

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 MAY 15, 2019

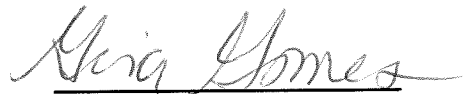
APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER

GINA GIANFRANCESCO GOMES
COURT REPORTER

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

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 9, inclusive, are a true and accurate transcript of my stenographic notes.



GINA GIANFRANCESCO GOMES
COURT REPORTER

1 WEDNESDAY, MAY 15, 2019

2 MORNING SESSION

3 THE CLERK: Your Honor, the matter before the Court
4 is PC-2017-3856, St. Joseph's Health Services of Rhode
5 Island v. St. Joseph's Health Services of Rhode Island
6 Retirement Plan. This is on for the Receiver's ninth
7 interim report and eighth request for approval of fees.
8 Would counsel please identify himself.

9 MR. DEL SESTO: Good morning, your Honor. Stephen
10 Del Sesto, the court-appointed Receiver for the St.
11 Joseph's Health Services of Rhode Island Retirement Plan.

12 THE COURT: You may proceed.

13 MR. DEL SESTO: Thank you, your Honor. Your Honor,
14 we were last before the Court approximately six days ago
15 on the eighth interim report. In that time there has
16 actually been some substantial action that has taken
17 place with regard to the plan. As of today, your Honor,
18 the plan assets are approximately \$73 million. I do want
19 to note for the Court, and I did note it in my report,
20 that when we started in August of 2017 we had
21 approximately \$85 million. As I just stated, we're down
22 to about \$73 million now, which is approximately a \$12
23 million diminished amount. However, in that same time,
24 your Honor, we have paid out approximately \$22 million in
25 benefits as well as other costs related to the plan. So

1 while the \$12 million reduction is significant, I am at
2 least happy to report to the Court that the investments,
3 because that is the only source of income for this plan
4 at this time, has buoyed it somewhat. Unfortunately, I
5 have to thank the market, not my own acting on that, but
6 it is a fact that remains, your Honor, that those
7 investments have been assisting.

8 In addition, your Honor, as your Honor is aware
9 there was a joint conference held approximately a month
10 ago. Your Honor and Judge Smith in the Federal Court
11 requested that conference and all parties' counsel
12 attended that conference. The result of that conference
13 was not only to have a joint status of what was taking
14 place both in this court as well as the Federal Court,
15 but mostly geared toward a discussion as to whether or
16 not something could happen that would put the parties in
17 a position to either resolve the litigation issues or at
18 least narrow those litigation issues. As your Honor is
19 aware, although not formally ordered, there was a very
20 strong suggestion by both this Court and the Federal
21 Court that the parties look to mediation. The parties
22 have agreed to terms of mediation and that will be
23 starting tomorrow. It's scheduled for two days and,
24 obviously, I will provide a report to the Court as to the
25 results of that mediation. I am hopeful that at the very

1 least it will result in the narrowing of some issues.
2 Obviously, it would be ideal if it could resolve all, but
3 it remains to be seen what will happen over those next
4 two days.

5 In addition, your Honor, Judge Smith has approved
6 preliminary the settlement that this Court approved as
7 being in the best interest of the plan with CharterCare
8 Community Board, the old St. Joe's and the old Roger
9 Williams. Now that it has received that preliminary
10 approval, the next step is final approval, which Judge
11 Smith indicated that he wanted to wait until the
12 mediation proceeded before he dealt with that issue. In
13 addition, we had a telephone conference yesterday in
14 advance of the mediation and one piece of that conference
15 came out where CharterCare Foundation, CCF, who also
16 entered into a settlement with me and this Court approved
17 it as being in the best interest of the plan inquired as
18 to whether or not preliminary approval would go forward
19 on that. Judge Smith indicated that he would probably be
20 scheduling a hearing within the next few days for that so
21 that settlement could also move to that next step.

22 Beyond that, your Honor, the most significant event
23 that has occurred -- actually, let me speak to the last
24 hearing before this Court in which Prospect sought motion
25 notice of intent to sue in Delaware and in the

1 alternative motion for relief. Your Honor heard
2 arguments. It was a lengthy argument in which Prospect
3 and the Receiver's counsel presented to the Court, and at
4 the end of that argument, your Honor took it under
5 advisement and deferred any ruling. So as a result the
6 parties are progressing to mediation. That hearing has
7 been heard and we will await the Court's decision when
8 the Court deems that to be an appropriate time to release
9 that.

10 In addition, your Honor, the most significant event
11 that has occurred since the last report is on April 15th
12 I took actions to bring the plan under ERISA. That's a
13 voluntary election. As your Honor is aware, this plan
14 historically has been treated as a church plan and church
15 plans are exempt from the requirements under ERISA.
16 However, even an exempt plan can voluntarily elect to be
17 covered under ERISA. So on April 15th I filed the
18 requisite forms which were the 5500 with the IRS, an 8955
19 SSA with the Department of Labor, as well as a premium
20 filing with the PBGC, The Pension Benefit Guaranty
21 Corporation, which are necessary to trigger that
22 election.

23 In addition to the PBGC filing there was also a
24 payment of the premium due to the PBGC of approximately
25 \$1.5 million, slightly more than 1.5, and the election

1 it's important to note was retroactive or I seek
2 retroactive election to July 1, 2017. The reason for
3 that date, your Honor, is that is the beginning of the
4 plan year. The plan year begins on July 1st of each year
5 and under the regulations and the election allowances I
6 am only allowed to go back two years in terms of the
7 election. I would have gone back further if I could, but
8 the regulations require me to limit it to two years. As
9 a result now, your Honor, as of April 15th I have sought
10 voluntarily to be covered under ERISA in connection with
11 that election. The plan, which was a church plan prior
12 to that time, did not comply with ERISA regulations. I
13 have amended the plan to bring it in compliance with
14 ERISA.

15 In addition, there are certain investments that are
16 non-ERISA investments that a church plan can participate
17 in. We had to -- I'll call it ERISAify the investments
18 as well. As of this date the plan has been amended and
19 the investments have been amended to reflect all ERISA
20 compliant investments. As far as investments are
21 concerned, your Honor, the vehicles are the same. There
22 is just an ERISA and a non-ERISA version. The impact to
23 the plan in terms of the performance of those investments
24 should be nothing at all. The investments should perform
25 the same.

1 Now that this is done, the next step is to have a
2 meeting with the IRS and the Department of Labor because
3 we have amended the plan to make it compliant under ERISA
4 as of April 15th. However, we have elected to have ERISA
5 coverage as far back as July 1, 2017. As a result the
6 IRS and the Department of Labor are going to require me
7 to develop an action plan to, I guess I'll call it,
8 correct the non-ERISA problems that existed prior to the
9 plan's amendment. That will be done in cooperation and
10 conjunction with the Department of Labor and the IRS, and
11 whatever the Department of Labor and IRS identify as the
12 appropriate action to take, we will take that action in
13 an effort to cure the non-ERISA compliant issues for the
14 plan as far back as July 1, 2017.

15 It's important to note for the Court as well as for
16 the participants that the filing itself does not actually
17 provide any additional protection to the plan. As I
18 stated in the report, it's my belief, one, that the
19 filing will have no impact on the litigation or the
20 claims we have made in the litigation. In addition, at
21 this time I have no insight into what position any of the
22 federal agencies, the IRS or the Department of Labor or
23 the PBGC, will take relative to the election and relative
24 to most importantly the PBGC coverage. Based on the
25 conversations that I had with the PBGC prior to the

1 election they had taken what I would call a non-position,
2 which is to merely state that factually the plan had been
3 treated like a church plan historically and that until an
4 agency or a Court indicated that it should be treated
5 differently, the PBGC will not look at it any
6 differently. When asked what would happen if an election
7 were made, the response was essentially we will deal with
8 that when it happens if it happens.

9 So just because we have made the election, I want to
10 make it very very clear that does not mean that all of a
11 sudden there is federal protection. I know there have
12 been some reports and some news outlets that seem to
13 indicate that there is now protection. I think those
14 articles went a step or two too far in terms of
15 characterizing the effect of this election and that this
16 is an election that I believe was necessary and
17 appropriate based on the condition of the plan as it is
18 today as well as the claims that were brought in the
19 litigation with the hope that it will also result in the
20 benefits of the plan. But it's most important to say
21 that as of my appointment, the ERISA compliance issue for
22 this plan was necessary and I did it in order to protect
23 the plan and make sure that the plan was operating as it
24 should under both federal and state law. Unless your
25 Honor has any questions, I can move to the fee portion.

1 THE COURT: That would be fine.

2 MR. DEL SESTO: Thank you, your Honor. For the
3 period of time from February 1, 2019, through March 31,
4 2019, I have fees, costs, and expenses totalling
5 \$68,431.95. I have provided an itemized invoice to the
6 Court for review. In addition to those fees, costs, and
7 expenses, in accordance with the engagement that I
8 entered into with Special Counsel, it allows for me to
9 reimburse Special Counsel out-of-pocket hard costs, and
10 to date out-of-pocket hard costs -- not for the same time
11 period. This time period is longer than the past two
12 months -- total \$33,071.16.

13 In connection with the report today, I am asking
14 that the Court approve the fees, costs, and expenses of
15 the Receiver as reasonable and necessary and appropriate
16 for the protection of the plan and also authorize me,
17 consistent with the terms of the engagement that was
18 approved by this Court, to reimburse Special Counsel
19 their hard out-of-pocket expenses in that amount of
20 \$33,071.16. I will tell your Honor that I do have cash
21 on hand totalling \$69,195.40. Since the last report I
22 have had disbursements of \$9,324.54 and that now as of
23 this report reduces the cash on hand to \$58,870.86. That
24 cash is being held by the Receiver, your Honor, in a
25 separate account for expenses similar to reimbursement to

1 Special Counsel and then all other expenses that are
2 appropriate under ERISA are born by the plan, your Honor.

3 THE COURT: Okay. No objection having been filed,
4 the Court at this point after reviewing the report and
5 hearing the presentation, ratifies the acts and deeds of
6 the Receiver and approves the report. As I indicated to
7 the Receiver prior to taking the bench, I did receive the
8 backup materials on the fees and costs but have not had
9 the opportunity to review them. What I am going to ask
10 the Receiver to do is submit an order both on the report
11 as well as the expenses and leave the fee portion blank.
12 The Court will review it over the next day and issue the
13 appropriate order.

14 MR. DEL SESTO: I will do that. Thank you, your
15 Honor.

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