

**HEARING DATE:
THURSDAY, NOVEMBER 21, 2019 AT 2:00 PM
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 ELEVENTH INTERIM REPORT AND TENTH 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 Eleventh Interim Report (the “Eleventh Report”) and Tenth Interim Request for Approval of Fees, Costs and Expenses (the “Tenth Fee Application”). In support of the Eleventh Report and Tenth 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 October 1, 2019, 1,432 participants are currently 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 and is updated regularly to 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 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 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 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 Eleventh Report and Tenth Request for Approval of Fees, the Receiver has filed ten (10) prior reports with the Court and nine (9) prior requests for approval of fees. Rather than set forth summaries for each prior Report, copies of the First Report, Second Report, Third Report, Fourth Report, Fifth Report, Sixth Report, Seventh Report, Eighth Report, Ninth Report, Tenth 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 Eleventh 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 September 13, 2019, this Court held a hearing on the Receiver’s Tenth Interim Report and Ninth Interim Request for Approval of Fees, Costs and Expenses (the “Tenth Report”). Upon conclusion of the hearing, the Court approved the Tenth Report and granted the Receiver’s oral recommendation to further postpone any modification to benefits payments until, at least, the hearing on this Eleventh Report.

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

- a. On or about August 30, 2019, the Prospect Entities jointly filed an Objection to Receiver’s Motion for Authorization to Exercise the Put Option and/or Direct its

Exercise (the “Put Objection”). Subsequent to the filing of the Put Objection, the Receiver filed a Reply Memorandum and related exhibits to the Put Objection (“the “Receiver’s Reply to Put Objection”). On September 13, 2019, the hearings on the Put Objection and Receiver’s Reply to Put Objection were continued until October 1, 2019.

- b. On September 10, 2019, the Prospect Entities jointly filed an Objection to Receiver’s Ninth Interim Request for Approval of Fees, Costs and Expenses (the “Objection to Ninth Fee Request”). In response to the Objection to Ninth Fee Request, on or about September 12, 2019, the Receiver filed a Reply Memorandum to the Objection to Ninth Fee Request (the “Reply to Objection to Ninth Fee Request”).
- c. On September 13, 2019, following the hearing on the Tenth Report, the Ninth Interim Request for Approval of Fees, Costs and Expenses (the “Ninth Fee Request”) and the Objection to Ninth Fee Request, the Court entered an Order approving the Tenth Report and the Ninth Fee Request. In that Order the Court also indicated that it was making no ruling relative to the Objection to the Ninth Fee Request or the Reply to Objection to Ninth Fee Request.
- d. On October 1, 2019, the Court held a hearing on the Put Objection and Receiver’s Reply to Put Objection. However, at the conclusion of the hearing and in anticipation of the pending decision by the Federal Court for the District of Rhode Island (the “Federal Court”) relative to the proposed settlement with the former St. Joseph’s Hospital, the former Roger Williams Hospital and the CharterCare Community Board (collectively “CCCB”) (the “Settlement A”), the Court reserved on any decision relative to the Put Objection and Receiver’s Reply to Put Objection until October 11, 2019.
- e. On October 11, 2019, the Court held a conference relative to the Put Objection and Receiver’s Reply to Put Objection and was advised that the Federal Court had issued a decision giving final approval of Settlement A. That approval, practically speaking, rendered the Put Option issue moot. As a result, no hearing took place and the Court issued no decision on the issue.

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

- a. In connection with the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval (the “First Federal Motion to Approve CCCB Settlement”) and subsequent to the August 27, 2019, Diocesan Defendants filing of their Opposition to Final Approval and Companion Motion for Attorneys’ Fees Concerning Settlement with CCCB (the “Diocesan Opposition to CCCB Settlement”) and the Prospect Entities filed an Objection to Final Settlement Approval (the “Prospect Objection to CCCB Settlement”) the following were submitted or actions taken:
 - i. On September 3, 2019, CCCB filed their Response to the Prospect Objection to CCCB Settlement (the “CCCB Response to Prospect”), the Plaintiff’s (the Receiver, *et. al.*) filed their Memorandum in Support of the First Federal Motion to Approve CCCB Settlement (the “Plaintiffs’ Memo in Support of CCCB Settlement”) and Plaintiffs’ Counsel filed its Memorandum in Support of Motion for Award of Attorneys’ Fees in Connection with “Settlement A” (the “Counsel Memo”);
- b. On September 5, 2019, the Federal Court Appointed a Special Master for the limited purpose to review the motions for attorneys’ fees and make a recommendation to the Federal Court as to those requests;
- c. On September 10, 2019, the Federal Court held a Final Hearing regarding Settlement and Class Certification pursuant to the Memorandum and Order granting the Joint Motion for Settlement and Settlement Class Certification. Subsequent to that hearing, the Federal Court indicated that it would take the matter under advisement and issue a written decision;
- d. Also on September 10, 2019, the Federal Court held a hearing on the Joint Motion to Dismiss For Failure to State a Claim filed by the Prospect Entities (the “Prospect MTD”), the Motion to Dismiss For Failure to State a Claim filed by Angell (the “Angell MTD”), the Motion to Dismiss For Failure to State a Claim Concerning Amended Complaint filed by the Diocesan Entities (The “Diocesan Amended Complaint MTD”), the Motion to Dismiss For Failure to State a Claim as to First

Amended Complaint filed by Angell (the “Angell Amended Complaint MTD”), the Motion to Dismiss For Failure to State a Claim filed by the Diocesan Entities (the “Diocesan MTD”), the Motion to Dismiss filed by CharterCARE Foundation (the “CharterCare MTD”), the Motion Request for Judicial Notice filed by Angell (the “Angell Judicial Notice Motion”) and the Plaintiffs’ Objections and Responses thereto. At the conclusion of the hearing, the Federal Court found that the Angell MTD, the Angell Judicial Notice Motion, the Prospect MTD, the CharterCare MTD and the Diocesan MTD were moot and order the parties to file a Joint Proposed Discovery Schedule. The Federal Court further indicated that if the parties could not agree on a proposed schedule, they each must file a Proposed Discovery Schedule separately;

- e. On September 16, 2019, the Court-appointed Special Master filed a Proposed Compensation and Budget and Notice of Meeting with the Special Master scheduled for September 26, 2019;
- f. On September 26, 2019, with no objection filed, the Federal Court approved the Special Master’s proposed compensation and budget. On that same date the Special Master held the meeting with the parties;
- g. On September 30, 2019, the Federal Court issued a Memorandum of Decision entering Final Approval of the CCF Settlement pursuant to the prior Order on the Motion for Preliminary Approval of the CCF Settlement;
- h. On October 9, 2019, the Federal Court issued a Memorandum and Order entering Final Approval of the CCCB Settlement pursuant to the prior Memorandum and Order issued by the Federal Court granting preliminary approval of the Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Approval by Plaintiffs and Defendants SJHSRI, RWH, and CCCB;
- i. On October 14, 2019, the Special Master submitted his Report and Recommendation (the “SM Report”). Subsequent to the filing of the SM Report, on October 24, 2019, the Federal Court entered an Order adopted the SM Report;
- j. On October 22, 2019, the Plaintiffs filed a Stipulation and Proposed Order concerning limited discovery and related summary judgement motions (the “Proposed Stip”);

- k. On October 29, 2019, the Federal Court entered an Order approving the Proposed Stip. The Court further, based on the filing of the Proposed Stip, denied without prejudice the Diocesan Amended Complaint MTD, the Angell Amended Complaint MTD and Prospect MTD. The Federal Court indicated that to the extent that any party wished to raise an issue asserted in the motions to dismiss, it may do so at a later time in the proceedings, as contemplated by the Proposed Stip. The Federal Court further indicated, in accordance with the schedule set forth by the parties, that Plaintiffs' Motion for Summary Judgment as to Count IV shall be filed no earlier than November 29, 2019, and no later than December 29, 2019, and that the Defendants' responses and/or cross-motions for Summary Judgment will be due in accordance with the remainder of the schedule outlined in the Stipulation; and
- l. On November 7, 2019, the Prospect Entities filed a Stipulation and Proposed Order.

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

- a. On October 1, 2019, the Court held a hearing on CCCB's Motion to Compel; and
- b. On October 2, 2019, the parties submitted and on October 3, 2019, the Court entered a Stipulation and Consent Order. On that same date the Court entered an Order on the Expedited Motion to Compel Production.

14. Since the Federal Court's final approval of the CCCB Settlement, the Receiver has received the cash portion contemplated and required by that settlement. The gross cash obtained totaled \$12,596,253.50. This amount was reduced by 23.3% to satisfy the fees of Special Counsel that were approved by the Federal Court.

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. Since the Tenth Report, regarding the general administration of the Estate, the Receiver held two town-hall style, informational meetings on September 23, 2019, and November 4, 2019. At these meetings, the Receiver provided the status of (i) the proposed Settlement between the Receiver, the other Litigation Plaintiffs, Special Counsel, SJHSRI, CCCB and RWH; (ii) the proposed Second Settlement between the Receiver, other Litigation Plaintiffs, Special Counsel, CCF, SJHSRI, CCCB and RWH; (iii) disputes concerning CCCB and Prospect; and (iv) addressed questions and concerns raised by Plan participants regarding the proceedings and the Plan generally. The next town-hall style meeting will likely occur in December 2019 but it has not yet been scheduled.

17. 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.

18. With regard to Plan assets, since the inception of this proceeding in August 2017, the Plan assets have reduced by approximately eighteen percent (18% or approximately \$15,440,000). As the Court may recall, as of the start of this proceeding, the Plan assets totaled approximately \$85,795,641.99. In the twenty-six (26) months since (as of September 30, 2019), the Plan assets totaled approximately \$67,697,658.14. The largest factor in the reduction of the Plan assets is monthly benefit payments. It is important to note that during that 26 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 \$936,000 per month. At that average rate the Plan had net negative cash flow of approximately \$24,300,000.

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 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 the end of August 2019, 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.

Based upon the value of the Plan assets and the current and projected market performance, the need for additional funds (to be realized from the settlements presented to this Court) to support the Plan is becoming more critical every day. That said, the approval of the CCF and CCCB Settlements will inject significant funds into the Plan which are critical to the ability of the Plan to continue to pay out benefits to participants.

19. Contemporaneous with seeking this Court’s approval, confirmation and ratification of all of the Receiver’s acts and doings through and in connection with this Eleventh Report, absent any emergency circumstances, 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 Twelfth Interim Report which will be docketed for approximately sixty (60) days from the hearing on this Eleventh 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 the hearing on the Twelfth 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 Eleventh Interim Report as if fully set forth herein.

20. In connection with the administration of the within proceeding, as of the filing of the Tenth Report on or about September 3, 2019, your Receiver had cash-on-hand totaling \$97,975.92. Since that time, your Receiver has had additional receipts in the amount of \$0.00 and has had additional disbursements totaling \$11,492.65, leaving current cash-on-hand in the sum of \$86,483.27, all as set forth in the “**Schedule of Receipts and Disbursements**” attached hereto.

21. In connection with this Eleventh Report, your Receiver is requesting that the Court approve the Tenth Fee Application. The Receiver’s fees, costs, and expenses associated with the Tenth Fee Application and incurred for the four (4) month period from July 1, 2019 through, and including, October 31, 2019, total approximately \$130,000.00. The Receiver respectfully requests that this Court approve the Tenth Fee Application of the Receiver and authorize him to pay himself such approved fees. A copy of your Receiver’s Tenth Fee Application Invoice will be presented, in redacted form, under separate cover to the Court for review in advance of the Hearing on this Eleventh 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 Temporary and Permanent Receiver as of the filing of this Eleventh Report; (2) authorizing the Receiver to satisfy the fees, costs and expenses incurred by the Receiver and presented in connection with the Tenth Fee Application for his services as Temporary and Permanent Receiver

herein; (3) approving the Receiver's recommendation, absent any emergency circumstances, to further postpone any modification to monthly benefit payments until the hearing on the Receiver's Twelfth Interim Report; (4) 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 (5) 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@pierceanwood.com
Dated: November 13, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2019, 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

1:42 PM

11/13/19

Accrual Basis

St Joseph Health Services of RI Retirement Plan
Transactions by Account 111319
As of November 13, 2019

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Credit</u>	<u>Balance</u>
BankRI Checking Account					97,975.92
09/06/2019	325	Relevant Discover-e	Inv #5915; copying & postage for notices of meeting & hearings	3,624.16	94,351.76
09/23/2019	326	Rhodes on the Pawtuxet	Inv #1790; 9/23/19 meeting with participants	1,500.00	92,851.76
09/25/2019	327	William White Legal Video Services	Inv #1732; video & audio for 9/23/19 meeting	675.00	92,176.76
10/09/2019	328	Gina Gomes	10/1/19 hearing transcript	18.00	92,158.76
10/25/2019	329	Relevant Discover-e	Inv #6190; copying & postage for notices of hearings & meeting	3,625.49	88,533.27
10/29/2019	330	Rhodes on the Pawtuxet	Inv #1812; 11/4/19 meeting with participants	1,500.00	87,033.27
11/05/2019	331	William White Legal Video Services	Inv #1748; video & audio for 11/4/19 meeting	550.00	86,483.27
Total BankRI Checking Account				11,492.65	86,483.27
TOTAL				11,492.65	86,483.27