

**HEARING DATE:
FRIDAY, March 2, 2018 AT 9:30 AM
BUSINESS CALENDAR BEFORE JUDGE STERN**

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.
Petitioner

PC 2017-3856

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

**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**

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, as amended (the "Plan"), and hereby submits his recommendations regarding: (1) monthly benefit payment modifications; and, (2) release of the stay relative to the processing of pending benefits elections and properly filed applications for benefits. The Receiver recommends (a) that this Court further postpone a modification to monthly benefit payments for approximately ninety (90) days; and, (2) that this honorable Court partially release/lift the stay as it pertains to the processing of pending benefits elections and properly filed applications for benefits. In support of his recommendations the Receiver states the following:

1. Monthly Benefit Payment Modification

As this Court recalls, in its Petition for the Appointment of Receiver (the “Petition”) the Petitioner requested that this Court set a hearing “for appointment of a permanent receiver and for an immediate 40% uniform reduction in [monthly] benefits”. See “Petition for the Appointment of Receiver”, attached hereto as **Exhibit A** (excluding Exhibits), at page 7. The hearing on the appointment of permanent receiver was docketed for October 11, 2017 (the “October 2017 Hearing”), and it was anticipated that the requested “40% uniform reduction” would also be addressed at that hearing. However, prior to the October 2017 Hearing, this Court docketed a hearing for September 8, 2017, and directed that the Receiver appear and provide an interim status report for the Court and interested parties (the “September 2017 Hearing”). A copy of the September 8, 2017, Hearing Transcript is attached hereto as **Exhibit B**. At the September 2017 Hearing, following a discussion regarding whether honoring the Petitioner’s request for a reduction was appropriate following the appointment of a Court-receiver, the Receiver requested that this Court defer requiring the Receiver to make any recommendation regarding a modification of monthly benefit payments until at least February 1, 2018. See September 2017 Hearing Transcript at pages 1-4, lines 12-12. In support of his requested deferral, the Receiver advised that he did not believe that less than two (2) months was sufficient amount of time to review, analyze and formulate a recommendation regarding such an impactful and critical issue. See September 2017 Hearing Transcript at page 4, lines 1-18. The Receiver stated further that he needed to be “deliberate, thorough and correct on this issue”. See September 2017 Hearing Transcript at page 4, lines 3-4. After consideration of the Receiver’s request, this Court granted the Receiver’s request and deferred any recommendation regarding monthly benefit payment modifications until after January 1, 2018. See September 2017 Hearing Transcript at pages 4-5, lines 16-1.¹

Since the September 2017 Hearing and in order to assess what may be an appropriate modification to benefits, if any, the Receiver has reviewed a large volume of financial data related to the Plan’s assets and investments, the current monthly benefit payment obligation and the potential impact of new benefits elections and applications. The Receiver has also requested and reviewed data provided from by the Plan actuary, Angell Pension Group, regarding projected

¹ At the October 2017 Hearing the Receiver also requested and the Court permitted that the Petitioner’s request for a uniform 40% reduction be passed indefinitely.

increases in monthly payment obligations, Plan run-out calculations (based on a variety of variables suggested by the Receiver) and other data related to the Plan. Further, the Receiver has engaged WhaleRock Point Partners, an SEC registered investment advisor headquartered in Providence, Rhode Island, to assist the Receiver's review and analysis of the Plan's current investment portfolio and provide the Receiver with guidance regarding investment strategy going forward. In addition to the Receiver's independent review and analysis, as approved by this Court on October 27, 2017, the Receiver has formed and met weekly with the Advisory Committee² to identify and discuss various positions and options regarding modifications to benefits.

In addition to the above, some of the other primary and critical issues that the Receiver has and must consider in assessing whether a modification is appropriate and, if so, what the modification should be include: (a) a review and analysis of the projected market performance and its potential impact on the Plan investments; (b) the estimated impact if monthly benefit payments increase; (c) the identification of and potential for financial recovery from the various parties involved with the Plan prior to the receivership; and, (d) the potential for involvement by the Pension Benefit Guaranty Corporation ("PBGC") and what such involvement (or non-involvement) could mean to the Plan and the participants.

a. Projected market performance

During the few years prior to and since the commencement of the Receivership, the Plan has outperformed the projected rate of return on investments. Expecting the market and rate of return to continue long-term at that level is unrealistic. In fact, as the Court is likely aware, the market experienced some recent volatility which appears to have, for the most part, "corrected" itself.³ However, reports to the Receiver are that market volatility is projected to increase over the next few years and this will require a re-evaluation of long-term investment/asset allocation. The Receiver is in the process of re-evaluating the current asset allocation in order to, hopefully, protect the Plan's assets from any substantial declines. Notwithstanding the recent volatility and long

² Excluding the Receiver and Attorneys Callaci, Violet, Senville and Kasle, as formed the Advisory Committee is comprised of 14 volunteer pension plan participants that, based on information provided to the Receiver are diversely representative of the full pension participant group.

³ As of the date of the filing of this Recommendation, the Receiver has made several requests to Mercer Investment Consulting LLC, the Plan's investment manager, for an update regarding the impact on the Plan's assets resulting from the recent volatility and to discuss allocation recommendations going forward. A call on that issue has been scheduled for February 23, 2018.

term projections, a re-evaluation of Plan asset allocations would need to happen regardless of whether monthly benefit payments are modified.

Based on the above, projected market performance was considered in connection with the Receiver's recommendation, but that projected performance was not and should not be the only consideration.

b. Impact of monthly benefit payment increase

Currently, the Receiver pays approximately \$853,000 per month in monthly benefits. Assuming the stay on participant benefit application processing is lifted (an action that the Receiver is also requesting as set forth in more detail below), a significant consideration regarding benefit modifications is the potential impact that an increase in monthly benefit payments will have on the erosion of Plan assets. Since August 18, 2017, and through February 1, 2018, 16 participants had completed the benefits application process and submitted benefits election forms (the "Election Forms").⁴ If processed, the monthly increase associated with the Election Forms would be \$13,000. In addition to the Election Forms and also since the commencement of the Receivership, 123 participants⁵ have submitted benefit applications (the "Applications").⁶ If processed, the monthly increase associated with the Applications would be approximately \$52,000.⁷ Thus, if all current Election Forms and Applications are processed⁸, the monthly benefit payments would increase by approximately \$65,000.⁹

In addition to the 139 Election Forms and Applications received to date, through February 1, 2018, there are 626 plan participants who are eligible for benefits but have not yet applied. If all of these eligible participants applied for benefits, the monthly increase associated with these

⁴ After an application is filed and deemed complete, the Plan benefits administrator calculates the benefit options available to the applying participant (i.e. life annuity, joint and survivor annuity, etc.) and sends the participant a "Participant Election and Certification Form". Once the participant chooses an option, signs and returns this form, their monthly benefit payments will begin on the next monthly cycle.

⁵ An average of approximately 20 per month.

⁶ Once a participant becomes eligible for benefits (either through early or standard retirement age), they prepare and file an "Application for Pension Benefit" with the benefit administrator. Once filed, the benefit administrator reviews the application for completeness and, once deemed complete, requests that the applicant provide certain financial information which is necessary to calculate the applicant's various benefit options.

⁷ This benefit calculation is an estimate based on the actuarial valuation data and has not been verified on an individual basis. Verification will not happen until the applications go through processing and the participants provide the financial data needed to conclusively calculate the benefit options.

⁸ The amounts attributed to the Election Forms and Applications are based on single life annuity amounts.

⁹ In addition to the Election Forms and Applications, there is 1 survivor benefit payable as a single, one-time payment in the amount of \$29,637.

participants would be approximately \$176,000.¹⁰ Further, between March 1, 2018 and July 1, 2018, another 22 plan participants will become eligible¹¹ to apply for benefits and, if all applied, would result in an additional total monthly increase of approximately \$11,000.

In light of the estimated monthly value of the pending Elections and Applications, the total estimated impact on monthly benefits would be approximately \$65,000 per month if the stay on Election Forms and Applications was lifted. Over a 90-day period, this would reduce the Plan assets by an additional \$195,000 as compared to maintaining the status quo (.002%). Moreover, over the next 90 days, the Receiver is hopeful that the number of participants who seek to apply for benefits does not exceed the prior six (6) month average.

Based upon the above, the Receiver believes that the monthly increase that will result from the processing of Election Forms and Applications as well as any additional increase that may result from new applications over the next 90-days does not out-weigh the reasons in favor of not modifying benefits at this time.

c. Potential for financial recovery

On or about September 13, 2017, the Court expanded the Receiver's power and authority to include the power, authority and discretion to issue subpoenas. See "Order" entered on September 13, 2017, attached hereto as **Exhibit C**. Further, on or about October 17, 2017, the Court authorized the Receiver to retain the law firm of Wistow, Sheehan & Loveley PC ("WSL") to act as special litigation counsel to the Receiver for the Receivership Estate to, among other things, investigate and identify potential litigation targets that may result in some financial recovery for the Plan. See "Order Approving Receiver's Emergency Petition to Engage Special Legal Counsel" entered on October 17, 2017, attached hereto as **Exhibit D**. Shortly after their engagement, WSL began to serve subpoenas upon numerous parties connected to the Plan and its management/oversight, the 2009 and 2014 regulatory approvals/transactions or both. As this Court is well aware, most parties served with subpoenas from Special Counsel did not comply with the subpoenas. As a result, Special Counsel was forced to seek Court intervention to compel the requested production. Although the Court established very strict, short deadlines for production and status reporting, the need to seek Court intervention unavoidably delayed the Special Counsel's ability to receive and review documents by at least 45 days. Indeed, there are a

¹⁰ See footnote 6

¹¹ March 1st=6, April 1st=0, May 1st=4, June 1st=8 and July 1st=4.

number of subpoenaed parties who are still in the process of completing their production, such that there are likely tens if not hundreds of thousands of pages of documents that Special Counsel requested but has yet to receive. Moreover, there are many thousands of pages of subpoenaed material that have been recently delivered to Special Counsel that remain to be searched.

If not for the substantial delays, both the Receiver and Special Counsel had hoped and anticipated that the Special Counsel's investigation and identification of viable litigation targets would be far along by the hearing on this Recommendation. Unfortunately, the delays did occur and Special Counsel, although having searched hundreds of thousands of pages of documents, is not yet fully to the point where they can provide the Receiver with a recommendation on litigation targets, assessment of possible damages and any estimate of a likelihood of success for recovery.

The Receiver believes that the conclusion of the Special Counsel's investigation and claim assessment is critical to any proposed modification because it will help the Receiver and this Court better understand what additional funds, if any, may eventually be available to the Plan which may also dictate the level of modification required for the long-term. For example, a benefit modification recommendation from the Receiver would be much less if Special Counsel were hopeful to obtain a large recovery versus a small recovery or none at all. Special Counsel has indicated that within the next 30 days they hope to be in a position to discuss the results of their review and begin preliminary discussions regarding possible, viable litigation targets. Of course, such discussions are attorney client communications and while they will inform the Receiver's recommendations they will not be disclosed.

For these reasons, the Receiver believes that deferring any recommendation on benefits modification until Special Counsel has concluded their investigation is appropriate.

d. Pension Benefit Guaranty Corporation

The final and perhaps most critical and compelling consideration against benefit modification involves the PBGC. Special Counsel and the Receiver have begun preliminary discussions with the PBGC regarding whether the Plan would be entitled to PBGC coverage. The PBGC has been furnished with relevant documents produced in the investigation conducted by Special Counsel. Additional relevant documents are being discovered in the investigative process and will be forwarded to the PBGC. As the Court is aware, the Petitioner had historically considered the Plan a so-called "church plan" and, without getting too technical, a "church plan" is typically not subject to the Employee Retirement Income Security Act ("ERISA") and not

generally covered by PBGC. Despite the Petitioner's historical consideration of the Plan as a "church plan", there are viable arguments that the "church plan" designation was not proper as of a certain points in the Plan's history.

At this point it is too early in the discussions with the PBGC to know how it will respond/react to the assertions that the Plan is not a "church plan" and is, thus, subject to ERISA and entitled to PBGC coverage. Until it is determined that the Plan is not an ERISA-regulated plan, any potential benefit modification is premature since if ERISA applies, any such modification conceivably might unintentionally violate ERISA and result in penalties. Based upon those hypothetical but potentially very significant risks, the Receiver does not recommend a benefit modification at this time. The Receiver is hopeful that within the next 90 days, the discussions with the PBGC will be further along and the Receiver will have a better sense of where those discussions may lead the Plan.

RECOMMENDATION

For the reasons set forth above, the Receiver recommends that this honorable Court further postpone any modification to monthly benefit payments for approximately ninety (90) days.

2. Pending Benefits Elections And Properly Filed Applications For Benefits

On or about September 1, 2017, *nunc pro tunc* as of August 18, 2017, this Court entered an Order clarifying that the Court-imposed stay set forth in paragraph 6 of the Order Appointing Temporary Receiver.¹² See "Order" entered September 1, 2017, attached as **Exhibit E**. Also, at the September 2017 Hearing, the Receiver indicated to the Court that he requested entry of the September 1, 2017 Order to maintain the status quo and avoid substantial fluctuations in Plan assets while he assessed whether any benefit modification would be necessary or appropriate. See September 2017 Hearing Transcript at page 16, lines 15-25.

¹² Paragraph 15 of the Order Appointing Permanent Receiver is identical to Paragraph 6 of the Order Appointing Temporary Receiver and the former order supersedes the latter. The September 1, 2017 Order clarifying the Court-imposed stay set forth in the Order Appointing Temporary Receiver equally applies to and clarifies the identical and subsequent Court-imposed stay provision set forth in the Order Appointing Permanent Receiver. Thus, any modification to the Court-imposed stay would be appropriate as a modification of paragraph 15 of the Order Appointing Permanent Receiver.

Although the Receiver is not recommending any benefit modifications at this time, he does believe that the need to maintain the *status quo* as it pertains to Elections Forms and Applications is no longer required. The Receiver has had the benefit of the *status quo* on benefits payments for approximately six (6) months and does not believe any further “stay” of the processing of election forms or applications (currently pending or new) is necessary. In addition, the Receiver has similar concerns as those raised in section 1(d) above regarding the potential negative impact that a continued stay of processing elections and applications benefits may have relative to ERISA.

Based on the above, the Receiver recommends that the Court-imposed stay as set forth in the Orders appointing Temporary and Permanent Receiver, specifically paragraphs 6 and 15, respectively (copies of the Orders appointing Temporary and Permanent Receiver are attached hereto as **Exhibit F**), be modified to partially lift the stay for the limited purpose only of permitting Plan participant elections and applications to be processed.

RECOMMENDATION

For the reasons set forth above, the Receiver recommends that this honorable Court modify the Order Appointing Permanent Receiver to partially lift the stay for the limited purpose only of permitting Plan participant elections and applications to be processed.

WHEREFORE the Receiver prays for an Order or Orders (i) further postponing any modification to monthly benefit payments for approximately ninety (90) days; (ii) modifying the Order Appointing Permanent Receiver to partially lift the stay for the limited purpose only of permitting Plan participant elections and applications to be processed; and; (iii) granting such further relief as this Court may determine to be reasonable and necessary under the circumstances.

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
c/o Pierce Atwood, LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: February 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2018, 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

EXHIBIT A

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode
Island, Inc.

Vs.

PC 2017-

St. Josephs Health Services of Rhode
Island
Retirement Plan, as amended

PETITION FOR THE APPOINTMENT OF A RECEIVER

Petitioner respectfully represents that:

1. Petitioner, a Rhode Island domestic non-profit corporation, formerly provided hospital and related medical services to communities in northern Rhode Island. In connection therewith, Petitioner coordinated compensation and benefits for its employees, including a defined benefit pension plan.¹

2. In June 2014, Petitioner sold substantially all of its operating assets to a newly-formed entity (the "Hospital Purchaser") owned by Prospect Medical Holdings, Inc. ("Prospect") and CharterCARE Community Board ("CCCB"),² and specifically organized for such purpose. As a result of the sale, Petitioner ceased operating as a health care institution and entered into a "wind-down" phase.

3. Respondent, a defined benefit pension plan, was organized by Petitioner

¹ Generally speaking, a "defined benefit pension plan" is a retirement vehicle which pays out to a beneficiary a defined annuity payment based upon the employee's compensation during employment and length of employment. By comparison, a "defined contribution pension plan" is a retirement vehicle which pays out to a beneficiary a variable annuity or lump sum payment based upon the contributions made to the plan during the employee's employment.

² CCCB was organized in 2009 to seek operating efficiencies and to stem the on-going losses from the operations of Petitioner and Roger Williams Hospital.

as of July 1, 1965 (and amended from time to time), for the benefit of Petitioner's employees (the Respondent pension plan, as amended, shall be hereinafter referred to as the "Plan"). A copy of the latest Plan document is attached as Exhibit 1.

4. Prior to the sale, eligibility for employee participation in the Plan was terminated, thereby closing the Plan to new participants. At the time of the sale, the Plan was estimated to be approximately 90% funded.³ In connection with the sale, additional benefit accruals for existing plan participants were terminated effectively "freezing" benefits for then-eligible employees. Neither Prospect nor the Hospital Purchaser assumed the Plan or any liability with respect thereto as clearly stated in the asset purchase agreement among the parties.⁴

5. At the time of the transaction with the Hospital Purchaser, Petitioner elected to contribute \$14,000,000 to the Plan as a one-time contribution.

6. Throughout its history, Petitioner has been affiliated with the Catholic Church. Petitioner has continued that affiliation during and after the sale to the Hospital Purchaser. As an affiliate of the Catholic Church, the Plan qualified as a "church plan," which is exempt from the provisions of the Employment Retirement Income Security Act of 1974 ("ERISA") governing defined benefit pension plans. As a result of the "church plan" exemption, Petitioner was not required to make annual minimum contributions to the Plan, or make pension insurance payments to the

³ As will be discussed below, the concept of "funding" of a pension plan has different meanings under different circumstances. Here, the assumptions made about the funding level at the time of the transaction with the Hospital Purchaser did not consider all of the long-term issues affecting the Plan.

⁴ Prospect had no role in the evaluation of the Plan or its funding level.

Pension Benefit Guaranty Corporation ("PBGC").⁵

7. Petitioner is advised and believes that the Plan will lose "church plan" status on or before December 31, 2018.

8. If the Plan loses its status as a "church plan," Petitioner would be required to make minimum annual contributions and annual payments to PBGC, and would otherwise be required to comply with ERISA. Petitioner does not have the financial resources to make such payments, or to comply with the other financial and regulatory requirements of ERISA.

9. Angell Pension Group, Inc. ("Angell") performs valuable administrative services for the Plan and serves as the Plan's actuary. Angell prepares an annual actuarial report of the Plan, the most recent of which is attached hereto as Exhibit 2 (the "Actuarial Report").

10. Pursuant to the Actuarial Report, the Plan is severely underfunded and requires additional capital of over \$43,000,000 to reach a 100% funding level. See Actuarial Report, p. 2. One of the underlying assumptions in the actuarial calculation, an annual rate of return of 7.75%, has been consistently attributed to the Plan and, historically, constituted a reasonable estimate of performance. However, going forward there is concern that 7.75% projected annualized return is unlikely to be sustained in the long term. Applying a lower anticipated annual rate of return would result in a higher underfunding projection.

11. In light of the considerable underfunding and the imminent loss of "church plan" status, Petitioner requested that Angell perform analyses of different

⁵ PGBC is the quasi-governmental entity that insures defined benefit pension plans.

Plan termination and liquidation scenarios to facilitate an evaluation of options for the Plan and its beneficiaries. Angell provided an analysis dated May 8, 2017, attached hereto as Exhibit 3 (the "Initial Termination Analysis").

12. The Initial Termination Analysis demonstrated that upon an immediate termination of the Plan, beneficiaries currently receiving benefits would receive a payout of approximately 60% of their accrued benefits and all other beneficiaries would receive no distributions whatsoever. Petitioner believes that such an outcome represents the least favorable result.

13. Following review and evaluation of the Initial Termination Analysis, in an effort to identify better options for Plan beneficiaries, Petitioner requested that Angell perform an analysis of the Plan based upon a uniform reduction of 40% for all current and future beneficiaries' benefits, and assuming more conservative annualized rates of return. In response to such request, Angell provided an analysis dated May 24, 2017, attached hereto as Exhibit 4 (the "Benefit Adjustment Analysis").

14. The Benefit Adjustment Analysis demonstrates:

a. That at an annualized rate of return of 6.66%, the Plan will pay out 60% of accrued benefits to 100% of Plan beneficiaries;

b. That at an annualized rate of return of 6.5%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last "allocation group" receiving approximately 48.6% of their accrued benefits; and

c. That at an annualized rate of return of 6.0%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last

“allocation group” receiving only 9% of their accrued benefits.⁶

15. Petitioner believes that a uniform reduction of 40% of pension benefits is likely the most reasonable approach to achieving an equitable resolution for all beneficiaries and therefore requests that the receiver be given authority to make such uniform reduction immediately in order to preserve the Pension assets for the benefit of all beneficiaries.

16. Petitioner, and, Petitioner’s affiliates, Roger Williams Hospital and CCCB,⁷ are winding down their respective affairs. Upon conclusion of such wind-down efforts, the net assets of Petitioner, RWH and CCCB may become available to assist with the Plan.⁸ While the availability of additional funds is uncertain at this time, such additional funds could be used to support the Plan for long-term pay-outs to beneficiaries or provide supplemental distributions to beneficiaries whose benefit payments might be reduced as part of the Plan’s wind-down process. The potential for additional Plan funds is not contemplated by the Benefit Adjustment Analysis.

17. Petitioner believes that the Plan should not be terminated immediately, but rather, that the Court should oversee a long-term wind-down of the Plan through a judicial receivership in the nature of a liquidating trust.

18. Petitioner anticipates that a long-term judicial wind-down could achieve the following goals:

⁶ This 15% payout is more than this group would receive under an immediate liquidation.

⁷ The wind-down of CCCB could potentially take a long time due to its ownership interest in the Hospital Purchaser.

⁸ Petitioner anticipates that the wind-down of RWH and SJHSRI is likely to take several years to complete.

a. Afford all of the Plan beneficiaries the opportunity to receive periodic payments of at least the estimated amount that would result from an immediate termination of the Plan;

b. Afford beneficiaries the opportunity to benefit from the contribution of additional funds to the Plan to increase benefit pay-outs over time;

c. Afford beneficiaries the opportunity to benefit from higher than expected returns should the Plan investments outperform the returns assumed in the Benefit Adjustment Analysis.

19. Petitioner is informed and believes that the Plan is unsustainable absent court intervention and will be unable to pay all accrued benefits as they become due.

20. Absent judicial intervention, Petitioner anticipates that the Plan will be terminated and its funds distributed in a manner that will result in current Plan beneficiaries receiving approximately 60% of their accrued benefits and all others receiving nothing.

21. In the opinion of Petitioner, it is urgent and advisable that a Temporary Receiver be appointed immediately to take charge of the affairs, assets, estate, effects and property of the Plan to preserve the same for the interest of all creditors and the benefit of all interested parties. Petitioner further believes that the current administrators and actuaries of the Plan should remain in place for administrative purposes and to continue to render services to the Plan consistent with past practice, so as to avoid unnecessary additional delay, cost and expense.⁹

⁹ Since the commencement of the wind-down process, administrative expenses of the

22. Petitioner, together with RWH and CCCB are authorized, in the sole discretion of their respective officers and directors, to fund the fees and expenses of the Receiver from time to time, in an effort to avoid further impairment of the Plan's assets to the extent possible.¹⁰

23. This Petition is made in good faith for the protection of the Plan and for the benefit of its beneficiaries, and the appointment of a Temporary Receiver is most desirable pending final hearing on the appointment of a Permanent Receiver.

24. This Petition is filed to seek relief as requested by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

WHEREFORE, Petitioner respectfully requests that (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days

Plan, other than investment management and custodian fees, have been paid for with non-Plan assets. Petitioner anticipates that such expenses will continue to be paid for using non-Plan assets so as to avoid further impairment of participant claims. Investment management and custodial fees and expenses would continue to be paid from Plan assets.

¹⁰ This authorization should not be construed as an obligation of, or affirmative undertaking by, Petitioner, RWH or CCCB, who may determine, in their sole discretion, not to fund such expenses at any given time.

from the date this petition is heard, (4) that notice of such hearing and the relief requested be given to all present and future Plan beneficiaries, at their last known addresses, and to the representative(s) of any unions and other organizations collectively representing any groups of beneficiaries, and (5) that Petitioner have such other and further relief as this Court shall deem proper.

PETITIONER,

St. Joseph Hospital Services
Rhode Island

By David Hirsch

David Hirsch, President

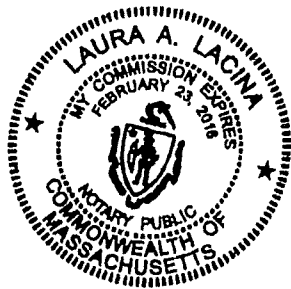
David Hirsch

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Barnstable

In Barnstable on the 16 day of August, 2017, before me personally appeared David Hirsch, who made oath that he subscribed to the foregoing Petition, that he knows the contents thereof and that the same are true, excepting those matters stated on information and belief, and as to those matters he believes them to be true.

Laura A. Lacina
Notary Public

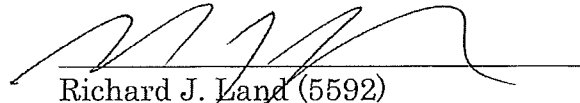
My commission expires: Feb. 23, 2018



On this 16 day of August, 2017
before me, the undersigned notary public, personally
appeared David M. Hirsch, proved to me
through satisfactory evidence of identification, which were
RI Drivers License, to be the
person whose name is signed on the preceding or attached
document, and acknowledge to me that (he) (she) signed it
voluntarily for its stated purpose.

CERTIFICATE OF ATTORNEY

I, the undersigned, Attorney for the Petitioner, certify that this Petition is made in good faith for the protection of the Plan and for the benefit of beneficiaries, and that the appointment of a Temporary Receiver is desirable pending a hearing for the appointment of a Permanent Receiver.



Richard J. Land (5592)
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
Tel.: 401-453-6400
Email: rland@crflp.com

EXHIBIT B

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 BRIAN P. STERN

ON SEPTEMBER 8, 2017

APPEARANCES:

STEPHEN DeLSESTO, ESQUIRE.....FOR THE 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 25, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

FRIDAY, SEPTEMBER 8, 2017

AFTERNOON SESSION

1
2
3 THE COURT: Good afternoon. Madame clerk, if you'd
4 please call the case.

5 THE CLERK: Your Honor, the matter before the Court
6 is PC-2017-3856, St. Joseph Health Services of Rhode
7 Island vs. St. Joseph Services of Rhode Island Retirement
8 Plan. Would counsel please identify yourselves for the
9 record.

10 MR. Delsesto: Stephen DelSesto, the Court appointed
11 temporary Receiver for the Plaintiff.

12 THE COURT: Thank you very much. Before I ask for
13 your report, counsel, a petition was filed with the
14 Superior Court on August 18th, that's three weeks ago, by
15 St. Joseph Health Services of Rhode Island, Inc. They
16 requested a couple of things of this Court. The first is
17 to appoint a temporary Receiver to take charge of the
18 assets, the affairs, and the property of St. Joseph's
19 Health Services of Rhode Island Retirement Plan; two,
20 that the Receiver be authorized to continue the
21 operations of the plan; and finally, that the Court
22 authorize an immediate 40 percent uniform reduction in
23 benefits across the board for retirees.

24 According to the petition, the rationale for filing
25 was that this retirement plan was severely under funded.

1 In other words, does not have the money over time to pay
2 the pensions of the current retirees and other
3 participants as they retire. In addition, as a result of
4 the sale that was approved in 2014, the petitioner claims
5 that the retirement plan will lose its church plan status
6 at the end of next year and may not be able to maintain
7 the funding levels and make insurance payments as
8 required under ERISA, the federal retirement law.

9 On that date Stephen DelSesto was appointed as
10 temporary Receiver of the assets and affairs of the
11 retirement plan and authorized to continue the plan's
12 operations. A hearing was scheduled for October 11, 2017
13 to determine whether or not it will appoint Attorney
14 DelSesto as the permanent Receiver, and, two, whether or
15 not a reduction in payments in the amount of 40 percent
16 across the board should be authorized immediately as
17 described in the petition.

18 Earlier this week, the Court issued an order setting
19 down this hearing this afternoon. The Court determined
20 that it was important to hear an interim report from the
21 temporary Receiver in open court and not wait until
22 October 11th. The Court is fully aware that more than
23 2,700 participants in the pension plan are extremely
24 concerned and upset based upon the filing three weeks
25 ago. While, they understand the temporary Receiver is

1 still gathering information and has not had all the
2 answers, the Court had some questions and the
3 participants should have timely information both good and
4 bad.

5 So, counsel, I would first like you to address a
6 request that was made by the petitioner, not you as the
7 Receiver, that the Court entertain on October 11th that
8 the 40 percent reduction in benefits across the board. I
9 know you've only had the case for a few weeks, but it's
10 the Receiver's job to make any petitions before the Court
11 both with respect to the petitioner and I wanted to know
12 how you wished to proceed.

13 MR. DeLSESTO: Yes, thank you, your Honor. I have
14 looked at the issue and it was going to be my request to
15 this Court today to ask that that portion of the October
16 11th hearing be deferred until a later date. So that the
17 Court is aware, I did ask that the plan actuary provide
18 me with an analysis on what the impact on the plan would
19 be if we deferred that, and by deferral I mean the Court
20 would not make a ruling on the 11th, it would not be
21 addressed and benefit payments to current retirees would
22 continue to go as typically scheduled in typical amounts.
23 According to the plan actuary, while it would have an
24 impact on the projected rate of return, that impact is a
25 .14 percent impact as to compared to what St. Joseph's

1 Health Services had suggested or recommended in the
2 petition of 6.66. While that certainly is a difference,
3 it is an impact on the plan. Based on the need to be
4 deliberate, thorough, and correct on this issue, I think
5 that it's prudent to push that off for at least a few
6 months. The projection I had pushed it at least to
7 February 1st.

8 THE COURT: Again, based on the Receiver's
9 recommendation at this point, the Court is going to defer
10 hearing any request to make a uniform cut in pension
11 benefits until February 1st. Is that what you're saying
12 or after the first of the year?

13 MR. Delsesto: I would rather address maybe my
14 progress on October 11th to see if that date is a
15 realistic date and chose one on that date, your Honor.

16 THE COURT: In any event, you're talking after the
17 first of the year?

18 MR. Delsesto: After the first of the year; correct.

19 THE COURT: I want to be clear. The Court will not
20 on October 11th be hearing a motion to make an across the
21 board immediate cut in pension benefits by 40 percent on
22 October 11th. The Receiver will continue to make the one
23 hundred percent payment to the retirees that are
24 collecting, and you can further address it on October
25 11th in terms of when after the first of the year we are

1 going to schedule it. I appreciate that. That was one
2 of the things I saw in the petition. I thought let's try
3 and address it upfront now that we have seen it.

4 Number two, I would like the Receiver to address --
5 probably the best way to put it is help me understand,
6 and I have been through a lot of the documents that are
7 attached. I'm sure you have been through them in far
8 more detail. Can you give the Court a report?

9 MR. DELSESTO: I can, your Honor. If I come across
10 something that is unclear or needs clarification, please
11 interrupt me. This plan was originally adopted by St.
12 Joseph's Health Services, which is the petitioner in this
13 case, back in 1965. The version of the plan that was
14 attached to the petition was an amendment that was
15 adopted in 1995. There are some changes, but it is
16 substantially similar. As of 1995, according to that
17 amendment, there is an indication on the first few pages
18 in the whereas declarations that this is designated as a
19 church plan under the Internal Revenue Service Code
20 Section 414(e), and under Section 333 of the Employee
21 Retirement Income Security Act, which is commonly known
22 as ERISA.

23 With regard to that designation, your Honor, I'm
24 stating that merely as it was reported in that plan. I
25 do not know as I stand here today how that conclusion was

1 drawn as to whether it is, in fact, a church plan and
2 that it should be designated as such. I know there are
3 opinion letters from attorneys over the years that seem
4 to tie it together. I haven't received all of those yet.
5 That is a question I'm looking into as to whether or not
6 that designation actually is appropriate, and if it is or
7 isn't what impact would that have on what we're trying to
8 do with the plan. While I stated that it's designated
9 today as a church plan, I'm looking into the
10 circumstances surrounding that.

11 With regard to the plan as well, your Honor, there
12 was certain restrictions in the 1995 amendment and
13 beyond. After October 1, 2007 no one who was hired after
14 that was allowed into the plan with the exclusion of
15 United Nurses' and Allied Professional Employees that
16 retired on or before October 1, 2008.

17 In addition, benefit accruals froze for the
18 following parties on the following dates: Non-union
19 employees were frozen on September 30, 2009; Federation
20 of Nurses and Health Professionals were frozen as of
21 September 30, 2011; and general union employees were
22 frozen as of June 19th of 2014. The plan calls for a
23 standard retirement age of 65 years old. However, there
24 is an option for early retirement so long as the employee
25 had worked at least five years prior to attaining 55.

1 As the group configured to manage this plan and make
2 decisions regarding this plan, as of the date that I was
3 appointed, your Honor, was the board of St. Joseph Health
4 Services, which is a three-person board. Attorney Rick
5 Land represents that board and he is the petitioner and
6 he signed on behalf of the petitioner in this case.
7 Angell Pension Group has been the plan actuary since 2008
8 and they did the actuary evaluation beginning July 1,
9 2005 going forward. MRSA Investment Consulting is the
10 investing group who manages the investments of the funds
11 and assists in determining rate of return.

12 Bank of America is the trustee and let me explain
13 that a little bit, your Honor. In fact, they are
14 designated as trustee, but, in fact, they are a directed
15 trustee and a custodian. They hold the funds. They
16 disburse the funds, but they don't do anything. They
17 don't have any discretion unless otherwise directed by an
18 authorized party. Going back to 2008 authorization came
19 from members of the board of St. Joseph's Health
20 Services. As of right now I am the individual who is
21 communicating with Bank of America.

22 THE COURT: Just to clarify, you mentioned Attorney
23 Land and the three-person board. In 2008 it was my
24 recollection before the first transaction so there was
25 some another board in place?

1 MR. DeLSESTO: Correct. Over the years there have
2 been changes in the individual or individuals who were
3 authorized to direct Bank of America to hack on behalf
4 of the plan. Many of them, I have asked for all the
5 historical documents, which I am told are in storage and
6 have to be pulled back. At least the ones they had
7 issues with there had been five changes, with the last
8 two being a change to Attorney Land and the chairman of
9 the board at that time and then to me. So those are the
10 most recent two. Other than that, your Honor, I can get
11 into the status of the plan as it exists today.

12 THE COURT: Just before we get into that, it's a
13 defined benefit plan?

14 MR. DeLSESTO: It is a defined benefit plan.

15 THE COURT: How has that been historically funded?

16 MR. DeLSESTO: I meant to say that and I apologize
17 for not doing so. This is an employer contribution plan,
18 your Honor. So what that means is: All the money that
19 went into this plan or should have gone into this plan by
20 way of contributions were employer generated funds, not
21 employee funds, meaning if an employee had a check, there
22 was no deduction out of their weekly, biweekly, whenever
23 they got paid, check with a portion of their pay going in
24 to fund the plan. All the funds were employer funds so
25 what is in there today is all employer based funds.

1 THE COURT: Okay. So there was no cash
2 contributions by the employee that may have been
3 negotiated in some other way? The only money that came
4 into the fund was the employer?

5 MR. DeLSESTO: That's correct. That's correct.

6 THE COURT: Just a question in terms of
7 understanding the retirement plan. It appears there
8 seems to be two major transactions. One in 2009 and
9 Charter Care became involved, and there was a Class B
10 shareholders and there was a conversion, and in 2014 we
11 have another one. One of the things they raised in the
12 petition I wanted to ask about. This is a reference to
13 the plan being 90 percent funded and then at some point
14 there was a \$14 million contribution. I looked for the
15 same period in the petition and in the documents reported
16 by the actuary and it seems to say exactly the opposite.
17 There was a much larger fund in issue. Can you shed any
18 light on that?

19 MR. DeLSESTO: At this time unfortunately, your
20 Honor, I don't have a lot of answers on that piece.
21 That's one thing I am looking into. I do know the \$14
22 million did go in. I know there was a representation in
23 the conversion documents. I believe I read in the
24 decision of the Attorney General's Office, there is a
25 reference in there to the 90 percent funding. What I can

1 tell your Honor that I do know is from the actuarial
2 report that existed at the time of the transaction that
3 it showed for that year there was, and that was 2014, the
4 recommended contribution at that time was approximately
5 \$2 million and it showed a funding deficit. So they
6 needed funding to the year 2029. That was reduced by \$14
7 million once the 14 went in. I just do not know, your
8 Honor, at the point in time whether or not that 90
9 percent is an accurate number and how that came about,
10 why it came about, why it wasn't a 100 at that time or
11 anything like that. As I stand here today, I don't know
12 the answer to that.

13 THE COURT: And also there was an assumption made
14 even with that money to make it a hundred percent funded
15 that was dependent on future contributions.

16 MR. Delsesto: That's one of the main issues here,
17 your Honor. Regardless of the annual funding
18 contributions, all of that analysis assumes two things.
19 It assumes that the rate of return will, at least, on
20 average hit the projected rate of return, and it assumes
21 they are going to be continuing contributions going into
22 the plan or thereafter. This plan with St. Joseph Health
23 Services as the employer after that 2014 transaction
24 while that employer still existed, it had no operations
25 to speak of. It was a hospital management company

1 without a hospital to manage, and without a hospital to
2 manage, it didn't have a record. So the assumption at
3 that time of 90 percent or a 100 percent annual
4 contribution, if there was nothing that was going to go
5 into the plan after that then it was in trouble at that
6 point because you needed that portion in addition to the
7 interest portion or the investment portion to keep this
8 place viable.

9 THE COURT: I did notice, at least in reading the
10 Attorney General's approval document, the only thing I
11 see with the \$14 million that counsel noted is a footnote
12 to a James Harris, CPA, who was retained. I guess there
13 is a letter somewhere, so I just ask you to see if you
14 can get a hold of that and maybe that will shed some
15 light on the \$14 million.

16 MR. DeLSESTO: I will, your Honor, and actually this
17 may be an appropriate time to ask your Honor because you
18 just raised that issue. As part of today, while I was
19 not planning on asking your Honor for anything by way of
20 authorization today, that issue raises a point. While I
21 have received cooperation from everybody that I've asked
22 for in terms of documentation, as a precautionary
23 measure, because I believe it's necessary to move
24 somewhat quickly on this, as your Honor knows typically
25 in a permanent order, the Receiver is given the power to

1 subpoena records and documents, I would be asking the
2 Court today to at least expand my powers under the
3 temporary order to include the power to subpoena records
4 just so that does not have to wait until October 11th so
5 I can move on that quickly.

6 THE COURT: I do want to address that. We will get
7 to in a little while potential claims information of the
8 Receiver. Why don't we address that at this point. That
9 may be a good segway of what you were starting to talk
10 about. You took over as of August 18th. What do we have
11 in terms of assets, liabilities, the number of people
12 that are affected?

13 MR. DELSESTO: I will proceed with that, your Honor.
14 As far as the plan assets are concerned, and this is an
15 unaudited number as of August 21, 2017. The market value
16 of the assets is \$85,362,976.74. The liabilities
17 associated with this plan, your Honor, there are in
18 essence two to three of those, and I say two to three
19 because one of them I believe is one in the same. There
20 are monthly benefit payments to participants who are
21 receiving which as of right now are approximately
22 \$850,000 a month. Last year in total benefit
23 distributions were \$10,021,000. In addition, there are
24 fees associated with the plan's management, MRSA charges
25 and fees associated with the transfer of investment.

1 Each time an investment changes, there is a fee
2 associated with that change. Those numbers are actually
3 one in the same. There is an additional management fee
4 but those are the liabilities. So you have the fees of
5 MRSA in connection with managing the plan and making and
6 changing investments and then you have the benefits that
7 are being paid out on a monthly basis.

8 THE COURT: When you mentioned there is \$85 million
9 and change, is that all being held by Bank of America as
10 trustee?

11 MR. Delsesto: That's correct, your Honor. It's
12 important to note, your Honor, that typically liabilities
13 would include the fees associated with the actuary. In
14 this case it would be fees associated with the Receiver,
15 things of that nature. In this case at least based on
16 the petition filed with the Court on the 18th, St.
17 Joseph's Health Services has indicated that they will
18 fund those fees. So Angell Pension has confirmed to me
19 they have not been paid from plan assets for at least two
20 or three years. And at least based on the petition, St.
21 Joseph Health Services have said that the fees and
22 expenses of the estate will not be a burden on the plan's
23 assets.

24 THE COURT: So at least at this point in time the
25 only things that are coming out of this \$85 million or so

1 fund assets are which expenses?

2 MR. DeLSESTO: These of MRSA Investment Consulting
3 and benefits that are being paid to eligible
4 participants.

5 THE COURT: So what do we have in terms of
6 participants? I had mentioned at the beginning, you
7 know, somewhere in anticipation of 2,700. What type of
8 numbers do we have and are there different groups?

9 MR. DeLSESTO: There are, your Honor. So the most
10 up-to-date numbers I have are there are 2,724
11 participants. Of that, I'm going to break them down into
12 three categories that the actuary broke them down into
13 and then I will speak to your Honor a little bit about
14 the way I see it in terms of this proceeding.

15 As far as the actuary is concerned of that 10,724;
16 1,229 are active retirees meaning individuals who are
17 actively receiving benefits. They hit age 65 or early
18 retirement and are receiving benefits. In addition to
19 that, your Honor, there are 498 what we will call active,
20 but not yet collecting. By active, I mean that they are
21 working either at Prospect St. Joseph's or Prospect Roger
22 Williams or something like that. They are eligible to
23 receive but they haven't yet applied to receive.

24 Then there are 997, what I'm going to call vested
25 but inactive. So they're vested. They're eligible.

1 They are not working anywhere, but they also are not yet
2 receiving. Of that, your Honor, we're talking
3 approximately 1,500 individuals who are eligible at some
4 point in time, either now or some point in the future, to
5 receive benefits that are not yet receiving benefits.

6 What I would like to do though, your Honor, is I
7 would like to talk to you about the way that I see the
8 world in terms of this case, in terms of the
9 participants. Similar to the way the actuary has broken
10 down, what I call true retirees, those people who are
11 receiving benefits, they are not working anywhere, they
12 are receiving benefits under the plan, and they are
13 retired, and that's it, they've got a unique group of
14 people because of the 2014 transaction. In 2014 when the
15 hospital conversion act became effective, all active
16 employees, all people currently working for St. Joseph's
17 and Fatima were terminated and made to retire. That
18 action of terminating and immediately retiring made
19 certain employees eligible for early retirement or
20 retirement. Even though they were still working,
21 technically now they were terminated from St. Joseph's
22 even though the very next day they went back to work at
23 the same exact place. So you've got individuals that are
24 working for Prospect St. Joseph's, Prospect Fatima, and
25 that are collecting retirement but also working. You've

1 got those that are eligible to collect retirement,
2 they're working, they're eligible to collect because of
3 the termination status but they haven't applied and then
4 you've got the pool of individuals who are vested in the
5 plan but are not of an age they can start collecting yet.
6 So in my mind I see four tranches, four groups of people
7 that have a similar but in some ways a different
8 relationship to this plan and the others. And that's it.

9 THE COURT: We have those groups.

10 MR. Delsesto: Yes.

11 THE COURT: Since the receivership petition was
12 filed, are there any applications or other things in
13 terms of people that may wish to move to receive
14 benefits?

15 MR. Delsesto: Yes. Since the filing of the
16 petition and the entry of the order confirming me as
17 temporary, Angell confirmed to me there have been
18 approximately 40 applications filed with them to start
19 receiving benefits. As your Honor knows, approximately a
20 week and a half ago I asked your Honor while I do this
21 analysis to figure out what we can do with this plan to
22 allow applications to be filed but not processed. So
23 those applications have been placed in the order in which
24 they have been received and given credit for the date
25 they were filed but not processed. Angell tells me that

1 is a healthy number for a three-week period. It's
2 certainly reasonable under the circumstances but they
3 cannot say that this is typically what they receive on a
4 plan in terms of applications. So there is definitely a
5 pickup on the applications filed. As I stated, none of
6 them have been processed. They have all been marked and
7 wind up in accordance with the date and that date is
8 preserved.

9 THE COURT: At this point, we have our assets, our
10 liabilities. The people we're talking about as you're
11 well aware one of the charges to the Receiver is to see
12 if there is potential of other assets. Is there any
13 update you can give me in terms of that issue?

14 MR. DeLSESTO: I can, your Honor. In addition to
15 what is currently in the plan, I see two potential
16 sources of money that can go into the plan. One is
17 related to the wind down of operations of St. Joseph's
18 and Roger Williams. This Court entered a cy-pres order
19 in connection with the 2014 transaction, which simply
20 states or basically states that once those operations
21 have been wind down and the obligations have been
22 satisfied, any funds that remain would go to St. Joseph's
23 and, therefore, they would flow into the pension fund.
24 So as I sit here today we do not know what amount of
25 money, if any, would go there as a potential source of

1 funds.

2 In addition to that, your Honor, it would have to
3 any source of revenue funds for this plan to come from
4 claims identified by the Receiver and that the Receiver
5 and the Court believe were worthy of pursuit and they
6 would, in fact, result in funds back to the estate plan.

7 In that regard with the Court's permission I have
8 spoken with Attorney Max Wistow, who is the courtroom
9 today, and I've asked Max, in essence, to take a two-step
10 approach to this. I asked Max to assist me with
11 identifying what claims, if any, are out there. If we
12 identify claims, who are those claims against and then
13 have Max give me an assessment of what he believes the
14 viability, the worthiness of changing those plans would
15 be. Max and I have met on many occasions over the past
16 week, week and a half, in trying to get our hands around
17 those issues and I will be asking the Court as soon as
18 Max and I have put together the terms of engagement,
19 which if we identify claims, and if we identify claims
20 being worthy of pursuit, then there would be built in to
21 that engagement would be the ability to move forward and
22 pursue those claims with a compensation structure that is
23 approved by this Court. At this point we are trying to
24 figure out what exactly is there. It's a charge the
25 Court would make of me and I am asking Attorney Wistow to

1 help me do that.

2 THE COURT: Back to a question you had asked the
3 Court for approval, certainly it's common because it's
4 normally twenty days after the temporary Receiver is
5 appointed. We're at day 21. Part of that is because of
6 the other issues. I am not going to take up the
7 permanent Receiver today, but certainly the Court will
8 expand your authority to issue subpoenas to the keeper if
9 you believe it is appropriate in your investigation to
10 try and pull together information in terms of what you
11 have there. And at the end of the hearing you can submit
12 an order to that effect.

13 MR. Delsesto: Thank you.

14 THE COURT: I just want to be clear that in every
15 receivership case, one of the obligations that the
16 Receiver has is to determine whether there are claims to
17 bring money into the Receiver estate. By allowing the
18 Receiver to go forward, doesn't mean there are
19 necessarily claims or that there are not claims. You
20 need to look at that. And I also want to state for the
21 record that this authorization of the Receiver doing what
22 you're doing with the order that this Court issued, does
23 not in way stay or preclude any investigation as deemed
24 appropriate by any of our state or federal regulatory
25 public protection or law enforcement authority. I want

1 to be very very clear about that. You are looking at a
2 very narrow issue, which is there are the claims to bring
3 assets into the estate itself and should not be seen as
4 operating under a stay on any other issue.

5 MR. DeLSESTO: Thank you.

6 THE COURT: What else?

7 MR. DeLSESTO: To the extent that your Honor would
8 like to hear what I've been doing over the past three
9 weeks in addition to what I just stated, I have met or
10 spoken to what I consider to be the main parties in this
11 case or the main interested groups in this case.

12 Obviously, I have spoken to the Court. I've spoken to
13 Attorney Land and members of the board. I have had
14 multiple meetings and discussions with Angell Pension
15 with MRSA Investment, Bank of America. I have also
16 spoken to counsel for the Diocese of Providence, counsel
17 for the United Nurses' and Allied Professionals. I have
18 spoken to the Attorney General's Office and the Health
19 Care Advocate in that office. I've spoke to the Rhode
20 Island Department of Revenue, the Pension Benefit
21 Guarantee Corporation, which is an agency that has been
22 established to guarantee pension and shortfall failures.

23 The important thing here, your Honor, is going back
24 to what I said earlier about the church plan status, the
25 plan that had church plan status were not required to

1 make premium payments to Pension Benefit Guarantee
2 Corporation. All of that said, in my discussion with the
3 Pension Benefit Guarantee Corporation as well as in
4 things I have read, that in and of itself does not end
5 the inquiry. They may still ensure a shortfall or
6 failure under certain circumstances, and I'm looking into
7 what exactly that would be. I have spoken, obviously,
8 with several participants either on the phone or via
9 e-mail. I have set up a dedicated e-mail address. I've
10 noticed that out to all participants known to me. I have
11 set up two dedicated phone numbers of which do not have
12 an active person answering, but there is information in
13 the voicemail for that. People can leave a message and
14 we will return them as quickly as we can. That,
15 obviously, though from a time standpoint becomes more
16 tedious. An e-mail I can respond in two minutes, but a
17 phone call usually takes longer so there is a slower time
18 to get back to people that are making phone calls, and I
19 had a number of conversations with media outlets.

20 Notice did go out for the temporary hearing on
21 August 31st. I have filed a copy of that notice with an
22 affidavit. In that notice it gave me a standard
23 explanation of what the Receiver and what a receivership
24 process is, a general explanation. I also provided
25 individuals with the e-mail address, phone number, and a

1 designated website where I have been posting thus far
2 documents that were filed with this case so that
3 participants do not have to contact the Court to try and
4 get a copy. They can go right to that website, look at
5 it, download it.

6 It's my intention either on that or set a related
7 website up where I'm going to refer to as kind of a due
8 diligence where participants from the public can see
9 documents related to the plan, not court documents, but
10 plan documents that are not confidential or that the
11 efforts of myself and Attorney Wistow will not be
12 compromised by providing them in an attempt to provide as
13 much clarity and transparency to the participants as
14 possible if it's a document that is publically available
15 or that I cannot believe that the Court's authority to do
16 it would harm my efforts and I think the participants
17 have a right to see it, look at it, and read it, and ask
18 whatever questions they have.

19 THE COURT: One thing I would ask is if the Receiver
20 can if you're getting many phone calls and e-mails and I
21 completely understand that, if it's possible to set up a
22 frequently asked questions that can be posted or
23 distributed and then when there is a material change, you
24 can update it. It may help in terms of information out
25 there. I like your idea of some type of documents, site,

1 or others. It's best if people that want to look at some
2 of those documents that were filed by the Court or also
3 publically can be made available. That would go a long
4 way to get the information out.

5 The only other piece and will the Court had done
6 this several years ago in the Westerly Hospital
7 receivership and it seemed to work well is to give some
8 thought when you come back for the October 11th hearing
9 in terms of committee or committees to give certain of
10 groups basically a seat at the table, as we go through
11 the process. I know that Attorney Callaci is here from
12 the hospital as we went through. Ms. Wiens is here. We
13 have had been similar pension issues in the Central
14 Coventry Fire District. But to start thinking through
15 and talking about with individuals to have a
16 committee-type structure so information can be semineted
17 and questions can be asked. It will go a lot further to
18 at least have the information out there, which is very
19 important. I understand what happened prior to August
20 18th was out of the Receiver's control. Going forward
21 from August 18th, all that anyone can ask is for an open
22 process. And that's what I would like to happen. I
23 understand that may take some extra time but I think
24 that's important.

25 MR. DeLSESTO: I agree, your Honor. With regard to

1 both of those issues, I have begun to compile that
2 frequently-asked question sheet, which, obviously, I will
3 be updating as I get questions that I did not contemplate
4 with that. That's the issue with committees is what I
5 was contemplating when I was breaking down the different
6 groups in my head, like I said, they all have an interest
7 in what happens. Their interests differ slightly so it's
8 important for each one of those groups.

9 The other thing I have been contemplating, unless
10 your Honor has an objection to me doing this, I was going
11 to be setting up for the middle to the end of this month
12 a town hall meeting where I can be there. Various other
13 parties who wish to volunteer to come be there and answer
14 questions can be there. The participants can go and ask
15 openly their interests and concerns. Understanding that
16 we may not have all the answers at that point, but I will
17 provide as much information as I can as openly and
18 transparent as I possibly can.

19 THE COURT: I agree. If there is more information,
20 you can get out there. I appreciate the fact that you're
21 looking to bring counsel in to assist. There are a lot
22 of moving parts here and we will take it one step at
23 time. Is there anything else?

24 MR. Delsesto: Unless the Court has any further
25 questions, that concludes my report.

1 THE COURT: Thank you. I appreciate that, counsel,
2 if you can submit an order what we talked about and we
3 will next convene on October 11th for the permanent
4 receivership, but I also want to have another report in
5 open court on the 11th as well.

6 MR. DeLSESTO: Of course. Thank you, your Honor.

7 THE COURT: Thank you very much. The Court is in
8 recess.

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT C

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Vs.

PC 2017-3856

St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

ORDER

This matter came on for an emergency status hearing before the Court on September 8, 2017. During the course of the Receiver's status report, he orally requested that his powers and authority as Temporary Receiver include the power to issue subpoenas to compel the production of documents and/or records and/or testimony under oath and/or to serve interrogatories to be answered under oath. The Court finds that such request is reasonable and appropriate. Upon consideration of that request, it is hereby:

ORDERED, ADJUDGED AND DECREED

Until further Order of this Court, the Temporary Receiver's powers and authority shall be expanded to include the power and authority to issue subpoenas as he, in his sole discretion, deems necessary and appropriate to compel the production of documents and/or records and/or testimony under oath and/or to serve interrogatories to be answered under oath to any and all individuals or entities that the Receiver believes will assist his investigation of possible claims on behalf of the Receivership Estate and/or the Plan participants.

ENTER:


Brian P. Stern
Associate Justice

BY ORDER:

/s/ Carin Miley

Hon. Brian P. Stern
Associate Justice/Business Calendar
Date: September 13, 2017

Clerk, Superior Court

Date: September 13, 2017

EXHIBIT D

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Vs.

PC 2017-3856

St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

**ORDER APPROVING RECEIVER'S EMERGENCY PETITION
TO ENGAGE SPECIAL LEGAL COUNSEL**

This matter having come before this Honorable Court on October 11, 2017, Justice Brian Stern presiding, with respect to the Receiver's Emergency Petition to Engage Special Legal Counsel (the "Petition"), it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement;

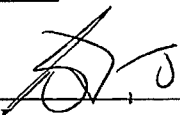
2. Until further order of this Court, the Receiver shall be authorized to submit to the Court for approval the time records/invoices of WSL in redacted format along with a reasoned recommendation by the Receiver regarding the approval of the same;

3. The Receiver's first request for approval of the fees of WSL may include those fees reasonably incurred by WSL in connection with this matter since August 18, 2017;

4. This Order shall be effective *nunc pro tunc* as of October 11, 2017.

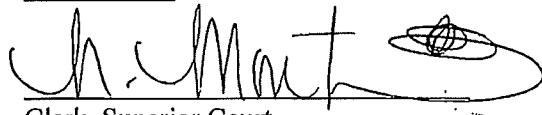
ENTERED as an Order of this Court this 17 day of October, 2017.

ENTERED:



Stern, J.
Date: October 17, 2017

BY ORDER:



Clerk, Superior Court
Date: October 17, 2017

EXHIBIT E

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Vs.

PC 2017-3856

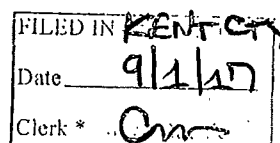
St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

ORDER

This matter was conferenced before the Court on August 29, 2017, regarding the Receiver's request to clarify the application of the Court imposed stay as set forth in Paragraph 6 of the Order Appointing Temporary Receiver entered on or about August 18, 2017 (the "Order"). Specifically, the Receiver requested that this Court clarify whether or not Paragraph 6 of the Order applies to and stays the processing and/or approval of properly filed applications for benefits submitted by eligible participants of the Defendant before or after the entry of the Order but which had not yet been submitted, processed and/or approved as of the date of entry of the Order. Upon consideration thereof, it is hereby:

ORDERED, ADJUDGED AND DECREED

1. Pending further Order of this Court, the Court imposed stay set forth in Paragraph 6 of the Order applies to and stays the processing and/or approval of properly filed applications for benefits submitted by eligible participants of the Defendant that had not been processed and/or approved as of the date of entry of the Order;
2. The date of submission for properly filed applications for benefits submitted by eligible participants of Defendant shall be preserved; and



3. This Order shall be effective *nunc pro tunc* as of August 18, 2017.

ENTER:



Hon. Brian P. Stern
Associate Justice/Business Calendar
Date: 9/1/17

BY ORDER:



Clerk, Superior Court

Date: 9/1/17

Presented by: Stephen F. Del Sesto, Esq., Receiver (6336), Donoghue Barrett & Singal, PC, One Cedar Street, Ste. 300, Providence, RI 02903,
Tel: 401-454-0400, Email: sdelsesto@dbslawfirm.com, Dated: August 30, 2017

EXHIBIT F

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Vs.

St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

PC 2017- 3856

ORDER APPOINTING TEMPORARY RECEIVER

This cause came on to be heard upon the Plaintiff's Petition for Appointment of a Receiver and, upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED

1. That Stephen DelSesto, of Providence, Rhode Island be and hereby is appointed Temporary Receiver (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan").

2. That said Receiver shall, no later than five (5) days from the date hereof, file a bond in the sum of \$ 1,000,000. ²⁵ With any surety company authorized to do business in the State of Rhode Island as surety thereon, conditioned that the Receiver will well and truly perform the duties of said office and duly account for all monies and property which may come into the Receiver's hands and abide by and perform all things which the Receiver will be directed to do by this Court.

3. That said Receiver is authorized to take control of the Plan as described in the Petition.

4. That said Receiver is authorized, until further Order of this Court, in the Receiver's discretion and as said Receiver deems appropriate and advisable, to continue administration of the Plan, to engage employees and assistants, clerical or otherwise, actuaries, and other professionals necessary or appropriate for the efficient administration of the Plan, and to pay all such individuals and entities in the usual course of business, and to do and perform or cause to be done and performed all other acts and things as are appropriate in the premises. The Court specifically authorizes the Receiver to continue to utilize the services of Chace Ruttenberg & Freedman, LLP in connection with the administration of the Plan, provided that payment for such services shall not come from assets of the Plan unless otherwise ordered by this Court.

5. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 2000-2, this Court finds that the designation of the aforescribed persons for

Filed BH 8/18/17


appointment as Receiver herein is warranted and required because of the Receiver's specialized expertise and experience in operating businesses in Receivership and in administrating non-routine Receiverships which involve unusual or complex legal, financial, or business issues.

6. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against said Plan or any of its property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution or other process upon or against any property of said Plan, or the taking or attempting to take into possession any property in the possession of the Plan or of which the Plan has the right to possession, or the interference with the Receiver's taking possession of or retaining possession of any such property, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract relating to the Plan, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, or the termination of services relating to the Plan, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

7. That a Citation be issued to the Plan, returnable to the Superior Court sitting at 250 Benefit Street, Providence, Rhode Island on the 11th day of OCTOBER, 2017, at 9:30 a.m. at which time and place this cause is set down for Hearing on the prayer for the Appointment of a Permanent Receiver and for reduction of beneficiary payments as described in the Petition; that the Clerk of this Court shall give Notice of the pendency of the Petition herein by publishing this Order Appointing Temporary Receiver once in The Providence Journal on or before the 24th day of AUGUST, 2017, and the Receiver shall give further notice by mailing, on or before the 31st day of AUGUST, 2017, a copy of said Order Appointing Temporary Receiver to each of the participants of the Plan whose address is known or may become known to the Receiver.

ENTER:

BY ORDER:



Michael A. Silverstein
Associate Justice/Business Calendar
Dated: 8/17/2017

181 Bearse Henglatzamy

Clerk, Superior Court
8/18/2017

**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

SUPERIOR COURT
FILED
HENRY S. KINCH, JR.
17 OCT 27 AM 10:51

ORDER APPOINTING PERMANENT RECEIVER

This cause came to be heard on October 27, 2017, on the Appointment of Permanent Receiver for the Respondent, and it appearing that the notice provided by the Order of this Court previously entered herein has been given, and upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That Stephen F. Del Sesto, Esq., of Providence, Rhode Island, be and hereby is appointed Permanent Receiver (the "Receiver") of the Respondent, and of all the estate, assets, effects, property and business of Respondent of every name, kind, nature and description, with all the powers conferred upon the Receiver by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver's said Office.

2. That said Receiver shall, no later than five (5) days from the date hereof, file herein a bond in the amount of \$1,000,000.00 with any surety thereon authorized to do business in the State of Rhode Island conditioned that the Receiver will well and truly perform the duties of said office.

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the Respondent's plan administrator, officers, directors and managers under applicable state and federal law, the Plan, as amended, the Trust Agreement, as may have been amended and/or other agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of RI Rules of Civil Procedure, Rule 66.

4. The directors, officers, managers, investment advisors, accountants, actuaries, attorneys and other agents of the Respondent shall have no authority with respect to the Respondent, its administration or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the administration of the Respondent and shall pursue and preserve all of its claims. The Receiver be and hereby is authorized to take any and all actions or expressly delegate the same which, prior to the entry of this Order, could have been taken by the officers, directors, administrators, managers, and agents of the Respondent.

5. That said Receiver be and hereby is authorized, empowered and directed to take control, possession and charge of said Respondent and its assets, wherever located, and manage and continue the administration and oversee the Respondent and to reasonably preserve the same, and is hereby vested with title to the same; to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent and to appear, intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or desirable for the protection, maintenance and preservation of the assets of said Respondent.

6. The past and/or present officers, directors, agents, managers, trustees, attorneys, actuaries, accountants, investment advisors and investment managers of the Respondent, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Respondent and/or all Respondent's assets or property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

7. That this appointment is made in succession to the appointment of Temporary Receiver heretofore made by order of this Court, and the Receiver shall take and be vested with the title to all assets, property and choses-in-action which have heretofore accrued to the Temporary Receiver with power to reject or confirm and ratify in writing such agreements as are entered into by such Temporary Receiver and to carry out and perform the same.

8. That the Receiver is authorized, in the Receiver's discretion, to monitor, manage and continue the administration of Respondent until further order of this Court, and to engage and employ such persons, including, without limitation, actuaries, investment advisors, investment managers, benefit administrators and any other professionals as may be desirable, in the Receiver's sole discretion, for the foregoing purposes and, in connection therewith, to use such assets of the Respondent and other monies as shall come into the Receiver's hands and possession, as far as the same shall be necessary, for the above purposes and for continuing the administration of the Respondent until further Order of this Court. The Court recognizes and acknowledges that prior to the entry of this Order the Receiver had sought and obtained this Court's authority to engage the Providence, RI law firm of Wistow Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to the Receiver for the purpose of investigating and, if necessary and appropriate, settling or litigating possible claims against third parties related to the prior management, administration and oversight of the Respondent. To the extent necessary, the Court here confirms and ratifies the Receiver's authority to engage WSL for that purpose.

9. That the Receiver is authorized to incur expenses for goods and services as in the Receiver's discretion may be desirable or necessary for continued management, investment, assessment and administration of the Respondent and its assets. To the extent that the Receiver incurs, directly or indirectly, any hard costs and expenses in furtherance of his obligations and duties hereunder, until further order of this Court, the Receiver shall be authorized to pay or reimburse the pre-payment of such expenses without the need to first obtain prior approval from this Court. Any and all such expenses paid or reimbursed shall be reported to the Court as part of the Receiver's formal reports filed with the Court. The Receiver's authority as set forth in this paragraph 9 shall be *nunc pro tunc* as of August 18, 2017.

10. That said Receiver be and hereby is authorized and empowered to sell, transfer convert, invest, monetize or convey said Receiver's right, title and interest and the right, title and interest of the Respondent in and to any investment, interest or property, tangible or intangible, for such sum or sums of money as to said Receiver appears reasonable and proper, provided, however, that approval is first given by this Court on *ex parte* application by the Receiver, or after such notice as the Court may require.

11. In fulfillment of the reporting requirements set forth in Rule 66 (e) of the Superior Court Rules of Civil Procedure, the Receiver shall file with the Court the Reports referred to in said Rule, as and when the Receiver deems necessary or advisable under the circumstances, or, in any event, as and when required by Order of this Court. In addition, the Receiver shall file with the Court, on or before May 1st and October 1st of each year, a Receivership Control Calendar Report in accordance with Rhode Island Superior Court Administrative Order No. 98-7.

12. That the Receiver shall continue to discharge said Receiver's duties and trusts hereunder until further order of this Court; that the right is reserved to the Receiver and to the parties hereto to apply to this Court for any other or further instructions to said Receiver and that this Court reserves the right, upon such Notice, if any, as it shall deem proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

13. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 95-01, this Court finds that the designation of the aforescribed person for appointment as Receiver is warranted and required because of said Receiver's specialized expertise and experience.

14. Excluding the vested participants of Respondent, all other creditors or other claimants of Respondent, if any, hereby are ordered to file under oath with the Receiver at 72 Pine Street, 5th Floor, Providence, Rhode Island 02903 on or before the **1st day of March, 2018**, a statement setting forth their claims, including, but without limiting the generality of the foregoing, the name and address of the claimant, the nature and amount of such claim, a statement of any security or lien held by the claimant to which such claimant is or claims to be

entitled, and also a statement as to any preference or priority which the claimant claims to be entitled to over the claims of any other or all other claimants or creditors.

15. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Respondent or any of its assets or property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract with the Respondent, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

16. That Notice be given of the entry of this Order by the Clerk of this Court by publication of a copy of this Order in The Providence Journal on or before the 10th day of November, 2017, and by the Receiver mailing on or before the 17th day of November, 2017 a copy of this Order to each of Respondent's vested participants and creditors known as such to the Receiver, or appearing as such on the books or records of the Respondent, addressed to each such vested participant or creditor at his/her/its last known address.

17. This Order is entered by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

ENTERED as an Order of this Court this 27th day of October, 2017.

ENTERED:

BY ORDER:

B.P.S.

Stern, J. **BRIAN P. STERN**
October 27, 2017 **ASSOCIATE JUSTICE**

C. Meley

Clerk, Superior Court **CARIN MELEY**
October 27, 2017 **DEPUTY CLERK**