

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

vs.

PC 2017-3856

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

PETITION FOR INSTRUCTION

To the Honorable Providence County Superior Court, now comes Stephen F. Del Sesto, Esquire, Temporary Receiver (“Receiver”) of St. Josephs Health Services of Rhode Island Retirement Plan, as amended (hereinafter referred to as the “Plan”) and hereby states as follows:

1. On or about August 17, 2017, the Petitioner, St. Josephs Health Services of Rhode Island, Inc. (“SJHSRI”), filed a Petition for the Appointment of Receiver (the “Petition”) in which it requested, among other things, that this Court appoint a Receiver for the Plan, the only named Respondent. As a result of that Petition and by an Order entered on August 18, 2017, Stephen F. Del Sesto was appointed as Temporary Receiver of the Plan.

2. Pursuant to the terms of the Order, specifically paragraph 7 of the Order, a “Citation” was to be issued to the Plan. However, notwithstanding the reference in the Order, your Receiver has learned that the Superior Court Clerk no longer issues citations in, at least, receivership proceedings; and thus, no citation was issued here.¹

3. In addition, immediately after his appointment, the Receiver began reviewing documents associated with the Plan, including the restated Plan document dated August 25, 2011, and effective July 1, 2011 (the “Plan Document”), and the Plan Trust Agreement dated September 27, 1995 (the “Trust”). After reviewing these and other documents related to the

¹ Of course, even if a citation were issued to the Plan a significant question exists as to whom that Citation would have been issued to and whether such issuance would have been effective service to the Plan.

Plan, it appears clear that SJHSRI intended to establish a Trust under Rhode Island law to “hold and distribute” the Plan’s assets in accordance with the terms of the Trust and the Plan. Thus, the assets of the Plan that the Receiver has been charged with overseeing and controlling are held by a Trust.

4. Bank of America (as successor to Fleet National Bank) (the “Bank”) is the named Trustee of the Trust. However, a reading of the Trust indicates that although the Bank is the Trustee it functions more akin to a custodian of the Trust’s funds.² Under the Trust, the Bank exercises little if any discretion, instead it must take direction from certain parties identified and allocated discretion in the Trust.

5. It is well settled that a suit against a trust must be brought against the trustee, that is, the legal representative of the trust. Accordingly, the trustee must be properly before the court as a result of service, acceptance, or waiver of process, or an appearance. Stated simply, for relief to be granted against a trust, the trust—through its trustee—must be made a party to the action. See Restatement (Third) of Trusts, section 105 (a third party may assert a claim against a trust for a liability incurred in trust administration by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable).

6. As stated above, the Trust allocated very little discretion to the Bank over the responsibility, authority and control of the Trust. As a result, the Receiver requested that the Bank provide him with the person(s) designated and authorized to direct it as Trustee as required by the Trust. In response to that request, the Bank provided an incomplete set of documents which included five (5) “Certification of Authorized Signors Appointment Including Specimen Signatures” (the “Certification”), which included the most recently executed Certification dated January 21, 2015, identifying Daniel Ryan and Petitioner’s counsel, Richard Land. A copy of the executed Certification dated January 21, 2015, identifying Daniel Ryan and Petitioner’s counsel, Richard Land, is attached hereto as Exhibit A.

² Unlike other states, Rhode Island law does not recognize the roles, obligations or creation of “directed trustees”.

7. Based upon the necessity that the trustee of a trust, regardless of liability, be made a party to an action against a trust and be properly served in the action, the Receiver requests that he be authorized to formally serve, via summons, the Petition and Order upon the Bank and direct it to appear before this Court in ten (10) days and show cause as to whether the Receiver should be appointed as Permanent Receiver of the Plan and its assets. Further, the Receiver seeks instruction as to whether or not the Bank should be added as a respondent or “nominal” respondent in the instant matter.

8. In addition, due to the fact that the Bank functions more as a custodian with very little discretion, as a precautionary measure the Receiver also seeks authority to formally serve, via summons, the Petition and Order upon the most recent authorized signors and/or the members of the SJHSRI Board of Directors who authorized the filing of the Petition and direct each of them to appear before this Court in ten (10) days and show cause as to whether the Receiver should be appointed as Permanent Receiver of the Plan and its assets.

9. The Receiver believes that if authorized to serve the Bank and the authorized signors and/or the current Board members via summons, such service will rectify any existing defective service issues, if any exist at all, and therefore substantially weaken or eliminate any potential challenge to whether the Plan is properly before the Court and under the proper control of the Receiver. Further, adding the Trustee as an additional respondent or “nominal” respondent will substantially weaken or eliminate any potential issue, if any exists, regarding the relief sought by the Petitioner relative to the Plan and its assets through the filing of its Petition.

WHEREFORE, your Receiver respectfully requests that this Honorable Court enter an order authorizing him to formally serve, via summons, the Petition and Order upon the Bank and the most recent authorized signors and/or the members of the SJHSRI Board of Directors who authorized the filing of the Petition and direct each of them to appear before this Court in ten (10) days and show cause as to whether the Receiver should be appointed as Permanent Receiver of the Plan and its assets. Further, your Receiver requests instruction from this Court as to whether the Bank should be added as an additional respondent or “nominal” respondent in the instant matter.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336)

Solely in his capacity as Temporary Receiver for St. Josephs Health Services of Rhode Island Retirement Plan and not individually

72 Pine Street, 5th Floor

Providence, RI 02903

Tel: 401-490-3415

sdelsesto@pierceatwood.com

Dated: October 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2017, I electronically filed and served the within document via the Electronic Case Filing System of the Superior Court with notice to all parties in the system.

/s/ Stephen F. Del Sesto

EMPLOYEE BENEFIT PLANS
CERTIFICATION OF
AUTHORIZED SIGNERS APPOINTMENT
INCLUDING SPECIMEN SIGNATURES

36-16-100-8515211 Cond
8515218 Fds
8515459 Berastin
8519957 C. Ryan

I, Daniel J. Ryan, Secretary/Clerk of St. Joseph Health Services of RI hereby certify that the undersigned persons are Authorized Signers with all the powers and duties to administer the St. Joseph Health Services of RI Retirement Plan ("Plan") in accordance with the terms of the plan and trust agreement and so may provide directions and requests to the Bank on behalf of the Plan Sponsor. The Plan Sponsor acknowledges that this certification must contain the names and signatures of all individuals who will be providing directions and requests to the Bank with regard to plan administration matters involving the Trust and that the Bank will be unable to accept directions or requests from any individual whose name is not included on this certification.

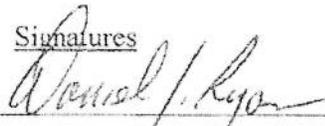
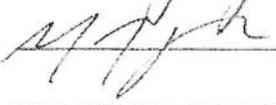
All instructions to and requests of the Bank must be in writing and signed by:

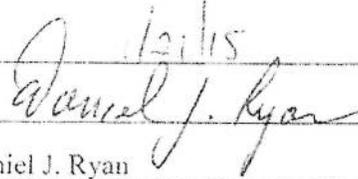
one of the below named persons

a majority of the below named persons

Bank of America, N.A may rely on the continuance of the authority of each of the below named persons until notified to the contrary in writing by the Secretary/Clerk of the Corporation.

No instruction shall be binding upon the Bank unless signed by an Authorized Signer as evidenced by his/her signature on record below:

<u>Names</u>	<u>Signatures</u>
Daniel J. Ryan	
Richard J. Land	
_____	_____
_____	_____

Date: 12/15
Signature: 
Name: Daniel J. Ryan
Title: Secretary

ERISA REQUIRES THAT EVERY FIDUCIARY AND EVERY PERSON WHO "HANDLES" PLAN FUNDS OR PROPERTY BE COVERED BY A FIDELITY BOND