

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 MARCH 29 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 27, inclusive, are a true and accurate transcript of my stenographic notes.



GINA GIANFRANCESCO GOMES  
COURT REPORTER

1 THURSDAY, MARCH 29, 2018

2 MORNING SESSION

3 THE COURT: Madam Clerk, I ask that you please call  
4 the case.

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

12 MR. DELSESTO: Good morning, your Honor. Stephen  
13 DelSesto, court appointed Receiver.

14 MR. WISTOW: Max Wistow, special counsel.

15 THE COURT: Thank you. This matter is with respect  
16 to the report that was on several weeks ago. My  
17 apologies for having to cancel it at the last minute, but  
18 we have rescheduled for today's date, and there has been  
19 an additional application by the Receiver in this case.  
20 So I think the best place to begin is with the Receiver  
21 and also special counsel may make such presentations to  
22 the Court.

23 MR. DELSESTO: Thank you, your Honor. If the Court  
24 does not have a preference on the order of presentation  
25 this morning, your Honor, I would just assume present in

1 the order they were filed and start with the  
2 recommendation.

3 THE COURT: That's fine, and I just ask that you  
4 speak into the microphone.

5 MR. DELSESTO: Okay. Thank you, your Honor. This  
6 morning, your Honor, I am here on my initial  
7 recommendation regarding monthly benefit modification as  
8 well as a release of the stay that this Court imposed  
9 relative to the processing of benefit payment  
10 applications. The reason I am referring to this as an  
11 initial recommendation, your Honor, is because as your  
12 Honor is aware this is a fluid situation and there may be  
13 a need to come back to the Court and ask for some type of  
14 a modification different than what I'm asking for today  
15 so this is an initial. This is not anything that is  
16 intended to be a permanent request, rather a temporary  
17 request at this time.

18 Your Honor, rather than going through the full  
19 details of the report, which I am sure the Court is well  
20 aware of. I will just briefly give some background. As  
21 the Court recalls, there was initially a hearing set down  
22 for permanent Receiver on October 11th. However, prior  
23 to that date the Court asked for an emergency hearing  
24 basically just seeking a status based on the significance  
25 of this matter on September 8th. At that hearing it was

1 discussed as to whether or not the modifications that had  
2 been proposed by the petitioners would be going forward  
3 on October 11th. At that time I indicated to the Court  
4 that I did not think I had enough time by October 11th to  
5 make such recommendation, and I asked this Court to allow  
6 that decision to be deferred until some time after  
7 February 1, 2018. The Court agreed to that. Since then,  
8 your Honor, I was appointed permanent Receiver. We did  
9 have a hearing on October 11th. I was not appointed on  
10 that day because I asked the Court to defer that as well  
11 while some administrative issues were dealt with and I  
12 was ultimately appointed thereafter.

13 Since September 8th, actually, since the beginning  
14 of this case, your Honor, I have been reviewing a lot of  
15 financial information, documents, trying to understand  
16 what may be the best way to deal with benefits here. As  
17 your Honor is aware, as your Honor approved, we put  
18 together an advisory committee, which up until very  
19 recently, had been meeting on a weekly basis. In  
20 addition to that, your Honor, I have been meeting with  
21 the pension holders as a group at the Rhodes on the  
22 Pawtuxet on a monthly basis giving updates but also  
23 trying to get a feel for the most appropriate thing to  
24 happen here. Based on the circumstances and the  
25 information that I have with me at this point, your

1 Honor, as I stated in my recommendation, my  
2 recommendation is that no adjustment in benefits be made  
3 at this time and barring any significant event that would  
4 change my thought process between now and the next 90  
5 days, to leave that no change or no adjustment in place  
6 for 90 days.

7 In my report, your Honor, in my recommendation, I  
8 set forth four primary reasons. There are many things  
9 that went into coming up with that recommendation. There  
10 are four primary things. One, obviously, I viewed the  
11 market performance. I am happy to say that since August  
12 of 2017 when I was appointed, notwithstanding the fact  
13 that we have paid out benefits of approximately \$850,000  
14 a month, we started this case with approximately \$86  
15 million in assets with the plan and as of today we still  
16 have about \$85 million in assets with the plan. So  
17 that's an indication that notwithstanding seven, eight  
18 months of payments at \$850,000 that the investment  
19 portion of the assets or the investment allocation of the  
20 assets have been performing relatively well, keeping pace  
21 with the amounts of money going out. Notwithstanding  
22 that, the market has become more volatile over the past  
23 few months. So with that in mind, I contacted the  
24 discretionary investment manager and I am having  
25 discussions with them. I had expected another call with

1           them. I had two thus far. I expect another call within  
2           the next week.

3           THE COURT: Is that Mercer?

4           MR. DELSESTO: That is Mercer, your Honor. To  
5           discuss the allocation of the investments to make sure  
6           that the allocation that we currently have is appropriate  
7           based on what the current market has been doing and what  
8           Mercer, as the investment professional, believes will  
9           happen both short term and long term. Based on those  
10          discussions, I think we are still -- our allocation  
11          currently is still in a place where it is appropriate for  
12          the market and appropriate for this plan. Obviously, if  
13          there is a change in that, I will bring that to the  
14          attention of the Court through some filing, but at this  
15          time everything seems to be that there is volatility but  
16          there is nothing yet to be concerned about.

17          In addition, your Honor, in my recommendation I also  
18          asked the Court to release the stay with benefit  
19          application. That is a consideration as to whether or  
20          not benefits should be adjusted because, obviously, the  
21          release on application processing will increase the  
22          monthly payments due to pension holders.

23          THE COURT: Can you just explain that a little bit?

24          MR. DELSESTO: As of right now, your Honor, or as of  
25          August, 2017 we were paying out benefits on a monthly

1 basis of \$850,000. The Court stayed the application,  
2 meaning that anybody who had not yet applied and had gone  
3 through the application process approval, which takes  
4 approximately four weeks, was going to continue to get  
5 their monthly benefits, but any new applications would  
6 not be processed and they would not be receiving checks.  
7 We did, obviously, log those applications. People are  
8 still allowed to apply. We just weren't processing.  
9 Each application, your Honor, that is processed results  
10 in a benefit being paid out on a monthly basis once it  
11 has been processed.

12 As of the end of February, we had 139 applications  
13 that had been filed after the stay had been imposed. So  
14 if all of those were to be filed, I believe the estimated  
15 number -- because until we actually go through the  
16 application process, we don't won't have a hard number.  
17 It's estimated that if all 139 applications are processed  
18 and allowed, that will increase the monthly outlay of  
19 cash by \$65,000. So every application that is processed  
20 results in more money going out on a monthly basis  
21 because now a new pension holder is now collecting  
22 benefits that was not collecting benefits before.

23 THE COURT: Understood.

24 MR. DELSESTO: Obviously, that is consideration in  
25 whether or not an adjustment needs to be made because the



1 more benefits that are paid out, the greater the drain on  
2 the cash and the faster the drain on the plan's assets.  
3 Based on my recommendation, your Honor, and assuming all  
4 of those applications are processed and it does estimate  
5 approximately \$65,000 that would mean over the next 90  
6 days the plan will pay out \$195,000 more than it has  
7 currently been paying out, which is approximately point  
8 002 percent of the overall plan assets. While that  
9 certainly is a significant number, I do not believe that  
10 it is so significant that will require an adjustment down  
11 of the benefits beyond 100 percent. I think it's prudent  
12 to leave the benefits at 100 percent notwithstanding that  
13 additional draw.

14 I will note for the Court that as of the end of  
15 February, putting aside those 139 applications, there  
16 were another more than 600 plan participants who are  
17 eligible to apply. Obviously, that would be a  
18 significant event if all of those individuals apply.  
19 That would increase the monthly outlay by approximately  
20 \$175,000 over and above the 65 I just spoke about. If  
21 that were to happen, if everybody were to apply, then  
22 that may need me to come back and reconsider things and  
23 come back to the Court. As of right now I have the 139  
24 applications and I don't believe that amount would  
25 require an adjustment.

1           The last two issues, your Honor, are the most  
2           critical in my analysis. One is the work that Attorney  
3           Wistow and his office have been doing with regard to the  
4           investigation, which goes to whether or not there are any  
5           funds to be recovered. Based on the investigation that  
6           Attorney Wistow and his office have been doing and it has  
7           been, as your Honor knows, a substantial undertaking with  
8           several hundred thousand documents. I think my last  
9           communication with Attorney Wistow's office was they are  
10          up to about 800,000 pages that have been reviewed thus  
11          far. They believe that -- well, based on the report that  
12          had been given to me, I believe that it's prudent at this  
13          point to not make an adjustment because we are very close  
14          to understanding what exactly there may be in terms of  
15          claims and I need to have a discussion with Attorney  
16          Wistow and his office regarding what potential recovery.  
17          Obviously, if there is a potential recovery that is a  
18          very high number, it's less likely that a benefit  
19          reduction needs to happen. If it's a low number, then we  
20          have to review it. At this point in time, your Honor,  
21          based on the discussions I had with the special counsel,  
22          I do not believe that it is prudent to make an adjustment  
23          because we are very close to understanding and that will  
24          give us more information to make that decision.

25                 The last one, your Honor, is, quite frankly, the

1 most critical. It is our discussions with the Pension  
2 Benefit Guarantee Corporation, which is the federal  
3 agency that insures ERISA-based plans. This is a case,  
4 your Honor, as you know, the plan had been treated as a  
5 church plan. There are arguments that special counsel  
6 has formulated that would say that this plan actually  
7 should be or should have been treated as an ERISA plan.  
8 I am very aware of the potential penalties that ERISA  
9 would impose on a plan if I were to make some changes.  
10 So although there has not been any decision on that,  
11 there are ongoing discussions with the P.B.G.C. my  
12 concern would be if the plan is determined to be or had  
13 been an ERISA plan and I recommend a cut to this Court  
14 and the Court approves it that we might be in violation  
15 of ERISA and that may result in penalties and a result  
16 that would not be beneficial to this plan.

17 So while we continue those discussions and they are  
18 continuing, special counsel has produced a large number  
19 of documents to the P.B.G.C. we are going to be making  
20 additional documents. They are in a discovery phase. I  
21 know they subpoenaed other parties as well. While we are  
22 continuing with those discussions with the P.B.G.C., I  
23 don't want to ask this Court to approve anything that  
24 would ultimately possibly prove to be a misstep with  
25 regard to ERISA. That, quite frankly, your Honor, is the

1 most critical because even if I believe that a cut might  
2 be appropriate at this time, I would probably still be  
3 recommending not doing it based on that reason alone.

4 All in all, your Honor, my recommendation with  
5 regard to benefits, is that at this time we continue to  
6 maintain the status quo, no reduction in benefits at this  
7 time at least for another 90 days, unless there is some  
8 substantial event that takes place that would alter the  
9 decision and that would have to be an event either with  
10 regard to the finances, the market, something like that  
11 where we had to revisit.

12 In addition, and I did touch on it, your Honor, with  
13 regard to the benefit reduction, I am asking the Court to  
14 release the stay with regard to the processing of  
15 applications. Quite simply, your Honor on September 1st  
16 the Court clarified the order appointing Receiver saying  
17 that the stayed provision of that order applied to the  
18 processing of applications. That in my opinion was  
19 necessary at the time because I was evaluating the plan,  
20 I was evaluating its assets, and I was evaluating its  
21 performance and I felt if there were constant movement in  
22 the plan based on applications being processed and  
23 approved that it might make my task a little more  
24 difficult. I am beyond that at this point, your Honor.  
25 I have reviewed. I am here with a recommendation

1 recommending no cuts, and I believe the time to hold  
2 those applications is no longer necessary.

3 In addition, going back to the comments that I made  
4 earlier about the P.B.G.C. and running afoul of ERISA,  
5 similarly, I believe that the application should be  
6 processed so that we are -- if ultimately this plan is  
7 deemed to be an ERISA plan that we don't run afoul of any  
8 of its requirements or regulations, both because I have  
9 done my analysis and I am here recommending no cut to  
10 benefits as well as the fact I want to make sure we don't  
11 make any missteps that would unintentionally compromise  
12 the plan and our ability to recover in that scenario. I  
13 am recommending to the Court no cut in benefits and that  
14 the Court release the stay with regard to applications so  
15 those applications that we currently have in hand can be  
16 processed and those individuals can begin receiving  
17 monthly benefits.

18 THE COURT: Just to kind of sum up, you used more  
19 acronyms than anything else. Originally there was an  
20 application when the receivership was filed for a  
21 potential benefit cut that could be as much as 40  
22 percent.

23 MR. DELSESTO: That's correct.

24 THE COURT: The Court then put that on hold and said  
25 we would take it up after I believe it was February 1st

1 or so. Also, at the beginning there was some  
2 clarification of what would happen with those people that  
3 had filed application but they have not been processed at  
4 that point, and the Court, in accordance with its initial  
5 order, stayed those and said we are going to put those on  
6 hold. What I'm hearing is really three reasons why at  
7 this point you believe the Court should not entertain a  
8 cut and the Court should allow applications that have  
9 been filed that are on hold and possibly new applications  
10 to be filed with the state. One, over a short period of  
11 time, and I wished we engaged the market over six months  
12 or so, we have about the same amount of money even with  
13 benefit payments. But, more importantly it sounds like,  
14 and I would like to hear from the special counsel at some  
15 point in terms of what he can or cannot share, but we're  
16 getting to the point where we progressed with the  
17 investigation. It probably makes sense if we're getting  
18 there to come to some conclusions before we start cutting  
19 benefits. And the third, most importantly, is there is  
20 this ERISA out there and something called the Pension  
21 Benefit Guarantee Corporation that provides that there is  
22 insurance provided for a certain type of pension plan  
23 that historically this plan has not been part of, but  
24 there are discussions with the Federal Pension Benefit  
25 Guarantee or at least a possibility that we may make a

1 claim that there is entitlement to benefits. And if we  
2 make a reduction in benefits or if we stop people from  
3 applying, that may have a negative affect on what the  
4 recovery will be.

5 MR. DELSESTO: That's a perfect summary.

6 THE COURT: Very good. I can use all those big  
7 words too.

8 MR. DELSESTO: Had I done that, my presentation  
9 would have been a lot shorter.

10 THE COURT: That's the good thing about sitting up  
11 here. So would either the -- would special counsel like  
12 to be heard at this point or later on in this hearing and  
13 then the Court hasn't received any objections, but,  
14 certainly, if there is, counsel will let me know.

15 MR. DELSESTO: I will mention, obviously, I do want  
16 special counsel and special counsel does want to address  
17 the Court whether it be now or during the reporting  
18 portion. It's up to the special counsel. I do want to  
19 let the Court know that all counsel that have been  
20 involved in the advisory committee are aware and this  
21 recommendation has been discussed, a point that everybody  
22 wanted the Court to be aware of and I do not have any  
23 objection to, I think it's appropriate, is the fact there  
24 was no objection filed with regard to this recommendation  
25 should not be construed as anything other than we agree

1 that we should wait a little bit longer before anything  
2 is done. So there is a complete reservation of rights  
3 that a party's silence today should not held against them  
4 if they want to take a position.

5 THE COURT: I think it's appropriate to just include  
6 a reservation of rights paragraph in any order. I agree  
7 we're talking about a little bit of a moving target at  
8 this point.

9 MR. DELSESTO: Exactly, your Honor.

10 THE COURT: So you let me know if you want to move  
11 forward or if you want to turn it over to the Special  
12 Master?

13 MR. DELSESTO: I am happy to turn it over to anybody  
14 who wishes to speak on the recommendation, your Honor.

15 THE COURT: Good morning.

16 MR. WISTOW: Good morning, your Honor. I am very  
17 mindful how concerned the participants in the pension  
18 plan are as to what's going on and how confusing this  
19 whole situation is. I just want to speak very, very  
20 briefly on the issue of the Pension Benefit Guarantee  
21 Corporation as it has been brought up. The investigation  
22 has been proceeding in a sense on two parallel tracks.  
23 One is can we get the insurance coverage, and the other  
24 is if we can't, are there are other sources, defendants  
25 really, to make the pension fund whole. We have been to



1 Washington. We met with the P.B.G.C. they have been  
2 furnished with request materials that we have been able  
3 to give them as a result of my investigation and the  
4 subpoenas that we've processed. As we go through the  
5 documents, which we continue to do, we are finding  
6 additional documents that we think will be relevant to  
7 the P.B.G.C.'s decision as to whether or not this is a  
8 covered plan and we intend to supplement our submissions.

9 I know everybody in this courtroom is saying, you  
10 know, when is this coming to an end. When are we going  
11 to know what exactly the plan is here. All I can say is  
12 the following: The materials that we're looking at are  
13 mammoth. When we first started getting responses to our  
14 subpoena, the first 60 days, as your Honor knows, we were  
15 in the Court almost every week asking the Court's  
16 assistance, which we received, to force disclosure by  
17 various components. In the first 60 days, that was from  
18 November 8th to January 8th we received about 97,000  
19 pages of documents. As a result of the subpoenas, the  
20 motions rather, which were heard before your Honor, in  
21 the next 60 days through around March 8th we received an  
22 additional 566,000 pages of documents, and this is an  
23 ongoing process. In the last roughly ten days we got  
24 another 43,000 pages of documents. So we're well over  
25 700,000 pages to date. We're not finished going through

1       them. Some of them, of course, are duplicative, some are  
2       sort of perfunctory things, other are very, very dense  
3       documents that require extensive examination.

4             I can tell you that we're trying to set up a meeting  
5       with the Attorney General's Office for next week because,  
6       as your Honor knows, they filed privilege logs  
7       withholding information from us still. We're going to  
8       try to work that out I hope next week. If not, we will  
9       be back in court on that issue. I am just asking  
10       everybody to understand what a tremendous job it is to go  
11       through these documents. I anticipate that before we're  
12       finished with the subpoena process, I'm sure we're going  
13       to be getting at least another 200,000 documents because  
14       there has been a rolling production. St. Joseph's  
15       Hospital is still producing documents, Prospect  
16       CharterCare is still, and we're trying to move this as  
17       quickly as we can. I am delighted that at this point, at  
18       least, it looks promising enough that the participants  
19       can be kept getting their full pensions for the time  
20       being. With that, your Honor, unless you have some  
21       questions.

22             THE COURT: No. The only thing is I want to say I  
23       understand the amount of documents you're going through  
24       and the amount, you know, several months going through it  
25       seems to, I'm sure, all of the people collecting pensions

1 a long time. My direction very clearly to the Receiver  
2 and the special investigator is we're going to -- I want  
3 to do this right and if that means that it takes a little  
4 more time, I would rather get it right than rush to  
5 something especially because we are in the situation at  
6 least in the short term right now that we don't have to  
7 deal with a large cut across the board with the benefits,  
8 which certainly puts us in a very good position.

9 MR. WISTOW: I appreciate that, your Honor. I can  
10 say we have come to some tentative conclusions but  
11 because of the mass of documents that are unreviewed at  
12 this point and what is coming in, I want to make sure the  
13 conclusion I reach based on document A is not  
14 contradicted by further documents. That's the problem.  
15 Thank you.

16 THE COURT: Thank you very much. You may continue.

17 MR. DELSESTO: Thank you, your Honor. Barring any  
18 further questions on the recommendation, I will move over  
19 to the first interim record. I'm sorry. I mean the  
20 second interim report.

21 THE COURT: I just want to address with respect to  
22 the recommendations on the stay because, certainly, in  
23 terms of the no benefits cut at this point, that's just  
24 advising the Court as far as releasing the stay itself.  
25 I already pointed out if there is any order, that would

1 contain a full reservation of rights. Is there any  
2 counsel who wishes to be heard on that issue? Hearing  
3 none. So the Court does approve that form of relief.  
4 Why don't we move on to the next matter.

5 MR. DELSESTO: Your Honor, the second matter on  
6 before the Court is the Receiver's second interim report  
7 and request for fees, costs, and expenses in this case.  
8 Rather than duplicate anything that I just said, your  
9 Honor, I will advise the Court that we continue to do  
10 much research. As I have stated, I continue to meet with  
11 the benefit participants, the pension participants on a  
12 monthly basis. Those meetings have gotten shorter as we  
13 have gone along. They continue to be recorded and posted  
14 to the website. That way people who live out of state do  
15 have an opportunity to at least see what was discussed  
16 and hear the answers to the questions that been asked.

17 The advisory committee, as I stated, up until  
18 recently we were meeting on a weekly basis. The only  
19 reason why we stopped meeting on a weekly basis is  
20 because we asked for some substantial information from  
21 the actuary, which is necessary to further some of the  
22 discussions that had come with the advisory committee. I  
23 can say that the meetings with the advisory committee  
24 have been very, very beneficial. It's a very good group.  
25 It's a thoughtful group.

1           Obviously, this is a very significant issue, both  
2 generally, but also personally to many of them, and as a  
3 result their meetings can get emotional, as you can  
4 expect that they would, but at the end of the day,  
5 everybody has been very professional and very thoughtful.  
6 Any ideas that have come out have been -- some are ideas  
7 that you would think about but some have been extremely  
8 creative. Luckily, we're not at the point we're asking  
9 the Court to entertain any of them but it has been a  
10 helpful process.

11           I continue to speak with the benefits administrator,  
12 which is Angell Pension, who is also the plan actuary, on  
13 a regular basis to understand better what's going on in  
14 terms of applications coming in and things of that  
15 nature, as well as general administrative issues, change  
16 of address, but also with regard to the information that  
17 may be helpful to the advisory committee as they continue  
18 down its path.

19           As I stated during the recommendation presentation,  
20 I've had numerous discussions with Mercer, who is the  
21 discretionary investment manager. They have recently  
22 provided me with multiple scenarios which range from  
23 maintaining the current allocation of the plan to one of  
24 the more conservative aspects of it. In an eye towards  
25 looking what this plan should look like in terms of

1 investment allocation as the market possibly continues to  
2 evolve. As I stated, as of now there has been no change  
3 to the allocation, but I am continuing with those  
4 discussions as well.

5 Beyond that, your Honor, and some research that I  
6 have been doing on various issues that may be presented  
7 to this Court at future periods, the majority of the work  
8 that's been done in this case has been through special  
9 counsel and their office. The report goes through some  
10 detail on those efforts, mostly the presentations to this  
11 Court with motions to compel and things of that nature.  
12 So with that, your Honor, before I address the fees, I  
13 would like special counsel to be here to answer any  
14 questions the Court may have with regard to that  
15 investigation beyond what he already stated.

16 THE COURT: And I believe, you know, counsel gave a  
17 sufficient overview. I understand the issue right now  
18 is that there is an investigation going on. I think we  
19 heard in terms of the number of documents kind of  
20 process, and, hopefully, special counsel will be coming  
21 to some conclusions. Certainly, if there is anything  
22 else he wishes to add, but the Court is satisfied based  
23 on the report that you just gave.

24 MR. DELSESTO: Thank you, your Honor. I do want to  
25 mention, your Honor, as your Honor knows, I did set up a

1 dedicated website where all court filings as well as  
2 other plan documents and pieces of information have been  
3 posted so that any plan participant can access them at  
4 any time as often as they want to and they can print them  
5 all and things like that. That website appears to be  
6 very, very beneficial. I'm aware that many of the  
7 planned participants through their communications with  
8 me, because we also have the e-mail and phone lines set  
9 up, are visiting that website on a day-to-day basis to  
10 make sure things are not happening that they didn't know  
11 about yesterday. So that has been very, very beneficial.  
12 And I think it's important because as this Court stated,  
13 as your Honor stated right out of the gate, one of the  
14 most important aspects of this case is transparency.  
15 Making sure that the people that are affected by what is  
16 going on here, understand what's going on at least as of  
17 August going forward and that website has been critical  
18 to maintaining that in addition to the meetings at Rhodes  
19 on the Pawtuxet and what not. I wanted the Court to know  
20 that is serving the purpose that I hoped that it would.  
21 Unless your Honor has any questions regarding the report  
22 of me, I will move to the fee portion.

23 THE COURT: Yes, go right ahead.

24 MR. DELSESTO: As your Honor may recall. I was last  
25 before the Court on November 20th on my first interim

1 report and request for fees. At that time the Court  
2 approved all the fees, costs, and expenses of both the  
3 Receiver and special counsel but required a holdback, I  
4 believe, of 20 percent from those fees. Today, your  
5 Honor, I am here on the second report. The fees that I  
6 am requesting approval from this Court span the timeframe  
7 of November 1st through February 28th of this year, so  
8 approximately four months. During that period of time,  
9 your Honor, and this includes costs and expenses,  
10 obviously, as your Honor is aware, special counsel with  
11 regard to its investigation has retained experts and  
12 things like that. So there is a high amount of expense  
13 associated with their bills. So special counsel's bill  
14 through that timeframe, November 1st of 2017 through  
15 February 28, 2018, including the holdback from the first  
16 interim report, total \$262,175.37. The Receiver's fees  
17 through that same period of time, costs and expenses,  
18 including the holdback total \$151,395.67. I am asking  
19 the Court to approve those fees, costs, and expenses  
20 through that date in connection with this second interim  
21 report. I will tell your Honor, as your Honor knows, the  
22 fees, costs, and expenses to date that have been paid  
23 have been paid from funds that were transferred over to  
24 the receivership estate from the petitioner.

25 THE COURT: Just to be clear, the fees are not being



1           paid out of the corpus of what is with Mercer?

2           MR. DELSESTO: Correct. Exactly. So the \$85, \$86  
3 million of plan assets that are invested and serve to pay  
4 the monthly benefits, the fees are not coming from that.  
5 They are coming from a request from the petitioner who is  
6 holding money that ultimately would be coming over to the  
7 plan. As of today, your Honor, I have approximately --  
8 they originally forwarded \$650,000. As of today, I have  
9 approximately \$317,000 left. Obviously, some quick math  
10 shows I do not have enough on hand to cover the fees,  
11 costs, and expenses. I have made a request of the  
12 petitioner through their counsel Attorney Land. He has  
13 discussed that request with the board. I was informed  
14 today that of the three board members that he has, he has  
15 received responses from two in the affirmative and then  
16 he is still waiting for a response from the other. They  
17 may -- and I think Attorney Land is here, if he wants to  
18 speak to this more specifically. I believe I asked for a  
19 sum certain whereas I think the board is asking that  
20 rather than go with a flat sum that I asked for that they  
21 approve an amount that this Court approves for those  
22 fees and costs.

23           THE COURT: Yes, and I will allow that to work  
24 through. It certainly sounds like any fees and expenses  
25 approved by the Court you can draw down on what is left

1 in that reserve and it sounds like it's going through the  
2 process right now and whether an arrangement is reached,  
3 whether there is a further drawdown or whether there is  
4 fees and expenses, certainly, you can review that and if  
5 there is an issue, you can review that.

6 MR. DELSESTO: Absolutely. And one thing I wanted  
7 to make sure so the Court and everyone in the courtroom  
8 is aware of, those discussions with Attorney Land have  
9 been happening and they will continue to happen. If  
10 there is an issue, obviously, we will bring it to the  
11 Court's attention but that there is no portion of the  
12 fees, costs, expenses that I would be seeking to pay from  
13 of the corpus of the plan. With that, your Honor --

14 MR. WISTOW: I think it's important to note on the  
15 record the payments that have been made to date to the  
16 Receiver have been by Roger William's Hospital and not  
17 St. Joseph's.

18 MR. DELSESTO: That's correct, your Honor. The  
19 actual funds were drawn on Roger Williams.

20 MR. WISTOW: Right. And my understanding is the  
21 future funds coming in would similarly be from Roger  
22 Williams.

23 MR. DELSESTO: I won't know until I get the check.

24 THE COURT: I understand.

25 MR. WISTOW: So with that, your Honor, I would ask

1 that the Court approve, confirm, and ratify all the acts,  
2 doings of the Receiver and special counsel in connection  
3 with the second interim report, approve the fees, costs,  
4 and expenses presented to this Court. I have also asked  
5 that the Court, within its discretion, release the  
6 holdback from the first interim report and keep this  
7 matter open pending further order of the Court and the  
8 continued acts and doings of both the Receiver and  
9 special counsel.

10 THE COURT: First of all, the Court with respect to  
11 the interim report does approve the acts and deeds of the  
12 Receiver and counsel and finds that the services rendered  
13 -- and I will say for the record that I have had the  
14 opportunity in detail to review the special counsel's  
15 fees and expenses and invoices. I believe I got a little  
16 bit later yours. So I can comment that the fees and  
17 expenses of the special counsel, the Court finds is fair  
18 and reasonable and certainly for the benefit of the  
19 receivership estate. The Court, subject to a review,  
20 which I should be able to finish by the end of the day on  
21 Monday, again makes that representation subject to the  
22 Court's review that they're fair and reasonable and for  
23 the benefit of the receivership estate. I also  
24 understand after reviewing, especially with respect to  
25 the special counsel, is that the fees can be a little

1       deceiving because we have a lot of outside expenses and  
2       other things that are part of that number. But based on  
3       what I have seen and what I have heard on the record in  
4       terms of what is going on, these fees are approved and  
5       you can certainly draw down on what is left being held by  
6       the Receiver to pay those fees, including the holdback  
7       from the first report, and the balance will be subject to  
8       an arrangement being made of the St. Joe's and Roger  
9       Williams. The Court does not permit any fees and  
10      expenses, and you're not asking at this point, to be  
11      taken from the corpus of the estate.

12             MR. DELSESTO: That's correct.

13             THE COURT: Is there anything else?

14             MR. DELSESTO: Not unless the Court has any further  
15      questions, your Honor.

16             THE COURT: And I know that we went by a fair amount  
17      of time especially since the Court cancelled the last  
18      hearing. I think it's important from a status point of  
19      view that certainly in the next 60 days or so we have  
20      another status report.

21             MR. WISTOW: Absolutely.

22             THE COURT: Thank you very much.

23             MR. DELSESTO: Thank you, your Honor.

24             THE COURT: The Court will also note for the record  
25      that it was given before it took the bench given a

1 proposal from, I believe, it was a planned participant as  
2 far as a solution to this issue. That is what is called  
3 ex parte. The Court hasn't reviewed it, but the Court  
4 will provide it to counsel and special counsel and will  
5 make it part of the court record. Thank you all very  
6 much. The Court will be in recess.

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