

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. SUPERIOR COURT

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IN RE: CHARTERCARE COMMUNITY BOARD) C.A.: PC-2019-11756
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HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

REMOTELY ON MAY 22, 2020

APPEARANCES:

THOMAS HEMMENDINGER, ESQUIRE.....FOR CHARTERCARE
ARLENE VIOLET, ESQUIRE.....FOR RETIREES

GINA GIANFRANCESCO GOMES
COURT REPORTER

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

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 8, inclusive, are a true and accurate transcript of my stenographic notes produced to the best of my ability of a hearing conducted remotely.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 THE COURT: Thank you very much, counsel. The
2 Receiver may proceed.

3 MR. HEMMENDINGER: Thank you, your Honor. This is
4 my first report as Liquidating Receiver in this case. I
5 sent notice of the copies of the petition and notice of
6 this hearing both to all counsel of record in this
7 receivership, the plan receivership, as I will call it,
8 which is the St. Joseph's Health Services of Rhode Island
9 Retirement Plan, the litigation that the receivership
10 entities in this case are involved in, those counsel of
11 record, as well as all of the parties in interest that I
12 am aware of. The notice included information on how to
13 access the hearing through the public portal for members
14 of the public as well as a reference for anyone who is
15 represented by counsel.

16 I have not received any written responses to the
17 first report, your Honor, and I realize you have read
18 through the report. I imagine everyone else on this
19 hearing has read it, and I wasn't sure how much detail
20 you wanted me to provide or whether you would just like
21 me to answer questions.

22 THE COURT: I understand and I have read the report.
23 If you can give us an overview of the report itself, not
24 merely in the detail, and then we will go to any
25 questions.

1 MR. HEMMENDINGER: Will do, your Honor. The main
2 activities that I have been involved in since the
3 original appointment in December of 2019 have been
4 getting familiar with all of the litigation, the assets,
5 and the settlements involving the Plan Receiver, Stephen
6 Del Sesto. There was quite a bit of information I had to
7 marshal and digest and this is an ongoing process. I
8 have also been working with Mr. Del Sesto to assess the
9 Put option in Prospect CharterCare, LLC and to preserve
10 and extend my right to exercise that Put. There is a
11 hearing scheduled before this Court on June 23rd on a
12 request for injunctive relieve and a motion to compel to
13 obtain additional information that we believe is
14 necessary in order to evaluate that Put.

15 Otherwise, I have been working with the Plan
16 Receiver to perform my obligations on behalf of the
17 receivership entities under the two settlement agreements
18 that are commonly referred to as Settlement A and
19 Settlement B. Settlement A is the Plan Receiver's claims
20 against the receivership entities. Settlement B is the
21 settlement involving the CharterCare Community
22 Foundation.

23 There was also pending at the time of my appointment
24 a case commonly known as CharterCare Community Board v.
25 Lee pending before this Court in which CCCB is seeking

1 injunctive relief, declaratory relief, turn over of
2 documents, and damages. Now, based on an investigation
3 that was completed after the effective date of my report,
4 we have amended the complaint and now the Plan Receiver
5 and I are co-plaintiffs in that case. This is based on
6 additional development since the CharterCare Community
7 Board cases were filed as well as adding causes of action
8 that we have uncovered since then.

9 Also, after the March 31st effective date of the
10 report both Mr. Del Sesto and I objected to the Prospect
11 entity's application for the Rhode Island Department of
12 Health for approval of an effective change of control of
13 Fatima Hospital and Roger Williams Medical Center. That
14 matter is pending before the health department and as far
15 as I know, no hearing has been scheduled on that at this
16 time. The concern that both receivers have is that the
17 proposed transaction would impair our rights and remedies
18 against the Prospect entities, including potentially the
19 value of this Put option.

20 I also continue to collect the distributions that
21 are made on a number of charitable trusts in which the
22 receivership entities are beneficiaries. And I am
23 looking into an agreement before the receivership with
24 Beacon Mutual Insurance Company that involved payment of
25 Workers' Comp. Claims during a time when the hospitals

1 were self-insured. I expect to be reporting back on that
2 soon because I'm considering whether it's appropriate to
3 reject that contract. The main things I'm trying to
4 investigate there are what the affect would be on the
5 plan receivership as well as the affect that rejection
6 might have on the former employees who are receiving
7 benefits because I don't want to affect those benefits.

8 And, finally, subject to court approval, Mr.
9 Del Sesto and I reached an agreement under which he could
10 file an omnibus proof of claim as it were on behalf of
11 all planned participants in this liquidating receivership
12 rather than have all the individual planned participants
13 needing to file their own individual claims. There are
14 well over 2,000 parties and, generally, I think of
15 limited means, so they wouldn't have to file proof of
16 claim to preserve any rights they may have in the
17 receivership that are independent of their rights against
18 the plan or the plan receivership.

19 And I can address the request for compensation and
20 reimbursement of expenses now or after the Court has
21 questions, depending on how you would like to proceed.

22 THE COURT: Why don't we proceed with that as well
23 right now. I have read and reviewed it. Please go
24 forward on the request for fees, costs, and expenses.

25 MR. HEMMENDINGER: Thank you your, Honor. There is

1 a mistake in the report in that I asked in the report for
2 reimbursement of a little over \$300 in expenses, and the
3 summary of time and expenses that I submitted to the
4 Court shows \$548.68. It was because an entry that was
5 made after March 15th when I originally planned on
6 cutting off the time and expense period got posted there
7 and I just failed to carry it over into the actual
8 report. But from my appointment until March 31st of this
9 year, I and my counsel, Mr. Recuperero, have put in 239.2
10 hours. We are asking for compensation of \$77,088, which
11 comes to a blended rate of 322.27. I submitted an
12 unredacted version to chambers with the chambers' copy of
13 the report and I have a redacted copy just cutting out
14 the privileged and work-product material that was made
15 available and offered to any and all interested parties.
16 To my knowledge no one has asked for that but it remains
17 available at any time. Thank you.

18 THE COURT: Thank you very much, counsel. Does
19 anyone wish to be heard with respect to the Receiver's
20 report and request for fees? I understand there has been
21 no objection that was filed at least at this point.
22 Hearing none, I do not have any questions. The report
23 itself was very comprehensive and I went through it. The
24 Court does approve the report as well as ratifying the
25 acts and deeds of the Receiver. With respect to the

1 application for fees, costs, and expenses, the Court
2 finds that they are reasonable and for the benefit of the
3 receivership estate and those fees and expenses,
4 including that one error between three and 500 some odd
5 dollars are hereby approved.

6 I understand that we have a hearing scheduled at the
7 very end of June, I believe the 25th, that may involve an
8 injunction hearing. Because of the fact that at this
9 point, and I fully anticipate at the end of June we will
10 still be conducting proceedings remotely, I would like
11 the Receiver to advise the Court at least one week before
12 the hearing whether an evidentiary hearing will be going
13 forward, whether there will be a continuance of that
14 hearing, or whether that issue has been resolved. This
15 way we can take the steps in the virtual process of
16 conducting the hearing, which would include getting any
17 exhibits electronically to the court clerk if they are to
18 be used during the proceeding itself. At least one week
19 prior to the hearing I will ask the Receiver to
20 coordinate that with the parties that may be involved in
21 that hearing on the 25th. To the Receiver, is there
22 anything further?

23 MR. HEMMENDINGER: No, your Honor.

24 THE COURT: Very good. So, counsel, if you would
25 submit the appropriate order to the Court. Let me ask

1 the court reporter, is there anything you need
2 clarification on?

3 COURT REPORTER: No, thank you.

4 THE COURT: Thank you very much. We will turn off
5 the public audio and this Court will be in recess.

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

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