

**HEARING DATE:
THURSDAY, JULY 26, 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 FIFTH INTERIM REPORT AND FOURTH 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 Fifth Interim Report (the "Fifth Report") and Fourth Interim Request for Approval of Fees, Costs and Expenses (the "Fourth Fee Application"). In support of the Fifth Report and Fourth 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.

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 to now include access to filings made in both the State and Federal litigation matters as well as other related litigation matters related to this proceeding.

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

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.

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 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" or "Special Counsel") 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 27th, 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.

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. On or about May 31, 2018, this Honorable Court held a hearing on the “Receiver’s Third Interim Report and Request for Approval of Fees, Costs and Expenses” (the “Third Report”). At the hearing on the Third Report, the Receiver provided the Court with an update of the events occurring since the Second Report. At that hearing, the Receiver and Special Counsel also provided the Court with a status update regarding the claims investigation and a projected time frame for completion of that investigation and related next steps. Following the hearing on the Third Report, on or about May 31, 2018, this Court entered an Order approving the Third Report and approving the Receiver’s and WSL’s request for fees, costs and expenses covering the period of March 1, 2018 through April 30, 2018 (the “Third Report Order”). Through the Third Report Order, the Court approved, confirmed, and ratified all acts and doings of the Receiver through the Third 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.

14. On or about June 28, 2018, this Honorable Court held a hearing on the “Receiver’s Fourth Interim Report and Request for an Expedited Hearing and Shortened Notice Regarding Same” (the “Fourth Report”). At the hearing on the Fourth Report, the Receiver provided the Court with an update of the events occurring since the Third Report and orally requested that the Court further defer any recommendation of the Receiver regarding modifications to monthly benefit payments for plan participants. In addition and most importantly, 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. Following the hearing on the Fourth Report, this Court entered an Order approving the Fourth Report (the “Fourth Report Order”). Through the Fourth Report Order, the Court approved, confirmed, and ratified all acts and doings of the Receiver through the Fourth Report hearing date. Further, the Court granted the Receiver’s request that the Court further defer any recommendation of the Receiver regarding modifications to monthly benefit payments for plan participants until at least the hearing on the Fifth Report on July 26, 2018. An Order relative to the Receiver’s oral request for a further deferral has been submitted to the Court for entry (the “30 Day Deferral Order”).

15. Copies of the First Report, Second Report, Third Report and Fourth 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 Fifth Interim Report as if fully set forth herein.

16. Also on June 28, 2018, the Court held a brief hearing in the related matter captioned as *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.* (docket number CA No.: KM-2015-0035) (the “Cy Pres Matter”),

on the Receiver's and other named Plaintiffs' (the "Plaintiffs") "Motion For Leave to Intervene" (the "Motion") in that matter. The issue before the Court was related to the Court's 2015 *Cy Pres* Order which authorized the transfer of \$8.2 million (the "Funds") of so-called charitable assets from St. Joseph Health Services of Rhode Island, Inc. and Roger Williams Hospital to CharterCare Health Partners Foundation ("CCHP Foundation"), who in turn deposited most of the Funds with the Rhode Island Foundation ("RIF"). Through the Motion the Plaintiffs were essentially seeking to preserve the remaining portion of the Funds which Plaintiffs believe should have been used to fund the Plan's unfunded liability after the closing on the 2014 transaction.

After a brief hearing and subsequent chamber's conference with all counsel the Court continued the hearing. Thereafter, the parties conferred and agreed to the terms of an Order which would preserve the Funds (less a required annual distribution of not more than 4.5% to the CharterCare Foundation) pending litigation and setting a schedule on the Motion. The Order was presented to and entered by the Court on or about June 29, 2018, without further hearing.

17. Since the hearing on the Fourth Report on June 28, 2018, regarding the general administration of the Estate, the Receiver has engaged Gabriel, Roder, Smith & Company ("GRS") to replace Angell Pension Group, Inc. ("Angell") as the actuary and benefits administrator for the Plan. GRS is a large actuarial and consulting firm based out of Michigan (with seven (7) additional offices located across the country). GRS provides expert actuarial audit and valuation services to more than 400 pension clients nationwide, with a primary focus on church and public sector plans and their expertise and services include capabilities in actuarial and pension plan regulatory and compliance. Based on discussions with GRS, and assuming the full cooperation of the Receiver, Angell, Bank of America and Mercer Consulting, they anticipate that a full transition of the information needed for GRS to provide the actuarial and administrative services for the Plan will take approximately 30 days.

In addition to the engagement of GRS, the Receiver continues to communicate regularly with Attorney Jeffrey Cohen and Calibre regarding Plan regulatory and compliance issues in a continuing effort to assure compliance, consistency and protection of the Plan and its assets. Similarly, the Receiver continues to regularly communicate with Mercer Consulting regarding the Plan's assets and investment strategy. The Receiver has scheduled a full day, face-to-face meeting for August 8, 2018, with members of the Mercer team from St. Louis.

18. Regarding the State Litigation and Federal Litigation, the Receiver can confirm and report the following:

- a. All Defendants have been duly served in the Litigation;
- b. In the State Litigation, on or about July 6, 2018, Plaintiffs and all Defendants entered into and filed a Stipulation to stay the State Litigation pending further motion by either Plaintiffs or Defendants. The Stipulation was filed to avoid the unnecessary duplication of efforts in both State and Federal Court and to preserve the Plaintiffs' State Litigation claims in the event that the Federal Court, for any reason declines to exercise supplemental jurisdiction over those claims;
- c. In the Federal Litigation, on or about July 6, 2018, all Plaintiffs and Defendants entered into a Stipulation agreeing that Defendants would have until August 14, 2018, to answer or otherwise respond to the Complaint filed in the Federal Litigation; and
- d. The Federal Court has not yet scheduled the Rule 16 conference with the parties to the Federal Litigation. For purpose of explanation to interested parties to this matter that may not be familiar, under Rule 16 of the Federal Rules of Civil Procedure, the Federal Court may require the parties to appear at a pre-trial conference for purposes including: (i) expediting the action, (ii) establishing early control so that the action will not be unnecessarily delayed, (iii) discouraging wasteful pretrial activities by the parties, (iv) improve the quality of an ultimate trial, and (v) facilitating possible settlement.

19. In addition to the above, the Receiver continues to receive and review documents related to the Plan and its history and explore options with the Court-approved Advisory Committee relative to possible benefits adjustment scenarios in an effort to identify the most equitable, interim adjustment in the event that an adjustment becomes absolutely necessary or unavoidable to better protect and preserve the Plan's assets.

20. In addition to seeking the Court's approval, confirmation and ratification of all of the Receiver's acts and doings through and in connection with this Fifth Report, the Receiver is recommending and requesting this honorable Court's approval to further postpone a modification

to monthly benefit payments until the hearing on the Receiver's Sixth Interim Report which will be docketed for approximately sixty (60) days from the hearing on this Fifth Report. Consistent with the reasons set forth in 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 for Benefits" (the "March Recommendation") and approved by this Court via Order entered on or about April 4, 2018, the Receiver recommends that a further deferral of any recommendation on benefits adjustments until, at least, the hearing on the Sixth Interim Report is appropriate. Copies of the March Recommendation and related Order are on file with the Clerk of the Court and accessible on the Receiver's dedicated website and each are incorporated by reference and made a part of this Fifth Interim Report as if fully set forth herein.

21. In connection with the administration of the within proceeding, as of the hearing on the Fourth Report on or about June 25, 2018, your Receiver had cash-on-hand totaling \$378,558.21. Since that time, your Receiver has had no additional receipts (\$0.00) and has had additional disbursements totaling \$18,534.06, leaving current cash-on-hand in the sum of \$360,024.15, all as set forth in the "**Schedule of Receipts and Disbursements**" attached hereto.

22. In connection with this Fifth Report, your Receiver is requesting that the Court approve the Fourth Fee Application. The Receiver's fees, costs, and expenses associated with the Fourth Fee Application and incurred from May 1, 2018 through, and including, June 30, 2018, total approximately \$65,000. The Receiver respectfully requests that this Court approve the Fourth Fee Application of the Receiver and authorize him to pay himself such fees from the available cash-on-hand. A copy of your Receiver's Fourth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Fifth Report. In addition and also in connection with this Fourth Fee Application, your Receiver is requesting that the Court authorize him to pay WSL's fees, costs and expenses incurred from May 1, 2018 through, and including, June 17, 2018, totaling approximately \$120,000. 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 Fifth Report and Fourth Fee Application. 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.

23. Regarding the request for approval of the fees, costs and expenses of Special Counsel, it is important to note and remind the Court that, upon the filing of the Complaints in the Litigation, Special Counsel's compensation arrangement under their engagement with the Receiver shifts from hourly to contingency. As a result, Special Counsel's invoices associated with this Fourth Interim Fee Application through and including June 17, 2018, will be the last presented to this Court that will include hourly fees. Consistent with the Receiver's engagement with WSL, beginning June 18, 2018, and going forward, invoices from Special Counsel will only consist of requests to pay or reimburse Special Counsel for out-of-pockets and similar expenses and costs.

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 Fifth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Fourth Fee Application for his services as Temporary and Permanent Receiver herein; (3) authorizing the Receiver to satisfy the fees, costs and expenses incurred by WSL and presented with this Fifth Report and Fourth Fee Application; (4) approving the Receiver's recommendation to further postpone any modification to monthly benefit payments until, at least, the hearing on the Receiver's Sixth Interim Report; (5) 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 (6) 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: July 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 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

2:52 PM

07/17/18

Accrual Basis

St Joseph Health Services of RI Retirement Plan Transactions by Account

As of July 17, 2018

Date	Num	Name	Memo	Balance
BankRI Checking Account				
06/23/2018	260	Calibre CPA Group	incoming wire fee	378,558.21
06/29/2018	261	Bailey & Ehrenberg PLLC	Inv #234755 progress bill dated 6/14/18	378,543.21
07/06/2018	262	Rhodes on the Pawtuxet	Inv #2683: consulting expert	371,043.21
07/13/2018	263	Relevant Discover-e	Inv #1636: 7/16/18 meeting with plan participants	365,593.21
07/16/2018	264	William White Legal Video Services	Inv #3636: copying & postage	364,093.21
			Inv #1610 Video & Audio for 7/16/18 town hall meeting	360,924.15
				900.00
				360,024.15
Total BankRI Checking Account				360,024.15
TOTAL				360,024.15