to go through all of these things.

1 I'm just going to pick out what I consider to be some  
2 really significant ones.

3 This one was especially startling to me. It's the  
4 fourth supplement, Exhibit 38, and it's a -- make that  
5 Exhibit 37. It's an e-mail from Joseph D'Alessandro at  
6 CharterCare to Richard Beretta at Adler Pollock and it  
7 says, "Joe DiStefano wanted a copy of the St. Joseph's  
8 Hospital retirement plan forwarded to you. Attached  
9 please find that document. Should you require additional  
10 information, please do not hesitate to contact me." This  
11 is 12/28/12, five years before the petition of the  
12 receivership.

13 On January 2nd, this is a few days, obviously, after  
14 the December 28th. We have Rocha entering a billing item  
15 for two and a half hours. This is Exhibit 38, "Review  
16 analysis re church pension and receivership. Meeting  
17 with Ken Belcher and Kim O'Donnell," so forth and so on.  
18 The next day -- no, the same day Beretta bills the same  
19 amount of time for a meeting at CharterCare re the  
20 pension/mastership issues, and then two days later  
21 Beretta at Adler Pollock is reviewing pension documents  
22 from Souza. Souza is an employee at St. Joseph's.

23 THE COURT: Counsel, just let me know when a good  
24 time to break is. It's been about an hour and a half.  
25 When you get to that point over the next few minutes, and

1 then we'll take a ten-minute break.

2 MR. WISTOW: I would just like to finish these.

3 THE COURT: Sure.

4 MR. WISTOW: But I want to ask the stenographer's  
5 permission through the Court if I can go for another five  
6 or ten minutes.

7 THE COURT: Gina, is that a problem?

8 COURT REPORTER: No, no problem.

9 MR. WISTOW: Thank you. February 7, 2013, this is  
10 an e-mail. It's the fourth settlement Exhibit 40 at one.  
11 It's from Richard Beretta to Pat Rocha and the subject is  
12 letter of intent, drafts. And what is attached are the  
13 letters of intent for Prime and Prospect prepared by Cain  
14 Brothers. This is February 7, 2013. And when your Honor  
15 looks at the letters of intent you will see that they are  
16 starting to discuss many of the items that end up in the  
17 underlying transaction. For example, Prospect commits to  
18 make \$50 million in additional capital contributions, et  
19 cetera, et cetera. There is a good deal of what ends up  
20 with the final thing. This is months before the  
21 engagement of Drinker Biddle.

22 There is a particularly interesting one from Hans  
23 Lundsten was at Adler Pollock & Sheehan. This is dated  
24 April 6, 2013, and what it says it's from Lundsten to Joe  
25 DiStefano, Sally Dowley, Pat Rocha, all lawyers and all

1 part of the attorney/client privilege log. And I'll just  
2 read you the beginning of it. It's Exhibit one, page 48.  
3 "We discussed the structure of the deal between  
4 CharterCare and Prospect involving the two hospitals,"  
5 and then it goes on to explain what is going on at that  
6 moment with the deal. On January 9th, this is the  
7 fourth supplement, Exhibit 43, there is an entry by  
8 Lundsten, again, your Honor, I'm skipping many, many,  
9 many where he says, "Review issues on proposed sale.  
10 Discussed with firm Attorney J. DiStefano. The Drinker  
11 Biddle letter, which is Exhibit 17, engagement letter, is  
12 signed July 11, 2013." Even after Drinker Biddle comes  
13 on, we have all kinds of discussions about the  
14 transaction. For example, "8/21/13, Lundsten, review  
15 issues on structure of sale with firm attorney JR  
16 DiStefano."

17 Now, there is no question that I believe Lundsten is  
18 a well-known tax lawyer and I'm sure a great deal of what  
19 he was doing is looking at the taxation aspect, but that  
20 affected, as you'll see, that affects the form of the --  
21 your Honor, needn't be told that complicated business  
22 transactions have tax consequences structured to satisfy  
23 the IRS in some fashion.

24 Now, additionally, the CCCB v. Lee case that is  
25 before your Honor makes express references to

1 misrepresentations made to the towns -- to the cities  
2 rather of North Providence and Providence to get tax  
3 stabilization. And one of the misrepresentations, one of  
4 the most glaring ones, is that they would put in the \$50  
5 million capital contribution. We have actual audio  
6 transcripts and in one case a video transcript of those  
7 representations being made by council for Prospect. What  
8 I didn't know until we got this attorney/client material  
9 is that Pat Rocha on July 10th spoke to Kent Belcher and  
10 Prospect Medical Holdings is the subject. "Hi, Ken.  
11 Following up on your discussion with Joe", meaning  
12 DiStefano, "I'm writing to confirm that Adler Pollock &  
13 Sheehan is providing representation to Prospect Medical  
14 Holdings in connection with obtaining a tax  
15 stabilization/exemption ordinance from the City of  
16 Providence." And later on, by the way, there is an  
17 express reference saying if there is ever a dispute about  
18 that between them, they will represent neither party,  
19 which is obviously what would have to happen.

20 Now, there is a request on July 10, 2013, for Robert  
21 Brooks who is a lawyer at Adler Pollock, an e-mail I  
22 should say to Pat Rocha and Richard Beretta. This is the  
23 fourth supplement at Exhibit 44-3, and he says that,  
24 "Mark Russo asked that we bill him directly for the work  
25 so I will weave this into the engagement letter." And

1 that e-mail trail Exhibit 44 at four says, "In the  
2 engagement letter to Prospect, we should confirm our  
3 representation of CharterCare Health Partners, Roger  
4 Williams Medical Center, St. Joseph's Health Services of  
5 Rhode Island in the regulatory review, and if there is a  
6 dispute between the parties regarding the property tax  
7 issue, we will not represent either one. Thanks. If you  
8 have any questions, let me know. Pat."

9 That is the proper thing to do. Then, this issue  
10 about was it involved in the underlying transaction,  
11 there is a multi-page, multi-page letter. It appears in  
12 the fourth supplement, Exhibit 47 at two. It's a letter  
13 by Joe DiStefano to Ken Belcher. It's sent to Pat Rocha  
14 and it goes on. It comments on the draft asset purchase  
15 agreement red line version dated 7/5/13. And there are  
16 literally eleven suggested changes to the operative  
17 agreement.

18 And, finally, finally on this issue about when was  
19 there the finalization of the agreements between Prospect  
20 and Oldco and who was involved in it. So this is the  
21 last one of the particular items I'm going to  
22 specifically call to your attention. It's the fourth  
23 supplement, Exhibit 55, and it's an e-mail from Pat Rocha  
24 to Ken Belcher dated -- I believe I said -- well, I  
25 didn't. It's dated April 10, 2014. Remember, the

1 decision to allow the transaction by the Attorney General  
2 was in May of 2014. This is very late in the game, and  
3 here is what they say.

4 They say that, "Operation of the hospitals on a  
5 go-forward basis including the services under the  
6 management agreement." That's part of the transaction.  
7 "Ed Santos was questioned." He was the chairman of the  
8 board. "As were the Prospect folks regarding the  
9 management agreement and whether its terms are contrary  
10 to what we are proposing. Mark, which is Mark Russo, is  
11 going to circulate a draft today to address operations  
12 and once everyone signs off, if need be we can tweak the  
13 management agreement."

14 And forgive me, I left out probably the reason for  
15 this. What it says, Rocha says to Belcher, "I spoke with  
16 Mark Russo, and as a result of all the interviews,  
17 meaning with the regulators, we need to address the  
18 following issues with the AG/DOH." And she said, "If we  
19 have to, we can tweak the management agreement." In  
20 other words, there is nothing in cement here. They're  
21 still working and have the ability to work on these  
22 documents. So to say that they were only involved in the  
23 transaction in front of the regulators is not true. And  
24 even if it was true, we say it doesn't matter.

25 With that, your Honor, I would suggest a break. I



1 am going to try to move along more rapidly. I don't have  
2 much more. I appreciate your Honor's indulgence. I know  
3 this is going on, but this is, obviously, an extremely  
4 important issue for both sides and a fairly complex one.

5 THE COURT: Like I said, I will allow everyone to  
6 make their record and give me the information they  
7 believe is appropriate. It's now just about 11:40. We  
8 are going to take a ten-minute break. We will return at  
9 11:50. The best bet is probably on your screen to hit  
10 both the mute and stop video button. Like I said, if you  
11 can come back on at 11:50, we will resume. With that,  
12 the Court will take a ten-minute recess. Thank you.

13 (R E C E S S.)

14 THE COURT: We are back on the record at this  
15 point. The Plan Receiver may continue.

16 MR. WISTOW: Thank you, your Honor. So I guess I  
17 would kind of like to, and I'm sure the Court and  
18 everybody else would like me to finish up, but I just  
19 want to talk about something that to me is just  
20 absolutely completely puzzling. You know, I'm not going  
21 to say to what extent Adler Pollock knew about all of  
22 these other lawsuits, et cetera, et cetera. I think it's  
23 reasonable to assume they did. By the way, apropos with  
24 that, the suit CCCB v. Lee which long antedated the  
25 application was not listed as one -- the one in question,

1           you know, lists the lawsuits and it's a peculiar one to  
2           leave out, especially when one of the Defendants was  
3           Joseph DiStefano, a member of the firm, but it was left  
4           out.

5           MR. ROCHA: Your Honor, may I interject for a  
6           moment? Mr. Tarantino just told me he's not able to  
7           listen. I just want to sure he can listen.

8           THE COURT: I appreciate that. We don't we give it  
9           a try. Otherwise, what I find is sometimes you have to  
10          log off and log back on. So let's stop for a moment.

11          MR. TARANTINO: I can hear again, your Honor.

12          THE COURT: Okay. Very good.

13          MS. ROCHA: Thank you. I apologize.

14          THE COURT: No problem at all. Attorney Wistow, you  
15          may continue.

16          MR. WISTOW: Whatever Adler Pollock may or may not  
17          have known, Prospect Medical knew all of the things, all  
18          of the things. And, by the way, it's a very big company.  
19          They are represented by layers and layers of counsel.  
20          They all knew about this and yet they went to Adler  
21          Pollock. Didn't it occur to them that there was some  
22          issue that might come up to at least run it by Oldco and  
23          maybe avoid all of these problems? Was there some other  
24          reason they thought Adler Pollock would be best? I say  
25          that, your Honor, on this issue of poor Prospect being

1 denied its counsel. This is not the ordinary situation  
2 where somebody goes to a lawyer in an automobile case and  
3 later on somebody saying, well, he represented me and now  
4 he's suing me and the poor plaintiff doesn't know  
5 anything about it. If anything Prospect knew more about  
6 this than Adler Pollock, at least as much. There is no  
7 question about that. And they are now claiming, now  
8 claiming, hypocritically, that if they lose their counsel  
9 that delay will injure them.

10 The bottom line is, your Honor, how are we supposed  
11 to allow without screaming, yelling, jumping up and down,  
12 how can we allow Adler Pollock to go to these ex parte  
13 meetings that they acknowledge they go to to submit  
14 materials that we don't even get to see? I wouldn't have  
15 seen the supplement but for the fact it was attached.  
16 How can that be when they're coupled with an issue about  
17 did they comply or didn't they comply. That's an issue  
18 they represented they have and they got all this  
19 information about what happened back then most of which  
20 they won't give us, the work product. It's an  
21 intolerable situation.

22 And I want to say something, your Honor. I think we  
23 fall fairly within the terms of 1.9, and generally  
24 speaking, the appearance of impropriety. One of the  
25 Rhode Island cases, I don't remember which one, says

1 ordinarily that is not sufficient except in extraordinary  
2 circumstances. Just the appearance of impropriety is  
3 extraordinary. I won't say the impropriety is all of  
4 Adler Pollock's fault, but clearly it's attributable to  
5 Prospect. For them to come back now -- well, okay.

6 I'll just close up by making a couple of comments.  
7 They cited an opinion, an ethics opinion about a lawyer  
8 who represented a woman in a bankruptcy proceeding and  
9 her son wanted to go into bankruptcy and the lawyer asked  
10 for an opinion from the ethics council whether or not it  
11 was appropriate because the son's bankruptcy filing would  
12 show a transfer that the trustee might consider to be  
13 fraudulent, and, therefore, by filing the son they would  
14 precipitate at least an inquiry by the trustee.

15 Two things about that case. Number one, it's not  
16 binding on this Court. It's not even binding on the  
17 lawyer who asked the question. If he went ahead and did  
18 it if they said no, don't do it, all it does is it gives  
19 him immunity himself. But I don't want to get into a  
20 quibble on it. It's completely distinguishable. If that  
21 lawyer who put her into bankruptcy were asked to act as  
22 the trustee and set aside, that is completely different.  
23 That is what we've got here. The lawyer is simply saying  
24 this guy is going into bankruptcy. What happens  
25 thereafter, I'm not going to say it was a fraudulent

1 trade. I mean, that would be what we're talking about  
2 here. It's the converse. They're saying everything was  
3 done right. I'm saying everything was done wrong. In  
4 the bankruptcy case, the lawyer would have to go in and  
5 say that this transfer to the son was a fraudulent  
6 transfer and the trustee should go at it. That is not at  
7 all what happened and I submit if that lawyer was  
8 appointed trustee, he would have to say I cannot serve.

9 You know, this improper motive, the litigation  
10 strategy that I have been accused of in the memo, there  
11 is no such thing. Normally what happens is the courts  
12 are saying, listen, we know that more and more lawyers  
13 are moving to disqualify other lawyers in the same case  
14 and that's a strategy. That doesn't mean that it  
15 shouldn't be done. We look at it real hard because it's  
16 a strategy. We're not moving to disqualify Halperin or  
17 any of the lawyers in the case. We're moving for an  
18 injunction to protect ourselves in a circumstance where,  
19 yes, it's beneficial to us to get him knocked off. Yes,  
20 we want to get him knocked off. Yes, that's part of our  
21 strategy, but it's not without merit. That's the point.  
22 If it's just to delay things, the Court will say, hey,  
23 this is denied. And by the way, there is too many times  
24 people are making these choices to delay things. That is  
25 not at all what is happening here. This is exactly in my

1 mind covered by your Honor's decision in Quinn v. Yip  
2 where the lawyers who were attacking the LLC structures  
3 were saying my client owns a part of these were the  
4 lawyers who helped structure those very LLCs many years  
5 before. I don't know if your Honor recalls the facts in  
6 that case.

7 THE COURT: I do.

8 MR. WISTOW: And we're saying the same thing is  
9 happening here. You can see even if you focus just on  
10 the regulatory aspect, just that, they were involved in  
11 structuring this. They were involved in getting the  
12 protections. They were involved in getting the  
13 commitments. And now they are turning around and saying,  
14 hey, you know what, you got what you were entitled for  
15 when the client says no.

16 It's almost like -- I'm trying to draw an analogy.  
17 So if a lawyer represents a seller in a liquor store  
18 situation and in that contract there is a provision for a  
19 non-compete within a certain distance, a certain area, a  
20 neighborhood, and now the lawyer is representing somebody  
21 else other than the seller. He is representing the buyer  
22 who wants to open up in a certain area and it's not very  
23 well described. It talks about the neighborhood of  
24 Sheep's Head Bay or something like that. And there is an  
25 objection in the liquor commission by the seller saying

1 this is a violation of the sale and now we have the  
2 buyer's lawyer. Let me restate that. The lawyer who  
3 helped draft the competition agreement is coming in  
4 trying to get the license saying no, no this doesn't  
5 violate the competition agreement, the non-compete. It's  
6 exactly the same thing. They're not involved in the same  
7 lawsuit but they switch sides to the detriment of the  
8 client who obtained the benefit from that lawyer in the  
9 first place.

10 Now, I cited Brady Sullivan for a very limited  
11 purpose and they jumped all over me to say what those  
12 guys did were terrible, et cetera, et cetera. And  
13 according to the facts of the case, what those guys did  
14 was not to be commended. I didn't cite it as an example  
15 of anything except -- and my brothers misstate what  
16 happened in that case. They say the lawyers were  
17 disqualified. They were not. They withdrew. I think  
18 they withdrew in anticipation they were going to get  
19 disqualified. What I cited it for was the proposition  
20 that even if they cannot go forward, they should be  
21 enjoined from using any of the materials that we had and  
22 turn it all over to us because that's what happened in  
23 Brady Sullivan. The court said it's not necessary for me  
24 to disqualify. They're gone. They withdrew, but there  
25 is lingering doubt, lingering fear on the part of the

1 clients on what is going to happen what those  
2 attorney/client things. That's what we have here.

3 THE COURT: I am very familiar. Brady Sullivan was  
4 before me. Thank goodness it got removed to the federal  
5 court. I'm familiar with the facts and followed the  
6 decision.

7 MR. WISTOW: Well, I don't know if I should say  
8 this. It might prejudice you against me, your Honor.  
9 But I asked Judge Smith to remand the case back to you  
10 and it's in federal court so you can decide.

11 THE COURT: Okay.

12 MR. WISTOW: In any event, the one final thing I  
13 want to say and this is especially distressing and I am  
14 surprised to see Adler Pollock doing this in their memo.  
15 They quote me completely out of context in the memo.  
16 They quote me as saying to the regulators, "I'm not  
17 asking you now to turn this down. That would be like  
18 asking you to believe everything I said. I'm not asking  
19 you to do that."

20 Now, the fact of the matter is if you look at the  
21 objection, the formal objection in the proceeding, it  
22 says, one, don't hear it because it's incomplete. And if  
23 you do hear it, turn it down. Now here is the full quote  
24 of what I said and it's totally consistent with the  
25 objection and completely inconsistent to what I was doing



1           there. It says, "Ms. Rocha said to you, this is me, flat  
2           out in her letter do your job. Don't worry about the  
3           jobs of anybody else. Just approve this thing." I was  
4           making the argument that among other things we wanted to  
5           save this hospital -- these hospitals rather, not just  
6           for our own reasons, to protect the pensioners, to  
7           protect Oldco, but also it's important to the State.

8           And so anyway, I'll start it over again and then  
9           I'll conclude. "Ms. Rocha said to you flat out in her  
10          letter, do your job. Don't worry about the jobs of  
11          anybody else, just approve this thing." Me continuing,  
12          "Don't do that. Please don't do that. I'm not asking  
13          you now to turn this down. That would be like asking you  
14          to believe everything I said. I am not asking you to do  
15          that. I am asking you to use your intelligence, your  
16          integrity, and before you sign off on this, make sure  
17          that you know what is going on. The Attorney General's  
18          Office has the investigatory ability of get to the bottom  
19          of this, I believe, and we're certainly going to try to  
20          help them. Why don't you get the benefit of what they  
21          find out before you do this. And I would like an  
22          opportunity to put on a full presentation. I don't have  
23          that opportunity now and if you give me a week, I won't  
24          have it because of all of the new materials that keep  
25          flooding in, including, as I said, we just got the report

1 from the monitor."

2 So what I did say to them was what I'm saying to  
3 you. I'm making all of these allegations. I'm giving  
4 you all these documents. I'm not asking you to rule on  
5 it today. That would be ridiculous. But, please, please  
6 don't approve it today. I want to come back and we're  
7 going to do stuff. So that is the end of my comments.  
8 I thank you, your Honor.

9 THE COURT: Counsel, just before we move on to see  
10 if Attorney Hemmendinger has anything to add, with  
11 respect to the substantially related prong, so you're  
12 saying the Court just shouldn't be focused on the 13th,  
13 14th application. The Court should also focus whether  
14 it's substantially related based on other conduct and  
15 other billing. I just want to make sure that I'm clear.

16 MR. WISTOW: Absolutely. It should be substantially  
17 related and it is substantially related. There is a  
18 little nuance that I would like to make. I'm not sure it  
19 exists but it's on my mind. You recall Mr. Ledsham gave  
20 me the application form that says they have complied.  
21 That was part of the requirement and we're saying no. So  
22 that in itself makes it substantially related. The  
23 regulators are saying we want to know what happened with  
24 the last transaction if we're going to trust going  
25 forward on this stuff, so it is substantially related.

1           The other thing is, I guess -- I'm not sure quite  
2           how to phrase this, but if you have a situation where  
3           another hospital was coming in, another hospital was  
4           coming in, and there were objections to that hospital  
5           that potentially involved confidential information even  
6           if it's, quote, not substantially related, if there is a  
7           danger of the use of confidential information to advance  
8           the position of somebody else, clearly -- I'll give you  
9           one example of that that is pretty obvious.

10           Let's say that I'm representing a plaintiff in an  
11           automobile accident and 20 years later he is in another  
12           automobile accident, and this time I am hired by an  
13           insurance company to defend him. I would say on its  
14           face, it's pretty tough to argue that they are  
15           substantially related. But if I have information about  
16           his medical condition, you know, he's claiming that he's  
17           got seizures and I know from 20 years ago he had  
18           seizures, then I've got a different problem.

19           So the question of substantially related also  
20           involves the question of is it likely that the  
21           confidential information may come into play in the  
22           representation. I think I have muddled the thing. I  
23           think what is clear here is they made it substantially  
24           related. They affirmatively bragged about what they have  
25           done with these two hospitals in support of their

1 petition when they know, at least Prospect knows, that we  
2 have been fighting them now for years saying they didn't  
3 do this. So I hope that was a reasonably articulated  
4 response, your Honor.

5 THE COURT: And I understand, and, you know, the  
6 first prong being patently clear, substantially related.  
7 I understand your arguments on the material adversity. I  
8 just wanted to make sure I have the scope right because  
9 you went through a lot of things.

10 MR. WISTOW: I just want to say I think the document  
11 that Mr. Ledsham gave me is dispositive because they flat  
12 out say they performed all the things that we say they  
13 didn't. And if that was the requirement, they answered  
14 our question.

15 THE COURT: Okay. Because you said Attorney  
16 Hemmendinger was going to be addressing certain issues,  
17 if the Liquidating Receiver would like to add anything so  
18 we have it all on the record before we turn it over to  
19 Adler Pollock and or Prospect.

20 MR. HEMMENDINGER: Thank you, your Honor. Mr.  
21 Wistow did an excellent job at laying the foundation for  
22 all of our arguments and articulating the arguments  
23 themselves. I just wanted to add a few points to  
24 illustrate the arguments here. The first is, as Mr.  
25 Wistow said, you don't have to decide today whether we're

1 right or Prospect is right or whether they complied with  
2 the 2014 requirements. But if you look at the monitor's  
3 report, the monitor reports that two years after the  
4 deadline for putting in that \$50 million, they've only  
5 been able to document \$6.6 million going in. So we're  
6 not just making these allegations in thin air. There is  
7 a strong basis for them. The same thing goes for the  
8 other allegations that we have made.

9 In fact, the regulators have extended the period for  
10 review of the HCA application based in part on the  
11 nagging questions about just what is this deal that is  
12 before the regulators and did Prospect, in fact, comply  
13 with the 2014 requirements. In addition to the \$50  
14 million capital contribution and the impairment of the  
15 Receiver's remedies against Prospect Medical Holdings and  
16 the Prospect entities for the \$50 million, another aspect  
17 of the 2014 approvals by the regulators was that there  
18 would be local control to local hospitals. There was  
19 going to be a fifty-fifty board. Half of the board of  
20 Prospect CharterCare was appointed by Prospect Medical  
21 Holdings, or its other subsidiary. I believe it was  
22 technically the member. And half the board would be  
23 appointed by CharterCare Community Board, one of the  
24 legacy hospital entities.

25 But if you look at the conventional LLC agreement,

1 which wasn't signed until June 20, 2014, after the  
2 regulators approved the transfer, yes, there's a  
3 fifty-fifty board, but there is also a procedure for  
4 dealing with deadlocks and that deadlock procedure ends  
5 in the Prospect board controlling the outcome. So there  
6 really isn't fifty-fifty control here. There isn't a  
7 requirement that there would be a consensus on how the  
8 local hospitals are operated.

9 And I'm just going to mention right now, but this is  
10 not before the Court but I think it's relevant that the  
11 Court know about this. In my second report I reported to  
12 the Court that in July I appointed four new CCCB  
13 directors for Prospect CharterCare. They have yet to  
14 gain any information that they had requested, even basic  
15 orientation information. And, in fact, Prospect's  
16 counsel has in no uncertain terms said that they will not  
17 receive any information unless they sign what I believe  
18 is an unconscionable confidentiality agreement that  
19 hamstring their ability to fulfill their fiduciary  
20 obligations to Prospect CharterCare, LLC. So that is  
21 another point of contention that makes this adverse.

22 And, again, as Mr. Wistow had pointed out, the 2020  
23 regulatory proceedings depend entirely on whether  
24 Prospect complied with the 2014 requirements. If they  
25 can't prove that, then the regulators almost certainly

1 will not approve the change in effect of control. So  
2 this is yet another issue that we're taking contrary  
3 positions on and 2014 flows directly from and builds on  
4 -- 2020 builds on the 2014 proceeding.

5 I also wanted to just address what may be a question  
6 in the Court's mind and put it to rest. Mr. Wistow has  
7 referred to privilege material and the two receivers had  
8 filed some privilege material. And I would like to  
9 explain how I got that material and what I did with it.  
10 I asked Adler Pollock & Sheehan to give me all of the  
11 documents that were listed in their 200 and some odd page  
12 privilege log and the supplement to the privilege log  
13 that they submitted as part of the Plan Receiver's  
14 investigation in 2018. They gave me a number of  
15 documents.

16 They withheld attorney work product documents and  
17 the privilege log lists various types of privileges. One  
18 is attorney/client privilege. The second is the work  
19 product protection, which I don't believe is a privilege,  
20 but has immunity from discovery or partial immunity. And  
21 third, common interest privilege based on the  
22 proposition, which I'm not sure I accept it, but that  
23 Prospect and the CharterCare entities had a common  
24 interest in the 2014 regulatory proceedings, and,  
25 therefore, their communications are privileged and have a

1 common interest privilege.

2 Now, the log did not identify which document or what  
3 bate stamp number. So what I got was a list, a privilege  
4 log, which didn't identify by bate number what these  
5 documents were and I got a pile of documents. I gave all  
6 of those documents and the logs to my e-discovery vendor  
7 and asked them to line everything up and to identify and  
8 segregate anything on which the common interest privilege  
9 was claimed. They did that. They gave me back two data  
10 files, one was attorney/client privilege and one was work  
11 product -- and one was common interest privilege.

12 I have neither reviewed the common interest  
13 documents nor have I shared them with anyone, but as the  
14 Court knows, based on US Supreme Court precedent in  
15 Commodity Futures Trading v. Weintraub as the successor  
16 to this court proceeding to CharterCare Community Board  
17 and its subsidiaries I'm the owner of the attorney/client  
18 privilege and I have the absolute control over whether it  
19 is waived and the extent to which it is waived. So I  
20 shared those documents, but none of the common interest  
21 documents with Mr. Wistow's firm and with the Plan  
22 Receiver. With that, I would be glad to try to answer  
23 any questions that the Court may have.

24 THE COURT: No, that's fine. I think this would be  
25 an appropriate time to move on to the objection that was



1 filed. Attorney Tarantino, are you going to be making  
2 the argument this afternoon?

3 MR. TARANTINO: Yes, your Honor.

4 THE COURT: I'm sorry. Max, you were on mute if you  
5 were trying to say something. I saw your lips moving.

6 MR. WISTOW: I just wanted to emphasize, this  
7 relates to the standing issues. Mr. Hemmendinger is the  
8 Receiver holding a trust for Del Sesto. The real party  
9 in interest is the plan. To the extent that Mr.  
10 Hemmendinger does work on the case and only he can do it,  
11 it depletes the assets of his estate which the plan hopes  
12 to obtain some. So he and I have agreed that as much  
13 work can be done by me would be done to save the plan and  
14 the estate money because I am on a contingency, which I'm  
15 beginning to regret. I just wanted to clarify that's why  
16 we're working together as much as we are.

17 THE COURT: Okay. Thank you, counsel. Attorney  
18 Tarantino, you may proceed.

19 MR. TARANTINO: Thank you, your Honor. So I must  
20 say that I didn't think I would ever quote from John  
21 Cleese from Monty Python but that's all I could think of  
22 when I heard this and that is: "And now for something  
23 completely different." I'm going to actually focus on  
24 the law and I'm going to focus on the facts as opposed to  
25 characterizations and allegations, the actual facts and

1 the law, so let me do that.

2 We received, I don't know, 60 some odd exhibits  
3 after the filing of the papers, none of which was  
4 explained to us or I assume to the Court. If was sort of  
5 figure out what this has to do with anything and so I did  
6 the best that I could. But maybe I'm mistaken but I went  
7 to the issues as I understood them to be before the  
8 Court, meaning should AP & S be disqualified and or  
9 enjoined with respect to not the matters that we're not  
10 involved in, but the matters we are involved in. What I  
11 heard from Mr. Wistow and to a lesser extent Mr.  
12 Hemmendinger, they're talking about all the problems we  
13 would have if we were counsel in either the federal court  
14 case or your case. I get that.

15 But what they're doing is they're taking issue with  
16 issues that you have in your case and Judge Smith has in  
17 his case where there is adversity between those clients  
18 and we're not involved in that and they're trying to  
19 grasp that on to two very specific limited, by statute  
20 limited, regulatory proceedings. They want to rewrite  
21 the law. They want to say those proceedings are going to  
22 decide issues that they can't decide.

23 And every time they quote Ms. Rocha, you will see -  
24 we gave you the transcript - where she says, "But that  
25 issue is in contention in other litigation," and she

1 explains we're not involved in that litigation. So  
2 everything that Mr. Wistow is talking about, if we were  
3 counsel in the federal court and we were arguing about  
4 those issues or we were counsel before you and we were  
5 arguing about those issues, you could say, well, there is  
6 adversity there.

7 What is there not adversity about? There is no  
8 change to the 2013 application or to the original HCA  
9 approval. There is no change to it. The only thing that  
10 is being considered by the regulators are whether they  
11 will approve the buyout at the top. The conditions stay  
12 the same. The \$50 million, whether it's paid or not,  
13 that stays the same. And Ms. Rocha says that is going to  
14 be determined in a matter before Judge Stern. It doesn't  
15 change the \$50 million. It's still a requirement. The  
16 only thing that is going to change is the ownership at  
17 the top and there is no adversity. It doesn't have  
18 anything to do with the 15 percent ownership. They still  
19 own the 15 percent or whatever ownership might ultimately  
20 be determined in your case. The only difference is going  
21 to be what ownership interest will those two individuals  
22 now have if it's approved. Will they own 100 percent, or  
23 now it's the 60 and the 20 and the 20. That's it. That  
24 is the issue.

25 I know your Honor was a regulator. I know your

1 Honor was counsel to regulators, and I know that  
2 regulators -- when Ms. Rocha says, "Do your job," she's  
3 not trying to be dismissive of them, but it's, you know,  
4 you regulators know what your job is. You know what your  
5 criteria are. It's not to decide do they own 15 percent  
6 or 18 percent or whatever percent. I don't even know  
7 what the allegation is in the case. That's not their  
8 job. The regulators can't do that. They would be doing  
9 your job if they tried to do it or the jury's job if  
10 there is a jury involved. Again, I don't even know that.  
11 It has nothing to do with these adversity arguments that  
12 Mr. Wistow is advancing.

13 Let's talk about the law. I didn't hear anything  
14 about that. I didn't hear anything about that. It's  
15 like you have to go for an archeological dig to find the  
16 law. What is the law? The law are these motions are  
17 disfavored. The law is that there is a heavy burden, a  
18 higher burden. What does that mean? What does it mean?  
19 I looked at Rhode Island cases where the court says what  
20 does it mean in a civil case when we say there is a heavy  
21 burden. There is only the burdens of proof recognized in  
22 Rhode Island. There is preponderance of the evidence,  
23 there is clear and convincing evidence, there is beyond a  
24 reasonable doubt. That's it. All three of those can  
25 apply in civil cases, as your Honor knows.

1           When the constitutionality of a statute is at issue,  
2           you apply beyond a reasonable doubt. There are  
3           categories of cases where the Court has said we establish  
4           a heavy burden. That's clear and convincing evidence.  
5           And then there is the typical more probably than not  
6           preponderance of the evidence standard. So not my words,  
7           not my writing, the Court's writing as well, your writing  
8           as well. There is a heavy burden. It is a higher  
9           standard. That means we're higher than just  
10          preponderance of the evidence.

11           What else do we know? We know -- and this isn't the  
12          first case where a party has sought to disqualify  
13          lawyers. They have cited no case that is like this one.  
14          We have cited many cases where courts have said the party  
15          seeking the disqualification either misunderstands or  
16          mischaracterizes the law on what is substantially  
17          related. Your Honor asked a couple of questions about  
18          that. What is substantially related? And the law is it  
19          has to be virtually identical. The issues have to be  
20          virtually identical.

21           And our point is if those two regulatory  
22          proceedings, there is no power on the part of the  
23          regulators to decide the issues that they are claiming  
24          would make them identical. They can't be substantially  
25          related. They're not litigating before you, I don't

1 believe, whether this should be owned by the two  
2 individuals or the private equity owner. I didn't  
3 understand that if they are. You will make your own  
4 decision. But I do know what is before the regulators  
5 and it has nothing to do with what Mr. Wistow was talking  
6 about, nothing.

7 And the regulators, and you can read the transcript,  
8 I mean, the regulators focused on what the issues are  
9 before them, and I am confident the Attorney General will  
10 focus on the issues that are before him or his team.  
11 They're not going to do your job. They're not going to  
12 do Judge Smith's job. They're not parties to it.  
13 They're not parties to the litigation. They're not  
14 involved. And when we say -- it's not out of disrespect,  
15 it's out of fact, when we say Mr. Wistow's client or  
16 clients, if he is speaking on behalf of Mr. Hemmendinger,  
17 they're parties to the regulatory proceedings, not  
18 because we don't want them, we don't but that's not the  
19 reason. It's because the legislature determined who the  
20 parties are to those proceedings and a 15 percent  
21 minority shareholder on an issue that doesn't involve it  
22 on who is going to own the ownership interest at the top  
23 isn't a party. It's not because of anything we did.  
24 It's not because of any argument we made. It's not  
25 because of any paper we filed. It's because that is the

1 law. That is the law.

2 And Mr. Wistow apparently wants you to say, this is  
3 truly extraordinary, what he wants you to do and I have  
4 not found any case that has done this. When there are  
5 disqualification motions, and this includes Brady  
6 Sullivan, who, by the way, as your Honor will remember, I  
7 represented Brady Sullivan. Their disqualification  
8 motions where the Court is talking about disqualifying  
9 counsel in a matter before it, they are asking you to  
10 reach out and disqualify us in matters that aren't even  
11 before the Court. They're asking you to disqualify us in  
12 a regulatory proceeding before the Department of Health  
13 and a regulatory proceeding before the Department of  
14 Health and the Attorney General. That is truly  
15 extraordinary, truly extraordinary.

16 This is not a case like any of the cases where they  
17 decided where there was litigation before a court and one  
18 party was saying to the court that was deciding the case,  
19 the lawyer on the other side representing the other party  
20 should be disqualified in this case. So there is no case  
21 that they cite that is anything like this because what  
22 they're trying to do is extraordinary, truly  
23 extraordinary.

24 What else do we know? We know that no matter how  
25 many times he says it clearly there is adversity. What

1 is the adversity with respect to the legal issue that is  
2 at issue in the Department of Health? What is the legal  
3 adversity as to whether or not Leonard Green should or  
4 should have known what it owns or whether it should be  
5 transferred? If they want to say there is some issue  
6 that they have about a fraudulent transfer or about a  
7 need for security or where is that money going to go,  
8 that goes before you. And Mr. Halperin, if any such  
9 claims were ever brought or any such motion were ever  
10 filed, like a motion for an attachment or a motion to  
11 enjoin, Mr. Halperin would handle that. We're not  
12 involved in that. We're not involved in that. The  
13 regulator, the Health Services Council isn't going to  
14 make a determination of whether there was a fraudulent  
15 transfer. They would look at people sideways. What are  
16 you talking about? The regulator isn't going to make a  
17 determination of whether they own 15 percent or some  
18 other amount. That is going to be decided by you. We're  
19 not involved in that.

20 THE COURT: Counsel, let me ask a question that I  
21 would like you to take me through, which is the \$50  
22 million capital infusion.

23 MR. TARANTINO: That's correct.

24 THE COURT: Is one of the factors or issues that the  
25 Health Services Council is looking at in whether to



1 approve or not approve this new application whether or  
2 not their prior approvals have been complied with, and is  
3 that adversity if, in fact, Attorney Wistow is correct  
4 that there was some affirmative representation that that  
5 investment had been made?

6 MR. TARANTINO: Your Honor, my understanding is that  
7 the answer to that is -- the first part of the question  
8 is no. The condition remains the same. There is still a  
9 condition of \$50 million. They're not determining  
10 whether it was or wasn't paid. Ms. Rocha says right on  
11 the record there is a dispute about that. That is going  
12 to be decided in a matter before your Honor. All Ms.  
13 Rocha did was set forth this is what the condition is.  
14 It is going to be determined. And, frankly, I don't  
15 believe in your case Mr. Wistow or anyone else puts forth  
16 a different percent of ownership toward that 50 --

17 THE COURT: I'm putting the ownership aside. What  
18 I'm talking about is the long-term capital contribution.

19 MR. TARANTINO: My understanding is that is an issue  
20 that there is adversity about in your case.

21 THE COURT: Correct.

22 MR. TARANTINO: The Department of Health is not  
23 going to decide that.

24 THE COURT: Not whether they're going to decide that  
25 but whether the Department of Health or in the Hospital

1 Conversion Act portion if it comes up here and the HCA is  
2 that a factor that's looked towards to make that ultimate  
3 decision, which you're saying is five layers up? I guess  
4 that's my question.

5 MR. TARANTINO: My understanding, your Honor, there  
6 are four criteria. None of which have to deal with that  
7 condition. No one is asking them to revisit that  
8 requirement or whether it did or didn't happen. They're  
9 talking about what happens at the top. The \$50 million  
10 was paid or it wasn't paid. If it wasn't paid that's a  
11 problem for the entity, irrespective of who owns it at  
12 the top. That is not going to be determined in this  
13 case.

14 THE COURT: Just so I'm clear, if the entity went in  
15 on this new application and said we know we agree to as  
16 far as this transaction that we make \$50 million over a  
17 certain period of time. That time period has past. We  
18 just want to let you know we only made 10 - and I'm  
19 making up a number - not 50, that that wouldn't have any  
20 effect one way or another on the decision before the  
21 council in terms of whether they'll approve this new  
22 transaction.

23 MR. TARANTINO: My understanding that would be a  
24 separate proceeding of whether there should be a change  
25 to any of the conditions, and my understanding, your

1 Honor, is that the hospital would have to petition to  
2 change that condition, but it has nothing to do with who  
3 owns it at the time.

4 THE COURT: Okay. Thank you.

5 MR. TARANTINO: Again, if we were involved in your  
6 case, I get it. I understand it, but we're not  
7 litigating that case. We're not litigating that case.  
8 The issues are very simple and straight forward. Mr.  
9 Wistow said, I counted it, eight times he said, "It's  
10 incredibly complex what was before the Health Services  
11 Council." Respectfully - and Ms. Rocha does it all the  
12 time and she does a good job - but I have seen some  
13 incredibly complex cases, that ain't one of them. It's  
14 whether the ownership at the top should be changed,  
15 which, by the way, in every other state it has happened.  
16 This is it. It's Rhode Island, okay.

17 And obviously, you know he filed an objection. He  
18 can file an objection as a member of the public. He  
19 can't make himself a party. He can't try to intervene,  
20 nor am I aware of any way to intervene in the case. So  
21 he has a right to be heard. He can be heard, but a  
22 member of the public can't change the criteria, nor can a  
23 member of the public ask the Health Services Council to  
24 look at something or to decide something that they are  
25 not supposed to look at or decide.

1           Your Honor knows as a regulator people can say  
2           whatever they want in these public hearings and they do.  
3           They say lots of different things and usually the  
4           regulator says thank you for your comments, but a member  
5           of the public can't change the standards and a member of  
6           the public can't change what the legal requirements are.

7           What we've tried to do in our brief, your Honor, is  
8           because I was concerned that, and I made a conscious  
9           decision, getting into the minutia of where Mr. Wistow  
10          is, I'm getting into your case and I'm getting into the  
11          case that Judge Smith has. I would say this with the  
12          exception that Mr. Wistow accurately read certain  
13          portions of bills, left out certain other portions, but  
14          with the exception of an accurate reading, I pretty much  
15          disagree with all the conclusions he drew, but it's  
16          irrelevant. It has nothing to do with the cases that we  
17          have with the Health Services Council and the HCA. It  
18          has nothing to do with it.

19          I do want to comment on a couple of things because  
20          they're wrong and the documents will show that they're  
21          wrong. Mr. Hemmendinger contacts Ms. Rocha. There is a  
22          letter. It's an exhibit. He says, "You were transaction  
23          counsel. You negotiated the deal. You negotiated the  
24          terms." You did this. You did that. Ms. Rocha said,  
25          "No, we didn't. That was Drinker Biddle." So what Mr.

1 Wistow is trying to do is talk about other work not  
2 negotiating the deal and say, well, you said you weren't  
3 transaction counsel. Again, your Honor knows what  
4 transaction counsel does. Drinker Biddle represented one  
5 party and another very large firm represented the other  
6 party. They were transaction counsel.

7 So when Mr. Hemmendinger writes a letter and says we  
8 object because you were transaction counsel and Ms. Rocha  
9 says, no, we weren't, that is an absolutely correct  
10 statement. But my point is alright even if we were  
11 transaction counsel, which we demonstrably weren't, what  
12 does that have to do with the 2013 approval, which is the  
13 only thing that the Health Services Council is looking  
14 at? It has nothing to do with the issues of the change  
15 at the top in ownership, nothing, nothing.

16 The other point, your Honor, that Mr. Hemmendinger  
17 and Mr. Wistow were talking about was this supposed  
18 delay. I just went back to make sure maybe my memory was  
19 wrong or I misread the documents. He said that a request  
20 was made for the bills. He is correct. Ms. Rocha  
21 initially said, "Look we are shut down. The governor  
22 shut us down. All of our people are working remotely. I  
23 don't know where we're going to find these things. Don't  
24 you have them?" And when Mr. Hemendinger said, "No, we  
25 don't," we didn't know they didn't have them. We said,

1 "Okay, we will get them." It was seven days, seven  
2 days, when we responded to him. We called in people from  
3 IT. We got it done.

4 And then with respect to the withheld documents, as  
5 soon as Mr. Hemmendinger -- I mean he had the privilege  
6 log. There was adversity there at one point in time. We  
7 were retained by Mr. Land. Mr. Land didn't want to turn  
8 those documents over. He was the client. He asked us to  
9 do it. It was a monstrous task. It was enormous and we  
10 did it. And then when he no longer had the privilege --  
11 when he had the privilege, he had the right to say I  
12 don't want you to turn them over. When he no longer had  
13 the privilege and now we get the request from Mr.  
14 Hemmendinger, we gave it to him. We gave it to him.

15 Again, none of that has anything to do with the  
16 pending issues in the two regulatory proceedings. And  
17 what your Honor would have to determine is that it is  
18 patently clear that they are the same or nearly  
19 identical. That's just -- it's not possible to make that  
20 determination and it certainly isn't possible, I would  
21 submit, to make that determination under the heavy burden  
22 -- they can't even come close to preponderance. It's  
23 more likely than not those two things.

24 What is before you and what is before the HCA or  
25 before the Health Services Council are identical. On a

1           preponderance of the evidence they couldn't make it, but  
2           on a clear and convincing evidence heavy burden  
3           disfavored and Mr. Wistow wants to blame our client,  
4           Prospect, for saying we would be prejudiced if we lost  
5           our attorneys. This is on the two-yard line and if we  
6           lost our attorneys now we would be prejudiced. And Mr.  
7           Wistow says that's a matter of your own making, Prospect.  
8           You've got to judge that against the law and against the  
9           standard. And case after case after case, every single  
10          case says these are disfavored. A client should be  
11          afforded the right to his or her counsel unless there is  
12          a legal or an ethical reason to say that can't happen.

13                 Mr. Wistow says, "I don't know why they went to  
14                 Adler Pollock & Sheehan." I'd like to think because  
15                 we're good lawyers. I would like to think because we  
16                 know what we're doing. I'd like to think because they  
17                 had a matter that involved the Health Services Council  
18                 and Ms. Rocha does a lot of work there and does have a  
19                 well-deserved excellent reputation there. I think that  
20                 might be why. Why do you go to any lawyer? You go to  
21                 any lawyer because you believe that lawyer is going to do  
22                 a good job for you, and we have done a good job for the  
23                 client. We have done a good ethical job for that client.

24                 And, again when I say challenge the court, I don't  
25                 mean it in a derogatory. I would invite the Court to

1 look at everything that was submitted. It's in the  
2 record. Everything is in the record. Where is there an  
3 ounce of confidential information, an ounce of  
4 confidential information in any of that presentation  
5 where they're saying you should enjoin them from  
6 disclosing confidential information? There is no basis  
7 for such an injunction. The record is in. It's there.  
8 That's it. And the matters before the Attorney General,  
9 again, have to do with those matters that are either  
10 public record or matters that were the 2013 application.  
11 There is no confidential information on other -- look, we  
12 did work for Oldcos on lots of different things over the  
13 years. We gave them all the bills on all the work we  
14 did. So there is lots and lots of different things.  
15 Most of which have nothing to do with anything. But, of  
16 course, you still can't disclose confidential information  
17 on one client, even if it's a former client. You're not  
18 supposed to do that, but there is no record evidence.  
19 First of all, it didn't happen. But they don't point to  
20 anything. Look in all of their papers, look in all of  
21 their exhibits. They don't point to one thing that they  
22 say is confidential that we have disclosed to a regulator  
23 or that they believe we are going to disclose to a  
24 regulator. There's nothing to do with the matters that  
25 we're handling for our client before those two



1 regulators.

2 I said I was going to do something completely  
3 different. It is a completely different argument. It's  
4 two ships passing in the night. But guess what? My ship  
5 has legal books on it and my ship has the ethics rules on  
6 it and my ship has what courts say are supposed to be on  
7 that ship. So they may be ships passing in the night,  
8 but my ship has the law on it and my ship has the actual  
9 facts on it. There is not a shred of evidence that we  
10 have disclosed anything, that we're going to disclose  
11 anything. Think of all of the cases you had where there  
12 are injunctions sought, probability of success on the  
13 merits, irreparable harm, their burden to show it and we  
14 know it's their burden to show it by this heavy burden.  
15 This is devoid of evidence, devoid of evidence.

16 Your Honor, I will try to answer any question that  
17 you want. Ms. Rocha is also here. Her integrity was  
18 directly challenged. Read that transcript. It was  
19 insulting, insulting what Mr. Wistow said about her  
20 there. But you know what, so what. She is here if there  
21 are any questions you want to ask her, feel free to do  
22 so. Thank you, your Honor.

23 THE COURT: Thank you very much, counsel. I would  
24 like Attorney Wistow and or Hemmendinger to respond.

25 MR. ROCHA: Your Honor, may I make two comments at

1 an appropriate time?

2 THE COURT: Yes, let's hear from counsel first.

3 Absolutely. Go ahead.

4 MS. ROCHA: Me, your Honor?

5 THE COURT: I'm sorry. Why don't we hear from  
6 Attorney Wistow first and then we'll get over to you.

7 MS. ROCHA: Okay.

8 MR. WISTOW: Mr. Tarantino misstates the factors.  
9 I'm not suggesting he does it on purpose. I assume he is  
10 not that familiar with it. I'm going to read to your  
11 Honor from the regulations of the Department of Health.  
12 I will give you the cite. It's  
13 216-RICR-40-10-4.4.3(E)(1)(c), and the sentence that I'm  
14 going to read is shorter than the regulatory reference.  
15 And it says on of the factors C, "The applicants proposed  
16 and demonstrated financial commitment to the healthcare  
17 facility." That is exactly what we're talking about.  
18 That is exactly why there was an affirmative  
19 representation made that the 2014 transaction resulted in  
20 a decision by the Attorney General with conditions of  
21 approval and why they said flat out Prospect has  
22 performed with regard to the terms and conditions of  
23 approval and each such projection plan of descriptions.

24 Now, your Honor, I am not saying that these  
25 regulatory boards are not competent to decide issues.

1 I'm not coming close to saying that. What I'm saying is  
2 if I ask to disqualify a lawyer appearing in a case  
3 before you, I'm not suggesting you're not competent to  
4 hear the case. I'm suggesting the lawyer shouldn't be  
5 the one presenting it. That's what I'm saying. I'm not  
6 suggesting that the regulatory commissions have problems.  
7 What I'm suggesting is they shouldn't be hearing from  
8 somebody who has the kind of adversity.

9 Now, is there adversity or isn't there? They have  
10 to say they demonstrated financial commitment to the  
11 healthcare facility. I'm saying the opposite. I'm  
12 saying the opposite. They demonstrated flagrant  
13 disregard in breach of the conditions that have been put  
14 on. I'm also saying, your Honor, and this is really  
15 unusual, they are flat out saying we want to do a  
16 transaction which on its face is a fraudulent transfer.  
17 So what's going to happen?

18 Do you know, your Honor, this may astonish you but  
19 the case that is pending in federal court, we were at a  
20 point where we haven't had general discovery yet there  
21 has been so much activity. The issue about deciding the  
22 fraudulent transfer, it may be years down the line.  
23 They're asking permission to do it now. That's what  
24 they're asking for. Now, I'm not asking they be  
25 disqualified from the case. I'm asking they be enjoined

1 from harming us. Does it matter if a lawyer is out there  
2 spilling his guts and betraying his confidential  
3 obligations and his obligations to his clients, do you  
4 have to move to disqualify from that case? He doesn't  
5 even have to be in a case. You can get an injunction  
6 against him.

7 And my brother said something else that is not  
8 correct. He said that every other state that this has  
9 been before has been approved. Not true. First of all,  
10 no other state, none, has a hospital with any ownership  
11 in it other than Prospect Medical other than Rhode  
12 Island. We are the one state that has two hospitals out  
13 of the twenty where the ownership isn't a hundred percent  
14 in Prospect Medical.

15 Additionally, they had represented, and I don't want  
16 to get far afield here, they made the same representation  
17 to the healthcare board, Ms. Rocha. I'm not saying it  
18 was intentionally misleading, but it was false.  
19 Connecticut did not approve this transaction, and I have  
20 the materials. I will supply them. I wouldn't make this  
21 representation but I have the communications from the  
22 Attorney General in Connecticut. He said he had no  
23 authority to deal with this at all. Not everybody has  
24 the same kind of statutes. He said this is not within  
25 our purview. I'm not going to approve it or disapprove

1 it. It doesn't belong in front of you.

2 Now, the problem is that what has to be demonstrated  
3 here before these commissions is the proposed and  
4 demonstrated financial commitment to the hospitals, which  
5 that's the red. My brother said there is no such red.  
6 It's not one of the criteria. Is is one of the criteria.  
7 It's a central criteria. That's what makes all the  
8 difference here, your Honor. Again, we're not saying  
9 that the regulators are going to ultimately determine  
10 whether or not it's a fraudulent transfer, for example,  
11 but they're entitled to look at them because they are  
12 being asked to approve a payment by Prospect Medical of  
13 \$12 million plus that there is no benefit for that has  
14 been demonstrated, none. That sounds like it's a  
15 fraudulent transfer. It's going into the pockets of the  
16 two people on top.

17 Mr. Tarantino said there is no evidence that they  
18 have breached confidentiality yet. I agree with that. I  
19 know of no evidence that they breached confidentiality  
20 yet. What I am saying is they expressly said in the memo  
21 to you that they are going ex parte to be talking to the  
22 regulators, ex parte, on matters that are going to be  
23 confidential and not in public. We are concerned. They  
24 have all kinds of information that is confidential  
25 including their work product of what happened. If the

1 regulators say, for example, what is the story on the \$50  
2 million, I mean, I can make up things. They can say,  
3 well, you know, when we were negotiating things, that was  
4 not a central issue, that was this, that was that. Who  
5 knows what they want to say. The point is these are not  
6 the people who should be doing this.

7 The fact of the matter is, Judge, on the surface  
8 they're saying what do the regulators have to decide  
9 here. If we're saying that there's money that's  
10 effectively coming out of our hospitals, the ones I say  
11 we own 50 percent of, it's effectively -- we're listed on  
12 the financial thing as being guarantors on some of the  
13 obligations that we had no say in. Shouldn't that be  
14 known to the regulators for potentially jeopardizing  
15 these hospitals? Now, if the regulators want to say, Mr.  
16 Wistow, that's a lot of baloney, we don't buy that,  
17 that's fine, but to say that I should be opposed by  
18 counsel who has all of 291 pages of information, that's  
19 not right.

20 And, you know, my brother says I cited no case like  
21 this. I can't find anything like that. It is very  
22 unusual. Prospect picked lawyers who were familiar with  
23 the process. There is no doubt about that. They should  
24 have also anticipated that somebody might say, wait a  
25 minute, and they could have at least brought this subject

1 up and had a decision a year ago. We are not moving to  
2 disqualify. We are moving for injunction and we feel  
3 confident that -- we're talking about protecting, not  
4 just this hospital, we're talking about protecting the  
5 system and the confidence that we're supposed to have in  
6 the judicial system and not having lawyers go back and  
7 forth from one side to another, charge \$335,000 just to  
8 catalog the confidential material, not to generate it,  
9 just to catalog, which they did in 2018, by the way.

10 We're asking your Honor to really focus on what are  
11 the regs, not what my brother says he thinks the regs  
12 are. I cited the regs to you. I cited the fact that  
13 there is on its face a fraudulent transfer. I'm not  
14 asking you to decide there is, but I'm saying do the  
15 regulators have the right to look at that issue? Do  
16 they? Of course they do. Do they have the confidence to  
17 decide it in that situation? Yeah, okay, but who's going  
18 to help get them there?

19 THE COURT: Attorney Hemmendinger, anything to add?  
20 And then we'll go back to Attorney Tarantino and if he  
21 wishes Attorney Rocha to be heard, that's fine.

22 MR. HEMMENDINGER: Your Honor, Attorney Wistow has  
23 already put Mr. Tarantino's ship on the rocks. I have  
24 nothing to add.

25 THE COURT: Attorney Tarantino, I will turn back to

1           you.

2           MR. TARANTINO: I have an icebreaker, your Honor.  
3           It's okay. Your Honor, let me say this: I looked at  
4           this question and I thought Mr. Wistow would end up  
5           devolving into, well, we really don't have anything but  
6           we want some injunction to prohibit them from doing  
7           something. The courts have said there has to be a  
8           record. You don't issue an injunction for a lawyer who  
9           has taken an oath to abide by the oath. That's what he  
10          wants to do. He wants to issue an injunction that we are  
11          not going to divulge confidential information that  
12          relates to a client that we're not supposed to divulge  
13          even though there is no evidence that we have done so or  
14          would do so. There is no such basis for an injunction,  
15          your Honor. That's all I have to say.

16          THE COURT: Attorney Rocha.

17          MS. ROCHA: Thank you, your Honor. Mr. Tarantino  
18          represents me. I'm not going to repeat his arguments,  
19          but I am going to challenge that adage about representing  
20          oneself. I would like to make just a few comments.

21          One, Mr. Wistow asked several times why did Prospect  
22          engage AP & S. After the approval of the joint venture  
23          in 2014 AP & S, and I in particular, routinely  
24          represented Prospect before the Department of Health and  
25          I would say I am their Rhode Island regulatory counsel.



1 I represented Prospect before the department on a  
2 certificate of need for renovations to the emergency  
3 department. That was approved. Those renovations  
4 approximately \$50 million were made. I represented them  
5 on a certificate of need for a cardiac cath program.  
6 Unfortunately, that application was denied. I  
7 represented Prospect on a change order to move the  
8 clinic, the free-care clinic, on Peace Street to  
9 Chalkstone Avenue. That was approved and that clinic has  
10 been moved and providing services to the underserved  
11 population.

12 With respect to the issue of Rhode Island's review  
13 process. Rhode Island is unique. No other state has the  
14 process that is in Rhode Island. As Mr. Wistow  
15 indicated, in Connecticut Prospect notified the  
16 Connecticut regulators of the buyout of Leonard Green and  
17 were advised that no review was required. There is a  
18 review process in California. It is nothing like the  
19 Rhode Island process and as I tell many of my healthcare  
20 clients, welcome to Rhode Island.

21 Point number three, I want to address the Court's  
22 comment regarding if Mr. Wistow as a member of the public  
23 claims that the \$50 million had not been paid, does that  
24 trigger disqualification. The answer to your Honor is  
25 no. First, that is the same allegation that Mr. Wistow

1 is making in a litigation before you where he's seeking  
2 an increase to the 15 percent ownership interest. That  
3 would be decided by the Court, and in fact I advised the  
4 council of that dispute. I told the council we were not  
5 representing Prospect in that matter, and I also reminded  
6 the council that they didn't have jurisdiction over that  
7 matter.

8 As the Court is aware and as Mr. Tarantino  
9 highlighted, the heavy burden requires, one, that it be  
10 the same or substantially related matters. I think we  
11 all agree it's not the same and it's not substantially  
12 related, your Honor. The 2014 review was review of an  
13 asset purchase agreement between Oldco and Prospect to go  
14 from a non-profit healthcare system to a for-profit  
15 healthcare system. That was approved. The transaction  
16 that is under review today is a merger agreement between  
17 Leonard Green and Prospect and Prospect entities. The  
18 Oldco entities, they're not a party to that agreement.  
19 They have no rights or obligations under that agreement  
20 and that's why they're not transacting parties and  
21 they're not before the Department of Health or the  
22 Attorney General. They have a right as a member of the  
23 public. They can make their comments, but they're not  
24 substantially related.

25 The other test, remember your Honor, is

1 substantially related and the former client's interest  
2 are materially adverse to the interest of a current  
3 client. And we've provided cases, your Honor, stating  
4 that the interest must be so diametrically opposed to  
5 require the attorneys to adopt adversarial or opposite  
6 positions in the two representations. We are not taking  
7 any adversarial or opposite positions. We are not  
8 challenging what was approved, the structure. We're not  
9 challenging the 15 percent ownership interest. We're not  
10 challenging the conditions relating to the \$50 million  
11 capital long-term expenditures and the \$10 million yearly  
12 routine expenditures. By the way, your Honor, those  
13 conditions of approval will be decided in a separate  
14 matter by the Attorney General with the advice of its  
15 experts affiliated monitors. That's not before the  
16 council on the CEC or on the part of the HCA.

17 Now, with respect to the issue of confidential  
18 information, and I really thought about this, your Honor,  
19 last week weekend when I was thinking about this hearing,  
20 and if I were on the other side, I can't even think of  
21 any confidential information that would in any way be  
22 relevant to the matters before the Department of Health  
23 and the Attorney General. They're looking at a buyout of  
24 the Leonard Green -- the top of the corporate chain. Our  
25 representation of Oldco ended in 2014 and everything Mr.

1 Wistow is complaining of is Coset representation. So  
2 they haven't identified any confidential information.  
3 And, honestly, as an advocate, I can't even think of any  
4 confidential information that would in any way be  
5 relevant to review of the buyout of the private equity  
6 investors at the top of the corporate chain resulting in  
7 the original co-founders having a hundred percent  
8 ownership.

9 Finally, your Honor, and again this is not disputed,  
10 we did represent the Oldco entities. I hope -- I think  
11 we did a good job. I enjoyed representing them. We did  
12 good work together, but they're a former client, and now  
13 I am representing Prospect. Your Honor, we have been  
14 working on this regulatory matter for about a year. We  
15 spent enumerable time on this matter preparing the  
16 application, responding to the deficiency questions,  
17 responding to three sets of supplemental questions from  
18 the Attorney General, some 140 questions, producing 7,700  
19 pages of documents. Before Covid we had meetings with  
20 the regulators on this matter. After Covid we have had  
21 numerous meetings, phone conferences with the regulators  
22 and experts. We will have interviews of the parties and  
23 Mr. Wistow keeps on saying these are ex parte. They are  
24 not ex parte. Oldco is not a party to the review  
25 matters. Its only position is a member of the public.

1 They will also be a public informational meeting and  
2 there will be two more Health Services Council meetings.

3 So we are at the end, hopefully we are at the  
4 five-yard line. This review is to conclude by November  
5 4th. We look forward to that. We are confident we can  
6 meet the review criteria. By the way, your Honor, the  
7 review criteria are under the new ownership, so under a  
8 hundred percent ownership of Sam Lee and David Topper  
9 will the hospital provide safe and adequate treatment.  
10 Will they provide safe and adequate treatment without  
11 adversely impacting financial conditions? Will they  
12 continue to provide services to the unserved population  
13 and do they have the requisite character, confidence, and  
14 standing in the community to provide health care  
15 services? Although that matter is not before you, the  
16 answer is a resounding yes.

17 Judge, let me just end where I began. Respectfully,  
18 on behalf of our current client, we ask that you deny the  
19 motion. They haven't met the heavy burden, and there is  
20 no use of any confidential information. I can't think of  
21 any confidential information would that be relevant. And  
22 simply when you do the analysis, they have not met that  
23 heavy burden. Thank you, your Honor. I am happy to  
24 answer any questions.

25 THE COURT: Thank you very much. I want to circle

1 back Attorney Tarantino and Rocha where we began. Let's  
2 put aside confidential information right now. Let's talk  
3 about adverseness, and it may require me to have some  
4 limited briefing because I was a regulator, but I'm not  
5 as familiar with these statutes that they are operating  
6 under in terms of what the scope is, what they're  
7 reviewing, and making their decision.

8 But my question is why is it not adverse to the  
9 former client if -- I'm saying if because I haven't gone  
10 through the papers, if a representation was made that  
11 Prospect has, in fact, put on its commitment with  
12 respect to the \$50 million. Even if after that it said,  
13 well, it's under dispute, is taking that position  
14 materially adverse? And let's put aside the substantial  
15 relation and whatever else because that's a whole  
16 separate issue. Is that adverse or not?

17 MR. TARANTINO: Your Honor, if I might?

18 THE COURT: Please.

19 MR. TARANTINO: I'll answer the question and then I  
20 will tell you why. The answer is no and there is  
21 something baked into the question that is just -- and I  
22 understand why you baked it in is because it's what Mr.  
23 Wistow said.

24 THE COURT: Right.

25 MR. TARANTINO: What's baked into the question is we

1 took an advocate's position. If you read our papers, she  
2 is saying it is Prospect's position. It has done this.  
3 That is in dispute. We can't not say what the position  
4 is. We're not advocating. We didn't make arguments. We  
5 didn't say and here is why they are wrong and here is why  
6 when they say, you know, they have a claim that it wasn't  
7 made, that's why they're wrong. We simply said they were  
8 describing two pieces of litigation. They described your  
9 piece of litigation and the other piece of litigation.  
10 That is very different from being an advocate in either  
11 one of those positions. And Ms. Rocha made it clear.  
12 You have the transcript. You have the papers. She said  
13 we are not counsel in those cases.

14 MR. WISTOW: May I say something, your Honor?

15 THE COURT: Normally, we would have ended after  
16 Attorney Wistow and Hemmendinger had spoken. I allowed  
17 us to go back to hear from Attorney Rocha, so Attorney  
18 Wistow and Hemmendinger I will give you the last word.

19 MR. WISTOW: Thank you. Is it adverse? That is  
20 your Honor's question. They say they are not advocates.  
21 I don't know what they are doing up there. Ms. Rocha  
22 flat out in the transcript said we disagree with  
23 everything Mr. Wistow said. She said that on behalf of  
24 her client, Prospect. She is up there. She is not  
25 trying to get a change in effective control for herself.

1 She's doing it for Prospect. She is an advocate and she  
2 ended up -- all your Honor has to do is look at her  
3 closing, her closing statements to the Health Services  
4 Council. Please approve this now. They have satisfied  
5 all the conditions. I'm paraphrasing. There is no  
6 reason to delay. They've met all the criteria. That's  
7 not advocating? Of course it is.

8 THE COURT: Counsel, just because, as I mentioned  
9 before, just because it came up, I am going to give both  
10 sides at this point until next Wednesday to submit, and,  
11 please, you've killed enough trees at this point, short  
12 and concise as possible so the Court can understand each  
13 of your positions in terms of the criteria within which  
14 the plaintiff or agency is operating. Hopefully, we've  
15 flushed it out enough. As you all know, that may or may  
16 not just go to one factor. There are several factors the  
17 Court has to work its way through. The Court is going to  
18 reserve.

19 I do understand that this is an issue that needs to  
20 be decided. I'm going to ask either the Receiver or the  
21 Liquidating Receiver to please order a transcript from  
22 the court reporter so the Court has it in terms of the  
23 decision itself. And once I receive it, the record will  
24 then close and the Court will issue in all likelihood a  
25 written decision. But, again, I understand the



1           timeliness of the issues here, so certainly I will  
2           attempt to get it done before then. Is there anything  
3           else before we break?

4           MR. HALPERIN: Your Honor, Preston Halperin. I was  
5           hoping to have an opportunity to address the Court.

6           THE COURT: My apologies. Go ahead, Preston.

7           MR. HALPERIN: Your Honor, my prospective on this is  
8           as counsel to Prospect in the litigation where many of  
9           these issues have been raised, and I'm concerned and  
10          believe that this is about a flagrant a litigation tactic  
11          as one can possibly have and that the purpose of this is  
12          to gain an advantage in this litigation and not to  
13          address legitimate issues that are before the Health  
14          Services Council or the Attorney General.

15          Now, I say that because there are two different  
16          tactics that are going forward here right now. One is  
17          the objection itself and, two, is the effort to enjoin or  
18          disqualify and both of those are being asserted primarily  
19          by the Plan Receiver. Why does the Plan Receiver care  
20          whether Leonard Green exits from Prospect Medical  
21          Holdings? It has no impact, as Mr. Tarantino pointed  
22          out, on the 15 percent interest, has no impact on the  
23          hospitals, and the allegations that are being made are  
24          basically flame-throwing allegations made in public to  
25          energize the public, to energize the Attorney General, to

1 bring scrutiny, and to discredit Prospect and all the  
2 work it has done in the last five years as well as  
3 counsel for Prospect. I think these are litigation  
4 tactics and I don't think they should be overlooked.

5 Your Honor, there is a process in place for  
6 resolving this \$50 million issue that is going forward  
7 right now. Ms. Rocha mentioned it but I want to  
8 reiterate. There is a monitor that has the job of  
9 reviewing the documents. Mr. Wistow indicated that the  
10 monitor had previously indicated that the commitment  
11 hadn't been met. The monitor had previously indicated  
12 more information was needed. The information has now  
13 already been supplied. The monitor is doing that job and  
14 that information is in the hands of the Attorney General  
15 and the monitor and that determination is imminent as to  
16 whether or not that has been done. It's not going to be  
17 decided by the Health Services Council. It's going to be  
18 determined by the Attorney General and that is simply an  
19 issue that is being raised in order to put a road block  
20 into a transaction that has absolutely nothing to do with  
21 the interests of the Receiver, the Plan Receiver, or Mr.  
22 Hemmendinger.

23 And, again, they bring up the leaseback transaction  
24 and the financials and the guarantee. I did say on the  
25 record last time that it was the case that any of the

1 assets of the Rhode Island entities had been pledged or  
2 guarantees had been issued and I'm going to say it again.  
3 But this time I can tell you, as Mr. Wistow knows, that  
4 financials have been updated and submitted and they  
5 absolutely made the statement that the Rhode Island  
6 entities are not guarantors of the obligation. They have  
7 not pledged any of their assets. And, more importantly,  
8 the transactional documents are in the hands of the  
9 Attorney General.

10 Mr. Wistow is not the party to make any of these  
11 determinations, and, you know, one of the real problems I  
12 have with this is that Mr. Wistow is not representing a  
13 private litigant here. He comes to these meetings and  
14 says I am the counsel to the Superior Court Appointed  
15 Receiver and I have these concerns. The Receiver, as we  
16 know, is an agent of the Court. It really concerns us  
17 when these things are being done when there is absolutely  
18 no basis for them.

19 The last thing I want to say, your Honor, we did  
20 have a tremendous concern and opposed the settlement  
21 primarily on the grounds of what would happen if Mr.  
22 Wistow came in control of that 15 percent interest. If  
23 your Honor goes back and looks on November 16th of 2018  
24 the Court entered an order and granted the settlement  
25 instructions and the Court said that prior to

1 implementing or directing that CCCB implement any rights  
2 whatsoever in favor of the Receiver or the plan  
3 derivative of CCCB rights and or PCC, which is what we  
4 have here, PCC, the Receiver must provide all parties,  
5 including objectors 20 days written notice.

6 Your Honor, there was a reason for that. It was so  
7 that we would have an opportunity to prevent exactly what  
8 is going on here, interference with the hospital  
9 operations through this transfer control proceeding and  
10 also what is now happening with the directors. These are  
11 actions taken by Mr. Wistow that we were very worried  
12 about and this will all get sorted out by the Health  
13 Services Council and by the Attorney General. Those are  
14 the appropriate venues. And disqualification of Adler  
15 Pollock will not only prejudice Prospect but is also  
16 completely late in the game and unnecessary. Thank you,  
17 your Honor.

18 THE COURT: Thank you very much. Attorney Wistow, I  
19 will allow you to respond.

20 MR. WISTOW: Thank you. The last point about the  
21 order that Mr. Halperin referred to, that order was  
22 modified. We can go back and we can supply the  
23 modification. Your Honor, the very issue he's talking  
24 about, the notice, he asked the question why does the  
25 Plan Receiver care about whether or not this transaction

1 takes place. The answer is very simple. We are the real  
2 party in interest, the Plan Receiver on behalf of the  
3 beneficiaries of the pension. That's the real party in  
4 interest. It's being held in trust by Mr. Hemmendinger.  
5 It was part of the settlement. There were huge fights  
6 about this. Mr. Halperin expressed his concern. This is  
7 going to be a mess if they get to control this. That's  
8 right. It is a mess. Our interests are not the same as  
9 the interests of his clients, his ultimate clients.

10 We want to be sure that that 15 percent, or whatever  
11 it is, we're not asking anybody in the department or the  
12 various regulators to decide on a percentage. We  
13 mentioned that it might be more to show that it may be  
14 even more substantial than the 15. We're certainly not  
15 asking them to decide that in any way, shape, or form.  
16 The reason we're interested in it is we represent  
17 something like 2,700 people, who we believe have been  
18 robbed. In the process of all of this we find out, and I  
19 don't think most of the retirees know this, that when  
20 they were asking to reduce the percent, to reduce their  
21 pensions, there's two guys here, forget Leonard Green,  
22 two guys walked away with a couple of hundred million  
23 dollars in dividends from borrowed money. There is a lot  
24 to be looked at here, your Honor, a lot to be looked at.  
25 I am not embarrassed to come in here and say slow down.

1 I got some people whose interests are involved here.  
2 That is my obligation. That's why we wanted the 15  
3 percent is to get an insight into what is going on and  
4 have some control over it.

5 By the way, the 15 percent, the value is directly  
6 affected not only by the \$50 million, but what I'm  
7 telling your Honor is clearly an application to the  
8 regulators to enable them to do a fraudulent transfer, to  
9 take money from our guarantors and give it over to  
10 Leonard Green so that the two individuals can get the  
11 benefit of a hundred percent of the stock.

12 And by the way, Mr. Halperin is wrong about the  
13 financials. Even after they fixed them, and your Honor  
14 can see it, it shows that when we, when I say we, that  
15 Prospect Medical and Prospect CharterCare, are  
16 contingently liable, contingently liable on some of these  
17 objections. We never said they have immediate liability.  
18 The guarantor has contingent liability in most cases.  
19 That's what we have here even after the correction.

20 MR. HALPERIN: Your Honor, briefly. The order Mr.  
21 Wistow says was entered modifying the 2018 order is an  
22 order dated January 31 , 2020, and that order merely  
23 eliminated the notice requirement with respect to  
24 exercising the Put option. It was limited to that. It  
25 had nothing to do with appearing before the Health

1 Services Council or doing anything else that related to  
2 the interest in CCCB. So I dispute that order. I think  
3 that order has not been complied with.

4 My point more than the violation of the order is  
5 this is exactly the tactic we feared when we objected in  
6 the first place. I think that's why the Court put in  
7 that notice at our request because we could have had this  
8 heard before Mr. Wistow went out in the public on behalf  
9 of the Superior Court Appointed Receiver making unfounded  
10 allegations which are in fact wrong, frivolous,  
11 inaccurate, but sound great, great sound bites, just  
12 false, including the last thing he said about the  
13 financials, false. And you can't determine truth or  
14 falsity here today. It will come out. The documents are  
15 in front of the Attorney General. Everything is there.  
16 And whether or not the \$50 million is in, if it's in,  
17 there is no claim against Prospect Medical. They are not  
18 a guarantor. I don't even know why he uses the word  
19 guarantor.

20 MR. WISTOW: They are. That's preposterous.

21 THE COURT: Let him finish. Go ahead.

22 MR. HALPERIN: I made a commitment. If they  
23 complied with the commitment, then they've satisfied it.  
24 That's the same issue. And I'm telling the Court that  
25 that issue is going to be determined very soon because

1 all the information has been supplied to the monitor and  
2 we accept the determination to be made imminently.  
3 Whether it's one week or two weeks, it's imminent.  
4 That's the truth.

5 MR. WISTOW: Your Honor, may I say one other thing?  
6 This is getting kind of personal. I did not go before  
7 any board and say I was appointed by the Superior Court,  
8 to make it sound like your Honor was involved in this.  
9 What I said was I represented the Receiver of the plan,  
10 and that is literally true. The notice requirement,  
11 whatever that is, he can file a motion to hold me in  
12 contempt if he wants. But I will say this, your Honor,  
13 they gave me no notice of anything. I was confronted --  
14 when I found out about the pendency of this, I had a  
15 couple of weeks to put my objection in. That was the  
16 term of this thing. I am willing to be heard as a  
17 defendant in a contempt proceeding if that's what he's  
18 talking about.

19 THE COURT: We're going to end it there. Counsel,  
20 most if not all of you appeared before me before, I allow  
21 everyone to make their record but what I am lasered  
22 focused on is the motion before me, the objections, what  
23 the law is with respect to it, and I'll go ahead and  
24 issue the appropriate decision. I hate to see some of  
25 this devolve towards the end, but, quite frankly, I also



1 understand the case we're dealing with, the history of  
2 the case, so I understand. And, certainly, if there is  
3 an issue on notice or anything else, that can be brought  
4 in the proper proceeding. So as I said before, the Court  
5 will keep this matter open, if any supplement is filed on  
6 the issues the Court spoke about, and then we will close  
7 the record and the Court will issue a written decision.

8 To the court reporter, we spent just a little bit  
9 time today, and I would usually ask you did you get  
10 everything down or need any clarification. What I ask is  
11 as you go through the transcript, if there are issues  
12 just contact our clerk, Ms. Miley, and she can circulate  
13 something to the parties if there are any issues.

14 MR. BOYAJIAN: Your Honor?

15 THE COURT: Yes.

16 MR. BOYAJIAN: Steven Boyajian on behalf of Angell.  
17 I am sorry to drag this out any longer but because I am  
18 here I feel like I need to correct something. Mr. Wistow  
19 at one point said Angell had objected to settlement  
20 approval. Angell did not object to any settlement  
21 approval in the Superior or District Court. I just  
22 wanted that to be corrected.

23 MR. WISTOW: If I said that, I must have misspoken.

24 THE COURT: Okay. Thank you all very much. Our  
25 three-and-a-half-hour hearing is now concluded. The

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Court will be in recess.

(A D J O U R N E D.)