

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

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

v.)

)C.A.: PC-2017-3856

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

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

REMOTELY ON JUNE 1, 2020

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER
ARLENE VIOLET, ESQUIRE.....FOR THE RETIREES
CHRISTOPHER FRAGOMENI.....FOR PROSPECT
STEVEN BOYAJIAN, ESQUIRE.....FOR ANGELL PENSION
JESSICA RIDER, ESQUIRE.....FOR ATTORNEY GENERAL

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 11, inclusive, are a true and accurate transcript of my stenographic notes produced to the best of my ability through a hearing conducted remotely.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 record.

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

5 THE COURT: Why don't we have counsel for the
6 Receiver identify himself now.

7 MR. LEDSHAM: Benjamin Ledsham for the Receiver.

8 THE COURT: Just because we have a number of people
9 on the phone, Attorney Violet, if you can just introduce
10 yourself for the record.

11 MS. VIOLET: Arlene Violet. Thank you, your Honor.

12 THE COURT: Absolutely. And Attorney Fragomeni.

13 MR. FRAGOMENI: Good morning, your Honor. Chris
14 Fragomeni for the Prospect Entities.

15 THE COURT: Very good. And I believe we have
16 Attorney Boyajian on the line.

17 MR. BOYAJIAN: That's correct, your Honor. Steve
18 Boyajian for the Angell Pension Group.

19 THE COURT: And I believe we also have Attorney
20 Rider on the line as well.

21 MS. RIDER: Yes, I am, your Honor, on behalf of the
22 Attorney General's Office.

23 THE COURT: Thank you. Other than our law clerks
24 and court staff, is there anyone else that we have missed
25 that is on the video line at this point? Thank you very

1 much. The Receiver may proceed.

2 MR. DEL SESTO: Thank you, your Honor. Your Honor,
3 we're here this morning, as Clerk Miley indicated,
4 on the Receiver's 13th interim report and 12th request
5 for fees. The last hearing, the 12th interim report and
6 11th request for fees, was held on January 29, 2020. At
7 the conclusion of that hearing the Court entered an order
8 approving both the report and the Receiver's request for
9 fees. As everyone is well aware, because of the Covid 19
10 pandemic the court shut down, and although we typically
11 have these hearings every two months, the hearing that
12 was scheduled for, I believe, sometime in March has been
13 continued to this date. So this is the first hearing
14 that we are having since January 29th and since the
15 pandemic has occurred. Rather than go through everything
16 that was in the report as of that time, I will just
17 update the Court on anything that has happened since then
18 in this matter.

19 As your Honor knows, on or about April 17th your
20 Honor entered an order on an ex parte petition filed by
21 the Receiver relative to Jeffrey Cohen. As your Honor
22 knows, the Receiver engaged Attorney Cohen, who is an
23 expert on the Pension Benefit Guarantee Corporation and
24 ERISA, he was with a firm Bailey & Ehrenberg. The
25 ex-parte petition was related to his move to the

1 Trachunsky firm, and it was merely a request to engage
2 that firm because we had engaged Mr. Cohen and that was
3 the person that I wanted as my expert. So it was more of
4 an administrative motion just to acknowledge that he has
5 moved firms but that we were continuing our relationship
6 with him and your Honor approved that ex-parte motion on
7 April 17th. That is all that actually has happened in
8 this case since that time.

9 In the federal litigation there was a conference
10 held with Judge Smith relative to some discovery issues.
11 I'm sorry. I misspoke. There was supposed to be a
12 conference with Judge Smith, but those issues were worked
13 out among the parties and there is a discovery ongoing in
14 that litigation relative to the narrow ERISA Church Plan
15 issue that Judge Smith would like to address first in
16 that case.

17 In addition, in the CCCB litigation there is
18 discovery going on in that case and the Put has been
19 postponed, I believe. I don't -- as I sit here right
20 now, your Honor, I forget the date that it has been
21 postponed to. There is an agreement between the Prospect
22 entities and the Receiver. I'm sorry. I misspoke again.
23 Actually, there is not an agreement between them, but the
24 order that your Honor had entered allowed the Put to be
25 extended under certain circumstances and those

1 circumstances were triggered.

2 As your Honor also knows, there is the Liquidating
3 Receiver or I will call them the Legacy hospitals.
4 Attorney Tom Hemmendinger is the Liquidating Receiver in
5 that. I believe it was just last week or a week and a
6 half ago that Attorney Hemmendinger appeared before you
7 on his first interim report.

8 I will also tell your Honor in addition to Attorney
9 Hemmendinger's actions in the liquidating receivership,
10 Prospect has filed a change of effective control
11 application with the Attorney General and Department of
12 Health, and both Attorney Hemmendinger on behalf of the
13 Legacy hospitals as well as myself on behalf of both the
14 plan as well as the other class plaintiffs in the federal
15 litigation have filed an objection to that and that issue
16 is pending before those state agencies right now.

17 With regard to one of the most important things that
18 has happened, obviously, relative to the plan's
19 performance, we continue to, obviously, have the same
20 payout per month on benefits, which is approximately just
21 slightly under a million dollars a month. When the
22 pandemic hit, as everybody knows, the markets went into a
23 substantial turmoil in volatility. I am happy to report
24 that just about eight to twelve months prior to the
25 pandemic hitting, I had readjusted the investment

1 allocations for the plan's assets to a more conservative
2 allocation, which for the months prior to the pandemic
3 resulted in a lower performance in terms of investment
4 income being generated. However, as a result of the
5 pandemic, which I can't take credit for because I didn't
6 see it coming any more than anybody else did, but it did
7 insulate the plan substantially. In March the market was
8 down approximately 25 to 26 percent, and as a result of
9 the change in asset allocation the plan was only down
10 about ten percent so it substantially insulated the plan
11 and its assets from the volatility that hit as a result
12 of the pandemic.

13 Based on that, your Honor, as I believe you might
14 recall, after the settlements had been finalized with the
15 Legacy hospitals as well as with the CharterCare
16 Foundation we had taken in gross settlement proceeds of
17 approximately \$16 million. After legal fees had been
18 paid that was reduced to between \$11 and \$12 million and
19 as a result at that time we had just around \$80 million
20 in the plan. It was just under. I believe it was \$79
21 million. As a result of the pandemic and the market
22 volatility, that asset value has dropped. However, as of
23 the end of March it was approximately \$70 million.
24 That's around that ten percent that I just mentioned that
25 the plan had dropped. Keeping in mind that we were also

1 paying out about a million dollars in benefits. So
2 that's the delta between ten percent and the actual
3 number. I have not yet received the most recent report
4 but I can certainly provide that to your Honor in a
5 separate writing so that your Honor is aware of what it
6 is. However, the market has rebounded slightly, which
7 means that the asset value other than the erosion as a
8 result of payment of benefits that the asset value has
9 stayed relatively consistent since that time.

10 With that, your Honor, I don't have anything further
11 to add as far as the report. I'm sorry, one more thing.
12 As your Honor also knows, approximately every two months
13 or so I was holding town hall-style meetings to advise
14 the pension holders as to the status of things.
15 Obviously, because of the pandemic that has not been
16 possible. There are many, many participants. Those
17 meetings are still attended by -- while I was having
18 them, they were attended by somewhere in the vicinity of
19 about 150 people, give or take, each time so some type of
20 a zoom was not possible. But I am going to be preparing
21 a letter, which will supplement this report. This report
22 was put on the website, which many have access to, and I
23 am going to be preparing a letter to the pension holders
24 to give them an update similar in style to what I would
25 give them if I were standing in front of them although

1 without the ability to do the question and answer.

2 Other than that, your Honor, that's about as much as
3 has been going on in dealing with as a result of the
4 pandemic certain deadlines for federal filings have been
5 extended so our PBGC premium as well as our Form 5500
6 because as you know now we were an elected or ERISA plan.
7 Notwithstanding the argument that I believe it was an
8 ERISA plan, as a belt and suspenders I did elect back in
9 April of 2019. So all of the forms are being filed
10 although the deadline has moved for the submission of
11 those. I also have recently received a recent plan audit
12 from the accountants Caliber as well as updated financial
13 statements and we are getting a plan valuation from the
14 actuary GRS, which should be done within the next week to
15 ten days, and I will, obviously, share that with your
16 Honor and the parties that I typically share that with.

17 Aside from that, your Honor, I have nothing further
18 unless your Honor has any questions. And I'm not sure
19 how this format works, if your Honor allows questions
20 from any other counsel, but that's what I have for my
21 report right now.

22 THE COURT: Thank you very much, counsel. I
23 appreciate the update. I have had the opportunity to
24 review the report as of March that was filed with the
25 Court. Does litigation counsel for the Receiver wish to

1 be heard at all?

2 MR. LEDSHAM: No, your Honor.

3 THE COURT: Thank you very much, counsel. Okay.
4 There have been no objections that were filed with the
5 Court. Does anyone else wish to be heard? Hearing none
6 at this point, the Court has reviewed the interim report
7 of the Receiver. And I want to be very clear, we are
8 just talking about the St. Joseph's and related entities
9 receivership as opposed to what Attorney Hemmendinger has
10 at this point for CCCB. The Court approves the interim
11 report ratifying the acts and deeds of the Receiver.

12 With respect to fees, costs, including legal fees, I
13 am happy to say that over the weekend I finally received
14 what they refer to as BPN access so I can see the full
15 unredacted legal fees. I have hearings until about 2:30
16 today. When that is over, I will sit down with those
17 documents and if they are approved, I just want to state
18 for the record that they are fair, reasonable, and for
19 the benefit of the receivership estate.

20 And, Attorney Del Sesto, if you don't receive
21 something from the Court by mid day tomorrow, I just ask
22 you to e-mail Clerk Miley. It's probably somewhere
23 between her and I at that point. Also, if you can submit
24 an order to the Court, again, that can come into the
25 Stern calendar by e-mail. Just leave a blank for the

1 fees, costs, and expenses and we can fill that in from
2 our end and we will issue the order itself.

3 MR. DEL SESTO: I will do that, your Honor. I will
4 send it both to the Stern calendar e-mail as well as file
5 it through the portal.

6 THE COURT: Thank you. That will be great. Just a
7 question in terms of the federal litigation. I heard
8 what you said discovery is going on. It appears Judge
9 Smith wants to deal with the issue of the ERISA church
10 plan. So is that the active part of what is going on in
11 federal court right now?

12 MR. DEL SESTO: That is, your Honor. And to the
13 extent that there is anything further, I would ask
14 Attorney Ledsham. Seeing as I am a litigant in that
15 case, I would prefer counsel in that case to actually
16 speak to any nuances to that.

17 THE COURT: And it's more of a broad-based
18 question. Benjamin, does that appear to be the main
19 focus right now?

20 MR. LEDSHAM: Yes, your Honor. There is currently
21 limited discovery that is going on concerning actually a
22 subset of the issue of when this plan became subject to
23 ERISA concerning the so-called principle purpose entity
24 requirement for maintaining an exception. Currently the
25 first period of discovery is supposed to end on June

1 26th. At that point the defendants in that case will
2 file potentially objections and cross motions for summary
3 judgment and further discovery will occur after that
4 point all related to the ERISA issue.

5 THE COURT: Thank you very much, counsel. With
6 that, I'm just going to ask the court reporter is there
7 any clarification that you need from anyone, Gina?

8 COURT REPORTER: No, thank you, Judge.

9 THE COURT: Okay. I want to thank counsel as well
10 as any members of the public or interested parties that
11 are on the public line. At this point the Court is going
12 to be in recess. Stay safe and thank you all very much.

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