

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND)

VS.)

C.A. NO. PC-2017-3856)

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON MAY 31, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL

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 12, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

THURSDAY, MAY 31, 2018

MORNING SESSION

1
2
3 THE CLERK: The matter before the Court is
4 PC-2017-3856, St. Joseph's Health Services of Rhode
5 Island vs. St. Joseph's Health Services of Rhode Island
6 Retirement Plan as amended, Bank of America Trustee.
7 Would counsel please identify yourselves and the party
8 you represent.

9 MR. DEL SESTO: Good morning, your Honor. Stephen
10 Del Sesto, Court Appointed Receiver.

11 MR. WISTOW: Max Wistow, counsel to Mr. Del Sesto.

12 THE COURT: Thank you. The Court has received and
13 reviewed the interim report of the Receiver. The
14 Receiver may be heard.

15 MR. DEL SESTO: Thank you, your Honor. As your
16 Honor noted, we are here on the third interim report in
17 this case, your Honor. Rather than go through the
18 history, which is well known to the Court, I'm going to
19 cut to the most recent since our last hearing on March
20 29th.

21 As your Honor is aware, on March 29th we had a
22 hearing on the second interim report. In addition to
23 that second interim report, we had a hearing on a
24 recommendation regarding adjustment to benefits. At the
25 conclusion of that hearing, this Court approved the

1 second interim report and request for fees and also
2 approved the Receiver's recommendation with regard to
3 benefits, specifically that no cuts will be made to
4 benefits at this time, and that decision on cuts will be
5 deferred at least 90 days, and the application and
6 election forms that were in cue and had been filed since
7 the commencement of the case that had not been acted upon
8 could then be processed through the planned benefit
9 administrator. I am happy to report that process has
10 happened, your Honor. Due to the volume, what was
11 normally a four-week process has become an eight to
12 ten-week process, but Angell has informed me as recently
13 as last week that they actually believe they will be done
14 with what I will call a backlog probably some time in mid
15 June and that way we will be caught up and we will just
16 be addressing applications that are filed on a going
17 basis.

18 In addition, your Honor, subsequent to that March
19 29th hearing, the Special Counsel had issued additional
20 subpoenas on CharterCare Foundation, on the Rhode Island
21 Department of Health, and on Prospect Medical Holdings.
22 As a result of the various subpoenas the Special Counsel
23 had served upon various parties, Special Counsel and his
24 team has reviewed in excess of 800,000 pages. It is my
25 understanding, your Honor, that CharterCare Foundation as

1 well as Prospect Medical Holdings have been complying
2 with the subpoena or at least with agreements with
3 Special Counsel as to how those documents can be
4 produced.

5 With regard to the Department of Health, the Court
6 held a hearing last week on a motion to compel and I
7 believe it is scheduled for a continued hearing this
8 afternoon at 2:00. Your Honor, we have seen some
9 volatility in the market as of January 1st. As is
10 customary with the pension plan with the discretionary
11 investment advisor on an annual basis the allocation and
12 investments of the plan are reviewed and a recommendation
13 is made by the investment advisor, which in this case is
14 Mercer Investments. Starting in January I began
15 discussions with Mercer Investments regarding the current
16 investment pool and the allocation of those assets.
17 Because of the issues regarding this plan as to whether
18 or not it's a church plan, whether or not it's an ERISA
19 plan those discussions took on a little more of a depth
20 than had been previously because it had been purely
21 treated as a church plan.

22 As of April Mercer provided to me a recommendation
23 that the allocation of the assets be changed to reflect
24 the fact that there are no contributions coming into the
25 plan, that benefits are being are paid out at

1 approximately \$11 million per year, and that although we
2 are hopeful that the plan will receive additional funds,
3 as we sit here today there is no guarantee or amount or
4 debt line for those funds to come into play. Based on
5 that, there are 10 and 20-year projections and adjusted
6 the allocation of the investments from what was a 67
7 percent, 33 percent based on growth assets at 67 and
8 reduced risk assets at 33 percent, so a fifty-fifty
9 allocation. It's a more conservative allocation, and
10 there is a range which allows that allocation to shift
11 from fifty-fifty to maybe a sixty-forty, .

12 But it's in Mercer's opinion, and this was confirmed
13 by the actuary, that it's the more prudent way to go
14 based on the circumstances for this plan. In connection
15 with that change in the allocation, there is, obviously,
16 also a change in the projected rate of return. So the
17 projected rate of return is reduced as a result of the
18 change in the allocation, which means the plan assets
19 quite simply are projected to earn less investment income
20 over that period of time, 10 years or 20 years. I am
21 still working with both Mercer as well as Angell
22 regarding what the target allocation should be, what is
23 the most appropriate one. Mercer has recommended on a
24 20-year projection a 5.7 percent rate of return and on a
25 ten year, 5.1 rate of return.

1 I'm currently in discussions because I have various
2 concerns with regard to those numbers as it relates to a
3 plan that isn't receiving regular contributions and those
4 discussions remain ongoing. I'm happy to say I've had
5 several discussions in meetings with the treasurer's
6 office who, as I have reported to this Court in the past,
7 have offered to volunteer their staff services and
8 knowledge to assist in any way that they can and they
9 have, in fact, done that. I have advised them of the
10 information that I've been getting from Mercer as well as
11 from Angell and they have sat down with me and made
12 suggestions, not recommendations, but suggestions as to
13 both questions that I could go back to those parties with
14 based on their knowledge of pension plan management as
15 well as suggestions as to what to do with the rate of
16 return and what they think is appropriate for the rate of
17 return at this point.

18 As I said, those discussions continue and that
19 discussion is necessary for the actuary to conduct the
20 plan valuation for the last closed year, and so that's
21 why we need that. We need to identify what the rate is
22 so that the valuation can be calculated.

23 In addition, your Honor, I have engaged on a
24 consulting basis WhaleRock Point Partners, which is an
25 investment firm based out of Providence, Rhode Island.

1 They are not managing the assets, but they, similar to
2 the treasurer, are providing me with guidance and
3 information. Of course, I have engaged them so they are,
4 in fact, making certain recommendations and giving the
5 analysis on what I am being provided from Mercer
6 Investments, but I have been utilizing their services to
7 make sure we're making the right decision when it comes
8 to these assets, the investment, and on projections
9 regarding the rate of return and things of that nature.

10 As the report indicated, we've engaged in
11 discussions with the Pension Benefit Guarantee
12 Corporation. All I can say, your Honor, is that we met
13 with them in person. We had phone conversations with
14 them. Those conversations remain ongoing. I don't
15 really, unfortunately, have anything of substance to
16 report from those conversations as the P.B.G.C. is
17 reviewing, as they typically do, and they have not gotten
18 back to us with any definitive position on anything at
19 this point. Those discussions continue and I will
20 continue to keep the Court updated especially in the
21 event there is something of substance that comes up with
22 those.

23 Other than that, your Honor, as I reported, I have
24 met with special counsel on a number of occasions to
25 discuss the status of the investigation of potential

1 claims that can be brought in this case. Those
2 discussions have been more frequent recently and we are
3 moving towards special counsel making a definitive
4 recommendation, which I will discuss with them and make a
5 determination as to what we will be doing in terms of
6 claims and actions regarding those claims.

7 Beyond that, your Honor, I continue to meet with the
8 pension holders on a monthly basis in a town-hall-style
9 meeting to address questions and concerns. I am happy to
10 report, as I think I have reported in the past, that
11 those meetings are getting shorter, which I hope is an
12 indication that the pension holders that do partake in
13 those meetings are feeling more comfortable with the
14 information that they're getting, that they are
15 comfortable with the fact they are getting information,
16 that this is as transparent of a process as we can
17 possibly make it and that the information is being
18 provided on a moment-to-moment basis.

19 As I receive a piece of information that is relevant
20 to the website, for example, it gets posted within a few
21 hours so that information is a constant flow and that
22 website is being updated consistently. I still receive
23 several calls and e-mails on a daily basis, which are
24 responded to with pension holder questions that are
25 specific to them, not necessarily general questions, but

1 we're attending to as quickly as we possibly can. I met
2 with the advisory committee that this Court had
3 established. I was meeting with them on a weekly basis.
4 It has now moved to every two to three weeks, and that is
5 mostly based on scheduling, not by design necessarily.
6 But those meetings have been productive. There are a lot
7 of different ideas and as ideas come up, we go back and
8 we gather data that may be relevant to those ideas in the
9 event that at some point I do have to come before this
10 Court and make a recommendation on reduction of benefits.

11 Beyond that, your Honor, all of those efforts I just
12 spoke of continue. We will continue to engage in
13 discussions with the P.B.G.C. Special counsel continues
14 to review the documents that they have been getting
15 relative to the subpoenas and I continue to speak with
16 special counsel regarding the investigation and we will
17 continue to monitor. If anything, obviously, comes up, I
18 will be bringing it to the Court's attention on an
19 emergency basis with regard to the assets allocation or
20 investments.

21 Beyond that, I'm not sure if I asked for it in the
22 report, but at the last hearing your Honor had asked to
23 have this hearing scheduled sixty days from the last one.
24 In the order I presented to the Court, I make that same
25 assumption that we will have another interim report

1 scheduled for 60 days from today unless your Honor wants
2 it sooner or later.

3 Barring that, if you have no questions, I will move
4 over to the fee portion.

5 THE COURT: You may proceed.

6 MR. DEL SESTO: Thank you, your Honor. In
7 connection with this third interim report, your Honor, I
8 have current cash on hand in the amount of \$264,962.60.
9 I can tell the Court that all of the funds that the
10 Receiver is holding in the estate account are the result
11 of disbursements made by Roger Williams, the former or
12 the shell company of Roger Williams that is winding down
13 its efforts.

14 I have submitted to the Court invoices for my fees,
15 costs, and expenses from March 1st through April 30,
16 2018, as well as Special Counsel's fees, costs, and
17 expenses for that same period of time and I'm asking the
18 the Court approve those amounts which are -- if you give
19 me a moment. The fees associated with my fees, costs,
20 and expenses are \$57,015.50, with costs of \$44.02. And
21 Special Counsel's fees, your Honor, are, I believe, it's
22 a total of \$155,473.16, which is inclusive of
23 disbursements of \$20,098.16. So in connection with this
24 third interim report, I am asking that the Court approve
25 those fees, costs, and expenses both of the Receiver as

1 well as Special Counsel. And as I stated, set a hearing
2 down for 60 days from today on a fourth interim report
3 unless an emergency issue arises sooner.

4 THE COURT: Does counsel wish the Special Counsel to
5 be heard or not?

6 MR. DEL SESTO: Yes, your Honor.

7 THE COURT: Counsel, you may proceed.

8 MR. WISTOW: Thank you, your Honor. I think I need
9 to thank the participants in the plan for their patience
10 and understanding of a drawn out process, and I can
11 imagine what it feels like to hear the fees that are
12 being expended and nothing has happened so far. The
13 Receiver has indicated in the report that suit will be
14 brought within 30 days from the date he filed the report.
15 I want to say that we intend to do that. Our
16 investigation is coming to a close. We have definite
17 plans of suits against definite defendants for reasons
18 that I needn't explain to your Honor. I want to keep
19 those confidential at this point, but I want the planned
20 participants to know that something is going to be
21 happening within that timetable. There has been
22 agreement between me, my office, and the Receiver that we
23 are going to get going.

24 MR. DEL SESTO: I don't have anything more, your
25 Honor. I'm just here to answer questions if the Court

1 has any.

2 THE COURT: No. I'm fine with the sixty days as far
3 as the report. Based on your representations made in
4 your report about suit being filed, I will leave it to
5 you to see once that happens whether an interim report
6 should happen earlier or whether you may want to convene
7 another public-type meeting so you can go through that
8 with the planned participants. No objection being filed,
9 the Court approves the third interim report of the
10 Receiver.

11 The Court has had the opportunity to review the
12 individual line items of the fees that you had gone
13 through on the record of both the Receiver and the
14 Special Counsel has sixty days plus some significant
15 costs, fees, and expenses. I also note even with
16 respect to the expenses, I do note an effort in terms of
17 trying to keep costs down. One thing that, quite
18 frankly, jumped out at me because I'm well aware that
19 many firms are charging as much as 40 or 50 cents a page
20 for copying and that the Special Counsel is charging five
21 cents a page, which may just make up for the maintenance
22 fees of the machine, if that. But, I really appreciate,
23 although the numbers are large, this is a significant
24 case. The Court finds that the fees and expenses are
25 fair and reasonable and for the benefit of the estate and

1 they are approved.

2 Please continue, especially as we are getting to the
3 suit stage, to keep the participants in the loop in terms
4 of what is going on through their counsel and
5 individually. I know that this has been a long slob in
6 terms of the investigation. I notice that some of these
7 hearings we're getting less people in the courtroom. I
8 just want to state, as I said from the beginning, that I
9 rather you take the time and get it right as opposed to
10 doing it too quickly and it looks like we're getting to
11 that point.

12 With that, the Court is going to adjourn this
13 hearing. The Court will take up at 2:00 p.m. the
14 continued motion by the special counsel as far as the
15 failure to comply with the Rhode Island Department of
16 Health to the subpoena that was issued and we'll take
17 that up at 2:00 p.m. Thank you very much. The Court is
18 in recess.

19 (A D J O U R N E D.)
20
21
22
23
24
25

JUNE 11, 2018

GINA GOMES, COURT REPORTER
PROVIDENCE SUPERIOR COURT
OFFICE OF COURT REPORTERS
250 BENEFIT STREET
PROVIDENCE, RI 02903

TO: STEPHEN DEL SESTO, ESQUIRE

A transcript request in the matter of St. Joseph's Health Services of R.I. vs. St. Joseph's Health Services of RI Retirement Plan, Pc-2017-3856, heard before the Honorable Justice Brian Stern on May 31, 2018.

5/31/18 27 pages \$3.00 each

\$81.00

AMOUNT DUE

\$81.00