

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 SERVICES OF RHODE)
ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON NOVEMBER 20, 2017

APPEARANCES:

STEPHEN DeLSESTO, ESQUIRE.....RECEIVER
MAX WISTOW, ESQUIRE.....FOR THE RECEIVER
ARLENE VIOLET, ESQUIRE.....FOR THE RETIREES

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


GINA GIANFRANCESCO GOMES
COURT REPORTER

1 MONDAY, NOVEMBER 20, 2017

2 MORNING SESSION

3 THE CLERK: Your Honor, the matter before the Court
4 is PC-2017-3856, St. Joseph's Health Services of Rhode
5 Island vs. The St. Joseph's Health Services Retirement
6 Plan. This matter is on for the Receiver's first interim
7 report. Would counsel please identify yourselves the
8 record.

9 MR. DELSESTO: Good morning, your Honor. Stephen
10 DelSesto, the permanent Receiver.

11 MR. WISTOW: Max Wistow, special counsel to the
12 Receiver.

13 MS. VIOLET: Arlene Violet for Lillian Sparfven, et
14 al, and approximately 300 retirees.

15 THE COURT: Thank you very much. The Receiver may
16 proceed.

17 MR. DELSESTO: Thank you, your Honor. Good morning.
18 We are here this morning on the Receiver's first interim
19 report and request for fees. As your Honor knows, we
20 have been before the Court on at least three prior
21 occasions, but this is the first formal report that has
22 come before the Court. I don't know if it's made its way
23 into the file, but an affidavit of notice, if it has not
24 been filed, will be filed which reflects that all parties
25 in interest, all pension holders, and all parties of

1 interest have received notice of this hearing. As of
2 today, your Honor, I have not received an objection to
3 the Receiver's report, and I will proceed even though
4 much of what I am going to say may be duplicative of what
5 the Court has heard at other hearings.

6 By way of background, your Honor, I was appointed
7 the temporary Receiver of St. Joseph's Health Services of
8 Rhode Island Retirement Plan on August 18, 2017, that was
9 a result of a petition filed by St. Joseph's Health
10 Services of Rhode Island seeking the appointment of a
11 Receiver at that time. Subsequent to my appointment as
12 Receiver, your Honor, on August 29th I sought
13 clarification from this Court regarding the stayed
14 provision in the order appointing temporary, specifically
15 whether or not that stayed provision applied to
16 applications of pension holders being received and/or
17 processed post-receivership.

18 At that point the Court entered an order clarifying
19 that the stay did, in fact, at least at this time apply
20 to applications being filed. The main reason for that,
21 your Honor, was to, for lack of a better way to put it,
22 calm the waters while the Receiver reviewed financial
23 information relative to potential adjustments. Because,
24 as your Honor will recall, at that time St. Joseph's
25 Health Services of Rhode Island, the petitioner in this

1 case, asked the Court to set a hearing for October 11th,
2 which would require cuts of -- they had suggested a 40
3 percent across the board cut.

4 So in order to understand the financial landscape
5 without much fluctuation in that beyond market
6 conditions, the Court indicated that the stay applied to
7 those applications. As a result, your Honor,
8 applications have been filed. Since August 18th
9 approximately 80 have been filed. That does not include
10 applications that were filed prior to the receivership
11 that were received but not processed by the time the
12 receivership had been commenced. Those have been stayed
13 although they have been all identified with the timeframe
14 by which they had been received. So there would be no
15 penalty for the fact that they have not been processed.
16 They are all in cue and the date that they were properly
17 filed has been preserved for that purpose.

18 In addition, on September 8th the Court asked me to
19 provide the Court with a status. I will call that an
20 informal report with this one being a formal report, and
21 I provided a status report to the Court at that time
22 based on the Court's request. At that time your Honor,
23 there were two specific things that I asked the Court to
24 do at the conclusion of that hearing. One was to expand
25 my powers to include subpoena powers, which the Court

1 did, in fact, grant. And the second thing I did, your
2 Honor, is I asked the Court to push the 40 percent cut
3 request that the petitioner had made until sometime out
4 in the beginning of 2018. I believe we had said
5 somewhere around February of 2018. The Court also
6 granted that request, your Honor.

7 After that September 8th hearing, your Honor, I did
8 have what I am calling a town hall meeting.
9 Approximately 750 participants attended that meeting. It
10 lasted approximately three, three and a half hours and it
11 was a status with an open forum question and answer for
12 all pension holders to understand exactly what was
13 happening in the interest of making sure that they
14 receive information from the Receiver directly as opposed
15 to relying on other sources that the Receiver has that I
16 don't have any input or impact on, such as social media
17 and things of that nature.

18 I can tell your Honor I held a second meeting as
19 well more recently following the Court's approval of the
20 formation of the advisory and the ad hoc committees. On
21 the 27th of October was that hearing and there was a
22 subsequent town hall meeting. At that time approximately
23 300 to 350 pension holders appeared, and it was similar
24 while it was much less status and more of a discussion
25 about those committees and the organization of what the

1 Court allowed me to designate as that middle group. It
2 did last approximately two hours and I guess the main
3 theme that came from there, your Honor, was a discussion
4 among the pension holders that a differing of opinion as
5 to many wanted to be viewed as just one large group, no
6 counsel, things of that nature. And others who didn't
7 speak that night did come to me afterwards that night and
8 then subsequent with phone calls and e-mails indicating
9 that they actually did want to be separated in different
10 groups.

11 I indicated that night, as I indicated to the Court
12 in the hearing that I view my role as more of a
13 facilitator. I can't force individuals into groups and I
14 can't force counsel upon individual groups, but that I
15 would do my best to assist in any way, shape, or form.
16 The Receiver clearly is the best way to communicate with
17 everybody. I have everybody's address. I can get that
18 message out, and I am happy to reach out to the group.

19 As your Honor knows, two groups formed almost
20 immediately and that was, obviously, United Nurses and
21 Allied Professionals Group, which is represented by Chris
22 Callaci, who has entered his appearance in this case, and
23 then Attorneys Violet and Senville identified a group of
24 more advanced age pension holders, and it was the middle
25 group that was out there in, I will call it, a limbo

1 status in terms of identification and representation.
2 Because of the difficulty, your Honor, in organizing
3 either a large group or identifying smaller groups, I
4 have since sent out what I will call a survey to the
5 pension holders.

6 As your Honor, knows similar to a Chapter 11
7 bankruptcy case or a Chapter 13, there are creditor
8 committees formed and the Court usually identifies those
9 as the largest creditors in the case. We don't have that
10 circumstance here so what I did is I sent out a letter
11 and this survey which asks pension holders to identify
12 whether or not they are interested in serving on either
13 one of the committees, and if they are, to provide me
14 certain information, which I believe would help me to
15 identify as diverse a group of pension holders as I
16 possibly can so as we sit on the advisory committee, I
17 have an understanding of all different interests that
18 exist, whether it be from the youngest pension holder,
19 who is about 31 years old, to the oldest, that may be
20 Attorney Violet's group, so that all interests are
21 represented there as best as possible and that each of
22 those interests have a say.

23 Just for the Court's information, that notice did
24 advise anybody who does want to serve on those committees
25 that they need to be available to do so and that can be

1 via phone or in person. Most importantly, that their
2 role on the committee has a fiduciary obligation to the
3 other pension holders. That while you certainly walk
4 into the room with your own subjective view and
5 circumstances, that the idea of that committee is to look
6 at the 2,729 pension holders as a group and identify what
7 would be most fair to everybody, not just to each
8 individual person.

9 With that in mind, your Honor, I am hopeful that I
10 will receive a large collection of volunteers, which I
11 can select from to form that committee. Whoever I end up
12 selecting on that committee, it's not carved in stone.
13 That can change over time. I hope to have about 15 to 20
14 on that committee, and I will tell your Honor that
15 apparently the website is working because the day that I
16 posted it, I actually received three surveys within 20
17 minutes of it going up on the website. So it is being
18 viewed by the pension holders. This is clearly a very
19 serious situation for them and it makes sense to me that
20 there is a constant attention on the information that is
21 going out to them and I am appreciative, at least, that
22 the avenues that I have setup to provide that
23 communication are actually working.

24 Beyond that, your Honor, there was a hearing on the
25 permanent Receiver on October 11th. At that time I asked

1 the Court to allow me to engage the law firm of Wistow
2 Sheehan & Lovely, which the Court approved. I also asked
3 the Court to hold off on appointing me permanent while
4 certain notice issues were addressed, not that I felt
5 they were necessarily problematic, but to avoid any
6 potential problem in the future, especially as Mr. Wistow
7 and his firm progressed on their charge. I needed to
8 serve Bank of America in particular as trustee seeing
9 that the plan itself is a trust and under R.I. law that
10 plan cannot be in front of this Court without the trustee
11 having actual notice. I did not have a question as to
12 whether or not Bank of America had notice, but I wanted
13 to make that notice formal so there was not a question in
14 the future by any other party.

15 The Court granted my request to push that off and we
16 did push that off, in fact, until October 27th. At which
17 time I appeared before the Court and notice was provided
18 to Bank of America as well to the designees who have
19 authority to direct Bank of America and ask the Court to
20 appoint me as permanent. I also presented to the Court
21 at that time that I just spoke about was the petitioner's
22 form to designate that middle group, form the advisory
23 committee, and form the ad hoc committee.

24 So your Honor is aware I have also scheduled another
25 town hall style meeting for December 4th. It's my

1 intention, until it maybe becomes unnecessary or the
2 Court indicates that it does not want me to do so, I plan
3 on doing that at least every other month, if not monthly,
4 depending on the circumstances of the case. As the Court
5 has expressed many times, and I agree, it's important
6 that all of the people who are involved in this case be
7 as informed as they possibly can as to what is going on.
8 Sometimes that open candid discussion of a town hall
9 meeting is able to address and flush out issues a little
10 bit more than formal reports like this can to the Court.
11 As well as allow me to talk about them in a more detailed
12 way so that there can be a better understanding as to
13 exactly what my efforts are, Attorney Wistow's efforts
14 are, and the Court's expectation. So I plan on doing
15 that on a regular basis. The next one is scheduled for
16 December 4th.

17 Beyond that, your Honor, unless your Honor has any
18 questions, I continue to review documents. Attorney
19 Wistow continues to platform his investigation and he and
20 I are in regular communication. With an eye toward
21 February 28, 2018, which is fast approaching, only about
22 two and a half months away at this point, I have been
23 collecting as much information as I can to identify the
24 circumstances of the plan as they exist today or what we
25 can potentially project. For example, your Honor, some

1 of the information I have asked for is we have those
2 applications that are postponed at this point and there
3 are also many individuals who could file who have not yet
4 for one reason or another.

5 So I need to have an understanding so that I can
6 present to the Court when I make a recommendation as to
7 what the impact of those will be because, as your Honor
8 knows, I have to assume the worst case scenario, meaning
9 everybody that can apply for benefits will apply and hope
10 that is less when adjusting benefits.

11 I have a meeting scheduled with Attorney Violet,
12 Attorney Callaci and Senville, I believe, it's November
13 30th, where we're going to start to talk, even though the
14 advisory committee had not yet been formally formed.
15 Attorney Calacci and I and Attorney Violet and Senville
16 and I have had communications already and we're going to
17 meet collectively as a group on the 30th to have that
18 discussion.

19 Unless your Honor has any questions, that concludes
20 my report, and with my report I would ask that the Court
21 approve, confirm, and ratify all my acts and doings to
22 date, approve the first interim report and allow me to
23 continue in my role as permanent Receiver going forward,
24 your Honor.

25 THE COURT: Attorney DelSesto, the issue of the

1 advisory committee, can you just flush out for me? If
2 you have sent out surveys, when are they due back?
3 Certainly, we need to get that moving. We are really
4 looking at a hard deadline of February at some point that
5 we need to make some decisions in terms of the plan going
6 forward.

7 MR. DELSESTO: That's correct, your Honor. As I
8 said, February, 2018, is not far away. I've asked
9 everybody -- understanding there is a Thanksgiving
10 holiday that there may be a delay in that, I've asked
11 everybody to get them back to me by the end of the week
12 next week and I will be going through them immediately
13 upon receiving them. I've already received some, as I
14 stated, and I hope to have that committee formed. Those
15 individuals identified that they are going to serve or
16 have chosen them to serve on that committee by the first
17 week of December with a meeting to be held almost
18 immediately thereafter.

19 THE COURT: Okay. And just in terms of background,
20 the people who are here heard a lot of what's gone on so
21 far in the receivership, and that is because in a normal
22 case we would have been here once about 20 days after the
23 filing for the Receiver to be appointed as a permanent
24 Receiver and this would have been the next time back when
25 he would have given a formal report to the Court. Some

1 of this is duplicate because we have had several hearings
2 before the Court. The Court has determined that it's
3 appropriate to have those and I appreciate the update.
4 That kind of brings us up through the date of your filing
5 of the report itself. The Court has not received any
6 objections to the report itself. Does any of the counsel
7 who entered wish to be heard before the Court rules on
8 just the report itself?

9 Hearing none, this Court accepts the first report of
10 the Receiver or the special Master ratifying his acts and
11 deeds up through the time of the report itself, and based
12 on what I heard at this point continue to progress. It
13 sounds like we are on a timeframe now by mid December
14 there will be a first meeting, if not before, of the
15 advisory committee. Unfortunately, as I have spoken to
16 you about before, come February of next year there is no
17 way around it, that we are going to have to consider the
18 issue in terms of interim cuts, because while the
19 investigation progresses there is very little chance that
20 we will be in a position if there is money that can be
21 recovered that that will happen in the short term. So if
22 counsel would submit the appropriate order with respect
23 to that.

24 MR. DELSESTO: I will, your Honor. Your Honor, with
25 regard to fees, and this is, obviously, a very sensitive

1 issue in a case like this. I have submitted to your
2 Honor invoices in redacted form. Obviously, for the
3 benefit of the Court as well as those here today, the
4 reason for the redactions is because much of what the
5 Receiver and Attorney Wistow's firm have been doing are
6 related to not only getting our hands around the plan,
7 but also in mind to investigation and potential
8 litigation. With regard to the latter, the entries in
9 the fee invoices, if not redacted, could provide some
10 insight to potential third-party litigants that we may
11 identify as to what we're looking at and why we're
12 looking at it and things of that nature, our strategy, so
13 on and so force. It's for those reasons as well as to
14 make sure that this Court is not aware of those
15 strategies and those reasons until those motions are
16 brought up before the Court or lawsuits filed that we
17 have redacted the bills.

18 I have reviewed, obviously, I reviewed my bill and I
19 have submitted to the Court in unredacted form. I also
20 reviewed the bill of Wistow, Sheehan & Lovely in
21 unredacted form. While the amounts are substantial, I do
22 believe that the time entries are reasonable in terms of
23 their descriptiveness, and I believe that the time is
24 reasonable in what has been spent. This has been a very
25 substantial case to get our arms around. And as your

1 Honor just mentioned, the substantial nature of this
2 case, both in terms of the complexity, but also in terms
3 of the need to keep the pension holders informed. We've
4 already had a number of hearings in which reports have
5 been done and that just underscores the need for
6 transparency and thoroughness here.

7 As a result, your Honor, the fees of my firm, and I
8 will note that I submitted two invoices, because prior to
9 me being with the firm I am with now I was at another
10 firm, which about 12 days of my appointment was with that
11 firm. So my fees from my prior firm, Donoghue Barrett &
12 Singal, fees and costs were \$28,127.93. That was broken
13 out, your Honor, in terms of fees of \$25,485 and expenses
14 of \$2,642.93. Fees with my current law firm which span
15 from September 8th through October 31st were \$83,754.15.
16 Again, broken out into 77,400 in fees, \$6,354.15 for
17 expenses. And then the fees for Wistow, Sheehan &
18 Loveley, also, your Honor, since the beginning of this
19 case through October 31st were \$137,625.42, broken out as
20 fees of \$106,593.75, and expenses of \$31,031.67.

21 Your Honor, I will note that again the fees are high
22 and Attorney Wistow and his office and I both agree that
23 in cases like this - and I know the Court did this in
24 Westerly. I know Judge Silverstein did this in Landmark
25 - that it's not inappropriate for the Court to hold back

1 a certain percentage of those fees on an interim basis to
2 be revisited at a later date. Attorney Wistow and myself
3 both believe that would not be inappropriate here as
4 well. So if the Court wants to so direct, we would be
5 willing to take whatever percentage the Court thought was
6 appropriate for a holdback.

7 THE COURT: The Court has not received any
8 objections on filings on the fees. The Court did receive
9 the fee invoices. In fact, I've had all of them the
10 latter part of last week. The Court did set aside some
11 time this afternoon. I want to go through those fees,
12 the invoices before I make a finding that they are fair
13 and reasonable and for the benefit of the special
14 mastership estate. I don't doubt that in any way. It's
15 just a matter of my own schedule that I haven't had the
16 time last week to go through them all. I will go through
17 them this afternoon. The Court is going to reserve. I
18 will be in touch with counsel probably the end of today.
19 Counsel is correct that in both the Westerly Hospital
20 receivership as well as Landmark there was certain
21 holdbacks on the fees, not on the costs, but on the fees
22 itself. In this case there will be a 20 percent
23 holdback. The Court sees no reason in the 90 days that
24 it can't revisit the holdback as we are dealing with each
25 subsequent bill. So the Court will reserve.

1 MR. DELSESTO: Thank you, your Honor.

2 THE COURT: Are there any other matters the
3 Receiver has?

4 MR. DELSESTO: No, your Honor, not unless the Court
5 has any questions for me. I believe Attorney Wistow
6 wants to briefly address the Court.

7 THE COURT: Absolutely. Counsel, you may proceed.

8 MR. WISTOW: Thank you, your Honor. As your Honor
9 knows, the receivership estate has served subpoenas on
10 the attorney general for which we received objections.
11 We filed motions to compel on Friday. We conferred with
12 counsel for the attorney general and have an agreed upon
13 schedule, hopefully convenient for the Court, and that
14 would be that they would file the response to our motion
15 to compel by Monday the 27th of November. And if the
16 Court is available, the matter will be heard at 2:00 on
17 the afternoon on Wednesday the 29th.

18 THE COURT: Okay. Just let me ask, Madam Clerk, if
19 you can see if we have availability and we can move
20 around what we have to do this on the 29th at 2:00.

21 THE CLERK: We are available.

22 THE COURT: Very good. The 29th at 2:00 will be
23 the hearing date for that hearing. I do want to mention
24 one other thing before we break for today. The Court has
25 received a number of telephone calls from pension

1 holders, has received requests from parties for
2 conferences including today. First of all, with respect
3 to the pension holders, it's not that I don't want to
4 speak with you. I cannot speak with you. The issues in
5 this case are brought forward by the Receiver and the
6 other attorneys who have entered in this case. So,
7 unfortunately, I cannot respond.

8 Also, from the very first hearing in this case, we
9 had a discussion about transparency, which is part of the
10 reason we're having so many hearings and the Receiver is
11 reaching out with town hall meetings that aren't normally
12 done in a receivership case. One of the things as well
13 if there are legal issues, we will be hearing that what
14 is called on the record, which is in open court.

15 Attorney Wistow just mentioned one before. There was an
16 objection filed, which is publically available, by the
17 Attorney General's Office to a subpoena that was issued
18 by Attorney Wistow's office. That can be responded to
19 and the Court will in open court hear that legal issue on
20 the 27th -- I'm sorry the 29th at 2:00 p.m.

21 That concludes the report and the update for today.
22 I am going to recess, I know we have another matter, to
23 clear the courtroom. Certainly, you are all welcome to
24 hear about a car lot opposite the airport, but I don't
25 know if you'd necessarily want to. We will take a brief

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recess. Thank you very much.

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

December 4, 2017

GINA GOMES, COURT REPORTER
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TO: Stephen DelSesto, Esquire

For a transcript request in the matter of St. Joseph
Health Services vs. St. Joseph Servies of R.I.,
PC-2017-3856, heard before the Honorable Justice Brian
Stern.

11/20/17 20 pages at \$3.00 per page \$60.00

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