

**HEARING DATE:
THURSDAY, APRIL 23, 2020 AT 9:30 AM
PROVIDENCE COUNTY 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 THIRTEENTH INTERIM REPORT AND TWELFTH INTERIM
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 Thirteenth Interim Report (the “Thirteenth Report”) and Twelfth Interim Request for Approval of Fees, Costs and Expenses (the “Twelfth Fee Application”). In support of the Thirteenth Report and Twelfth Fee Application 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 participants¹ of which approximately 1,229 were then receiving monthly benefits payments. Based on the benefits payments issued by Bank of America as of March 2, 2020, 1,448 participants are currently receiving monthly benefits payments. The total amount of benefits paid in February 2020 equaled \$944,527.86.

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) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated, public 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. The dedicated website has been revised and is updated regularly to include access to filings made in both the State and Federal litigation matters as well as other related litigation and liquidating receivership matters related to this proceeding.

5. Due to their day-to-day involvement with the Plan, the Receiver initially 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 at the time) regarding the

¹ 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.

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 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 made changes regarding the day-to-day management and administration of the Plan and its assets and will continue to evaluate and make changes as may be prudent or necessary.

6. Approximately every 4-6 weeks throughout this proceeding the Receiver hosts "town-hall" style, informational meetings at Rhodes on the Pawtuxet 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 and available for unrestricted viewing.

7. Prior to this Thirteenth Report and Twelfth Request for Approval of Fees, the Receiver has filed twelve (12) prior reports with the Court and eleven (11) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Twelfth Report and related Orders are on file with the Clerk of the Court and accessible on the Receiver's dedicated website and all are incorporated by reference and made a part of this Thirteenth Interim Report as if fully set forth herein.

8. 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”).

9. On or about June 28, 2018, as part of the Fourth Report, the Receiver advised the Court that litigation had been initiated in both State Court (*Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc.* (PC-2018-4386)) (the “State Litigation”) and Federal Court (*Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc.* (1:18-cv-00328-WES-LDA)) (the “Federal Litigation” together with the State Litigation shall be referred to as the “Litigation”) against various defendants and Special Counsel provided the Court with a status update of those actions and related next steps for the Litigation.

10. On January 29, 2020, this Court held a hearing on the Receiver’s Twelfth Interim Report (the “Twelfth Report”) and Eleventh Interim Request for Approval of Fees, Costs and Expenses (the “Eleventh Fee Request”). Upon conclusion of the hearing, the Court approved the Twelfth Report and the Eleventh Fee Request and the Order approving the Twelfth Report and Eleventh Fee Request was entered on February 4, 2020.

11. Since the filing of and hearing on the Twelfth Report, the following events have occurred in this Superior Court Receivership action:

- a. On or about January 31, 2020, the Court entered the Order granting the Motion for Clarification of the Order Entered on November 16, 2018; and

- b. On or about February 3, 2020, the Receiver, Special Counsel and the RI Attorney General entered into a Consent Order regarding an expansion of the scope of the confidentiality order entered by the Court on December 14, 2017.

12. Since the filing of and hearing on the Twelfth Report, the following events have occurred in the Federal Litigation:

- a. On January 28, 2020, the federal action Plaintiffs filed a Notice of Dismissal as to CharterCare Foundation and the RI Foundation. The Court entered the Notice of Dismissal via text order dated March 2, 2020;
- b. Also on March 2, 2020, the federal action Plaintiffs and Non-Settling Defendant Angell Pension Group, Inc., entered into a Stipulation regarding discovery and related issues; and
- c. On March 6, 2020, the Court scheduled a chamber's conference regarding the parties' discovery dispute for March 18, 2020. Due to parties reaching an agreement as outlined in the Third Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions, and the entry of that Stipulation by the Court on March 18, 2020, the conference was cancelled.

13. Since the filing of and hearing on the Twelfth Report, the following events have occurred in the CCCB Litigation:

- a. On February 7, 2020, the Receiver and the Liquidating Receiver for CharterCARE Community Board, St. Joseph's Health Services of Rhode Island and Roger Williams Hospital (the "Liquidating Receiver") filed a Motion for Temporary and Permanent Injunction and Equitable Relief and supportive memorandum (the "CCCB Motion") seeking that the Court direct Prospect CharterCARE, LLC ("Prospect") to provide access to or turn over any and all books, records and other information necessary for the Receiver and Liquidating Receiver to value and exercise the Put Option and extend the date by which the Put Option must be exercised. Prospect filed an Objection and supportive memorandum and affidavit to the CCCB Motion on March 3, 2020;

- b. On February 20, 2020, the Receiver and the Liquidating Receiver filed a Motion to Compel (“Motion to Compel”) production of documents and other information required to be produced by Prospect pursuant to the Stipulation and Consent Order entered on April 25, 2019. Prospect filed an Objection to the Motion Compel on March 3, 2020; and
- c. The hearings on both the CCCB Motion and the Motion to Compel are scheduled to be held on March 31, 2020. However, due to the circumstances regarding nCOVID-19 a/k/a novel coronavirus, it is not clear whether those hearings will proceed as scheduled.

14. In addition, and as referenced above, a Petition was filed with the RI Superior Court seeking the appointment of a Liquidating Receiver in the Liquidating Receivership. By Order dated December 18, 2019, the Court appointed Attorney Thomas Hemmendinger as the Liquidating Receiver. Due to the requirements of the CCCB Settlement (so-called Settlement “A”), the Liquidating Receiver and the Plan Receiver have met on several occasions to assure protection of the assets held by the Liquidating Receiver for the benefit of the Plan Receiver. Since the filing of and hearing on the Twelfth Report, the following events occurred in the Liquidating Receivership proceeding:

- a. On December 24, 2019, the Court entered an Amended Order Appointing Temporary Liquidating Receiver identifying and adding certain obligations for the Liquidating Receiver with regard to the Settlement A with the Receiver;
- b. On January 8, 2020, the Liquidating Receiver sought authority to engage Special Counsel to assist with addressing and fulfilling obligations related to Settlement A. On January 9, 2020, the Court entered an Order granting the Petition;
- c. On January 17, 2020, the Court entered an Order making the appointment of the Liquidating Receiver Permanent (the “Permanent Order”);
- d. On January 24, 2020, the Liquidating Receiver requested that the Court imposed stay set forth in the Permanent Order be modified to allow certain litigation to proceed conditioned that recovery would be limited to available insurance. By Order dated February 10, 2020, the Court granted the Petition; and

- e. On March 10, 2020, the Liquidating Receiver filed a Petition to Engage Accountants (“Petition to Engage”). The hearing on the Petition to Engage is presently scheduled for March 24, 2020. However, due to the circumstances regarding nCOVID-19 a/k/a novel coronavirus, it is not clear whether that hearing will proceed as scheduled.

15. Since the Federal Court’s final approval of the CCCB and CCF Settlements, the Receiver has received the cash portions contemplated and required by those Settlements. The gross cash obtained totaled \$17,096,253.50. This amount was reduced by 23.3% to satisfy the fees of Special Counsel that were approved by the Federal Court resulting in a \$13,112,826.40 NET benefit to the Plan.

16. In the Order Appointing Permanent Receiver (the “Permanent Receiver Order”) entered on October 27, 2017, this honorable Court established the Receiver’s duties with respect to the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”). The Order generally authorizes the Receiver to monitor, manage and administer the Plan and its assets on behalf of its participants and beneficiaries. Among other actions, the Receiver may engage actuaries, investment advisors, benefit administrators and other professionals to perform various administrative tasks and services for the Plan. The Receiver may also initiate and litigate claims against third parties on the Plan’s behalf, acquire and dispose of property, direct investments and pay Plan-related expenses from the assets held in trust.

17. Since the Twelfth Report, regarding the general administration of the Estate, the Receiver held one town-hall style, informational meeting on February 3, 2020. At the meeting, the Receiver provided an updated status on, among other matters, the various actions and activities taking place in the Receivership proceeding, the Federal Litigation, the CCCB Litigation and the Liquidating Receivership. The next meeting is scheduled for April 13, 2020; however, due to the circumstances regarding nCOVID-19 a/k/a novel coronavirus, the Receiver will monitor the progress and advice of health officials and make a decision as to whether to proceed or reschedule this meeting.

18. The Receiver continues to receive and review documents related to the Plan and its history. GRS, the Receiver's Plan actuary, has been able to complete its intake and analysis of all information relative to the Plan and is fully engaged regarding benefits administration of the Plan.

19. With regard to Plan assets, since the inception of this proceeding in August 2017, the Plan assets (without the inclusion of the Settlement A and Settlement B proceeds) have reduced by approximately twenty-six percent (26%). As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In the thirty-one (31) months since (as of February 29, 2020), the Plan assets totaled approximately \$64,155,312.14.² The largest factor in the reduction of the Plan assets is monthly benefit payments. It is important to note that during that 31 month period the Plan paid out monthly benefit payments, retroactive benefit payments and other payments and fees related to Plan maintenance and services at an average rate of approximately \$941,000 per month. At that average rate the Plan had net negative cash flow of approximately \$26,300,000.

The erosion of Plan assets became more significant following the end of March 2018 when the Plan assets totaled approximately \$83,238,244.35. In addition to the typical monthly benefit payment and Plan related expense obligations, there have been several factors/changes that have occurred which have negatively impacted the Plan asset value, including, without limitation:

- a. The "unfreezing" of benefit applications in March 2018. This resulted in significant retroactive payments being made to newly collecting participants. In addition, as a result of those processed applications and elections the monthly benefits payments increased from approximately \$850,000 per month to slightly less than \$1M per month (i.e. \$936,000). The monthly benefit increase alone accounts for an additional annual benefit payment obligation of approximately \$1,500,000;
- b. Beginning in or about February 2018, the consistent and strong market performance that the Plan had been experiencing for a significant period of time has been more volatile, and recently, less strong. The Receiver adjusted the investment allocation for the Plan assets in or about February 2018/March 2018 which provided some

² This amount does not include the Settlement "A" or Settlement "B" NET settlement proceeds discussed in Paragraph 15, above.

protection from the recent market down-turn. Over the past six (6) or more months the market's volatility has resulted in, at least, some short term uncertainty as to the Plan's investment performance. As recently as just days prior to the filing of this Report, the Receiver has communicated with Mercer regarding the performance of asset investments, the allocation of the asset investments and market conditions and projections that may impact those investments.

The approval of the CCF and CCCB Settlements and resulting cash portion of those settlements has increased the Plan assets to \$77,268,138.10. This substantial replenishment to the Plan assets is critical to the ability of the Plan to continue to pay out benefits to participants.

20. In connection with the administration of the within proceeding, as of the filing of the Twelfth Report on or about January 21, 2020, your Receiver had cash-on-hand totaling \$4,638,830.25. Since that time, your Receiver has had no additional receipts and has had additional disbursements totaling \$1,056,182.18, leaving current cash-on-hand in the sum of \$3,582,648.07, all as set forth in the "**Schedule of Receipts and Disbursements**" attached hereto.³

21. In connection with this Thirteenth Report, your Receiver is requesting that the Court approve the Twelfth Fee Application incurred for the two (2) month period from January 1, 2020 through, and including, February 29, 2020, totaling approximately \$60,000. The Receiver respectfully requests that this Court approve the Twelfth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver's Twelfth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Thirteenth Report. Due to the Litigation and the related descriptions and narratives 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.

³ Cash-on-hand includes the funds received from Settlement "B". The Receiver will be filing a Petition for Instructions in the coming weeks seeking instruction from the Court regarding the deposit of those funds into the Plan.

WHEREFORE, your Receiver prays that this honorable Court enter an order or orders: (1) approving, confirming and ratifying all of the Receiver's acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Thirteenth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Twelfth Fee Application for his services as Temporary and Permanent Receiver herein; (3) directing that this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the Receivership Estate; and (4) granting 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
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: March 19, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2020, 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 031820
 As of March 18, 2020**

03/18/20

Accrual Basis

Date	Num	Name	Memo	Debit	Credit	Balance
BankRI Checking Account						4,638,830.25
01/28/2020	342	Wistow Sheehan & Loveley, PC	out-of-pocket expenses thru 1/28/20		749.18	4,638,081.07
01/28/2020	343	Wistow Sheehan & Loveley, PC	fees per fee agreement (23.3%) in connection with CCF Settlement Agree...		1,048,500.00	3,589,581.07
02/03/2020	344	Rhodes on the Pawtuxet	2/3/20 meeting with participants		1,500.00	3,588,081.07
02/04/2020	345	William White Legal Video Serv...	Inv #1765; video & audio for 2/3/20 meeting		525.00	3,587,556.07
02/05/2020	346	Gina Gomes	1/29/20 hearing transcript		33.00	3,587,523.07
03/02/2020	347	Wisehart, Inc.	Inv #6318; Expert fees		4,875.00	3,582,648.07
Total BankRI Checking Account				0.00	1,056,182.18	3,582,648.07
TOTAL				0.00	1,056,182.18	3,582,648.07