

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

DECEMBER 14, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL
RUSSELL CONN, ESQUIRE.....FOR CHARTERCARE
JESSICA RIDER, ESQUIR.....ATTORNEY GENERAL
CHRISTOPHER CALLACI, ESQUIRE.....UNITED NURSES

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 17, inclusive, are a true and accurate transcript of my stenographic notes.

A handwritten signature in cursive script, appearing to read "Gina Gomes", written over a horizontal line.

GINA GIANFRANCESCO GOMES
COURT REPORTER

1 FRIDAY, DECEMBER 14, 2018

2 MORNING SESSION

3 THE CLERK: Your Honor, the matter before the Court
4 is St. Joseph's Health Services of Rhode Island v.
5 St. Joseph's Health Services of Rhode Island Retirement
6 Plan, Case Number PC-2017-3856. This matter is on for
7 the Receiver's petition for settlement approval, and the
8 Receiver's seventh interim report and sixth request for
9 approval of fees. We also have Case Number
10 KM-2015-0035, In Re: CharterCare Health Partners
11 Foundation. This is on for a joint motion for a stay of
12 all proceedings pending judicial approval of the proposed
13 settlement.

14 THE COURT: We're going to start with the proposed
15 settlement and depending on the outcome of that, we will
16 address the joint motion to stay and then we'll finish
17 off with the report. Counsel may proceed.

18 MR. WISTOW: Good morning, your Honor. Before I
19 begin, I want to thank Mr. Del Sesto for his flattering
20 gesture of trying to grow a goatee.

21 THE COURT: November is over.

22 MR. WISTOW: Your Honor has undoubtedly read all the
23 submissions. There is certainly nothing I can tell you
24 that you don't know, but there are participants in the
25 plan here who may not be aware of the technicalities. I

1 would like to just very very briefly outline what the
2 settlement is about.

3 THE COURT: I'd appreciate it if you would.

4 MR. WISTOW: This would be the second proposed
5 settlement in the case. There still remains, as these go
6 forward, multiple Defendants, principally Prospect
7 CharterCare, Angell, and the Roman Catholic Bishop of
8 Providence and various entities related to them. This
9 particular settlement that we're asking for approval has
10 already been entered into by the parties thereto, and
11 it's subject to being set aside as a condition subsequent
12 if your Honor chooses to take such an action. The
13 settlement parties are CharterCare Community Board, which
14 was the parent company of the old St. Joseph's Hospital
15 Society of Rhode Island and Roger Williams Hospital, the
16 so-called Heritage hospitals that existed before the 2014
17 hospital conversion. The other settling parties are
18 CharterCare Foundation and Rhode Island Foundation.
19 Those two groups are settling with the Receiver and the
20 seven individuals who are the punitive class action
21 members.

22 Your Honor will recall that following the 2014
23 hospital conversion of the transfer of substantially all
24 the assets of CharterCare Community Board to Prospect
25 CharterCare, we had a situation where we had not for

1 profits dealing with for profits and there was an issue
2 with what to do with certain charitable funds. There was
3 approximately \$8.2 million that had to be dealt with,
4 some of which belonged to Roger Williams Hospital, some
5 of which belonged to St. Joseph's Hospital. There was a
6 petition filed in 2015 in this court, and, indeed, before
7 your Honor, and as a result of that Cy Pres petition \$8.2
8 million was transferred to CharterCare Foundation, one of
9 the settling parties in the motion presently before the
10 Court. The involvement of Rhode Island Foundation is
11 simply really an investment holding wherein Rhode Island
12 Foundation takes the money, decides what appropriate
13 investments are made. The true title to the equitable
14 loan is CharterCare Foundation.

15 The settlement is as follows, and I have to get into
16 another court involved: If your Honor approves, the plan
17 will receive a gross payment of \$4.5 million, which we
18 consider reasonably favorable considering the original
19 sum transferred was \$8.2 million. Of that \$4.5 million,
20 at least \$3.9 would come directly from CharterCare. We
21 negotiated with CharterCare Foundation's records and
22 omissions carrier and they have agreed to put in \$600,000
23 to make up the \$4.5.

24 What is significant, your Honor, is that's an
25 arrangement between CharterCare and its carrier. We have

1 negotiated, but the underlying obligation to us is from
2 CharterCare Foundation whether the carrier pays or
3 doesn't pay. We had filed a motion to intervene in the
4 2015 Cy Pres case because it had never been closed, your
5 Honor. Your Honor granted that motion to intervene, and
6 as a result that precipitated the negotiations between
7 counsel for the funds, the retirement fund, and counsel
8 for CharterCare Foundation with the proposed settlement
9 we're talking about now.

10 If your Honor approves this, it's only one of three
11 necessary steps. If your Honor approves it, we will be
12 going to the Federal Court to ask the Federal Court to
13 approve, indeed, the very same settlement. The most
14 important reason for it being two fold, one, and this
15 does purport to be a class action, so we need to have the
16 Federal Court certify or at least ask the Federal Court
17 to certify this as a class action, and we need the Court
18 to find that it's a fair and equitable settlement within
19 the meaning of the new joint tortfeasor act that has been
20 past in connection with the St. Joseph's Pension Plan. I
21 don't believe there has been any objection filed.

22 THE COURT: The only papers the Court received was a
23 paper of support from Attorney Violet.

24 MR. WISTOW: Right. My understanding is your Honor
25 will recall there were three lawyers representing, I

1 believe, over a thousand planned participants whose
2 involvement in this is simply if ever there comes a time
3 that there is a need or a perceived need for a reduction
4 in the benefits paid out monthly, these various groups
5 may at that point have contentions and those lawyers are
6 representing those groups in that context. There is no
7 conflict insofar as this is involved because all the
8 money is going into one part which would benefit all of
9 these groups. I have spoken to Mr. Callaci. He is in
10 the courtroom I believe today. He is in favor of it and
11 I have spoken to Mr. Kasle, who I believe could not make
12 it today and he informed me he is in favor of it also.

13 So without objection and relying on, your Honor,
14 what I consider to be a virtually indistinguishable
15 situation in terms of standing and prematurity and
16 ripeness from the situation of the first settlement we
17 made, which in your Honor's October 29, 2018, decision
18 analyzed and approved including the Jeffrey's factors, we
19 would ask that your Honor approve our going forward
20 seeking the further approval of the Federal Court with
21 the understanding that, strangely enough, if we succeed
22 in Federal Court, we will be back before your Honor on
23 the Cy Pres. I don't know if your Honor wants me to
24 address the motion to stay the Cy Pres at this point.

25 THE COURT: Why don't we deal with this and then we

1 can deal with the motion to stay which may be a nonissue.
2 There were no papers filed. If they wish to place
3 anything on the record, CharterCare Foundation or Rhode
4 Island Foundation, I will give you the opportunity to do
5 that.

6 THE COURT: Good morning, counsel.

7 MR. CONN: Good morning, your Honor. Russell Conn
8 for CharterCare Foundation. I am with Mr. Beale, my
9 local counsel, and Mr. McQueen, the President of
10 CharterCare Foundation is here in the courtroom today.
11 This settlement, indeed CharterCare Foundation supports
12 it. It was negotiated between early October leading
13 right up to the Thanksgiving weekend. You can see from
14 the settlement agreement it's quite detailed. Mr. Wistow
15 and as I principally negotiated the terms and conditions.
16 We think it's an appropriate reasonable settlement that
17 takes into account the varying competing interests
18 towards these funds and we certainly support it. Mr.
19 Wistow mentioned the D&O policy and I can speak to that a
20 little bit. It was a \$1 million wasting policy and it
21 was wasting day by day legal fees and we were able to get
22 \$600,000 of that to put towards the settlement. It's not
23 before the Court but CharterCare Foundation has its own
24 separate agreement with R.S.E.Y. to fund that \$600,000
25 when and if we get through the final settlement

1 agreement. So we ask the Court to approve the settlement
2 petition filed by Mr. Wistow and the Receiver.

3 THE COURT: Thank you very much, counsel. Let me
4 ask Mr. Wallin, do you have anything you want to put on
5 the record?

6 MR. WALLIN: No, your Honor.

7 THE COURT: Very good. Attorney Callaci.

8 MR. CALLACI: Good morning, your Honor. Chris
9 Callaci for the United Nurses and Allied Professionals.
10 I thought it would be the worthwhile that the Court hear
11 from the horse's mouth of Special Counsel, Mr. Wistow's,
12 representation and our support. We have about 400 union
13 members who are participants in this plan and they fully
14 trust and are confident in the Receiver's assessment that
15 the settlement agreement is in the best interest of the
16 receivership estate and the plan, and the plan
17 participants, and we applaud the work that has been done
18 in that regard.

19 THE COURT: Thank you very much. Counsel.

20 MS. RIDER: Good morning, your Honor. Jessica Rider
21 on behalf of the Attorney General's Office. Just very
22 briefly, as you know we didn't file any papers. It was
23 addressed in the motion that the Receiver believes the
24 most appropriate forum for our participation is the
25 Cy Pres action and that is when we will file a response.

1 THE COURT: Let me just ask you while you're up
2 here, the next thing we're dealing with is the joint
3 motion to stay that Cy Pres at this point. As we go
4 through the process, does the Attorney General have any
5 objection?

6 MS. RYDER: No objection to that motion, your Honor.

7 THE COURT: Thank you very much. As opposed to the
8 first proposed settlement that was before the Court, this
9 one is in a very different posture where everyone agrees
10 with the proposed settlement which would allow the
11 Receiver and Special Counsel to go to the next step in
12 the process which is to seek appropriate approvals from
13 the Federal Court. The Court has reviewed the papers as
14 well as the filing in support by Attorney Violet, the
15 statement made by Attorney Callaci, and the
16 representation of Attorney Kasle as well.

17 As the Court detailed in its decision on the last
18 proposed settlement, the Court analyzed what is referred
19 to as the Jeffrey's factors, which is a case issued by
20 the First Circuit Court of Appeals, to determine whether
21 the settlement is appropriate. In the papers itself
22 Special Counsel had gone through those factors, and the
23 Court with respect to the probability of success in the
24 litigation being compromised; the difficulties to be
25 encountered in the matter of collection; complexity of

1 the litigation involved and the expenses, inconvenience,
2 and delay -- and the Court finds based on the issues
3 raised by CharterCare Foundation, this certainly may have
4 been a long drawn out issue to get to a final
5 conclusion -- and then the interest of the creditors and
6 a proper deference to their reasonable views.

7 The Court finds that this settlement is, in fact,
8 reasonable and in the interest of the creditors including
9 the pensioners in this case and as a result the Court
10 approves the proposed settlement by the Receiver. And
11 while it's of no consequence as this settlement is
12 pursued, I will look forward in another appropriate case,
13 probably not before this Court, as Attorney Conn finally
14 gets to deal with the issue before the United States
15 Supreme Court on charitable donations and charitable
16 issues and where they belong, but we will not be forced
17 to deal with that issue here. The motion is approved. I
18 would ask Special Counsel to prepare the appropriate
19 order and submit it to the Court. Thank you very much.

20 Let's move on next to the motion to stay.

21 MR. WISTOW: As to the claims of the charitable
22 funds that claim is unique in that it's engendered three
23 lawsuits, the federal lawsuit, the state lawsuit that
24 looks like the federal lawsuit except that it doesn't
25 have the ERISA claims, and now the Cy Pres is still

1 pending. If, indeed, we are able to consummate the
2 settlement, that is to say if the Federal Court approves
3 this particular settlement, and if your Honor approves
4 the settlement in the Cy Pres, then that case will go
5 away. If on the other hand the Federal Court refuses to
6 accept the settlement that we're proposing for whatever
7 reason, perhaps your Honor will not accept the end
8 result, then in that case we need to go forward with the
9 Cy Pres. But in the interim considering, we hope, the
10 likelihood that the settlement will go through, it seems
11 a needless waste of court time and lawyer time for us to
12 be proceeding on a Cy Pres, which, hopefully, just
13 disappears as a result of the settlement. We are asking
14 that everything be stayed in that proceeding then the
15 existing order, when I say freezing the assets, it's
16 understood it's not totally frozen, will continue in
17 place and I believe there is no objection.

18 THE COURT: I know the Attorney General said there
19 is no objection.

20 MR. CONN: There is no objection. This is a joint
21 motion. I think Mr. Wistow is referring to the Court's
22 June 28th, 29th preservation order and we agree that
23 stays in full force and effect during the stay.

24 THE COURT: Very good. Logically and preservation
25 of the state expenses the motion makes perfect sense to

1 the Court. The motion to stay is approved with the carve
2 out if it is implicated that preservation order will stay
3 in full force and effect. Thank you very much.

4 That kind of brings us to the wrap up of today which
5 is the Receiver's interim report. Counsel, you may
6 proceed.

7 MR. DEL SESTO: Thank you, your Honor. Your Honor,
8 unless you wish me to go through the details of the
9 report, I'm going to focus just merely on the highlights.

10 THE COURT: That's fine.

11 MR. DELSESTO: One of the issues I was going to
12 discuss and that is discussed in the report is what was
13 just presented by Special Counsel, so I'm not going to go
14 through that again either. With regard to that going
15 forward, your Honor, the main thing I want to address is
16 the prior settlement that this Court had approved back in
17 mid November. That settlement has been presented to the
18 Federal Court. The time period for objections for
19 approval of that settlement by the Federal Court is
20 either the 24th of December or the 26th or 27th. I don't
21 remember the exact date but it is this month and it's
22 coming up within at least ten days, that's where that
23 stands right now, your Honor. The litigation in Federal
24 Court, motions to dismiss have been filed, responses are
25 being prepared, and that is moving along in accordance

1 with Judge Smith's scheduling order on that.

2 Other than that, your Honor, I have had constant
3 communications with the expert that I retained in this
4 case regarding the ERISA issues for this plan. I
5 continue those communications. Other than to report to
6 the Court that those communications continue with expert
7 counsel, that's all I really have to report at this time.
8 There has been no determination made at this time as to
9 how to deal with that issue and that will be done in
10 conjunction with special counsel as well as expert
11 counsel to consider all the factors which include the
12 litigation as going forward in Federal Court.

13 Beyond that, your Honor, I did want to mention just
14 the status of the plan. When I was appointed back on
15 August 17th of 2017, the plan had approximately \$86
16 million in assets. The Court might recall that it was
17 reported at that time that the monthly benefit payment
18 obligation was approximately \$850,000 per month at that
19 time. Also, the Court at the beginning of the case froze
20 the processing of applications and elections. So we were
21 proceeding for approximately seven months, August through
22 March on that \$850,000 a month payment obligation to the
23 beneficiaries.

24 In March of 2018, at my request and recommendation,
25 the Court approved the lifting of that freeze of

1 applications and elections and we began to process those
2 applications and elections. That process resulted in two
3 financial impacts to the plan. One, they were
4 retroactive payments that were required to be made in
5 conjunction with those applications and elections, and in
6 addition on a go-forward basis the monthly payment
7 obligation on those benefits increased by approximately
8 \$125,000 per month as a result of all of those things,
9 your Honor, or in addition to all of those things, your
10 Honor. The market is much different today than it was in
11 the prior years, two or three years, for this plan where
12 it was experiencing some consistent steady growth. For a
13 long period of time we had a better period of volatility.
14 The first major period of volatility happened in February
15 of 2018. So although the plan is still performing and
16 generating investment income, it is not producing
17 investment income at the same rate that it was
18 previously.

19 Another factor in that, as your Honor might recall,
20 I sat down with the investment manager in February and
21 March and discussed a change in the allocation of the
22 assets. We did elect to change that allocation, which
23 was a 60/40 split to a 50/50 split.

24 THE COURT: 60 equities before --

25 MR. DELSESTO: That's correct, your Honor. That

1 reduction or that reallocation rather of the investments
2 has insulated the plan somewhat in the volatility, but at
3 the same time that allocation, obviously, means that it's
4 a less aggressive investment opportunity for the plan.
5 So all of those things combined, the increase in the
6 monthly benefit payments, the retroactive payment that
7 had to be made, and the reduction in the benefit of the
8 investments has resulted in today, 16 months later, the
9 plan's assets are approximately \$76 million, about \$10
10 million difference. Obviously, when you look at the
11 math, we still have benefitted from the investment
12 because based on those numbers on payment of benefits
13 alone we would normally be down somewhere in \$70 million,
14 maybe slightly lower than \$70 million, but the
15 investments have kept those buoyed slightly to keep it at
16 the \$76 million.

17 I mention all of this for two reasons, your Honor,
18 one, to give the Court a general report of where we are
19 in terms of the assets that the plan holds and to provide
20 that financial picture, but also to stress -- and I know
21 your Honor understands this and we've already been before
22 your Honor now twice on the settlement approvals -- but
23 the need to get these settlements approved by not only
24 this Court but by the Federal Court so that those funds
25 can be utilized by the plan to assist and keep a runway

1 for this plan going as we continue through the
2 litigation.

3 So with regard to my report, aside from the details
4 that are in the report and the settlement of the
5 CharterCare Foundation that special counsel had discussed
6 prior to my report, unless your Honor has any questions,
7 I will move over to the fee portion.

8 THE COURT: That's fine.

9 MR. DEL SESTO: Your Honor, with regard to the fees,
10 costs, and expenses of the Receiver, the time period for
11 these fees goes for the prior 60 days ending on October
12 31st. Fees of the Receiver are \$73,249.50 with expenses
13 of \$1,384.96, for a total of \$74,634.46. In addition to
14 that, your Honor, Mercer, who is the investment advisor
15 for the plan, there were two invoices that they had
16 outstanding just prior to my appointment and they remain
17 outstanding at this time. One of the invoices is a
18 fully -- I would call it a pre-receivership invoice. The
19 other covers a portion of the receivership and a portion
20 prior to the receivership.

21 Normally, your Honor, these types of invoices are
22 not paid and there is not a recommendation to pay these.
23 However, with the fact that Mercer continues to act as
24 the investment advisor they have asked about these. I
25 believe the Court has in the past approved payment of

1 prepetition amounts because of the continued involvement
2 and the importance of that continued involvement of that
3 particular vendor. I believe this case warrants that
4 same type of consideration, and in addition to my fees
5 and costs and expenses, your Honor, I would ask that the
6 fees of Mercer for the invoices covering the period of
7 April 1, 2017, through June 30, 2017, and July 1, 2017,
8 through August 17th of 2017 be approved. The amount of
9 that, your Honor, is approximately \$41,000 and I ask that
10 those be approved and that will bring Mercer current and
11 they are being paid current by me in conjunction with the
12 work they have been providing.

13 THE COURT: Thank you. The Court has received no
14 objection to the report. First, on the settlement
15 proposal, I just don't want to miss this, I forgot to put
16 on the record. It was also in there Special Counsel's
17 fee is based on a contingency fee plus costs. With
18 respect to the settlement, the Court finds that the
19 contingency fee being charged is, in fact, fair,
20 reasonable, and very much a benefit to the receivership
21 estate. I want to make sure on that case it's on the
22 record as well.

23 With respect to this, the Court has had the
24 opportunity to read the extensive report, the Court does
25 approve the report ratifying the acts and deeds. I do

1 understand the issues in terms of Mercer and the
2 continuity and those fees are approved and for the
3 benefit of the estate. The Court also approves the
4 Receiver's fees and expenses as fair and reasonable and
5 for the benefit of the estate. I would ask that you
6 please prepare the appropriate order for the Court's
7 signature. And with respect to the settlement, I
8 understand that triggers certain things on the federal
9 side, so I just ask that if we could get that in as
10 quickly as possible just because the Court goes to a duty
11 schedule at some point next week. So I just want to make
12 sure that is executed so there is no issue there.

13 MR. DEL SESTO: Thank you. May I approach, your
14 Honor?

15 THE COURT: Yes.

16 (Document handed to the Court.)

17 THE COURT: Are there any other matters at this
18 point? Okay. I want to thank everyone very much. The
19 Court will be in recess.

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