

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND	:	
ADMINISTRATOR OF THE ST. JOSEPH	:	
HEALTH SERVICES OF RHODE ISLAND	:	
RETIREMENT PLAN, et al	:	
	:	
Plaintiffs,	:	
v.	:	C. A. No.18-cv-00328-WES-LDA
	:	
	:	
PROSPECT CHARTERCARE, LLC, et al.	:	
	:	
Defendants.	:	

DEFENDANT THE ANGELL PENSION GROUP, INC.’S REQUEST FOR JUDICIAL NOTICE PURSUANT TO FEDERAL RULE OF EVIDENCE 201

I. REQUEST FOR JUDICIAL NOTICE

Defendant The Angell Pension Group, Inc. (“Angell”) hereby requests, pursuant to Fed. R. Evid. 201, that the Court take judicial notice of the following documents appended to Angell’s memorandum of law in support of its motion to dismiss:

- **Exhibit A** – An exemplar of the St. Joseph Health Services of Rhode Island retirement plan benefit statement; and
- **Exhibit B** – An exemplar of the St. Joseph Health Services of Rhode Island Retirement Plan Participant Election and Certification Form.

II. RELEVANCE OF MATERIALS

The Complaint¹ alleges that Angell defrauded Plan participants through intentional misrepresentations and omissions, participated in a so-called fraudulent scheme with other defendants, and “participated in a conspiracy to injure the Plaintiffs.” (Compl. Counts VII-IX,

¹ Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the contemporaneously filed Memorandum of Law in Support of Angell Pension Group, Inc.’s Motion to Dismiss (“Angell’s Memorandum”).

¶¶ 471-482.) As explained in Angell’s Memorandum, the factual allegations that purport to support these fraud-related claims fail to meet the heightened pleading standards of Fed. R. Civ. P. 9(b). (Angell’s Mem., pp. 21-25.) That the Complaint lacks the basic and required “who, what, where, and when” is particularly striking given that the Complaint contains 527 paragraphs spanning 133 pages and was drafted with the aid of more than 800,000 pages of documents.²

The rational conclusion that must be drawn from the Complaint’s lack of specificity regarding Angell’s alleged misrepresentations is that the Plaintiffs are unable to provide that detail that is required by Rule 9(b)—what did *Angell* say, when did *Angell* say it and to whom was it said. Given the Plaintiffs’ apparent inability to provide the required specificity about Angell’s alleged conduct, and the Plaintiffs’ repetitious references to “Defendants” throughout its fraud related claims, Angell has sought to identify those communications that *it* sent to Plan participants that form the basis of the Plaintiffs’ fraud-related claims. Plaintiffs’ Complaint extensively quotes and describes the exemplar documents, providing only cherry-picked quotes and leaving out key passages that undermine their claims of fraud. Plaintiffs clearly have access to and rely on these documents, but do not attach them to the Complaint. Angell submits that judicial notice of two exemplar documents that contain the supposed misrepresentations referenced in the Complaint is appropriate and necessary since the authenticity of the documents cannot reasonably be questioned. *See* Fed R. Evid. 201(b)(2).

² *See* Receiver’s Fourth Interim Report and Request for an Expedited Hearing and Shortened Notice Regarding Same, *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services f Rhode Island Retirement Plan*, PC-2017-3856, ¶ 14(f). A copy of the Receiver’s Fourth Interim Report is attached hereto as Exhibit 1. The Court can consider Del Sesto’s report to the Superior Court in considering Angell’s motion to dismiss since it is well settled that the Court may consider matters of public record in deciding a Rule 12(b) motion without converting the motion into one for summary judgment. *See Greene v. Rhode Island*, 398 F.3d 45, 48-49 (1st Cir. 2005) (collecting cases); *see also Boateng v. InterAmerican Univ., Inc.*, 210 F.3d 56, 60 (1st Cir. 2000) (“a court ordinarily may treat documents from prior state court adjudications as public records.”).

The first of these two documents is the statement of benefits regularly provided to Plan participants that is attached to Angell's Memorandum as Exhibit A (the "Benefits Statement"). The Benefits Statement is readily identified as the document described in paragraph 281 of the Complaint, and contains the following information identified in the Complaint as being misrepresentations that form the foundation of the Plaintiffs' fraud related claims against Angell:

- A statement that "[y]our pension benefit is an important part of your future retirement income,"; and
- "[t]he plan is entirely paid for by St. Joseph Health Services of RI. There is no cost to you." (Compl. ¶ 281.)

The second document upon which the Plaintiffs apparently base their fraud-related claims against Angell is the St. Joseph Health Services of Rhode Island Retirement Plan Participant Election and Certification Form attached to Angell's Memorandum as Exhibit B (the "Election Form"). The Election Form appears to be the document referenced in paragraph 292 of the Complaint which alleges that Angell's misrepresentations included "statements that set forth specific projected lifetime benefits" (Compl. ¶ 292) and paragraph 305 of the Complaint which alleges that Angell made misrepresentations to Plan participants by describing "payment options that included annuity payments for life." (Compl. ¶ 305.) The Election Form sets forth the benefit alternatives available to SJHSRI retirement Plan participants and contains the option to receive a "Life Annuity" which is described in the Election Form as a "pension [that] pays you level monthly payments for as long as you live. Payments stop when you die." The Election Form allows for six other payment options which are described as lasting as long as a participant lives, with additional payments to a beneficiary beyond the lifetime of the participant.

III. ARGUMENT

“A district court ‘may properly consider the relevant entirety of a document integral to or explicitly relied upon in the complaint, even though not attached to the complaint.’” *Trans-Spec Truck Serv. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) (quoting *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)); *see also Avedisian v. Select Portfolio Servicing, Inc.*, No. 16-654S, 2017 U.S. Dist. LEXIS 204278, at *2 n.1 (D.R.I. Aug. 29, 2017) (same), *report and recommendation adopted*, 2017 U.S. Dist. LEXIS 202973 (D.R.I., Dec. 11, 2017) (Smith, C.J.). Since the Benefit Statement and Election Form are the basis of the Plaintiffs’ fraud-related claims against Angell, they are so integral to the Complaint that the Plaintiffs’ claims cannot rationally be considered without reviewing the documents in their entirety.

The First Circuit has expressly held that—when evaluating the sufficiency of a plaintiff’s securities fraud claim—the district court “may properly consider the *relevant entirety* of a document *integral to* or explicitly relied upon in the complaint.” *Shaw*, 82 F.3d at 1220 (emphasis supplied). “Were the rule otherwise, a plaintiff could maintain a claim of fraud by excising an isolated statement from a document and importing it into the complaint, even though the surrounding context imparts a plainly non-fraudulent meaning to the allegedly wrongful statement.” *Id.*; *see also Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 231 (2d Cir. 2016) (noting that courts will consider documents “containing obligations upon which the plaintiff’s complaint stands or falls, but which for some reason -- usually because the document, read in its entirety, would undermine the legitimacy of the plaintiff’s claim -- was not attached to the complaint” (internal quotation omitted)); *Rzepiennik v. Archstone-Smith, Inc.*, 331 F. App’x 584, 588 (10th Cir. 2009) (noting that a district court may review documents referred to in a plaintiff’s complaint because, otherwise, “a plaintiff with a deficient claim could survive a

motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied”).

The plain indication on the Benefits Statement, that it is “not a promise or guarantee of any future benefits,” is precisely the type of matter that compels judicial notice of the entirety of an allegedly fraudulent communication. Were the Court not to take notice of the entirety of the Benefits Statement, the Plaintiffs could press ahead with their fraud claim on the premise that the Benefits Statement contained a promise of future benefits despite the fact that the Benefits Statement is expressly “*not a promise.*” (Benefits Statement, p. 1.) (emphasis added). The fraud-related claims against Angell are based upon select portions of the Benefits Statement, taken out of context, and the claims can survive only if the Court ignores plain language that will doom Plaintiffs’ attempts to prove that someone could reasonably rely upon the Benefits Statement as a guarantee of payment.

Similarly, the Plaintiffs characterize the Election Form as a misrepresentation to plan participants because it offered a variety of pension payment options that “included annuity payments for life.” (Compl. ¶ 305.) What the Complaint does not state is that Plaintiff Del Sesto recommended to the Superior Court, and instructed Angell, to accept and process the very Election Forms that he now claims constitute a fraud upon Plan participants. In the Receiver’s Recommendations Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Regarding the Processing of Pending Benefit Elections and Properly Filed Applications for Benefits (the “Receiver’s Application Recommendation”)³, dated February 22, 2018, Del Sesto indicated that he “does not believe that any further ‘stay’ of the processing of election forms or

³ A certified copy of the Receiver’s Application Recommendation is attached hereto as Exhibit 2.

applications (currently pending or new) is necessary.” (Exhibit 2, p. 8.) In an ironic reversal from his position in this litigation, Del Sesto complained to the Superior Court that Angell refused to continue processing benefit elections, despite his own allegations in this litigation that the Election Forms constitute a fraudulent misrepresentation.⁴ Indeed, Del Sesto sought and obtained the Superior Court’s ratification and approval of “all of his acts and doings” including his acceptance and processing of the Election Forms that he now contends are fraudulent. (Exhibit 1, p. 9.)

The Court should take judicial notice of the Election Form because it lays bare the contradiction of the Plaintiff’s fraud related claims against Angell. There are two potential conclusions that can be drawn from Del Sesto’s recommendation and insistence that Angell process Plan participants’ Election Forms. Perhaps Del Sesto is guilty of the same fraud upon Plan participants that the Plaintiffs’ claim was perpetrated by Angell.⁵ The more rational conclusion, however, is that the Election Form simply allows Plan participants to select the benefit option to which they are entitled without guaranteeing payments of benefits. Indeed, even as Del Sesto recommended to the Superior Court that he be allowed to accept and process applications by his co-plaintiffs for lifetime annuities, he informed the Superior Court that he was considering whether a severe reduction in those benefits would be necessary. (Exhibit 2, pp. 1-3, 8.) The Election Form cannot reasonably be interpreted as a statement of fact sufficient to support the fraud-related claims against Angell. Because the authenticity of the Election Form cannot reasonably be questioned, the Court should take judicial notice of it.

⁴ *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, PC-2017-3856, Hr’g Tr. (Jul. 26, 2018), pp. 7-8 attached as Exhibit 3.

⁵ If this is indeed the Plaintiffs’ position, it would be impossible for Del Sesto and his co-plaintiffs to use the same firm to prosecute this action.

IV. CONCLUSION

For the foregoing reasons, Angell requests that the Court take judicial notice of the Benefits Statement and Election Form in connection with Angell's motion to dismiss the claims against it.

THE ANGELL PENSION GROUP, INC.

By its attorneys,

/s/ Steven J. Boyajian

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-and-

/s/ David R. Godofsky

David R. Godofsky (*pro hac vice*)

/s/ Emily Seymour Costin

Emily Seymour Costin (*pro hac vice*)

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Telephone: (202) 239-3300

Facsimile: (202) 239-3333

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2018, I have caused the within *Request for Judicial Notice Pursuant to Federal Rule of Evidence 201* to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants identified on the Notice of Electronic Filing (NEF).

/s/ Steven J. Boyajian
Steven J. Boyajian

EXHIBIT 1

HEARING DATE:
Thursday, June 28, 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 FOURTH INTERIM REPORT AND REQUEST FOR AN EXPEDITED
HEARING AND SHORTENED NOTICE REGARDING SAME**

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Receiver (the "Receiver") for St. Josephs Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby submits this Fourth Interim Report (the "Fourth Report"). In addition, in light of the recent litigation filings by Special Counsel, on behalf of the Receiver and other plaintiffs, in State and Federal Court the Receiver requests that this Court grant an expedited hearing on this Fourth Report and shorten the otherwise required ten (10) day notice period established by the RI Superior Court Rules of Civil Procedure, Rule 6. In support of the Fourth Report and request for an expedited hearing the Receiver states as follows:

1. This case was commenced on August 17, 2017, upon the Petition for the Appointment of a Receiver (the "Petition") filed by St. Joseph Health Services of Rhode Island, Inc. ("Petitioner"). As a result of that Petition, on August 18, 2017, this Court appointed Stephen F. Del Sesto, Esq. as Temporary Receiver of the Plan under surety bond ordered by this Court in the amount of One Million and 00/100 (\$1,000,000.00) Dollars (the "Temporary Receiver Order").

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2. The Plan is a defined benefit plan organized by Petitioner on or about July 1, 1965, for the benefit of Petitioner's employees. As of the date of the Petition, the Plan had approximately 2,729 vested participants¹ of which approximately 1,229 were then receiving monthly benefits payments.

3. Typically, a hearing on permanent receiver is set for a date approximately twenty (20) days after the appointment of temporary receiver. Here however, the Petitioner requested that the Court set a hearing date no sooner than thirty (30) days to afford the Temporary Receiver time to consider the Petitioner's suggested 40% uniform benefit reduction. Based on that request, the Court docketed the hearing on permanent receiver for October 11, 2017.

4. Immediately upon appointment, in order to provide pension holders with a direct means to obtain answers to questions and access to information, the Receiver established a dedicated email address (stjosephretirementplan@pierceatwood.com) and two dedicated phone lines (401-490-3436 and 401-865-6249). In addition, the Receiver established a dedicated, public website (<https://www.pierceatwood.com/st-joseph-health-services-rhode-island-retirement-plan>) where all pleadings and other information would be posted for easy accessibility to pension holders and other interested parties. Notice of the dedicated email, phone lines and website was sent to all Plan participants via first class mail. The Receiver believes that establishing these various means of communication has been invaluable to the pension holders and the Receiver. Since establishing the email address and phone lines the Receiver has received hundreds of email and voicemail communications from pension holders. The dedicated website has been revised to now include access to filings made in both the State and Federal litigation matters as well as other related litigation matters related to this proceeding.

5. Due to their day-to-day involvement with the Plan, the Receiver has had consistent and regular communications with Bank of America (the Plan's Trustee and custodian of the assets) and Angell Pension Group (the Plan's actuary and benefits administrator) regarding the

¹ According to documents reviewed by the Receiver, excluding United Nurses and Allied Professionals Local 5110 ("UNAP") members hired before October 1, 2008, the Plan was closed to all employees on or about October 1, 2007. Thereafter, benefit accruals were frozen for non-union employees on September 30, 2009, for Federation of Nurses and Health Professionals and other non UNAP union employees on September 30, 2011 and for UNAP employees on June 19, 2014.

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management and administration of the Plan. The Receiver has reviewed quarterly reports and had periodic discussions with Mercer Investment (the Plan's discretionary Investment Manager) regarding the performance of asset investments, the allocation of the asset investments and market conditions and projections that may impact those investments. The Receiver is aware that, among the pension holders and other interested parties, there existed a level of distrust and concern regarding the pre-receivership administration and oversight of the Plan. As a result, the Receiver continues to consider all options and the related benefits regarding the ongoing day-to-day management and administration of the Plan and its assets and, if prudent, will make changes as necessary.

6. Approximately each month throughout this proceeding the Receiver hosts town-hall style, informational meetings at Rhodes on the Pawtucket in Cranston, Rhode Island. At these meetings the Receiver provides a current status of the receivership proceedings. In addition and in an effort to assure complete transparency of the receivership process and the Receiver's efforts, the Receiver responds to questions raised by the meeting participants regarding various aspects of the receivership and the Plan. Understanding that not all participants can attend these meetings, the Receiver digitally records each meeting and a link to the meeting recordings are posted to the Receiver's dedicated website.

7. The Receiver provided a formal status report to the Court on September 8, 2017. In addition to the general status, during the report the Receiver: (a) advised the Court that he had begun discussions regarding the possible engagement of Wistow, Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to assist the Receiver in investigating potential claims against third parties involved in the prior transactions involving Petitioner and pre-receivership management and administration of the Plan; (b) requested that the Court expand his powers as Temporary Receiver to include subpoena powers; and (c) requested that the Petitioner's request that benefits be adjusted on October 11, 2017 be continued until after the start of 2018. With regard to (b) and (c), the Court granted the Receiver's requests.

8. On or about October 11, 2017, the Court held a hearing on the appointment of Permanent Receiver, the Receiver's Emergency Petition to Engage Special Counsel and the Receiver's Petition for Instruction regarding Service on Bank of America and the Plan Administrator. At the

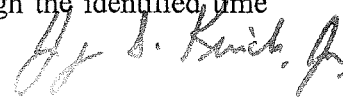
hearing, the Receiver requested that the Court: (a) authorize the Receiver to engage WSL as special litigation counsel; (b) pass (i.e. not consider) the Petitioner's request for a 40% uniform reduction of benefits; (c) authorize the Receiver to formally serve the Plan's trustee and administrators; (d) add the Plan's trustee, Bank of America NA, as a nominal respondent to the matter for purposes of notice and proper jurisdiction over the Plan; and (e) postpone the hearing on Permanent Receiver for a period of 2 weeks to effectuate the service upon the trustee and plan administrators. Following the hearing, the Court entered orders granting all the requests made by the Receiver and docketed the hearing on Permanent Receiver for October 27, 2017. In addition and also to be heard on October 27th, the Court directed the Receiver to submit to the Court a request to establish plan participant committees to assist the Receiver and Court regarding communications, benefits adjustments and similar issues.

9. On or about October 27, 2017, the Court held a hearing on the appointment of Permanent Receiver and the Committee Petition. At the conclusion of the hearing, the Court entered an Order appointing the Temporary Receiver as the Permanent Receiver. The Court also approved the Receiver's formation of the advisory committees and recognized the "middle group" as a recognized and designated group in the receivership process.

10. On or about November 20, 2017, this Honorable Court held a hearing on the Receiver's First Interim Report and Request for Approval of Fees, Costs and Expenses (the "First Report"). Subsequent to that hearing, on or about November 29, 2017, this Court entered an Order approving the First Report and approving the Receiver's and WSL's request for fees, costs and expenses covering the period of August 18, 2017 through October 31, 2017.

11. On or about March 29, 2018, this Honorable Court held a hearing on the "Receiver's Second Interim Report and Request for Approval of Fees, Costs and Expenses" (the "Second Report"). Following the hearing on the Second Report, on or about April 3, 2018, this Court entered an Order approving the Second Report and approving the Receiver's and WSL's request for fees, costs and expenses covering the period of November 1, 2017 through February 28, 2018 (the "Second Report Order"). Through the Second Report Order, the Court approved, confirmed, and ratified all acts and doings of the Receiver through the Second Report hearing date. Further, all of the Receiver's and WSL's fees, costs and expenses incurred through the identified time

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period were similarly approved and the Court approved the release of the previously held twenty percent (20%) reserve from the First Report.

12. In addition to the Second Report and also on March 29, 2018, this Honorable Court held a hearing on the “Receiver’s Initial Recommendations Regarding (1) Monthly Benefit Payment Modifications; and (2) Release of Stay Relative to the Processing of Pending Benefits Elections and Properly Filed Applications” (the “Initial Benefits Recommendation”). Subsequent to the hearing on the Initial Benefits Recommendation on April 4, 2018, this Court entered an Order (a) approving the Receiver’s recommendation, (b) deferring any recommendation on benefits modification for a period of approximately ninety (90) additional days, and (c) lifting the September 1, 2017, stay regarding the processing of elections and benefits applications (the “Initial Benefits Recommendation Order”).

13. On or about May 31, 2018, this Honorable Court held a hearing on the “Receiver’s Third Interim Report and Request for Approval of Fees, Costs and Expenses” (the “Third Report”). At the hearing on the Third Report, the Receiver provided the Court with an update of the events occurring since the Second Report. At that hearing, the Receiver and Special Counsel also provided the Court with a status update regarding the claims investigation and a projected time frame for completion of that investigation and related next steps. Following the hearing on the Third Report, on or about May 31, 2018, this Court entered an Order approving the Third Report and approving the Receiver’s and WSL’s request for fees, costs and expenses covering the period of March 1, 2018 through April 30, 2018 (the “Third Report Order”). Through the Third Report Order, the Court approved, confirmed, and ratified all acts and doings of the Receiver through the Third Report hearing date. Further, all of the Receiver’s and WSL’s fees, costs and expenses incurred through the identified time period were similarly approved. Copies of the First Report, Second Report and Third Report are on file with the Clerk of the Court, accessible on the Receiver’s dedicated website and all are incorporated by reference and made a part of this Fourth Interim Report as if fully set forth herein.

14. The Following are the actions and activities that have taken place since the filing of the Third Report on May 21, 2018:


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several other named plaintiffs (all of whom are participants of the Plan), filed a detailed, 170 page Complaint in Federal District Court for the District of Rhode Island captioned as Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (1:18-cv-00328-WES-LDA). On that same date, Special Counsel, on behalf of the Receiver and several other named plaintiffs (all of whom are participants of the Plan), filed a detailed, 106 page Complaint in Rhode Island Superior Court captioned as Stephen Del Sesto, et. al. v. Prospect CharterCARE, LLC, CharterCARE Community Board; St. Joseph Health Services of Rhode Island; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect East Holdings, Inc.; Prospect Medical Holdings, Inc.; Roger Williams Hospital; CharterCARE Foundation; The Rhode Island Community Foundation; Roman Catholic Bishop of Providence; Diocesan Administration Corporation; Diocesan Service Corporation; and The Angell Pension Group, Inc. (PC-2018-4386).

- g. Also, on June 18, 2018, Special Counsel, on behalf of Receiver and several other named plaintiffs (all of whom are participants of the Plan), filed a Motion to Intervene and related memorandum (the "Motion to Intervene") in the *Cy Pres* matter initiated in connection with the 2014 Hospital Conversion Application proceeding captioned as In re: CharterCARE Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc. (KM-2015-0035). The Motion to Intervene is presently docketed hearing before this Court at 9:30 am on June 28, 2018.
- h. On June 19, 2018, due to the need to maintain transparency of this receivership proceeding and the substantial public interest of this matter, this Court entered an Order authorizing the Receiver to publish/post the State and Federal Complaints on

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the Receiver's dedicated, public website. In light of the Order, the Complaints were posted to the website for access by the Plan participants and the general public.

15. As of the filing of the State and Federal Complaints, Special Counsel had reviewed more than 800,000 pages produced in connection with the subpoenas issued to the various parties by Special Counsel. The production and review of those documents was essential to develop the facts and substance of the recently filed State and Federal Complaints.

16. In addition and as has been reported to the Court on several occasions, the Receiver and Special Counsel are engaged in active discussions with the PBGC. The most recent communication occurred on or about June 5, 2018, when the PBGC delivered a letter to the Receiver, Special Counsel and Attorney Cohen stating that it was taking no position regarding the Plan. Since that communication from the PBGC, the Receiver and Attorney Cohen have had initial discussions with the US Department of Labor ("DOL") and the Internal Revenue Service ("IRS") regarding the Plan.

17. As was previously reported, the Receiver has asked Angell to complete the most recent annual valuation for the Plan. As of the filing of this Fourth Report, the valuation has not been completed and, in light of the recently filed Complaints, each which name Angell as a Defendant, the Receiver sought to replace Angell's services both as actuary and as benefits administrator for the Plan. As of the filing of this Fourth Report the Receiver has spoken to and received proposals from several experienced actuarial firms that have specialized experience in dealing with struggling and failing plans, both ERISA and non-ERISA. The Receiver expects to have one of these actuaries engaged prior to the hearing on this Fourth Report.

18. In addition to the above, the Receiver continues to receive and review documents related to the Plan and its history and explore options related to the ongoing management, investment and administration of the Plan. The Receiver is also reviewing and analyzing financial data relative to the possible benefits adjustment scenarios in an effort to identify the most equitable, interim adjustment while the investigation of third parties progresses.

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Courthouse of Providence & Bristol
Providence, Rhode Island

19. The Receiver and Special Counsel will both be in attendance at the hearing on this Fourth Report to respond to any questions or concerns that the Court may have relative to the litigation process and any other issue involving this Plan and receivership proceeding.

20. In connection with the administration of the within proceeding, as of the filing of the Third Report, your Receiver had cash-on-hand totaling \$264,962.60. Since that time, your Receiver has had additional receipts totaling \$350,000.00 and has had additional disbursements totaling \$236,404.39, leaving current cash-on-hand in the sum of \$378,558.21, all as set forth in the "Schedule of Receipts and Disbursements" attached hereto.

21. Due to the expedited nature of the hearing on this Fourth Report, the Receiver is not requesting that the Court approve any fees, costs, and expenses at this time. Such a request will be made in connection with the Receiver's Fifth Interim Report which is scheduled for hearing at 9:30 am on Thursday, July 26, 2018.

WHEREFORE, your Receiver prays that: (1) the Court grant the Receiver's request for an expedited hearing on this Fourth Report and a shortened period of notice relative to the same and docket the hearing on this Fourth Report for 9:30 am on Thursday, June 28, 2018; (2) that all of his acts, doings, and disbursements as Temporary and Permanent Receiver as of the filing of this Fourth Report be approved, confirmed and ratified; (3) this proceeding remain open pending final resolution of all the issues identified herein and the general winding down of the receivership Estate; and (4) such further relief as this Honorable Court deems necessary and appropriate.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336)

Solely in his capacity as Permanent Receiver
for St. Josephs Health Services of Rhode
Island Retirement Plan, and not individually
One Financial Plaza, 26th Floor

Providence, RI 02903

Tel: 401-490-3415 *Be Copy Attest*

sdelsesto@pierceatwood.com

Dated: June 25, 2018 *J. S. Keirich, Jr.*


J. S. Keirich, Jr.
Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 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

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Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

SCHEDULE OF RECEIPTS AND DISBURSEMENTS

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Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

2:45 PM
 06/25/18
 Accrual Basis

**St Joseph Health Services of RI Retirement Plan
 Transactions by Account
 As of June 25, 2018**

Date	Num	Name	Memo	Debit	Credit	Balance
BankRI Checking Account						
05/31/2018	252	Pierce Atwood LLP	3rd interim fees & costs in full thru 4/30/18		57,059.52	264,962.69
05/31/2018	253	Wistow Sheehan & Loveley, PC	3rd interim fees & costs in full thru 4/30/18		155,473.16	207,903.08
06/04/2018	254	Rhodes on the Pawtuxet	6/4/18 meeting with plan participants; Inv #1627		1,710.72	52,429.92
06/05/2018	255	William White Legal Video Services	Inv #1590; 6/4/18 meeting video & audio funds from RW/St. Joes (R. Land)		800.00	50,719.20
06/07/2018						49,919.20
06/11/2018	256	Gina Gomes	5/31/18 hearing transcripts		81.00	399,938.20
06/15/2018	257	Bailey & Ehrenberg PLLC	Inv #2867; consulting expert		17,545.00	382,293.20
06/15/2018	258	Angell Pension Group, Inc.	Inv #186275; benefit calculation & processing		275.00	382,018.20
06/22/2018	259	Relevant Discovere	Inv #3522; copying and postage		3,459.99	378,558.21
Total BankRI Checking Account				350,000.00	236,404.39	378,558.21
TOTAL				350,000.00	236,404.39	378,558.21

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[Signature]
 Superior Court
 Providence & Bristol
 Providence, Rhode Island

EXHIBIT 2

**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:

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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.

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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.

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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. True Copy Attest

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.

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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.

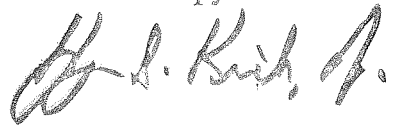
Based upon the above, the Receiver believes that the monthly increase that will result from the processing of Election Forms and Applications as well as any additional increase that may result from new applications over the next 90-days does not out-weigh the reasons in favor of not modifying benefits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

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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

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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.

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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.

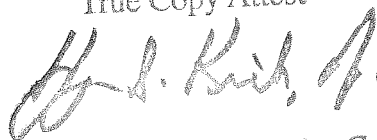
Based on the above, the Receiver recommends that the Court-imposed stay as set forth in the Orders appointing Temporary and Permanent Receiver, specifically paragraphs 6 and 15, respectively (copies of the Orders appointing Temporary and Permanent Receiver are attached hereto as **Exhibit F**), be modified 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.

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Respectfully submitted,

/s/ Stephen F. Del Sesto

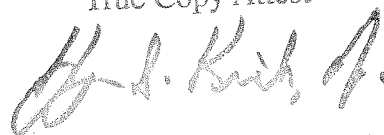
Stephen F. Del Sesto, Esq. (#6336)
Solely in his capacity as Permanent Receiver
for St. Josephs Health Services of Rhode
Island Retirement Plan, and not individually
c/o Pierce Atwood, LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: February 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

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EXHIBIT A

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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 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.

John S. Knick, Jr.
John S. Knick, Jr.
Clerk of Superior Court
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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,

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“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.

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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

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

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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.

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Reviewer: Lynn G.

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,

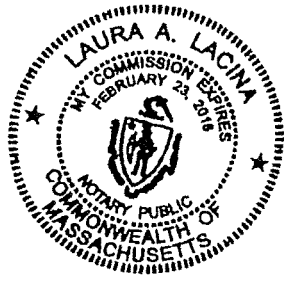
St. Joseph Hospital Services
Rhode Island

By *David Hirsch*

David Hirsch, President

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.

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H. S. Kenich, Jr.

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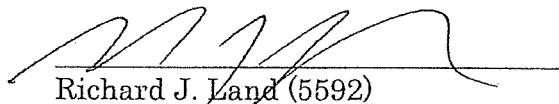
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Reviewer: Lynn G.

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
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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

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GINA GIANFRANCESCO-GOMES
COURT REPORTER
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Providence, Rhode Island

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

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FRIDAY, SEPTEMBER 8, 2017

AFTERNOON SESSION

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

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

MR. DELSESTO: Stephen DelSesto, the Court appointed temporary Receiver for the Plaintiff.

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

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

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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

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

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

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

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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

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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

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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 lease five years prior to attaining 55.

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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?

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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.

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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

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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.

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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

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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.

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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

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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.

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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

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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

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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

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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

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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 investigations deemed
24 appropriate by any of our state or federal regulatory
25 public protection or law enforcement authority. I want

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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

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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

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R.I.

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,

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[Signature]
Office of the Receiver
Providence Superior Court
Courthouse of Providence & Bristol
Providence, Rhode Island

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 seminated
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

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H. J. Keen
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Providence & Bristol
Providence, Rhode Island

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.

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Council of Providence & Bristol
Providence, Rhode Island

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

MR. Delsesto: Of course. Thank you, your Honor.

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

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

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Office of Clerk of Superior Court
County of Providence & Bristol
Providence, Rhode Island

EXHIBIT C

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[Signature]
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Counties of Bristol and Providence
Providence, Rhode Island

Filed in Providence/Bristol County Superior Court
Submitted: 09/13/2017 12:38:01 PM
Envelope: 1197722
Reviewer: Lynn G.

**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

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

{W6335123.1}

BY ORDER:

/s/ Carin Miley

Clerk, Superior Court

Date: September 13, 2017


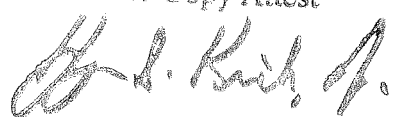
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Counties of Providence & Bristol
Providence, Rhode Island

EXHIBIT D

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Counties of Providence & Bristol
Providence, Rhode Island

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.

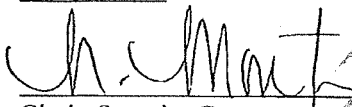
ENTERED as an Order of this Court this 17 day of October, 2017.

ENTERED:


Stern, J.

Date: October 17, 2017

BY ORDER:



Clerk, Superior Court

Date: October 17, 2017


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Counties of Providence & Bristol
Providence, Rhode Island

EXHIBIT E

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Providence, Rhode Island /

**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

536555.1

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Counties of Providence & Bristol
Providence, Rhode Island
FILED IN ~~KENTUCKY~~ PROVIDENCE
Date 9/1/17
Clerk * *[Signature]*

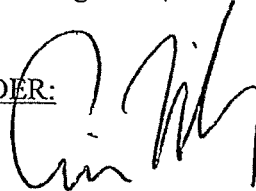
3. This Order shall be effective *nunc pro tunc* as of August 18, 2017.

ENTER:



Hon. Brian P. Stern
Associate Justice/Business Calendar
Date: 9/11/17

BY ORDER:



Clerk, Superior Court

Date: 9/12/17

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

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Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

EXHIBIT F

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Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island,
Inc.

Vs.

PC 2017- 3854

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

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. 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

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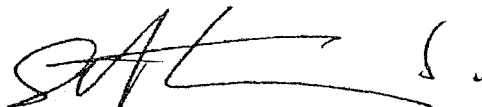
appointment as Receiver herein is warranted and required because of the Receiver's specialized expertise and experience in operating businesses in Receivership and in administering non-routine Receiverships which involve unusual or complex legal, financial, or business issues.

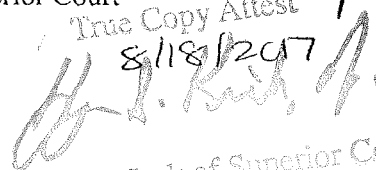
6. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, 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 Bearzi Hengjatsamy
Clerk, Superior Court
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8/18/2017

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Counties of Providence & Bristol
Providence, Rhode Island

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.
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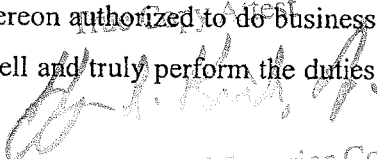
ORDER APPOINTING PERMANENT RECEIVER

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.


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Providence, Rhode Island

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.

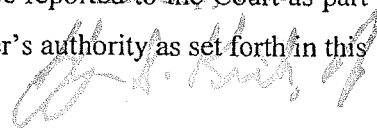
5. That said Receiver be and hereby is authorized, empowered and directed to take control, possession and charge of said Respondent and its assets, wherever located, and manage and continue the administration and oversee the Respondent and to reasonably preserve the same, and is hereby vested with title 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.


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Counties of Providence & Bristol
Providence, Rhode Island

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

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Providence, Rhode Island

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.

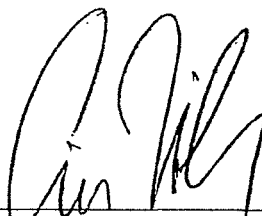
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Counties of Providence & Bristol
Providence, Rhode Island

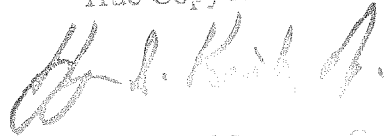


Stern, J. BRIAN P. STERN
October 27, 2017 ASSOCIATE JUSTICE



Clerk, Superior Court CARIN MILEY
October 27, 2017 DEPUTY CLERK

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Counties of Providence & Bristol
Providence, Rhode Island

EXHIBIT 3

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

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

VS.)

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

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

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON JULY 26, 2018

APPEARANCES:

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

GINA GIANFRANCESCO GOMES
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 19, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

1 THURSDAY, JULY 26, 2018

2 MORNING SESSION

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

5 THE CLERK: Your Honor, the matter before Court is
6 PC-2017-3856, St. Joseph Health Services of Rhode Island
7 vs. St. Joseph Health Services of Rhode Island Retirement
8 Plan. This is on for the Receiver's fifth interim and
9 request for fees. Would counsel please identify
10 themselves for the record.

11 MR. DEL SESTO: Good morning, your Honor. Stephen
12 Del Sesto, Court-Appointed Receiver.

13 MR. WISTOW: Max Wistow, Special Counsel.

14 THE COURT: Good morning. The Court has received
15 and reviewed the Receiver's fifth interim report as well
16 as the fees submitted for an in-camera review. The Court
17 had the opportunity to review them last evening.
18 Counsel, you may proceed.

19 MR. DEL SESTO: Thank you, your Honor. Your Honor,
20 we are here this morning on the Receiver's fifth interim
21 report and the fourth interim request for fees. I was
22 last before your Honor on June 28th on the fourth interim
23 report. There was no fee request associated with it
24 which is why there's a discrepancy between the report and
25 the fee application. As your Honor recalls, the fourth

1 interim report was unplanned, but because of the filing
2 of the lawsuits by Special Counsel in both the Federal
3 and State court, we felt it was important to provide the
4 Court with a more contemporaneous update before the
5 filing of the lawsuits, so we have about a month's worth
6 of activity that has happened since the last report.

7 In addition, your Honor, I am going to obviously go
8 over the events, comings and goings in the past month.
9 We do have an issue that propped up yesterday, which I
10 would like to address the Court, but I will do that at
11 the end of the report.

12 As stated, we were here on the fourth interim report
13 on June 28th. Since then with regard to the general
14 administration of the estate, I have fully engaged the
15 actuarial firm of Gabriel Roder. I'll refer to them as
16 G.R.S. I can't remember as I stand here the S, but
17 G.R.S. is the actuarial firm. They have agreed to step
18 in as the plan's actuary and a term that is identifiable
19 as a benefits administrator. What that means is they
20 will perform the administrator functions of the plan
21 including the valuation of processing of applications,
22 the production of election forms and dissemination of
23 those, all administration functions, change of address,
24 change of beneficiary, things like that, for the
25 participants who are actively in the plan right now

1 collecting money. They will also be in close contact
2 with Bank of America, who sends out the payments on a
3 monthly basis and Mercer Investments, who is the
4 investment advisor. I am happy to say they have a very
5 large firm. I think the Court is familiar with them, and
6 I'm happy to say that the pricing that they gave me -- I
7 had spoken to three different actuarial firms and G.R.S.
8 was substantially better than the other two that I had
9 spoken to, and, essentially, matched the costs and
10 expense that the plan was incurring with regard to those
11 services. They even had, for example, a setup fee that
12 they customarily charge of \$20,000, which they waived in
13 this case to help with this plan under these
14 circumstances.

15 In addition to that, your Honor, the Special Counsel
16 and the other parties to the litigation there have been
17 stipulations that have been entered. For example, a
18 stipulation of the parties in the State court action has
19 been entered basically agreeing to a stay of that action.
20 There has been a stipulation in the Federal court action
21 as to answers. I believe August 14th is the date that
22 answers will be due, and other stipulations I will call
23 it of an administrative nature. So Special Counsel and
24 the Defendants have all been talking about the procedural
25 aspects of that case and how its proceeding. As far as

1 I'm aware there is no Rule 16 conference yet scheduled,
2 but, obviously, if Special Counsel has information that I
3 am not aware of, he can correct that on the record, your
4 Honor.

5 Beyond that, your Honor, those cases are proceeding.
6 I don't want to get into the substance of what's going on
7 for obvious reasons related to both. I believe with
8 regard to the cy pres action, there has been a scheduling
9 order put in place that your Honor is aware of, and
10 Special Counsel will have the opportunity to respond to
11 any objections to the motion to intervene in accordance
12 with that schedule.

13 Beyond that, your Honor, we continue to monitor. I
14 have a meeting scheduled with Mercer for early in August,
15 a face-to-face meeting. They are coming up from St.
16 Louis so we can discuss the plan, the investment
17 structure, things of that nature. I remain in contact
18 for the Bank of America, who is the non-discretion
19 trustee of the assets, and I continue to communicate with
20 the pension holders. We meet on a monthly basis still at
21 the Rhodes on the Pawtuxet. In addition, I respond to
22 various phone calls -- me or my staff respond to various
23 phone calls and e-mails.

24 I am happy to say since the litigation that has been
25 filed, with the exception of one matter that I will raise

1 in a few seconds, things have been relatively quiet from
2 an administrative standpoint. I can say that it's my
3 understanding that the pension holders hopefully through
4 the website, the meetings, and what not, have been kept
5 as informed as they possibly could be of the goings on in
6 this case. I try to make myself and my team as
7 accessible as possible for that purpose and it seems to
8 be the feeling by the pension holders that I have spoken
9 to that they feel for the first time in a long time they
10 finally have an understanding of what is happening and I
11 am provided with a regular update of that, not only in
12 these reports but through the website and the meetings.
13 Unless the Court has any questions.

14 THE COURT: Just in terms of the last report, the
15 discussion in terms of is there any type of uptake in
16 payments going out and where do we stand in terms of
17 pending applications? I know we opened it up for people
18 to file.

19 MR. DEL SESTO: That's correct. During I'll call it
20 the stay portion of the application processing we were
21 paying out approximately \$850,000 a month. Based on the
22 processing of applications, which the Court permitted
23 those to be processed as of the end of March, so that
24 began the beginning of April, the expense of the estate
25 has increased by about \$100,000 per month, maybe a little

1 bit more. The initial first round of payments based on
2 those applications being processed showed a much higher
3 uptake because there was some retroactive money that was
4 due, but, generally, it's about \$950,000 a month right
5 now.

6 In connection with the issue that I'm going to
7 discuss with the Court on Angell --

8 THE COURT: Why don't we address it in the contents
9 of that. It sounds like, you raised it a few times, it's
10 an issue you want to address.

11 MR. DEL SESTO: So Angell Pension Group, who had
12 been engaged by St. Joseph's Health Services of Rhode
13 Island to be the actuary for the plan, and to be --
14 again, the term I'll use is benefits administrator. They
15 handle all the administrative operations. For obvious
16 reasons, although I won't state them right now, we sued
17 them both in Federal and State court. I felt and Special
18 Counsel felt, that it was in the best interest of
19 everybody that they be removed as the plan actuary
20 benefits administrator. Hence, the reason why I engaged
21 G.R.S. to step in and perform those functions.

22 In response to the letter advising Angell of the
23 change, and in that letter I advised them G.R.S. needs
24 thirty days, although I am not bound because I am not St.
25 Joseph's Health Services of Rhode Island. I am the

1 retirement plan and the Receiver for that plan. As a
2 courtesy, I gave the same thirty days that that agreement
3 provides in terms of termination of their services and
4 asked them that I hoped and expected that they would
5 cooperate and coordinate with G.R.S., the quarterly
6 transfer of information so that G.R.S. would be on line
7 as of August 1st in performing all of those functions for
8 the plan. In response to that letter yesterday morning,
9 I received a letter from --

10 THE COURT: When was that original letter?

11 MR. DEL SESTO: That was on July 17th, your Honor.

12 THE COURT: Okay.

13 MR. DEL SESTO: So in response to that letter
14 yesterday morning I received a letter from
15 Angell, not their counsel but the point person that I had
16 been dealing with up to that point, Peter Karlsen,
17 K-A-R-L-S-E-N. And, essentially, Mr. Karlsen indicated
18 that Angell Pension did not have any desire to continue
19 functioning, did not wish to cooperate with my request,
20 and, basically, stated that unless we dropped the lawsuit
21 and agreed to indemnify them as to the contract that they
22 had that St. Joseph's Services provides that they would
23 not be providing any information and assisting in any way
24 going forward effective immediately.

25 Shortly after that letter, about four hours later, I

1 received a second communication from Angell, which put in
2 my mailbox twenty-five applications that were pending but
3 had not yet been processed. The latest one was as of
4 April 3rd and there were some much more recent than that
5 and then approximately twenty-five to thirty
6 administrative forms, change of address, change of banks,
7 change of direct deposits, things of that nature.
8 Basically saying here is what has been left open, here is
9 what we have not done yet, it's now your responsibility
10 to take care of this and we will provide you this
11 information every two weeks as we receive it.

12 Obviously, that's a position that I am not happy to
13 be put in. It's my opinion based on my reading of that
14 letter that Angell is merely using the plan and their
15 participants as leverage to try to get some advantage or
16 dismissal of the lawsuit. I have drafted a letter in
17 response which I expect to go out today. There were
18 issues raised about the litigation so I asked Special
19 Counsel to review that letter and supplement as he
20 believes may be necessary with regard to the litigation
21 piece.

22 I want to be clear both to the Court and I am going
23 to make it clear in the letter in response that the issue
24 that they are raising is an issue that is dealing with
25 the administration of this estate and that their response

1 is interfering with that administration of the estate.
2 As I stated to them, the thing I am most concerned about
3 is I do not want there to be an impact on the pension
4 holders as a result of the change from Angell to G.R.S.
5 Based on their position, it seems to me that it is
6 inevitable that there will be an impact because between
7 now and the time that G.R.S. is fully engaged, and when I
8 say fully engaged, I mean they need the information from
9 Angell in order to do their job. As of right now they
10 don't have anything from Angell. They have information
11 that I provided and that I received from Angell, but
12 there is more detailed data regarding the history of each
13 one of these planned participants relative to their
14 employment and things of that nature that is absolutely
15 essential to allow those applications to be filed. That
16 is the data that is used to determine what their benefit
17 actually is.

18 So I'm concerned this will cause a disruption in
19 that. I am hopeful that letter will go to Angell today
20 and we will ask them by the close of business today to
21 confirm the April 1st deposition. If not, I told them
22 that I will do whatever I can with this Court's
23 permission to hold them accountable, compel them to
24 provide the information, which is the information that is
25 the plan's information, and that would include a motion

1 to compel. I would possibly seek contempt against them,
2 sanctions. And I've also advised with this Court's
3 authority I will report them to the disciplinary board
4 for actuaries. That's the most recent piece of
5 information that has come up in response to your question
6 earlier.

7 THE COURT: Before we get to that, does Angell have
8 counsel in this proceeding?

9 MR. DEL SESTO: They do not have counsel in the
10 receivership matter. They have engaged local counsel in
11 the State court litigation action. They have engaged, I
12 believe, out-of-state counsel that is going to appear on
13 their behalf in the Federal matter and I don't believe
14 they are involved in the cy pres.

15 THE COURT: We're not dealing with the State
16 litigation or the Federal litigation. We're dealing with
17 the administration and receivership. The answer is
18 Angell has not entered an appearance?

19 MR. DEL SESTO: Not in this case.

20 THE COURT: What about the person Karlsen? Is he a
21 Rhode Island licensed attorney?

22 MR. DEL SESTO: He is an attorney. I have not
23 checked the Rhode Island Bar Association.

24 THE COURT: Okay. Check and let me know.

25 MR. DEL SESTO: I will, your Honor.

1 THE COURT: So, basically, you got a letter from
2 Angell, in my words summing it up, saying we're not going
3 to cooperate with the transition unless you drop the
4 lawsuit?

5 MR. DEL SESTO: Essentially, that's correct, your
6 Honor.

7 THE COURT: Okay. I understand you're going to send
8 a letter out hopefully today and I would also ask that
9 you inquire of Angell if they have counsel who is going
10 to enter an appearance in the receivership proceeding.
11 Again, I have the Receiver's representations of the
12 letter at this point. I don't know if there is another
13 side. Certainly where this is going if there is not
14 cooperation as far as the plan participant data this will
15 end up very quickly on an emergency basis before this
16 Court. So I want to be clear -- if the Court can have a
17 copy of the letter and counsel can find out whoever
18 signed the letter. I don't know whether they signed it
19 as counsel or an employee or whatever else. We need to
20 know who we're dealing with at this point. What you're
21 representing to the Court is extremely concerning.

22 MR. DEL SESTO: It is, your Honor, and I will get
23 that letter over to you, and, hopefully, we will clear up
24 all of the questions in addition to whether or not Mr.
25 Karlsen is licensed in the State of Rhode Island.

1 THE COURT: Counsel.

2 MR. WISTOW: In apropo of the letter, a copy was
3 sent to Mr. Boyajian, who is local counsel in the
4 lawsuits, and who I have spoken to, not on this subject
5 matter. This just happened yesterday. I have spoken to
6 out-of-state counsel. And I'm wondering, it's up to the
7 Receiver and the Court, if I should perhaps give a call
8 to those lawyers and tell them this is an emergent
9 situation.

10 THE COURT: I would suggest absolutely. The more we
11 can do to get the attention of Angell's counsel. Again,
12 I don't know whether this came in house from an employee
13 there, whether counsel was consulted. Again, anything we
14 can avoid to go down the path of wasting the Court's time
15 and dealing with any issues of participants, I strongly
16 encourage it.

17 MR. DEL SESTO: Thank you, your Honor. So I guess
18 in response to your question as to applications pending,
19 I'm going to assume that the e-mail I received yesterday,
20 which included twenty-five applications, is the universe
21 of the applications that remain to be processed. I've
22 looked at those. It's very difficult for me to tell,
23 based on the information that I have been provided, as to
24 whether or not, for example, an application that is dated
25 April 3rd, whether or not that was received on April 3rd

1 or whether it was received at some time prior. But it
2 appears from that e-mail that there are about twenty-five
3 applications as of yesterday that have not been
4 processed.

5 THE COURT: And what about the August 1st date you
6 were talking about for G.R.S. taking over, was that based
7 on the receipt of certain information?

8 MR. DEL SESTO: Yes, it was.

9 THE COURT: It sounds like that date is in jeopardy
10 at this point.

11 MR. DEL SESTO: It may be. Although, G.R.S., I had
12 multiple conversations with them. I can say they were
13 very very responsive yesterday, and in the course of
14 those conversations they did indicate, for example, I
15 have a list of pension participants based on this case
16 and providing notice, they can start doing some of the
17 work in terms of notification to the pension holders with
18 that list. So I am providing them with that list. I am
19 providing them with all of the information that I have
20 from Angell. But, again, one piece of information I do
21 not have that will be critical for benefit application
22 assessment and analysis is the historical data for these
23 pension participants in terms of their employment. So to
24 the extent we receive any application, not only the
25 twenty-five that I received yesterday, but any going

1 forward, it will be very very difficult and slow moving
2 for G.R.S. to do that work because, essentially, we will
3 have to contact the hospital directly and see if they
4 have the documentation and hopefully that documentation
5 will be complete and accurate. That does cause a problem
6 for us. Although G.R.S. can get into the process very
7 quickly with some of the information, there is definitely
8 large pieces of critical information that will not allow
9 them to do their job.

10 THE COURT: Okay. Let's see where we are. As I
11 said, if we're dealing with pension holder information
12 and history, which we need to transfer over to G.R.S.,
13 this is emergent as far as the Court is concerned. I
14 will waive the regular notice requirements and let's
15 schedule a hearing as soon as possible.

16 MR. DEL SESTO: Hopefully, your Honor, I will get a
17 positive response.

18 THE COURT: Otherwise, I am open tomorrow.

19 MR. DEL SESTO: Okay.

20 THE COURT: Thank you very much.

21 MR. DEL SESTO: Thank you. I appreciate that.

22 Unless you Honor has any other questions with respect to
23 the report portion, I can move over to the fee's portion.

24 THE COURT: That's fine.

25 MR. DEL SESTO: Your Honor, this is the fourth

1 request for fees. I have provided invoices to your Honor
2 both from the Special Counsel and myself in redacted
3 form. The fees for the Receiver span the period of May
4 1st through June 30th. Fees for Special Counsel span May
5 1st through June 17th. As your Honor may recall, under
6 the terms of the engagement with Special Counsel once the
7 lawsuits were filed it moves over to a contingency-based
8 structure, although the estate will still continue to pay
9 those out-of-pocket expenses, reimburse Special Counsel
10 for those out-of-pocket expenses. For the time period of
11 May 1st through June 17th Special Counsel has fees in the
12 amount of \$108,750 and hard expenses totaling \$10,223.76,
13 for a total of \$118,973.76. For the period of May 1st
14 through June 30th the Receiver has fees and expenses
15 totalling \$62,000 and hard expenses of \$29.61, for a
16 total of \$62,029.61. And in connection with this report,
17 I am asking that the Court approve the fees for the
18 Special Counsel as well as for the Receiver and authorize
19 me to make payments from the estate fund which are
20 approximately \$300,000 at this point. Actually, I can
21 gave you the exact amount, your Honor.

22 THE COURT: If I can clarify, \$108,750 that's --

23 MR. DEL SESTO: That's fees only.

24 THE COURT: Of the Special Master?

25 MR. DEL SESTO: Of Special Counsel. Special Counsel

1 has fees of \$108,750.

2 THE COURT: That's fine. The documents which were
3 the Special Master's fees that I reviewed last evening
4 was the other amount. I just wanted to make sure.

5 MR. DEL SESTO: That's correct. So I am asking
6 approval and authorization to pay those. I have
7 approximately \$360,000 in the estate, so there are
8 sufficient funds to pay those, and I am asking for
9 authorization. Generally speaking, your Honor in
10 connection with today's hearing, I am asking for the
11 Court to confirm, approve, and ratify my acts and doings
12 as of the fifth interim report and approve the payment of
13 fees, costs, and expenses of the Special Counsel and the
14 Receiver, and to keep the matter open pending further
15 order of this Court.

16 There is one matter I did forget to mention to your
17 Honor. We had deferred until today a recommendation on
18 the adjustment of benefits for the reasons stated in my
19 original recommendation back in March. I am asking that
20 the Court continue to further defer a recommendation on
21 that until at least the sixth interim report which we
22 will schedule for approximately sixty days from today.

23 THE COURT: Very good. So the deferral portion is
24 granted. Before I rule I would like to give Special
25 Counsel if he wishes the opportunity to be heard.

1 MR. WISTOW: Thank you, your Honor. Just very
2 briefly, as your Honor is aware, there will be no more
3 application for fees from Special Counsel as we converted
4 to contingency. I wanted to add a couple of really minor
5 points to bring everybody up to date of the timing of the
6 Federal lawsuit, it's correct there is no Rule 16
7 conference that has been set up, but we've just heard
8 from the Court that we are going to have a conference
9 this Monday, July 30th, because there are fourteen
10 defendants and they have all been in touch with me saying
11 each one will be filing a motion to dismiss and they want
12 more time yet than they have had, and, obviously, this is
13 something, as your Honor knows, in the Federal court we
14 can't agree to continuances beyond thirty days. So we're
15 going to have a meeting with the court and try to work
16 out a schedule for the responses by the Defendants and
17 the time for us to reply and presumably we'll have a
18 discussion about the Rule 16 conference.

19 The only other minor issue is in the cy pres
20 proceeding that is pending before your Honor, your Honor
21 has entered an order regarding the stay of withholding
22 money of approximately \$8.7 million pending the various
23 other lawsuits, and in that order there is also a time
24 for us to reply to Mr. Karns' objection. I've talked to
25 Mr. Karns about that. His objection is forty pages.

1 It's quite complex. We've got other things going as you
2 can see and I've talked to Mr. Kahn and he graciously
3 agreed to allow us to extend our time to respond to him
4 to August 14th, which we represent the modification to
5 your Honor's June 29th order he has indicated he's
6 agreeable to that extension and I advised him I would
7 have to get approval from you.

8 THE COURT: That amendment is approved. If you can
9 just submit an amended order.

10 MR. WISTOW: Thank you, your Honor.

11 THE COURT: The Court has received and reviewed the
12 fifth interim report and request for fees and expenses by
13 the Special Master and those of the Special Counsel. The
14 Court based on the report filed accepts the report
15 ratifying the acts and deeds of the Special Master and
16 Special Counsel. The Court has also had the opportunity
17 to review the fees and expenses of the Special Counsel as
18 well as the Special Master. As I stated, I reviewed the
19 Special Master's fees last evening. This Court finds
20 based on a review that the fees and expenses are fair and
21 reasonable for the benefit of the estate at this point
22 and those are approved. I understand there is cash on
23 hand sufficient to pay those fees and expenses and
24 Attorney Del Sesto is authorized to make those payments
25 upon a signed order from this Court.

1 As I mentioned when we were talking about the e-mail
2 issue before, the Court is available tomorrow if
3 necessary for an emergency conference and any other time,
4 but certainly based on the representations that have been
5 made by Attorney Del Sesto today, this is certainly a
6 significant issue that needs to be brought to a head and
7 resolved one way or another and it's my sincere hope that
8 between Angell and the Special Master something can be
9 worked out very quickly that will not adversely affect
10 the pension participants and will allow the account to be
11 fully assumed by Gabriel Roder going forward. Is there
12 anything else, counsel?

13 MR. DEL SESTO: No, your Honor. Thank you.

14 THE COURT: Thank you. The Court is in recess.

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

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