

**HEARING DATE:
TUESDAY, DECEMBER 8, 2020 AT 10:00 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 SIXTEENTH INTERIM REPORT AND FIFTEENTH 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 Sixteenth Interim Report (the "Sixteenth Report") and Fifteenth Interim Request for Approval of Fees, Costs and Expenses (the "Fifteenth Fee Application"). In support of the Sixteenth Report and Fifteenth 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 November 1, 2020, 1,504 participants are currently receiving monthly benefits payments. The total amount of benefits paid in November 2020 equaled \$956,907.71.

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. Prior to the COVID pandemic, approximately every 4-6 weeks throughout this proceeding the Receiver hosted "town-hall" style, informational meetings at Rhodes on the Pawtuxet in Cranston, Rhode Island. At these meetings the Receiver provided 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.

Due to the State gathering restrictions imposed by the Governor during the pandemic and in order to provide pension holders with information, the Receiver has moved from an in-person to virtual via Zoom town hall meeting format. The Receiver has conduct two (2) meetings under this format and will continue every 4-6 weeks until in-person gatherings are safe again. The next meeting is scheduled in December 2020.

7. Prior to this Sixteenth Report and Fifteenth Request for Approval of Fees, the Receiver has filed fifteen (15) prior reports with the Court and fourteen (14) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report through the Fifteenth 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 Sixteenth Interim Report as if fully set forth herein.

8. 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.

9. On October 20, 2020, this Court held a hearing via WebEx on the Receiver’s Fifteenth Interim Report (the “Fifteenth Report”) and Fourteenth Interim Request for Approval of Fees, Costs and Expenses (the “Fourteenth Fee Request”). Upon conclusion of the hearing, the Court approved the Fifteenth Report and the Fourteenth Fee Request.

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

- a. On or about September 29, 2020, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc. and Prospect CharterCare, LLC (the “Prospect Entities”) filed a Motion seeking to adjudge the Receiver in Contempt of this Court’s November 16, 2018, Order and for an Award of Attorneys’ Fees (the “Motion”). In their Motion,

the Prospect Entities assert that the Receiver was required to provide twenty (20) days notice to the Prospect Entities prior to implementing or directing CharterCare Community Board (“CCCB”) (now controlled by the Liquidating Receiver) any rights related to CCCB’s 15% interest in Prospect CharterCare LLC. The hearing on the Motion and the Receiver’s Objection was continued by agreement several times and is currently scheduled for December 10, 2020.

11. Since the filing of and hearing on the Fifteenth Report, the following events have occurred in the Federal Litigation (CA No.: 1:18-CV-00328-S-LDA):

- a. On or about October 26, 2020, the Plaintiffs and Prospect Entities entered into and filed a Stipulation and Order concerning briefing on Prospect's Cross Motion for Summary Judgment. The Court approved the same on October 27, 2020;
- b. On or about November 20, 2020, the Diocesan Entities filed a Statement of Disputed Facts in Response to Prospect's Statement of Undisputed Facts and an Objection to the Prospect Entities Cross Motion for Summary Judgment; and
- c. On or about November 23, 2020, all Plaintiffs filed a Statement of Disputed Facts and a Response in Opposition to the Prospect Entities Cross Motion for Summary Judgment.

12. Since the filing of and hearing on the Fifteenth Report, the following events have occurred in the CCCB Litigation (PC-2019-3654):

- a. On or about October 16, 2020, the Liquidating Receiver and the Receiver filed a Memorandum and Motion to Compel Production, to Allow Deposition, to Extend Time to Exercise Put Option and for Sanctions (the “Motion to Compel”);
- b. On or about October 28, 2020, Green Equity Investors V, LP and Green Equity Investors Side V, LP (collectively “Green”) filed a Motion for Extension of Time to respond to discovery and a Motion for Continuance of oral argument and extension of time to file a reply brief (collectively the “Green Motions”);
- c. On or about November 6, 2020, the Court issued a decision denying JP Morgan Chase Bank, NA’s (“JP Morgan”) Motion to Dismiss;

- d. On or about November 9, 2020, the Receiver filed a Response to the Green Motions;
- e. On or about November 12, 2020, the Liquidating Receiver filed a Response to the Green Motions;
- f. Also on or about November 12, 2020, the Liquidating Receiver, the Receiver and JP Morgan entered into a Stipulation regarding the time for JP Morgan to file its answer to the amended complaint;
- g. On or about November 13, 2020, the Prospect Entities filed an Objection to the Motion to Compel; and
- h. On or about November 17, 2020, the parties entered into a Stipulation and Consent Order regarding the Motion to Compel (the “Stip”) which was entered by the Court on November 18, 2020 (the originally filed Stip was revised to correct an incorrect date reference).

13. Since the filing of and hearing on the Fifteenth Report, the following events have occurred in the Liquidating Receivership (PC-2019-11756):

- a. On or about October 19, 2020, the Court issued a decision denying the Liquidating Receiver and Receiver’s Motion to Enjoin Adler Pollock & Sheehan (the “APS Decision”). An order consistent with that decision was entered on October 29, 2020 (the “APS Order”);
- b. On or about October 29, 2020, the Court entered an Order granting the Liquidating Receiver’s *ex parte* request to file a Petition for Certiorari (a request for RI Supreme Court review) relative to the APS Decision and APS Order;
- c. On or about November 6, 2020, the Liquidating Receiver filed his Third Interim Report; and
- d. Also on November 6, 2020, the Liquidating Receiver filed a Petition for Instructions relative to seeking authority to engage independent counsel for the Category A Directors of Prospect CharterCare, LLC. Following a hearing on November 18, 2020, the Court entered an Order granting the Petition for Instructions on November 20, 2020.

14. Your Receiver, along with the Liquidating Receiver and several other parties have filed formal objections and other related filings to the Prospect Entities and related entities and individuals' application for a Change in Effective Control pending before the Rhode Island Health Services Council ("RIHSC"). Ultimately, the application will be presented to the Rhode Island Department of Health and Rhode Island Department of the Attorney General under the Rhode Island Hospital Conversion Act.

15. 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.

16. The Receiver continues to receive and review documents related to the Plan and its history. The Receiver and GRS, the Receiver's Plan actuary, are fully engaged regarding benefits administration of the Plan and address multiple inquiries, applications, and questions on a daily basis.

17. As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In months since (as of October 31, 2020), the Plan assets totaled approximately \$56,761,132.00.² The largest factor in the reduction of the Plan assets is monthly benefit payments. It is important to note that during the months since the inception of this proceeding 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 \$956,000 per month.

² This amount does not include the Settlement "A" or Settlement "B" NET settlement proceeds.

To add to the volatility of the investments, the COVID pandemic had a dramatic impact on the market. However, during the prior year in an effort to protect and insulate the Plan from dramatic market fluctuations, the Receiver adjusted the allocation of assets for investment risk. This reallocation was somewhat successful in insulating the Plan from COVID related losses in that when the market was down almost 25%, the Plan investments were only down approximately 10% during that same period. The Receiver and the investment manager continue to regularly assess the allocation of investments so as to maximize the returns for the Plan while at the same time protecting it based on its status and unavoidable fluctuations of the markets.

18. In connection with the administration of the within proceeding, as of the filing of the Fifteenth Report on or about October 20, 2020, your Receiver had cash-on-hand totaling \$3,524,332.62. Since that time, your Receiver has had no additional receipts and has had additional disbursements totaling \$14,136.97, leaving current cash-on-hand in the sum of \$3,510,195.65, all as set forth in the **“Schedule of Receipts and Disbursements”** attached hereto.³

19. In connection with this Sixteenth Report, your Receiver is requesting that the Court approve the Fifteenth Fee Application incurred for the two (2) month period from October 1, 2020, through, and including, November 30, 2020, totaling approximately \$65,000. The Receiver respectfully requests that this Court approve the Fifteenth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver’s Fifteenth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Sixteenth 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.

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

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.

Temporary and Permanent Receiver as of the filing of this Sixteenth Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Fifteenth 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

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Dated: November 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 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

12:11 PM

11/30/20

Accrual Basis

St Joseph Health Services of RI Retirement Plan
Transactions by Account 113020
As of November 30, 2020

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
BankRI Checking Account						
10/27/2020	358	Relevant Discover-e	Inv #7416; copying & postage interim report in August		205.98	3,524,332.62
10/27/2020	359	Wisehart, Inc.	Inv #6631; WSL's expert services		10,850.00	3,524,126.64
11/02/2020	360	Gina Gomes	10/20/20 hearing transcript		30.00	3,513,276.64
11/04/2020	361	Relevant Discover-e	Inv #7701; copying & postage interim report notice		3,050.99	3,513,246.64
Total BankRI Checking Account				0.00	14,136.97	3,510,195.65
TOTAL				0.00	14,136.97	3,510,195.65