

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF)
RHODE ISLAND)

VS.)

C.A. NO. PC-2017-3856

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

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON OCTOBER 27, 2017

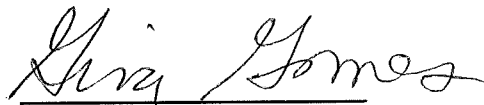
APPEARANCES:

STEPHEN DELSESTO, ESQUIRE.....RECEIVER

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



GINA GIANFRANCESCO GOMES
COURT REPORTER

1 FRIDAY, OCTOBER 27, 2017

2 MORNING SESSION

3 THE COURT: Madam Clerk, if you'd please call the
4 case.

5 THE CLERK: The matter before the Court is
6 PC-2017-3856, St. Joseph Health Services vs. St. Joseph
7 Health Services Pension Plan. This matter is on for a
8 hearing. Would counsel please identify themselves for
9 the record.

10 MR. DELSESTO: Good morning, your Honor. Stephen
11 DelSesto, the court-appointed Receiver.

12 MR. SHEEHAN: Good morning, your Honor. Stephen
13 Sheehan, counsel for the Receiver.

14 THE COURT: Thank you very much. Since we were last
15 in court, a petition has been filed by the Receiver as
16 well as we continued whether the Receiver would become
17 the permanent Receiver until today's hearing. The Court
18 has also received an entry of appearance from one other
19 attorney, Elizabeth Weins, who I see is with us here
20 today. If any counsel of record has entered an
21 appearance and wishes to be heard on any matter, please
22 just let me know, but I will ask the temporary Receiver
23 to please proceed.

24 MR. DELSESTO: Thank you, your Honor. Your Honor,
25 as you just stated, today we are here both on the

1 appointment of permanent Receiver, consideration of that
2 appointment, as well as a petition that I filed regarding
3 designation of groups of pension plan participants and
4 the formation of advisory committees. It probably makes
5 sense to address the permanent receivership first,
6 because I think that is the simplest matter to address.

7 The reason I asked, if you recall from our last
8 hearing, to continue the hearing of the appointment of
9 the Receiver was because of a potential, not an actual,
10 but a potential defect in the service of the petition to
11 appoint Receiver upon the trust. As a result of that, I
12 asked the Court to give me the authority to provide
13 notice to Bank of America who serves as the trustee to
14 the trust, which I believe is required by law in order to
15 bring an action against the trust, as well as the two
16 designated signators for Bank of America for the purpose
17 of directing the bank. The bank has very little
18 discretion and can only act upon direction. To the
19 extent there was a question as to whether or not that
20 lack of discretion meant that service upon them was not
21 complete or not sufficient, as a belt and suspenders, I
22 asked the Court to allow me to serve the signators.
23 Service on Bank of America as well as those two signators
24 has been effective. I have spoken to Bank of America.
25 They have indicated that they did receive service and

1 that they have no objection to the appointment of
2 permanent Receiver in this case. I have not received a
3 formal response from the two signators, but Attorney Land
4 is in the courtroom and I do not believe that he has an
5 objection. Of course, he was the one that filed the
6 petition in the first place.

7 With that, your Honor, having served both Bank of
8 America in its capacity as trustee as well as the two
9 designated signators for Bank of America in terms of
10 direction, I believe that service has been fully
11 performed and I am asking the Court to appoint me as
12 permanent Receiver in this case.

13 THE COURT: Okay. So normally a permanent Receiver
14 is appointed 20 days after the filing of the receivership
15 action. Attorney DelSesto was appointed temporary
16 Receiver. When it came up for hearing, that was
17 continued or played out for the State because of serving
18 a couple of additional parties. The Court received no
19 objection and has received an order appointing Attorney
20 DelSesto to permanent Receiver. The Court has reviewed
21 the order and it is in proper form outlining the duties
22 and responsibilities of counsel as the Receiver and the
23 Court will enter the order at this time.

24 MR. DELSESTO: Thank you, your Honor. Just for
25 clarity of the record as well, your Honor, I intended to

1 file an affidavit with the Court regarding the
2 notification I received from Bank of America regarding
3 their lack of objection to that.

4 THE COURT: Counsel, just so the individuals in the
5 courtroom understand, this will result in a publication?

6 MR. DELSESTO: That's correct, your Honor.

7 THE COURT: How will that work?

8 MR. DELSESTO: In this case typically, as your Honor
9 knows, there is what is called a receivership notice,
10 which is a revised or shortened version of the order
11 appointing permanent. Based on the nature of this case,
12 as well as some of the uniqueness of the provisions of
13 the permanent order here, we are suggesting that this
14 entire order be published in the Providence Journal. I
15 believe the date for publication is two weeks from today
16 in that order and it's typically published in the legal
17 notices of the section of the Providence Journal and it's
18 also available on line. It will include the full text of
19 the order that the Court is going to enter today.

20 THE COURT: Very good. That is part of the order
21 that the Court is signing today. Madame clerk, here is
22 the signed order.

23 MR. DELSESTO: Also, your Honor, I think it's
24 important to note, as your Honor knows, typically in
25 receivership matters, the entry of an order appointing

1 permanent Receiver results in the Receiver sending out
2 notice of that appointment along with a proof of claim
3 for creditors of the respondent to file who let the
4 Receiver know that they are, in fact, owed money. In
5 this case, your Honor, while that process is still put in
6 place with this order, I have suggested in this order
7 that the pension participants not be required to file any
8 claim with regards to their pension. I have all of the
9 information from the actuary. It seems like it would be
10 a burden upon them that is unnecessary as I have access
11 to or actual possession of all of the information related
12 to the pension participants and the details regarding
13 their pension.

14 THE COURT: So that's important. So in a normal
15 receivership case anyone who has a claim for assistance
16 would need to make a filing with the Receiver. In this
17 case it will not be required for plan participants to
18 file any notice of claim with the Receiver. However, any
19 other creditors or people who believed they are owed
20 money by the receivership estate still have to file.

21 MR. DELSESTO: That's correct. Thank you, your
22 Honor. Unless your Honor has any further questions on
23 the permanent appointment, I would like to move over to
24 to the petition I file with the Court. So, your Honor,
25 we have discussed on both prior hearings the issue

1 regarding the groupings of the pension participants.
2 More importantly, the representation for those groupings
3 on an -- I'll call it an unofficial basis. Two groups of
4 pension participants have already been somewhat defined.

5 One group is the union members for United Nurses and
6 Allied Professionals. Those are vested pension holders.
7 They may or may not be receiving benefits right now.
8 They may or may not be eligible to be receiving benefits
9 right now, but they are employed by Prospect Charter Care
10 possibly at the same exact facility that the St. Joseph's
11 operated and they are dues paying members of UNAP.

12 Similarly, Attorney Weins' group is also a union
13 group, a smaller group, but also a union group. Those
14 pension participants have representation through UNAP and
15 that is a relatively easily defined group.

16 The other group, as your Honor is aware, Attorneys
17 Violet and Senville, Attorney Senville is in the
18 courtroom today, represents another group which is
19 defined more as those pension holders who are vested.
20 It's my understanding that they all are receiving
21 benefits and they are either permanently disabled,
22 whereas they cannot obtain gainful employment, or they
23 are of an advanced age where they either cannot or it
24 wouldn't be reasonable to expect them to obtain
25 additional employment to offset any adjustments to the

1 benefits that may occur. That group is approximately 300
2 people that Attorneys Violet and Senville have stated
3 that they represent.

4 Beyond that, your Honor, that covers approximately
5 700 of the plan participants. There are 2,729
6 participants in this plan. So we have approximately
7 2,000 that are vested, may or may not be receiving
8 benefits, may or may not be eligible at this time to
9 receive benefits, may or may be not be employed some
10 place else other than St. Joseph's or Roger Williams and
11 to the extent that they have retired or aren't working,
12 that it is presumed, for lack of a better way to put it,
13 they could obtain some gainful employment some place
14 else. They are still employable. That group as it
15 stands right now has not been defined. It is also unlike
16 the UNAP group and Attorney Violet and Senville's group
17 they don't have representation specifically in this case.

18 What this petition does, your Honor, it asks the
19 Court to at least at this point identify that larger
20 group as, in fact, the group in this case, and another
21 prong is to allow me to schedule a meeting similar to the
22 meeting that I had on October 2nd. Except at this time
23 it would be to invite counsel who have expressed an
24 interest in representing all or a portion of that group
25 so that the pension participants in that group can hear

1 what those attorneys and those law firms have to say and
2 can make a decision for themselves.

3 It is important to note I have tried, with the
4 assistance of Attorneys Violet and Senville, to identify
5 other counsel that might be willing to do this type of
6 work on a pro bono basis. That has been up to this point
7 unsuccessful. So these other firms that have contacted
8 me and I had discussions with, who have a wealth of
9 business and receivership experience, and representatives
10 of those law firms are in the courtroom today, your
11 Honor, have indicated a willingness to do it, although
12 there would be a fee associated with it. How that will
13 work in terms of payment of that fee has not really been
14 discussed at this point because nobody has specifically
15 been identified yet.

16 In addition, I will note in my petition I do
17 reference the analogy of this type of a situation to an
18 unsecured creditor's committee in a bankruptcy case.
19 There is an opportunity. It's not a guarantee, but there
20 is an opportunity for the bankruptcy estate on the
21 bankruptcy side to pay all or a portion of the fees
22 associated with that representation. I am not taking any
23 position as to whether or not I think that would be
24 appropriate here or not because I think we need to kind
25 of wait and see what happens first before we address that

1 issue. I'm not saying that it would not happen but I am
2 also not advocating that it should at this point.

3 What I would propose to do and what I would ask the
4 Court to enter an order authorizing me to do is to
5 schedule another meeting, invite those firms,
6 representatives from those firms to come in, make their
7 presentation to the group, and the group can make a
8 decision as to whether or not they want to retain one of
9 those firms. It's not one or the other. They could
10 split off as they see fit.

11 Additionally, your Honor, there is nothing that
12 precludes them from engaging other counsel that do not
13 appear there. My hope, however, is for efficiency of
14 this case, both from a communication standpoint as well
15 as when we get into more substantive issues regarding
16 benefit adjustments that it would be much, much easier
17 for all involved in this case, myself, the Court, and
18 the other attorneys involved if we're dealing with a
19 smaller group, representative group, as opposed to 1,000,
20 2,000 individual attorneys. It would be very difficult
21 to try to come to a consensus the larger the group gets.

22 So that's part one of my petition, to identify that
23 group and to authorize me to allow law firms who have
24 expressed an interest to come in and make their
25 presentation to potentially represent all or a portion of

1 that group. Once that has been accomplished, your Honor,
2 my petition also asks the Court to set up, in essence,
3 two advisory committees or two committees. One I have
4 defined as an ad hoc committee. That one is the simplest
5 to discuss. That is one that is more of an information
6 conduit as opposed to having everybody need to contact me
7 and then the time constraints on me trying to get back to
8 them which is difficult. People have been patient but I
9 think they should be getting information faster than I
10 can provide it to them. This would allow the
11 representatives of those groups to communicate with me
12 directly and then they can go back and provide that
13 information to the larger group so everybody doesn't feel
14 like they have to contact me individually. They can get
15 the information with the case to the extent it's on the
16 website or they can't be at a hearing like this. They
17 can get further detail on that information from those
18 representatives, can also come back to me with questions
19 that the group has or individuals have, and it will just
20 make that communication more efficient I believe.

21 The second group is, for lack of a better way to put
22 it, a more substantive group. That is an advisory
23 committee that I defined in the petition. My hope on
24 that is there are some very difficult issues that are not
25 very far down the road. February being the first one,

1 which is an adjustment of benefits or an adjustment of
2 some type, whether it be benefits or some other multiple
3 issues that have to be addressed. It's my hope that by
4 setting up an advisory committee that those
5 representatives, who represent some portion or segments,
6 rather than the 2,729 pension holders, and I sit down and
7 hopefully come to a consensus on what might be the best
8 option at least on an interim basis.

9 And I want to stress that whatever is done in
10 February, your Honor, I do not believe will be the last
11 and final decision on what happens with this pension. We
12 have a process going on investigating claims. That has
13 commenced. The Court approved the engagement of the law
14 firm of Wistow Sheehan & Lovely on the 11th. That
15 process is going hopefully, not guaranteed, but hopefully
16 that process will result in identifying claims that would
17 result in funds coming into the plan. If that happens,
18 I think that another review of that plan and the makeup
19 of that plan will be necessary.

20 Plus, with the nature of investments and things of
21 that nature, it's necessary to review that on a regular
22 basis anyway to see which way the plan is going.
23 Nonetheless, this advisory committee would be able to
24 work with me directly so we can hopefully come to a
25 consensus. It may not be possible, but it will be

1 impossible without the advisory committee. At least the
2 advisory committee would make that possible so that way
3 when I am coming before your Honor let's say in February
4 or any date after that with a recommendation on what to
5 do with benefits, hopefully I can before your Honor and
6 say that the entire advisory committee is in support of
7 this recommendation and it will allow the Court to
8 implement it immediately without the need to have
9 additional briefing or arguments and things of that
10 nature.

11 I believe, your Honor, it's prudent to establish
12 those two committees. The Court has on a number of
13 occasions expressed a preference that that be done and
14 the Court has done that in prior matters, the Westerly
15 Hospital being one. This is not typical for a
16 receivership, but especially based on the precedent of
17 the Westerly case it's not unheard of in these cases and
18 I believe that it is appropriate here and I ask the Court
19 to approve both the designation of the group, the
20 authorization for me to schedule that meeting so counsel
21 can make the presentation and the formation of these two
22 committees, which in terms of membership of these
23 committees, I will leave that to the representation of
24 those groups to determine who is the most appropriate to
25 be a representative member for those groups on the

1 committee. I would hope that it would be somewhere in
2 the vicinity of about 15 people, give or take.

3 THE COURT: I'm sorry. What would be the vicinity
4 of the 15 people?

5 MR. DELSESTO: The size of each of the committees.

6 THE COURT: So let me just take a step back a little
7 bit. You have 2,729 give or take plan participants.

8 MR. DELSESTO: That's correct.

9 THE COURT: So part of this, and the Court has been
10 asking for this at the past couple of hearings, certainly
11 what the Court needs to address in probably the February
12 timeframe what adjustments, if any, are going to be made
13 to the plan in the interim. It would certainly not work
14 to have 2,729 people file things before the Court, retain
15 attorneys or be heard by the Court, and the Court making
16 a decision.

17 What the Court has done in the past and certainly it
18 had done in the federal context is to establish a
19 committee structure that is not necessarily going to
20 every person within each of those groups is not going to
21 be exactly the same or have the same circumstances,
22 but, certainly, there is going to be commonality between
23 those people so we can have a committee that is
24 representing the interest of that group before the Court
25 and we talked about communications and other things.

1 But the thing the Court is very concerned about is
2 when we get to that point in February where the Receiver
3 needs to make a recommendation to the Court based upon
4 the amount of assets and the funds, which I believe were
5 under \$85 million at this point. Is that correct?

6 MR. DELSESTO: That's correct.

7 THE COURT: That in the projections is not going to
8 be able to make payments under the plan so all the
9 participants in terms of the benefits that may be due.
10 So how do we set up these groups so there is
11 representation and their views are being heard before the
12 Court and the Court has to make that very difficult
13 decision? I agree that we have a certain number of
14 employees that are covered by the union and that appears
15 to be an appropriate group, although they may decide to
16 drill down. There may be subgroups or others, depending
17 on the circumstances. We have the group of people that
18 Attorney Violet and Senville currently represent which
19 was at the last hearing which was presented to be about
20 300. Again, that group may get larger or smaller based
21 on the determination of being a common group, but then
22 what I'm hearing is it sounds like we have approximately
23 65 percent or more of the people, about 2,000, that are
24 not covered in either of these groups at this point and
25 the Court feels very strongly that this group needs to

1 have a voice and it may not be all 2,000 people in one
2 group. We may end up with subgroups. We may end up with
3 four groups or five groups. I don't know.

4 What I want to say loud and clear is the Court does
5 not want to make a decision in equity in terms of cutting
6 of benefits without hearing the different perspectives
7 and being able to consider the different groups. I see
8 that two attorneys that do a large amount of business
9 receivership work and work in this area, Theodore Orson
10 and Preston Halperin, from two different firms are in the
11 courtroom today. I know they reached out to you about
12 possibly representing the group or portions of the group
13 and there may be others as well. I agree with how you
14 want to go forward, which is to schedule a meeting of
15 these people so they can hear from them. There can be a
16 flushing out in terms of is this group of 2,000 a single
17 group, which would be broken out in subgroups or other
18 groups, so those individuals can make a decision in terms
19 of representation and how these issues are going to be
20 entertained before the Court. So I agree very much.

21 The other issue is communication. I understand that
22 there is a lot of questions that are coming in everyday
23 and certainly from efficiency point of view, you need to
24 remember at the end of the day that the Receiver is being
25 paid and every time he needs to take actions to deal with

1 individual participants, the plan, or the estate and
2 others, funds need to be paid for it. So we can put in
3 place a way you can communicate except for real specific
4 circumstances with some representatives of these
5 different groups to get the word out. I think that would
6 be much more efficient going forward. There still will
7 be circumstances where you'll deal with plan
8 participants. A lot of the day-to-day information can be
9 communicated that way.

10 The last is the advisory committee, one is
11 communications, the other is talk about benefit changes.
12 The Court will feel more comfortable once the groups are
13 established after that meeting taking up and entertaining
14 doesn't require something formally before the Court other
15 than some sort of filing to see how the group is going to
16 operate and in what capacity. At the end of the day I
17 believe it's appropriate to have some conversations among
18 the groups and the Receiver in terms of what needs to
19 change in the interim and how that will take place and
20 certainly if there is some sort of consensus or at a
21 minimum it's flushed through the committee and the
22 committee members. That's just a positive, not saying
23 that the Court may agree or disagree with whatever that
24 recommendation is. At least we get that done. The
25 petition was just filed I believe yesterday or the day

1 before.

2 MR. DELSESTO: It was filed I believe two days ago,
3 your Honor, and actually that's a point I wanted to make.
4 Typically in these cases, a petition like this would be
5 submitted to the Court on an ex parte basis. However,
6 the Court has expressed and I have agreed on all
7 occasions that this case, based on its nature and
8 sensitivity, needs to be as transparent as possible.
9 Even though I believe this could have been brought ex
10 parte, I felt that it was prudent to make it a public
11 formal hearing like this so that the pension
12 participants, many of whom are here today, can hear
13 exactly why this is being done, how it's being done, and
14 what is being done.

15 THE COURT: Yesterday in the trial as I told my
16 jury, let me put that into English. Normally this can be
17 brought before the Court without a hearing or anyone
18 here. He can come into my chambers and explain I want a
19 committee. He is authorized to do it under the order and
20 I would sign off on it. As opposed to that in this case,
21 as I said from the beginning, I'd rather everything be
22 vetted in a public proceeding. He actually filed a
23 public filing before the Court, which is available for
24 all of you to see. It goes into detail in terms of what
25 he is requesting, and the Court feels that there is some

1 urgency to get these committees set up. So I am going to
2 direct the Receiver to make it available on the website
3 that you currently have.

4 MR. DELSESTO: It already is.

5 THE COURT: It is. And I am going to ask if anyone
6 wishes to file anything, that could be an attorney filing
7 something formal, a letter, or anything else, that it be
8 done by the close of business on Tuesday so the Court
9 next week can get an order entered and we can get this
10 process going.

11 In the interim, I think that the Court is very much
12 inclined to hear something differently to at least
13 appoint a committee or to explore a committee for 2,000
14 individuals. I would ask the Receiver not to waste any
15 time getting prepared to go forward with some type of
16 meeting, but I do want everyone to have the opportunity,
17 if they wish, to read through the very detailed
18 application that the Receiver has filed, which contains
19 more information than what he has touched on today. I
20 believe he has touched on everything that is important in
21 material, but it's available for you to look at. I will
22 say that the Court is inclined to grant that petition,
23 again, subject to drilling down between the groups to see
24 the number of groups and whether there is sub groups
25 depending on the circumstances of some of the claim

1 members.

2 MR. DELSESTO: Thank you, your Honor.

3 THE COURT: Anything else, counsel?

4 MR. DELSESTO: No, your Honor. I mean, I could give
5 your Honor an update.

6 THE COURT: Just give us a brief update from the
7 last hearing.

8 MR. DELSESTO: As I mentioned earlier and as your
9 Honor approved at the last hearing on the 11th, the law
10 firm of Wistow Sheehan & Lovely has been engaged as
11 special litigation counsel to investigate whether or not
12 claims exist that can be brought on behalf of the plan.
13 And the extent that they do, what would make sense in
14 terms of pursuing those claims as a way to get money back
15 into this plan. That law firm, Attorney Sheehan is here
16 today, I know they started that process. They have
17 already sent out some subpoenas to different groups.
18 Although I don't want to identify at this point anybody
19 who has been sent a subpoena but that process is moving
20 forward.

21 I have also have spoken to an investment management
22 group. As your Honor knows, Mercer is the current
23 investment manager, and they have been acting with a
24 quite high level of discretion since 2015. I have
25 contacted a few others. I have spoke to one about

1 possibly either consulting with the Receiver or if its
2 prudent to take over the investment management going
3 forward. That is a process as well, and I am doing the
4 same thing with regard to the actuarial firms. We have
5 had a number of meetings with Angell Pension, Mercer, as
6 well as others, and we're proceeding through to make sure
7 that every stone is turned over on the litigation side.
8 Attorney Sheehan and his office are doing everything that
9 they can and I am progressing down my side.

10 I've had multiple meetings with Attorney Violent and
11 Senville, conversations and meetings, also with counsel
12 to UNAP. In anticipation of that group that I'm asking
13 the Court to identify today, we've already started
14 discussions on what might need to happen in February. At
15 this point the discussions have been preliminary and at a
16 very high level, not in any detail, understanding this
17 other group of a substantial number of participants needs
18 to be part of that conversation. So we don't want to get
19 too far into the weeds until that happens.

20 THE COURT: I know that we are going to be waiting
21 until some time around February to make a decision.
22 Okay. Are we on track in terms of what we thought in
23 terms of the value of the current assets of the plan, in
24 terms of the payments that are going out, and the assets
25 based on the investments where we are. Is there anything

1 material that has changed or is it in line of what you
2 originally thought?

3 MR. DELSESTO: It's in line, your Honor. With
4 regards to the money going out to pay benefits on a
5 monthly basis. Those benefit payments have been going,
6 and because of your Honor's prior order freezing any new
7 applications, that number has remained unchanged. With
8 regard to the performance, I guess I'll say of the plan,
9 it's been consistent with where it had been in July and
10 August tracking at approximately 8.5 percent return so
11 it's better than the projected rate for that time period
12 and it has not fallen off at this point. Based on the
13 numbers I provided to your Honor, I believe, on September
14 8th, it has remained relatively unchanged. To the extent
15 there is a change, it is not any significant material
16 change.

17 THE COURT: Thank you very much.

18 MR. DELSESTO: Thank you. I will present an order,
19 your Honor.

20 THE COURT: As far as today, Attorney DelSesto has
21 been appointed the permanent Receiver. The Court has
22 heard the petition which is establishing the classes and
23 other ad hoc groups. An order will not be entered today.
24 The Court said I would wait until the close of business
25 on Tuesday, and we will proceed forward with the

1 investigation of claims as started to move forward at
2 this point. When does the Receiver believe that we need
3 to reconvene?

4 MR. DELSESTO: I was actually just going to say
5 that, your Honor. I intend to file a formal report to
6 the Court probably sometime prior to Thanksgiving in the
7 month of November, obviously, subject to the Court's
8 schedule.

9 THE COURT: Very good. That's fine. I would like
10 to if we can get to the point where we have a more
11 resolution as far as the groups and how it's going to
12 work in terms of the 2,000, if we can also use that as a
13 date to take care of and get an update on that. If there
14 is anything to get that going you need to come to the
15 Court beforehand, just let me know.

16 MR. DELSESTO: I will.

17 THE COURT: Thank you very much. The Court is in
18 recess.

19 (A D J O U R N E D.)

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