

**HEARING DATE:  
Thursday, May 31, 2018 AT 9:30 AM  
BUSINESS CALENDAR BEFORE JUDGE STERN**

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

**SUPERIOR COURT**

St. Joseph Health Services of Rhode Island,  
Inc.

*Petitioner*

vs.

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

*Respondent*

Bank of America, in its capacity as Trustee of  
Respondent

*Nominal Respondent*

PC-2017-3856

**RECEIVER'S THIRD INTERIM REPORT AND  
REQUEST FOR APPROVAL OF FEES, COSTS AND EXPENSES**

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Receiver (the "Receiver") for St. Josephs Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby submits this Third Interim Report and Request For Approval of Administrative Fees, Costs and Expenses (the "Third Report"). In support of the Third Report the Receiver states as follows:

1. This case was commenced on August 17, 2017, upon the Petition for the Appointment of a Receiver (the "Petition") filed by St. Joseph Health Services of Rhode Island, Inc. ("Petitioner"). As a result of that Petition, on August 18, 2017, this Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan under surety bond ordered by this Court in the amount of One Million and 00/100 (\$1,000,000.00) Dollars (the "Temporary Receiver Order").

2. The Plan is a defined benefit plan organized by Petitioner on or about July 1, 1965, for the benefit of Petitioner's employees. As of the date of the Petition, the Plan had approximately 2,729 vested participants<sup>1</sup> of which approximately 1,229 were then receiving monthly benefits payments.

3. Typically, a hearing on permanent receiver is set for a date approximately twenty (20) days after the appointment of temporary receiver. Here however, the Petitioner requested that the Court set a hearing date no sooner than thirty (30) days to afford the Temporary Receiver time to consider the Petitioner's suggested 40% uniform benefit reduction. Based on that request, the Court docketed the hearing on permanent receiver for October 11, 2017.

4. Immediately upon appointment, in order to provide pension holders with a direct means to obtain answers to questions and access to information, the Receiver established a dedicated email address ([stjosephretirementplan@pierceatwood.com](mailto:stjosephretirementplan@pierceatwood.com)) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated website (<https://www.pierceatwood.com/st-joseph-health-services-rhode-island-retirement-plan>) where all pleadings and other information would be posted for easy accessibility to pension holders and other interested parties. Notice of the dedicated email, phone lines and website was sent to all Plan participants via first class mail. The Receiver believes that establishing these various means of communication has been invaluable to the pension holders and the Receiver. Since establishing the email address and phone lines the Receiver has received hundreds of email and voicemail communications from pension holders.

5. Due to their day-to-day involvement with the Plan, the Receiver has had consistent and regular communications with Bank of America (the Plan's Trustee and custodian of the assets) and Angell Pension Group (the Plan's actuary and benefits administrator) regarding the management and administration of the Plan. The Receiver has reviewed quarterly reports and had periodic discussions with Mercer Investment (the Plan's discretionary Investment Manager) regarding the performance of asset investments, the allocation of the asset investments and market

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<sup>1</sup> According to documents reviewed by the Receiver, excluding United Nurses and Allied Professionals Local 5110 ("UNAP") members hired before October 1, 2008, the Plan was closed to all employees on or about October 1, 2007. Thereafter, benefit accruals were frozen for non-union employees on September 30, 2009, for Federation of Nurses and Health Professionals and other non UNAP union employees on September 30, 2011 and for UNAP employees on June 19, 2014.

conditions and projections that may impact those investments. The Receiver is aware that, among the pension holders and other interested parties, there existed a level of distrust and concern regarding the pre-receivership administration and oversight of the Plan. As a result, the Receiver continues to consider all options and the related benefits regarding the ongoing day-to-day management and administration of the Plan and its assets and, if prudent, will make changes as necessary.

6. Approximately each month throughout this proceeding the Receiver hosts town-hall style, informational meetings at Rhodes on the Pawtucket in Cranston, Rhode Island. At these meetings the Receiver provides a current status of the receivership proceedings. In addition and in an effort to assure complete transparency of the receivership process and the Receiver's efforts, the Receiver responds to questions raised by the meeting participants regarding various aspects of the receivership and the Plan. Understanding that not all participants can attend these meetings, the Receiver digitally records each meeting and a link to the meeting recordings are posted to the Receiver's dedicated website.

7. The Receiver provided a formal status report to the Court on September 8, 2017. In addition to the general status, during the report the Receiver: (a) advised the Court that he had begun discussions regarding the possible engagement of Wistow, Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to assist the Receiver in investigating potential claims against third parties involved in the prior transactions involving Petitioner and pre-receivership management and administration of the Plan; (b) requested that the Court expand his powers as Temporary Receiver to include subpoena powers; and (c) requested that the Petitioner's request that benefits be adjusted on October 11, 2017 be continued until after the start of 2018. With regard to (b) and (c), the Court granted the Receiver's requests.

8. On or about October 11, 2017, the Court held a hearing on the appointment of Permanent Receiver, the Receiver's Emergency Petition to Engage Special Counsel and the Receiver's Petition for Instruction regarding Service on Bank of America and the Plan Administrator. At the hearing, the Receiver requested that the Court: (a) authorize the Receiver to engage WSL as special litigation counsel; (b) pass (i.e. not consider) the Petitioner's request for a 40% uniform reduction of benefits; (c) authorize the Receiver to formally serve the Plan's trustee and administrators; (d)

add the Plan's trustee, Bank of America NA, as a nominal respondent to the matter for purposes of notice and proper jurisdiction over the Plan; and (e) postpone the hearing on Permanent Receiver for a period of 2 weeks to effectuate the service upon the trustee and plan administrators. Following the hearing, the Court entered orders granting all the requests made by the Receiver and docketed the hearing on Permanent Receiver for October 27, 2017. In addition and also to be heard on October 27<sup>th</sup>, the Court directed the Receiver to submit to the Court a request to establish plan participant committees to assist the Receiver and Court regarding communications, benefits adjustments and similar issues.

9. On or about October 27, 2017, the Court held a hearing on the appointment of Permanent Receiver and the Committee Petition. At the conclusion of the hearing, the Court entered an Order appointing the Temporary Receiver as the Permanent Receiver. The Court also approved the Receiver's formation of the advisory committees and recognized the "middle group" as a recognized and designated group in the receivership process.

10. On or about November 20, 2017, this Honorable Court held a hearing on the Receiver's First Interim Report and Request for Approval of Fees, Costs and Expenses (the "First Report"). Subsequent to that hearing, on or about November 29, 2017, this Court entered an Order approving the First Report and approving the Receiver's and WSL's request for fees, costs and expenses covering the period of August 18, 2017 through October 31, 2017

11. On or about March 29, 2018, this Honorable Court held a hearing on the "Receiver's Second Interim Report and Request for Approval of Fees, Costs and Expenses" (the "Second Report"). Following the hearing on the Second Report, on or about April 3, 2018, this Court entered an Order approving the Second Report and approving the Receiver's and WSL's request for fees, costs and expenses covering the period of November 1, 2017 through February 28, 2018 (the "Second Report Order"). Through the Second Report Order, the Court approved, confirmed, and ratified all acts and doings of the Receiver through the Second Report hearing date. Further, all of the Receiver's and WSL's fees, costs and expenses incurred through the identified time period were similarly approved and the Court approved the release of the previously held twenty percent (20%) reserve from the First Report. Copies of the First Report and Second Report are on

file with the Clerk of the Court, accessible on the Receiver's dedicated website and both are incorporated by reference and made a part of this Third Interim Report as if fully set forth herein.

12. In addition to the Second Report and also on March 29, 2018, this Honorable Court held a hearing on the "Receiver's Initial Recommendations Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Relative to the Processing of Pending Benefits Elections and Properly Filed Applications" (the "Initial Benefits Recommendation"). Subsequent to the hearing on the Initial Benefits Recommendation on April 4, 2018, this Court entered an Order (a) approving the Receiver's recommendation, (b) deferring any recommendation on benefits modification for a period of approximately ninety (90) additional days, and (c) lifting the September 1, 2017, stay regarding the processing of elections and benefits applications (the "Initial Benefits Recommendation Order").

13. The Following are the actions and activities that have taken place since the filing of the Second Report on March 16, 2018:

- a. On March 30, 2018, in response to the Subpoena served by Special Counsel to *CharterCARE Foundation* on or about February 1, 2018, WSL and *CharterCARE Foundation* entered into a stipulation regarding the production of documents requested through that Subpoena.
- b. On or about April 2, 2018, WSL served the *Rhode Island Department of Health* ("RIDOH") with a Subpoena to provide certain documents by April 17, 2018. The RIDOH has not yet complied with the terms of the Subpoena and has requested additional time to comply because they are under-staffed.
- c. On or about April 4, 2018, WSL served *Prospect Medical Holdings, Inc.* with a Subpoena to provide certain documents by April 25, 2018. On or about April 26, 2018, the parties presented the Court with a Stipulated Protective Order which was entered by the Court on or about May 2, 2018.

14. As of April 30, 2018, the subpoenas issued by WSL resulted in the production and review of more than 800,000 pages. That number continues to grow as documents continue to be produced and reviewed.

15. To the best of the Receiver's knowledge, the following groups have formally organized based on certain criteria and/or similar view points: (1) United Nurses and Allied Professionals; (2) a group represented by Attorneys Arlene Violet and Robert Senville; and (3) a group that identifies as "One Group St. Joseph". The Receiver did not assist in the formation of these groups. Collectively, these groups represent approximately 750 Plan participants. Notice of these groups, with contact information, was provided to all Plan participants on or about January 10, 2018.

16. As is customary and as a result of the volatility seen in the market beginning in January 2018, the Receiver engaged the Plan's discretionary investment manager, Mercer Investment Consulting LLC ("Mercer"), in discussions regarding the Plan's current investment allocation to determine what changes, if any, Mercer would recommend in light of the market volatility and the projected/anticipated funding of the Plan. Mercer provided several reports and analysis for the Receiver's consideration and, following several discussions, Mercer ultimately recommended that the Plan's investment allocation be moderately adjusted to reflect a more equal investment balance between "Growth Assets" and "Risk Reduction Assets".<sup>2</sup> The bases for Mercer's new allocation recommendation were (a) the Plan's risk tolerance, (b) the funded status of the Plan, and (c) expected future contributions to the Plan. By letter dated April 6, 2018, the Receiver confirmed Mercer's recommendation.<sup>3</sup>

17. Prior to the hearings on the Second Report and Initial Benefits Recommendation on March 29, 2018, a pension participant provided the Court with letter and a proposed analysis regarding an investment strategy to help the Plan. The Court provided the letter to the Receiver and the Receiver reviewed the proposed strategy with his engaged investment consultants, Whale Rock Point Partners ("WRPP"). The Receiver and WRPP note that the strategy proposed was sound; however, certain elements of the strategy make it difficult to implement. That said, the Receiver is appreciative of the efforts and suggestions and some of the ideas presented are viable strategies that will be considered.

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<sup>2</sup> Prior to these discussions and Mercer's recommendation and for at least the prior 15 months, the investment allocation was approximately 67% "Growth Assets" and 33% "Risk Reduction Assets".

<sup>3</sup> Due to certain notice requirements for certain investments, the investment allocation transition may take up to three (3) months to be fully completed.

18. In addition and as has been reported to the Court on several occasions, the Receiver and Special Counsel are engaged in active discussions with the Pension Benefit Guaranty Corporation (“PBGC”). To assist and advise the Receiver regarding issues related to the PBGC and ERISA, over the past 45 days the Receiver has engaged the services of Attorney Jeffrey B. Cohen from Bailey & Ehrenberg, PLLC in Washington, DC. From 1989 through 2007, Attorney Cohen served as general counsel to the PBGC, including serving as the PBGC’s Chief Counsel from 2005-2007. The Receiver has also engaged the accounting firm Calibre CPA Group (“CCG”), also of Washington, DC, to perform a current audit of the Plan and to advise and, if necessary, assist on financial reportings and filings for ERISA compliance.

Although only recently engaged, the knowledge, experience and guidance already provided by both Attorney Cohen and CCG have been significantly helpful to the Receiver and Special Counsel’s understanding and negotiation of the issues related to PBGC and ERISA and discussions with the PBGC.

19. Currently, the Receiver has asked Angell to complete the most recent annual valuation for the Plan. In order to complete that valuation, a new projected rate of return needs to be established for the Plan. The Receiver has been working with Mercer and Angell to reasonably establish an appropriate projected rate of return for this Plan in light of its funding status and future contribution status. Based upon a 20-year projected average, Mercer has suggested a projected rate of return equal to 5.7%<sup>4</sup> and Angell has confirmed that it agrees with that projected rate based upon Mercer’s 20-year model.<sup>5</sup> However, the Receiver is concerned about the use of a projected rate of return based on a 20-year average when, as it currently stands, the Plan (without any benefits adjustment) has a 10 year (or less) life expectancy. The Receiver is consulting with several other professionals to determine the most prudent rate of return to use for this Plan in light of its current status.

20. As the Court is aware and has been reported by the Receiver at the May 29, 2018, hearings, after significant delays from third parties’ failure to comply with subpoenas and the review of over 800,000 documents, Special Counsel is nearing the end of the investigation process related to

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<sup>4</sup> Prior to the Receiver’s appointment, the projected rate of return used was approximately 6.7%. At this projected rate, along with a uniform 40% reduction in benefits, the Petitioner, as asserted in its initial Petition to Appoint Receiver, believed the Plan could be sustained long term. At those numbers, the models viewed by the Receiver since his appointment do not appear to support that assumed long-term survival.

<sup>5</sup> The Mercer 20-year model assumed minimal to no contributions to the Plan over the 20-year period.

identifying claims that can be asserted by and on behalf of the Plan and its participants. But for the subpoena related delays, both the Receiver and Special Counsel had hoped and anticipated that the Special Counsel's investigation and identification of viable litigation targets would have been concluded by March/April 2018. The Receiver and Special Counsel have substantially discussed its findings and recommendations on litigation targets, assessment of possible damages and any estimate of a likelihood of success for recovery. Based on those discussions and Special Counsel's recommendations, the Receiver is confident that the Receiver will initiate litigation in no more than 30 days from the filing of this Third Report. Of course, these discussions are protected as attorney/client communications and while Special Counsel and the Receiver will discuss and develop a strategy and timing for filing, strategy will not be disclosed and the actual targets will not be disclosed until actual complaints are filed.

21. In addition to the above, the Receiver continues to receive and review documents related to the Plan and its history and explore options related to the ongoing management, investment and administration of the Plan. The Receiver is also reviewing and analyzing financial data relative to the possible benefits adjustment scenarios in an effort to identify the most equitable, interim adjustment while the investigation of third parties progresses.

22. In connection with the administration of the within proceeding, as of the filing of the Second Report, your Receiver had cash-on-hand totaling \$374,512.07. Since that time, your Receiver has had additional receipts totaling \$350,000.00 and has had additional disbursements totaling \$459,549.47, leaving current cash-on-hand in the sum of \$264,962.60, all as set forth in the "**Schedule of Receipts and Disbursements**" attached hereto.

23. In connection with this Third Report, your Receiver is requesting that the Court approve the Receiver's fees, costs, and expenses incurred from March 1, 2018 through, and including, April 30, 2018, and authorize him to pay himself such fees from the available cash-on-hand. A copy of your Receiver's Third Interim Fee Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Third Report. In addition, your Receiver is requesting that the Court authorize him to pay WSL's fees, costs and expenses incurred from March 1, 2018 through, and including, April 30, 2018. A copy of WSL's fee invoices will also be presented, in redacted form, under separate cover to the Court for review in advance of the

Hearing on this Third Report. Due to the potential for litigation in this matter and the related description in time entries, to avoid any potential disclosure, strategy, attorney-client privileged communications, etc., the Receiver requests that the redacted invoices submitted to the Court be filed under seal.

WHEREFORE, your Receiver prays that: (1) all of his acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Third Report be approved, confirmed and ratified; (2) the Receiver be awarded a Third Interim Allowance for his services as Temporary and Permanent Receiver herein, plus his costs and expenses; (3) the Receiver be authorized to satisfy the fees, costs and expenses incurred by WSL and presented with this Third Report; (4) this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the receivership Estate; and (5) such further relief as this Honorable Court deems necessary and appropriate.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336)  
Solely in his capacity as Permanent Receiver  
for St. Josephs Health Services of Rhode  
Island Retirement Plan, and not individually  
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Tel: 401-490-3415  
[sdelsesto@pierceatwood.com](mailto:sdelsesto@pierceatwood.com)  
Dated: May 21, 2018

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of May, 2018, 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

## **SCHEDULE OF RECEIPTS AND DISBURSEMENTS**

## St Joseph Health Services of RI Retirement Plan Transactions by Account 052118

As of May 21, 2018

Date	Num	Name	Memo	Debit	Credit	Balance
<b>BankRI Checking Account</b>						
03/20/2018	238	Relevant Discover-e	Inv #2980: 3/19/18 copying and postage		3,052.69	374,512.07
03/28/2018	239	CZP Associates	Inv dated 3/23/18; expert/consulting services		17,600.00	371,459.38
03/29/2018	240	Wistow Sheehan & Loveley, PC	2nd interim fees & costs in full thru 2/28/18		240,856.62	353,859.38
03/29/2018	241	Wistow Sheehan & Loveley, PC	holdback fees in full from 1st interim report		21,318.75	113,002.76
03/29/2018	242	Pierce Atwood LLP	holdback fees in full from 1st interim report		20,577.00	91,684.01
03/30/2018			funds from RW/St Joes (R. Land)	250,000.00		71,107.01
03/30/2018			incoming wire fee		15.00	321,107.01
04/02/2018	243	Pierce Atwood LLP	2nd interim fees & costs in full thru 2/28/18		130,818.67	321,092.01
04/10/2018	244	Gina Gomes	3/29/18 hearing transcript		87.00	190,273.34
04/11/2018	245	Relevant Discover-e	Inv #3109; copying & postage		3,171.51	190,186.34
04/17/2018	246	Calibre CPA Group	retainer for Plan audit, 5500 prep, financial stmt prep		7,500.00	187,014.83
04/19/2018	247	Rhodes on the Pawtuxet	4/23/18 meeting with plan participants; inv #1604		1,710.72	179,514.83
04/25/2018	248	William White Legal Video Services	Inv #1578; 4/23/18 meeting video & audio		900.00	177,804.11
04/25/2018			funds from RW/St Joes (R. Land)	100,000.00		176,904.11
04/25/2018			incoming wire fee		15.00	276,889.11
05/09/2018	249	Bailey & Ehrenberg PLLC	Inv #2618; consulting expert		5,730.00	271,159.11
05/14/2018	250	Angell Pension Group, Inc.	Inv #s186153 & 186230 benefit calculations & related expenses		3,025.00	268,134.11
05/18/2018	251	Relevant Discover-e	Inv #3334; copying and postage		3,171.51	264,962.60
<b>Total BankRI Checking Account</b>						
				350,000.00	459,549.47	264,962.60
<b>TOTAL</b>						
				<b>350,000.00</b>	<b>459,549.47</b>	<b>264,962.60</b>