

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF )  
RHODE ISLAND )

V. )

C.A. NO. PC-2017-3856 )

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

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON JANUARY 29, 2020

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER  
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL

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

  
GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 WEDNESDAY, JANUARY 29, 2020

2 MORNING SESSION

3 THE CLERK: The matter before the Court is  
4 PC-2017-3856, St. Joseph's Health Services of Rhode  
5 Island v. St. Joseph's Health Services of Rhode Island  
6 Retirement Plan. This is on for the Receiver's twelfth  
7 interim report and eleventh request for approval of fees.

8 MR. DEL SESTO: Good morning, your Honor. Steven  
9 Del Desto, the Receiver for the St. Joseph's Health  
10 Services of Rhode Island Retirement Plan. As Clerk Miley  
11 just indicated, I am here this morning on the Receiver's  
12 twelfth interim report and eleventh request for fees.

13 We were last before your Honor on November 21, 2019,  
14 on the eleventh report. Notice of this report has been  
15 provided to all parties and affidavit of notice has been  
16 filed with the Court, and I have received no objections  
17 to the report or the request for fees.

18 I do set out in some detail, and I'm happy to  
19 elaborate if the Court wants, but the coming and goings  
20 of matters since the last report in both the receivership  
21 matter, the federal litigation going on in front of Judge  
22 Smith in Federal Court, the CCCB litigation with  
23 Prospect, and the Cy Pres matter, which your Honor had  
24 recently in November modified the order to allow the CCF  
25 settlement to be finalized and proceeds come in. As I

1 indicated in the report, your Honor, the proceeds from  
2 both sales have now been received by the estate. The  
3 proceeds from the CCCB sale are in the plan, benefitting  
4 the plan. There is still some pieces that are held with  
5 the former manager, which is Schwab, to get it over to  
6 Mercer, but the money is invested and until it's  
7 liquidated and moved it continues to earn investment  
8 income as it would if it were in the plan. The money  
9 with the CCCF settlement is being held by the Receiver  
10 and pursuant to the terms of that settlement that money  
11 is held by me until directed by the Court. I will be  
12 presenting before the next report a request for the  
13 Court, a petition for instructions asking how to disburse  
14 those funds into the plan.

15 The only other major issue going on right now, your  
16 Honor, is, as you know, there is a put option with  
17 Prospect, Attorney Hemmdinger, who is the liquidating  
18 receiver for -- I'll call it the old entity Roger  
19 Williams, St. Joe's, and CCCB is the holder of that  
20 interest and he holds it pursuant to the settlement  
21 agreement that this Court approved and Judge Smith  
22 approved in the federal litigation. He holds that for  
23 the benefit of the plan. The option as it stands right  
24 now, the exercise date for that option is February 10th.  
25 We were, as I believe your Honor is aware because we had

1 several conferences, we're working with Prospect to -- I  
2 guess I will call it slightly modify the process that is  
3 set forth in the LLC agreement for if and when that put  
4 is exercised by way of valuation experts and the process  
5 by which they will value the hospitals. We are making  
6 progress on that but we have not finalized the full  
7 process.

8 What I can report to the Court is that Prospect, and  
9 I believe this was reported at one of Attorney  
10 Hemmendinger's hearings, that Prospect has agreed to the  
11 expert that, I guess, the old entities and I have agreed  
12 to or have selected ECG to be the valuation expert for  
13 our side. I received last night an e-mail from Attorney  
14 Chris Fragomeni that indicated who Prospect has  
15 identified as the expert they would like. I got that  
16 yesterday. I have not had the chance to even look at  
17 their website or speak to our expert to see if it's a  
18 group that we believe is appropriate for this exercise.

19 But, again, your Honor, we are having those  
20 communications, they are ongoing, and I hope to work  
21 something out with Prospect and Attorney Hemmendinger  
22 where a process for identifying evaluation experts and  
23 then identifying the universe of documents that those  
24 parties will be looking at to value this hospital is  
25 taken care of it. Hopefully that's done well before the

1 10th, which is not much further away from now. But,  
2 obviously, if there's an issue with that, we'll be coming  
3 back before your Honor and asking for some relief in  
4 connection with that.

5 Beyond that, your Honor, the report does not reflect  
6 in terms of cash in the plan or cash on hand, the money  
7 from the CCCB settlement, Settlement A. At the time the  
8 report was drafted that money was still in the hands of  
9 and in transition over from Schwab to Mercer. I just  
10 reported that the majority of it is there now. There is  
11 one vehicle of money, approximately a million dollars,  
12 although it changes quite frequently, which is a Hedge  
13 fund. It has restrictions on when it can be liquidated.  
14 We have begun the process of just merely moving that  
15 investment over to Mercer. You can't liquidate it yet,  
16 but once it does become due for liquidation or available  
17 for liquidation we will and it will be invested in the  
18 same manner as all of the other plan assets.

19 THE COURT: What's the assets position?

20 MR. DEL SESTO: As of right now, your Honor, as of  
21 the filing of this report the assets in the plan were  
22 \$68,209,570.13. That does not include, as I stated, the  
23 net proceeds from the Settlement A, the CCCB settlement,  
24 which are approximately roughly between nine and \$10  
25 million and it does not include the net proceeds from the

1 CCF Settlement, Settlement B, which the net proceeds of  
2 that are approximately \$3 million. The \$3 million is  
3 held in the estate, not reflected here because we  
4 received it after the report was filed. And as I just  
5 stated, the CCCB money, it was held with Schwab and  
6 transitioned over to Mercer.

7 THE COURT: On the low end, once the money is  
8 transferred, and I'm including the million dollars, which  
9 is certainly an asset but that's tied up, so around \$80  
10 million.

11 MR. DEL SESTO: That's correct, your Honor, which  
12 puts us just slightly under where we were in August of  
13 2017, so, obviously, that's a large assistance to the  
14 plan because it's from a financial standpoint it resets  
15 the clock in terms of money for those past two years of  
16 benefits going out.

17 THE COURT: Where do we stand right now in terms of  
18 the burn rate?

19 MR. DEL SESTO: The burn rate right now, your Honor,  
20 is approximately \$936,000 per month. I do indicate in  
21 the report -- I'm sorry the burn last month, or actually  
22 this month because it happened in the beginning of the  
23 month, we had \$941,176.74 go out in benefit payments and  
24 that paid to approximately 1,229 participants in the  
25 plan. There are, as your Honor may recall, there are

1 approximately 2,600 in the plan in total, so we're  
2 looking at about half are actually receiving benefits at  
3 this point, your Honor, and that burn rate of 941 is only  
4 the benefit payments. As your Honor knows, there are  
5 other expenses of the plan, such as the Mercer as the  
6 investment manager, GRS, the actuary, and then we also  
7 have the retained expert by the Receiver, which is  
8 Bailey & Ehrenberg, Attorney Jeff Cohen.

9 THE COURT: And I know there was a large payment on  
10 the ERISA plan. Is there another payment plan?

11 MR. DEL SESTO: We will have another payment plan  
12 this April, your Honor, along with the 5500 form that has  
13 to be filed. We will have a large payment that is due.  
14 It's based on the percentage of the assets that exist at  
15 a certain time so it's always changing.

16 THE COURT: We have until April?

17 MR. DEL SESTO: Correct. That goes to -- actually,  
18 we may have until September. I believe it's nine months  
19 after the beginning of the calendar year that it becomes  
20 due and that is the premium due to the PBGC with regard  
21 to the fact I have now elected the plan to be covered  
22 under ERISA as required.

23 Unless your Honor has any other questions about any  
24 other issues that I have identified in the report and  
25 wants me to go into more detail, that concludes the



1 report. I am asking the Court confirm, approve, ratify  
2 my acts and doings, approve the report in full, and allow  
3 me to continue in the same manner and set down a  
4 thirteenth interim report approximately 60 days from  
5 today subject to your Honor's schedule.

6 I will note, your Honor, I only know this because I  
7 got a number of e-mails and calls about this. As your  
8 Honor knows, in the past I have asked your Honor to defer  
9 decision on cutting benefits and at the last report I  
10 indicated that because was now the ERISA plan via the  
11 election, that I don't believe I have the authority to do  
12 that and I don't believe I have the authority to ask your  
13 Honor to allow me to do that. So I removed that request  
14 from the report in full. We are no longer asking for  
15 that. A number of people, because they didn't see it,  
16 were concerned that that meant that I would be asking for  
17 a cut. I just want to make it clear that that's not the  
18 case. I am not asking for a cut because I don't believe  
19 I have the authority to do that under ERISA.

20 THE COURT: The communications are ongoing?

21 MR. DEL SESTO: The communications are ongoing. I  
22 still maintain the dedicated website. We also have a  
23 dedicated e-mail. We get several every day. Some are as  
24 procedural and benign as my address has changed and  
25 others are much more detailed in terms of benefits,

1 calculations, and things of that nature. And I also  
2 continue what I have defined as or what I have termed the  
3 town hall meetings. We have those approximately every  
4 sixty days as well. We have another one coming up, I  
5 believe, in two weeks held at Rhodes on the Pawtuxet.  
6 Those are all recorded and the recordings are actually  
7 put on the internet via Youtube. I have put them on the  
8 website as well so the participants who cannot be at the  
9 meetings can at least hear the questions and answers that  
10 are asked at those meetings. One second please.

11 THE COURT: Yes.

12 MR. DEL SESTO: It's important to clarify, your  
13 Honor, that the election that was made to have the plan  
14 covered under ERISA was without prejudice to our position  
15 in the litigation that it was an ERISA plan before that  
16 election happened. I just wanted to make sure that is  
17 clear on the record.

18 Unless your Honor has questions, I would ask that  
19 the Court approve, confirm, ratify my acts and doings in  
20 the report, and I can move into the fee application  
21 portion if your Honor would like.

22 THE COURT: Very good. No objection being filed,  
23 the Court has had the opportunity to review the interim  
24 report, the twelfth interim report of the Receiver. The  
25 Court ratifies the acts and doings of the Receiver, and

1 as I have said, approves the report. The relief  
2 requested is approved and if you would submit the  
3 appropriate order.

4 MR. DEL SESTO: Thank you, your Honor. In  
5 connection with the twelfth interim report, I also made  
6 my eleventh interim request for fees. The fee invoice  
7 that has been provided to the Court covers all of my  
8 actions and acts between November 1, 2019, and December  
9 31st of 2019. The fees for that period of time total  
10 \$59,749.50, hard cost disbursements total \$3,041.07 for a  
11 grand total of \$62,790.57, and that covers approximately  
12 194 hours of time between myself, primarily myself and my  
13 paralegal, Ms. Zaccagnini, as well as some assistance  
14 from associates in my office, your Honor.

15 THE COURT: The Court has received and began to  
16 review the fee request. Unfortunately, as counsel knows,  
17 I was out for a couple of days so I haven't had the  
18 opportunity to completely review it. When I recess, I  
19 will ask that counsel submit the appropriate order to the  
20 clerk, I will make any adjustments that are necessary,  
21 and issue the order.

22 MR. DEL SESTO: Thank you, your Honor.

23 (A D J O U R N E D.)  
24  
25